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BARIATRIC SURGERY

BARIATRIC SURGERY – MALPRACTICE ISSUES

General Surgeon from New York City

Over the past several years, the number of bariatric surgery operations (surgery for weight loss) has grown from a handful to over 150,000 procedures per year in the USA alone, increasing faster than any other procedure. Since these procedures are complex and the patients are of high surgical risk, the number of complications and mortalities are significant. Inevitably, concerns about malpractice have followed. In evaluating a potential claim for malpractice in a bariatric surgical case, several issues require analysis.

Indications -- The indications for bariatric surgery are well established, starting with an NIH consensus conference in 1992. The patient who is a surgical candidate must be so heavy that the future risk to health exceeds the risk of surgery. This condition is called morbid obesity. Formerly it was defined as 100 pounds over ideal body weight. Today a formula is used to calculate body mass index (BMI) which must exceed 40 (unless serious medical conditions such as diabetes or cardiovascular disease already exist, in which case a BMI of 35 is acceptable). Generally, some prior attempt at medical weight loss should also be documented.

Informed consent – Most patients have researched this subject long before they ever see a surgeon. It is expected that patients will be informed of the specific risks and alternatives by their surgeon, usually with the addition of printed material and sometimes by attending seminars, support groups or other venues. Such discussions are usually memorialized by the signing of a specific consent, in addition to the usual surgical consent form.

Pre-operative evaluation – Each bariatric surgery patient should undergo an extensive preoperative evaluation, even if otherwise in apparent good health, in order to minimize the risks of the procedure. This usually includes an endocrine evaluation (to rule out hypothyroidism or adrenal tumors), pulmonary and cardiac consultations with additional testing as indicated, an endoscopy (EGD) to rule out any gastric pathology and treat any H. pylori infection prior to surgery, and a sleep evaluation if there is a history of sleep apnea. A consultation with a nutritionist is usually obtained to make certain that the post-operative dietary restrictions are understood. An evaluation by a psychologist or psychiatrist is needed to rule out any unrecognized mental illness, although a patient under psychiatric care may indeed still be a suitable surgical candidate.

Surgeon credentialing and training – Surgeons who perform bariatric surgery either learned it during their training in a specific fellowship for a year beyond surgical residency, or picked it up after being in practice for some time (much like the situation with laparoscopic cholecystectomy in the early 1990's). Each hospital should have a procedure by which this competence is assessed and reviewed prior to a surgeon being able to perform such procedures. In many community hospitals, there may even be a second surgeon who routinely first assists.

Hospital facilities – Hospitals that perform bariatric surgery need to have special equipment, ranging from CAT scanners, OR tables, stretchers and chairs to designed to support the extra weight of bariatric patients to extra-large sized gowns. Anesthesiologists and nursing staff may need to have special in-service training in order to adequately care for patients.

Types of operations performed – There are generally three main operations available today, based on two surgical principles. The size of the stomach may be reduced, called the "restrictive" principle. Alternatively, more or less of the digestive capacity of the small intestine can be bypass, called "malabsorption." The older gastroplasty procedures (which are no longer performed) and the adjustable silastic banding procedure rely entirely on restriction. The bilio-pancreatic diversion, with or without duodenal switch, relies primarily on malabsorption to produce weight loss. The Roux-en-Y gastric bypass combines both restriction and malabsorption, CONTINUED ON NEXT PAGE

There are numerous experts who are more than willing to provide testimony for medical malpractice and personal injury litigation cases. Finding the right one is crucial to the strength of your particular case.

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and is the most commonly performed procedure done in the United States. Recently CMS (the Center for Medicare and Medicaid Services) has recognized all three of these operations as being effective and acceptable.

Open versus laparoscopic – The laparoscopic adjustable gastric banding procedure (LAGB) is the only one which is never done via open surgery. Today both the Roux-en-Y gastric bypass (RNYGB) and bilio-pancreatic diversion with duodenal switch (BPDDS) can be acceptably done either via traditional open surgery or laparoscopically, depending on surgeon skill, preference and certain technical considerations. As young surgeons complete fellowship training in this field, more and more are being performed with minimally invasive techniques.

Complications – Complications and mortalities are much more frequent in bariatric surgery than in other procedures. When they occur (and there is not room to list them all here), the morbidity can be considerable. The preoperative consent process is expected to include a listing and discussion of each possible complication. In my opinion, if complications are recognized quickly and treated appropriately, they are part of the known risks of the operations. Obviously, simply giving informed consent does not allow a surgeon to be negligent in his care of the patient. No guarantees of outcome should ever be made.

Special considerations – Surgical risk is directly related to BMI. The higher this number, the greater the risk. For this reason, a term of “super morbid obesity” is sometimes used to describe the patient whose BMI is over 60. Some surgeons will refuse to operate on such patients, advising them to medically lose some weight first. Others will divide the operation into two stages.

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