

UTI, then massive hemorrhage

A WOMAN IN HER 60s WAS HOSPITALIZED with a urinary tract infection (UTI). She was treated with antibiotics and intravenous (IV) fluids but developed deep vein thrombosis (DVT) at the IV site. Enoxaparin sodium was ordered to treat the clot. After 3 days, she suffered a massive abdominal hemorrhage. When she woke from resuscitation,

her weight had doubled. She developed a methicillin-resistant *Staphylococcus aureus* (MRSA) infection, then *Clostridium difficile* infection due to antibiotics, plus bedsores. Multiple surgeries left her with an abdominal wall defect that cannot be repaired, and a permanent hernia. She was hospitalized for 75 days.

▶PATIENT'S CLAIM The hemorrhage was caused when enoxaparin was given at 1.5 times the proper dosage because the patient's weight was overestimated by 50%. Excessive blood, plasma, and fluids caused her weight to double after resuscitation. Her intestines were forced out of her abdominal cavity by the hemorrhage. A permanent hernia, visible underneath her skin, causes pain.

▶DEFENDANTS' DEFENSE The patient's preexisting diabetes, heart condition, high cholesterol levels, and orthopedic issues impacted her condition. She was not compliant in managing her diabetes, causing many of the current problems.

▶VERDICT A \$9.3 million Connecticut verdict was returned.

▶DEFENDANTS' DEFENSE After a settlement was reached with the hospital, the trial continued against the delivering ObGyn. He claimed that decreased fetal movement indicated that the brain injury had occurred 1 to 4 days before the mother came to the ED. The technician had manipulated the mother's abdomen to wake the fetus before starting the first biophysical profile, which invalidated the score. The nurse miscommunicated the score of the second biophysical profile.

▶VERDICT A gross \$29.8 million Illinois verdict was returned that included a \$1.65 million settlement with the hospital.

Was facility adequately staffed after Hurricane Ike?

A MOTHER WAS ADMITTED to a hospital for induction of labor in September 2008. After birth, the child was found to have cerebral palsy.

▶PARENTS' CLAIM The mother should have been sent to another facility before delivery was induced because the hospital was short-staffed and low on resources due to Hurricane Ike. Too much oxytocin was used to induce contractions, which led to a lack of oxygen for the fetus. All prenatal testing had shown a healthy fetus. A cesarean delivery should have occurred when fetal distress was noted.

▶DEFENDANTS' DEFENSE The mother had gastric bypass surgery 8 months before she became pregnant, and smoked during pregnancy, which accounted for the infant's injuries. Treatment during labor and delivery was appropriate. Hospital staffing and resources were adequate.

▶VERDICT A \$6.5 million Texas settlement was reached.

CONTINUED ON PAGE 74

Cesarean delayed unnecessarily

AT 37 WEEKS' GESTATION, a mother reported decreased fetal movement. When the biophysical profile test scored 8/8 and the fetal heart rate was reassuring, the attending ObGyn discharged the patient. However, it was the middle of the night, and the nurse kept the mother in the emergency department (ED). At 8:30 AM, the fetus began to show signs of fetal distress. Three ObGyns agreed to monitor labor, although one physician wanted delivery to occur that morning.

The next morning, a second biophysical profile scored 2/8, but the on-call ObGyn misunderstood the

score as 6/8 and scheduled cesarean delivery for noon. Two hours after the second biophysical profile, the fetal heart rate crashed. A nurse called the ObGyn, who began an emergency cesarean 15 minutes later. The baby, born lifeless, was resuscitated. The child suffered permanent brain damage, and has cerebral palsy, severe cognitive deficits and speech deficits, and walks with an abnormal gait.

▶PARENTS' CLAIM A physician did not see the patient for 24 hours, once the decision was made to monitor the mother, even though the fetal heart rate continued to decline. A biophysical profile test score of 2/8 indicates the need for immediate delivery. An earlier cesarean delivery could have reduced the child's injuries.



Placenta accreta; mother dies

A 33-YEAR-OLD WOMAN BECAME PREGNANT with her second child. A variety of conditions caused this to be high-risk pregnancy, so she saw a maternal-fetal medicine (MFM) specialist 2 months before delivery. The MFM reported that his examination and the ultrasonography (US) results were normal.

The ObGyn who provided prenatal care and delivered her first child scheduled cesarean delivery. During the procedure, the ObGyn noticed a 3- to 4-inch lesion where the placenta had penetrated the uterus. When the placenta was removed, the patient began to hemorrhage and a hysterectomy was performed. The hemorrhage created blood clots that led to gangrene in the patient's extremities. She died 5 days after giving birth.

▶**ESTATE'S CLAIM** Both the MFM and the ObGyn failed to recognize placenta accreta on US prior to delivery. The ObGyn should have performed US prior to beginning cesarean delivery. The hospital's protocols were not followed: the ObGyn should have stopped the procedure and called for extra surgical assistance and additional blood when he encountered placenta accreta, and again when the patient began to hemorrhage. Placenta accreta does not have to be fatal if detected and managed properly.

▶**DEFENDANTS' DEFENSE** There was no negligence; the patient was treated properly.

▶**VERDICT** A \$15.5 million Illinois verdict was returned against both physicians and the medical center.

Anticonvulsant and migraine meds taken during pregnancy

A WOMAN WAS PRESCRIBED topiramate (Topamax) for migraine headaches and hand tremors during the first trimester of her pregnancy in 2007. With a history of seizures, she also took several anticonvulsants throughout her pregnancy. Her child was diagnosed with right unilateral cleft lip (cheiloschisis) in utero. The condition had not been surgically corrected at the time of trial.

