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Democracy Dies in Darkness

Obstetric violence is a real problem. Evelyn Yang's experience is just one example.

By **Kimberly Seals Allers**

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When Evelyn Yang, wife of presidential candidate Andrew Yang, recently shared her traumatic experience of alleged sexual assault by her obstetrician, I felt physically ill. As a mother of two, the thought of being sexually violated by a provider during the vulnerable time of pregnancy — a period that should be one of joy and optimism — was tragic, infuriating and sickening.

Truth is, though, Yang's experience falls within the scope of a disturbing problem of obstetric violence. While much of the discourse in the mainstream media and social media around the issue has centered on assault, harassment and disrespect during actual childbirth — including forced C-sections — obstetric violence also occurs during the prenatal period. It can include the denial of treatment, verbal humiliations, invasive practices, or a disregard for pain, as well as a lack of privacy during vaginal exams, unnecessary use of medication and sexual assault. And it is often difficult to track, detect or litigate these frequently overlooked types of violence against women.

For many women, especially first-time mothers, there is uncertainty about what a "normal" exam is. How do you know what is unnecessary when you've never been pregnant before? The nature of the exams — being on our backs with a drape over our knees — means we can't always see what is happening. Did I feel what I thought I felt? The doubt, fear and shame often lead to silence.

The anecdotal rates of reported mistreatment are even higher among people of color. In my own maternal and infant health advocacy work — collecting the experiences of care among black women and birthing people of color — stories of insults, harassment, disregard for pain and nonconsensual touching during OB/GYN exams and childbirth are heard far too often.

The legal landscape doesn't offer much hope. The United Nations recently addressed the issue as a human rights violation in a July special report, but the term "obstetric violence" appears nowhere in U.S. law. Women must rely on the laws around informed consent and refusal, which state that no provider can touch a patient without meaningful communication covering the risks, benefits and alternatives to that touching. For many women, the only recourse is filing a medical malpractice or battery suit, where the statute of limitations may be only one year. And the first year after childbirth is hardly the time most women want to undertake an uphill legal battle.

"The legal protections and redress for women is pretty sparse and pretty depressing," says Indra Wood Lusero, a staff attorney at the National Advocates for Pregnant Women and founder of the Birth Rights Bar Association, which advocates for policy change.

As a result, if the mother and baby are both reasonably healthy, most women would rather try to put the traumatic experience behind them as they focus on parenthood, as Yang said she tried to do.

"The most troubling aspect of leaving the adjudication of obstetric violence to the civil justice system is that it treats the matter as either a medical error or an interpersonal conflict similar to a fistfight on a street corner," writes Farah Diaz-Tello in the report "Invisible Wounds: Obstetric Violence in the United States."

Barriers to pursuing these cases include the cost of an attorney, and even if you can afford one, it can be hard to find one willing to take your case. Reproductive-justice lawyers say that without serious injury to the baby or mother (beyond an unwanted or even medical intervention without consent), the monetary value given for harm to women during birth is low — or nonexistent in the case of psychological injury — providing little incentive for attorneys to take on a case on a contingent fee basis, the report concluded.

Kimberly Turbin, a mother in California, had a video of an episiotomy performed without her consent, but still struggled to find a lawyer. She had to consult nearly 80 attorneys and crowdsource a legal-defense fund to file on her own before finding an attorney who would pursue her case, according to media accounts and the Invisible Wounds report.

Women can make a complaint to a medical board or the accreditation institution for the hospital, but that process can take a long time.

"The need is for proper and prompt enforcement of these laws, not necessarily new laws," says Hermine Hayes-Klein, a Portland-based reproductive-justice lawyer.

In another case stemming from an OB/GYN exam, it took two years to complete an investigation of a high-profile UCLA gynecologist who was eventually arrested on sexual battery and exploitation charges. In that case, a woman sought the doctor in 2017 to have an intrauterine device removed after she experienced painful cramping shortly after it was inserted. During the appointment, the physician allegedly grabbed the woman's left breast and her buttocks and fondled her clitoral piercing, according to stories from the Los Angeles Times and other media organizations. He wasn't placed on administrative leave during the investigation, and he retired before his arrest and release on $75,000 bond.

As a glimmer of legal hope, New York City now has a violence-against-women law that could be used as a starting point and model, says Wood Lusero. The law has a seven-year statute of limitations, which extends beyond the initial postpartum period, and comes with a right of action, which means individuals can bring lawsuits with this law, they add.

The lack of national and substantive legal recourse has been aided and abetted by cultural forces including the medicalization of birth, hospitals' fear of litigation and the prioritizing of baby over mother, Wood Lusero says. "The focus has been on the fetus at the expense of and exclusion of the mother. It's another way of isolating the mother, whose body is also very relevant."

This is a dangerous trajectory that reflects issues in the larger society. "Nations with the best protections for women's economic equality, their rights around parental leave and supporting breast-feeding, historical commitments to human rights and feminism are the nations with the least abusive maternity care," says Hayes-Klein.

"Organized medicine has been incredibly successful in defining the American cultural narrative of childbirth as a pathological event from which mothers and babies are only delivered through intervention by doctors," adds Hayes-Klein. "Women feel uninformed and unconfident in their ability to make informed decisions during pregnancy and childbirth."

The price being paid by pregnant women and birthing people is dear. Legal experts offer these suggestions for combating obstetric violence:

1. When vetting a physician, ask about their opinion about informed consent. Wood Lusero said if they hesitate or reveal a more paternalistic attitude, it's better to know earlier in the pregnancy so you can find another provider.

2. Ask the potential birthing hospital for the patient bill of rights. Read it and bookmark the pages highlighting informed consent and other pregnancy- and birth-related encounters.

3. Follow the midwives. States where midwives have no legal status are also the states where the obstetric medical monopoly is strongest, says Hayes Klein. "In those states, women's rights in maternity care and their likelihood of survival are usually worse."

4. Document, document, document. Hayes-Klein says that women can and should document their stories and file them as complaints with the state medical and nursing boards, hospital certifying institutions and the Joint Commission.

5. Support one another's stories. Instead of saying things like, " 'Well your baby's okay, so that's all that matters,' women have to listen to each other," notes Hayes-Klein.

6. Educate yourself. Birth Monolopy offers a "Know Your Rights" online course and other tools. Improving Birth offers an "accountability tool kit" to help women file complaints about their treatment. The Birth Rights Bar Association is producing a new resource on birthing rights.

7. Get social and vocal. Social media movements and hashtags such as #BreakTheSilence have helped break the stigma and have allowed women to share their stories. New digital platforms and documentaries are also being produced to spotlight and address the issue. "Women's rights will only become meaningful in maternity care if women demand that their rights be recognized and demand accountability for the violation of their rights," says Hayes-Klein.

Kimberly Seals Allers is a journalist and author of five books who writes about motherhood and the intersection of race, class and policy. She is the founder of IRTH, a soon-to-be launched app to capture and address experiences of bias in maternity and infant health care. Follow @iamKSealsAllers and @theIrthApp to learn more.

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