

Legal aspects in nasal fractures

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SUMMARY

A criminal act is involved in a high percentage of cases of nasal fracture, and exact medical information describing the damages found is mandatory for the criminal court. It is necessary, that the medical information are obtained from the ENT-department, where the patient is treated, as the information obtained from the casualty department has a too low degree of truth in the establishment of the diagnosis. The statement should include information on the treatment given, as linear fractures in good position requiring no treatment may be classified legally as an offence against the person rather than as a bodily harm. X-ray examination of the nose in cases of nasal fracture gives a much too high number of false positive and false negative results to have any legal value, and, having no medical value as well, they should not be taken unless for scientific purposes.

INTRODUCTION

This paper is only dealing with the aspects of the nasal fractures related to the criminal code. The possible claims related to civil law are thus not taken into consideration.

Contrary to medicine, the criminal code is a national discipline. The considerations brought here are related to the Danish criminal code, and can not be transferred directly into other countries. The medical aspects, however, which are the basis for the evaluation of the court, are universal in nature.

Nasal fractures are said to make up 39% of all facial fractures (Lundin, 1972). The incidence in Denmark is 53/100,000 a year (Illum et al., 1983). 50% of the cases are the result of an assault, 15% of traffic accidents, and alcohol intake is found in approximately 35% of the cases (Illum et al., 1983). Thus most of the cases of nasal fractures must be regarded as the object of a potential criminal trial.

It is, of course, forbidden in Denmark to punch somebody. The criminal code says, that "a person, who violates or in other way attacks an other person's body, is

punished for offence against the person by penalty or arrest". In cases of nasal trauma without a fracture, which is regarded as a minor violation, almost all cases end up with withdrawal of charges.

On the other hand, if an actual damage to a person is found, the criminal code says, that "if the offence has resulted in damage to body or health, the punishment is arrest or prison for up to two years". Usually in cases of nasal fracture, the person is convicted to prison for two weeks.

The matters to be discussed are:

1. The value of the information obtained from the casualty departments for use in the court.
2. The legal value of the X-ray pictures of the external nose.
3. Is a nasal fracture a damage in the legal sense of the word?

DISCUSSION

1. The value of the information obtained from the casualty departments for use in the court

The first examination of a patient with a nasal trauma is performed at the casualty department. The evaluation of the traumatized nose is relatively difficult for a young doctor, who is inexperienced in otorhinolaryngology, and good illumination and special instruments are required.

Haematoma and oedema, which may be considerable, make the diagnosis of a nasal fracture even more difficult to establish. Approximately 25% of the patients, who are referred to the ENT-department for further examination, are found not to have a new fresh fracture, and the diagnosis of a nasal contusion is established. Thus, the information obtained from the casualty departments are much too questionable to have any legal value, and the diagnosis should always be confirmed by a request to the ENT-department.

2. The legal value of the X-ray pictures of the external nose

Most of the literature on nasal fractures agrees, that X-ray pictures have no real medical value. In many cases the pictures are false negative. In cases of cartilaginous fractures, the X-ray examination is always negative for obvious reasons. Positive X-ray examination has been reported to be found in 53–90% of cases of nasal fractures (Becker, 1948; Murray and Maran, 1980; Illum et al., 1983). It is, on the other hand a well-known fact, that old nasal fractures heal by ossification in only 50%, while the remainder heal with more or less fibrosis connecting the fragments thus being visible by X-ray examination for the rest of the life (Marcks and Pirsig, 1977). Many of the patients with nasal trauma from an assault are persons, who regularly are involved in fighting, and the combination of a new blow on the nose leading to a contusion and a old fracture healed with fibrosis is not uncommon. In these cases a false positive X-ray examination is the consequence.

It has constantly been said and written in the literature on nasal trauma, that although X-ray examination has no medical value with respect to diagnosis, treatment or prognosis (Murray and Maran, 1980; Illum et al., 1983), it is mandatory to perform this examination for medico-legal reasons. But this is an awkward argumentation. It should be obvious, that the legal value of any examination is depending on the medical evaluation of the degree of truth, which it has. X-ray examination has, in cases of nasal trauma, a high number of false negative and a considerable, but unknown number of false positive results, thus having much to low a degree of truth to have any legal value.

But then, why is it so important for the solicitors to have the results of the X-ray examination? That is because they, from their point of view, have the false, but clearly understandable impression, that X-ray examination gives the truth, the whole truth and nothing but the truth. Therefore, it is our responsibility to tell them otherwise.

3. Is a nasal fracture a damage in the legal sense of the word?

The law distinguishes between offence against the person and bodily harm or damage as a result of a trauma.

A blow to the face leading to a blue eye is not legally a bodily harm or damage, and it is treated mildly by the authorities, usually with withdrawal of charges. A fracture needing operation is, on the other hand, categorized as a damage. The criterium used by the legal authorities in Denmark is if the injury needs treatment or not. This leaves us with an interesting question in those cases, where a linear nasal fracture in good position is diagnosed and no treatment is indicated. The frequency of this findings is 30–59% (Illum, 1966; Marcks and Pirsig, 1977; Murray and Maran, 1980). In these cases of nasal fracture no damage in the legal sense is found, only an offence against the person. One might even say, that unless these considerations are brought into mind, approximately one third of the criminal cases, where a nasal fracture is involved as the most prominent lesion, results in a miscarriage of justice.

CONCLUSIONS

The diagnosis of a nasal fracture in cases of nasal trauma is based on the clinical examination by the ENT-specialist. Therefore, the information, which should be obtained for use in the criminal court in cases of nasal fracture, should not be obtained from the casualty department, but from the ENT-department treating the patient. If a positive diagnosis of nasal fracture is established, the statement from the ENT-specialist should include information about the need for treatment of this case. This information is needed to distinguish offence against the person from a bodily harm. X-ray pictures have no medico-legal value. As they have no medical value either, they need to be taken for scientific purposes only.

These considerations have been published in a Danish legal periodical (Illum, 1980). They have been confirmed by the Danish Medico-legal Counsel and the Danish Director of Public Prosecution (Rigsadvokaten, 1982). The legal usage has changed in accordance with these announcements.

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