



Thyroid surgery, complications and professional liability

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Thyroid surgery is mainly performed for neoplastic diseases, in the presence of an increase in volume of the gland responsible for goiter, or autoimmune diseases such as Graves' and Hashimoto's diseases. The rate of complications secondary to this surgery is low (3% to 8% of cases) and mainly concerns recurrent laryngeal nerve palsies and/or damages to the parathyroid glands causing hypocalcemia (1). While thyroidectomy is often performed for non-serious diseases, its complications can negatively impact the quality of life and can be potentially disabling in the case of unilateral recurrent laryngeal nerve palsies e.g., dysphonia for occupational voice users, dyspnea on exertion as well as swallowing disorders. The latter can be particularly serious in the elderly with underlying frailty (2). In octogenarians, the in-hospital mortality reaches 0.8%, with a significantly increased rate of overall complications, up to 30% (2). In rare cases, bilateral recurrent laryngeal nerve palsy may occur causing acute dyspnea that may require a posterior cordotomy or tracheostomy.

Recently, a complete transection of the cervical esophagus has been reported during thyroidectomy. This serious and unpredictable complication required further surgeries in order to perform reconstruction by free jejunal flap (3). In this case, the professional liability of

the surgeon may be engaged to seek compensation for the damage caused, for several reasons. First, because of the unjustifiable nature of this serious complication. Second, due to the incomplete preoperative work-up which led to a misdiagnosis followed by an incorrect surgical indication. Indeed, the indication for surgery was an alleged Graves' disease, however appropriate diagnostic tests were not performed. Moreover, the first-line treatment of Graves' disease is based on anti-thyroid drugs. Radioactive iodine therapy or radical surgery are usually performed after failure of the medical treatment. These different treatments were not considered by the surgeon and upfront surgery was performed.

This case raises the question of the surgical liability. It reminds the reader the paramount importance of a proper preoperative management, in order to make the right indication, even for such a common procedure. Besides, while some unpredictable complications could happen to any surgeon, performing a high volume of thyroidectomy is associated with fewer peri-operative complications (4).

As a matter of fact, thyroid surgery is at high risk of lawsuits. An Italian study has identified over the last ten years 50 lawsuits related to thyroid surgery, mainly related to recurrent laryngeal nerve palsies, and three-quarters of

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these resulted in a conviction with financial damage awards. The decisions to grant the claims were all motivated on the basis of deficiencies in the plaintiffs' medical records, particularly with regard to the descriptions of the surgical procedures performed (5). In England, between 1995 and 2012, there were a total of 161 claims, the majority of which related to lack of preoperative information, misdiagnosis and laryngeal recurrent nerve palsies (6). In a United States study, during the 24-year period reviewed, 380 claims related to thyroid surgery were reported, among which 128 (33.7%) resulted in an indemnity payment against the defendant. Fifty-five cases were related to laryngeal nerve injury or voice disturbance. Extrapolating from the Physician Insurers Association of America data, there are approximately 5.9 claims per 10,000 cases (7). The main convictions being linked to deficiencies in medical records, it is then necessary to show in the medical record that the surgeon informed the patient about the principles of the surgery, the balance of benefits and harms, and the risks involved in order to ensure that he understands them and to obtain his consent. From a medicolegal point of view, the medical records are fundamental, representing the most important probative and protective tool for the surgeon (8). The second important element, which is a motive for many appeals, is patient information. This is an essential point that the surgeon must not neglect to protect himself. The absence of information, clear and adapted to the understanding of the patient, can be an easy reason for complaint for the patient, all the more so if the medical record has not been correctly kept. Furthermore, the surgeon should be able to prove that he performs this surgery regularly, that he received an appropriate training and that he has access to suitable resources for such procedure. As most societies become more and more litigious over time, intraoperative nerve monitoring of the recurrent laryngeal nerve becomes highly recommended from a legal perspective (9).

This case also raises the question of the surgeon's responsibility in the event of unpredictable complications. These are so rare that the surgeon cannot be required to inform the patient about them. In most jurisdictions, surgeons are required to exercise their skills and knowledge with the level of care and skill expected for their profession at the time of performing the procedure. It is therefore necessary for a surgeon to continue to train throughout his career and to be aware of the good practice recommendations currently valid in his discipline.

This implies an obligation of means, that is to say the surgeon must take all the necessary precautions to avoid complications, but he is not obliged to obtain a certain result. In France, the jurisprudence of the Mercier decision in 1936 determines that "a contract is formed between the doctor and his patient comprising the obligation for the doctor to give his patient care that is conscientious, attentive and in accordance with the data acquired from science" (French Cassation Court, May 20, 1936). Since the patient has given informed consent and the complication cannot be anticipated, it is difficult to hold the surgeon legally accountable. However, if the unpredictable complication is due to the negligence or error of the surgeon, such as an error in surgical technique or a failure to meet reasonable standards of care, there may be a basis for a medical negligence claim. The surgeon's liability may be sought before several possible authorities: criminal, civil or ethical. However, in several countries, the victim can still request recognition of their damage and compensation in the context of, for example, a therapeutic hazard. In one case described by an Italian team, liability was not attributed to the medical professionals in the case of an excessively large volume thyroidectomy following which the patient presented with a unilateral recurrent nerve palsy. The nerve could not be identified during the intervention because of the bulkiness of the gland. The claim for compensation was not upheld since the surgeons, under the conditions in which they were operating, could not prevent what in fact happened. In Italy, under Article 2236 of the Civil Code, "If the service involves the solution of technical problems of special difficulty, the service provider is not liable for damages, except in cases of malice or gross negligence" (5). In France, following a recurrent bilateral laryngeal nerve palsy after thyroidectomy which required a tracheostomy, liability was not attributed to the medical professionals by the Administrative Court because the complication was too rare to be predicted but encouraged the payment by the national health insurance of an indemnity in view of the functional damage presented by the patient (Administrative Court of Appeal of Bordeaux 2nd chamber, October 17, 2017).

Overall, thyroid surgery is associated with a significant risk of debilitating complications as well as a legal risk for the surgeon. Therefore, all available measures should be implemented to guarantee patient safety and protect the surgeon at every stage e.g., an appropriate preoperative assessment with suitable patient information and advice, a

complete and well-kept medical record, a documentation of patient's consent and intraoperative nerve monitoring, as well as the carrying out of decisions and surgical acts in accordance with current scientific data. While unpredictable complications cannot be anticipated by nature, all these precautions will contribute to reduce their occurrence and mitigate their legal consequences.

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