▶**PARENTS' CLAIM** The use of topiramate caused the child's cleft lip.

Janssen Pharmaceuticals, the manufacturer of Topamax, knew about the risk of birth defects associated with the drug in 2007, but failed to provide adequate warnings.

▶**DEFENDANTS' DEFENSE** The mother received at least two warnings from her physician regarding the potential risks of anticonvulsant and anti-epileptic drugs and the importance of not becoming pregnant while taking the medications. An action against the physician was barred by the applicable statute of limitations. The mother had taken topiramate prescribed to her mother for a time; such actions should release Janssen from liability.

▶**VERDICT** A \$11 million Pennsylvania verdict was returned.

PID masks ectopic pregnancy

A WOMAN IN HER 40s became pregnant. On the first two prenatal diagnostic imaging studies, the ObGyn saw an intrauterine pregnancy. He later realized that the pregnancy was ectopic after beta human chorionic gonadotrophin (beta-hCG) blood levels were abnormal. During surgery to terminate the pregnancy, he found he had to perform a total hysterectomy because the patient had extensive pelvic inflammatory disease (PID) caused by a long history of sexually transmitted disease.

▶**PATIENT'S CLAIM** If the ectopic pregnancy had been diagnosed earlier, one of her ovaries could have been preserved, saving her from the symptoms of surgical menopause.

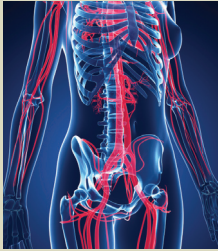
▶**PHYSICIAN'S DEFENSE** PID had caused the ovaries, numerous fibroid tumors, and the uterus to fuse into one mass. That was why the first two imaging studies appeared to show an intrauterine pregnancy. It was not possible to diagnose the extent of the problem until surgery. The patient did not have a true ectopic pregnancy.

The patient's difficulties occurred during a 2-week time period in which she had one visit with him and another visit to an ED where two other physicians examined her and missed the diagnosis.

▶**VERDICT** A Michigan defense verdict was returned.

These cases were selected by the editors of OBG MANAGEMENT from Medical Malpractice Verdicts, Settlements & Experts, with permission of the editor, Lewis Laska (www.verdictslaska.com). The information available to the editors about the cases presented here is sometimes incomplete. Moreover, the cases may or may not have merit. Nevertheless, these cases represent the types of clinical situations that typically result in litigation and are meant to illustrate nationwide variation in jury verdicts and awards.

PHOTO: THINKSTOCK



Iliac artery injured during laparoscopic surgery; patient dies

A 40-YEAR-OLD WOMAN underwent laparoscopic gynecologic surgery performed by her ObGyn. During the procedure, the patient's left internal iliac artery was punctured, but the injury was not recognized at the time. She was discharged the same day. The next morning, she went into hypovolemic shock due to internal bleeding. She was taken to the ED, where she died.

► **ESTATE'S CLAIM** The ObGyn, anesthesiologist, and hospital staff were negligent in their postoperative care. The anesthesiologist prescribed pain medication that masked the injury; the patient was discharged from the postanesthesia unit too early and without proper examination. The nursing staff did not react to the patient's reports of abdominal pain, nor did they properly assess her condition prior to discharge. The ObGyn failed to return a phone call the evening after the procedure.

► **DEFENDANTS' DEFENSE** The ObGyn settled before trial. The anesthesiologist and hospital denied negligence: care was proper and followed all protocols.

► **VERDICT** A confidential California settlement was reached with the ObGyn. A defense verdict was returned for the anesthesiologist and hospital.

endometriosis, but found none. He then successfully removed a large uterine fibroid during laparoscopic myomectomy. The patient was discharged the same day.

Two days later, the patient developed abdominal pain, nausea, and fever. She went to the ED and was taken into emergency surgery after a CT scan showed free air and fluid in her abdomen. She suffered multiple abscesses and peritonitis.

► **PATIENT'S CLAIM** The ObGyn was negligent in performing the surgery: the sigmoid colon sustained a thermal injury, which caused the abscesses and peritonitis.

► **PHYSICIAN'S DEFENSE** There was no evidence of thermal injury during the original operation; heat damage can and does occur in the absence of negligence. The patient's previously unknown diverticulitis contributed to the development of the recurrent abscesses and peritonitis.

► **VERDICT** A Florida defense verdict was returned.

Genetic testing missed a key diagnosis

A 40-YEAR-OLD WOMAN UNDERWENT genetic testing after she became pregnant. She was assured that there were no abnormalities that would impact her child.

The baby was born with Wolf-Hirschhorn syndrome, characterized by facial deformities, intellectual disabilities, delayed growth, and seizures. The child is nonverbal, deaf, and blind. She uses a feeding tube and requires 24-hour care.

► **PARENTS' CLAIM** The genetic testing was improperly conducted. The

mother would have had an abortion if she'd known that the child was so disabled.

► **DEFENDANTS' DEFENSE** Settlements were mediated.

► **VERDICT** A \$6.15 million New Jersey settlement was reached on behalf of the hospital and two laboratory technicians, and a \$1 million settlement was reached with the director of the genetic laboratory.

Heat injury to colon: abscesses, peritonitis

A 43-YEAR-OLD PATIENT had a history of symptomatic uterine fibroids and infertility. Her ObGyn performed a hysteroscopy because he suspected

Ruptured uterus is undetected

DURING LABOR AND DELIVERY, a declining fetal heart rate was observed, but there was an hour's delay before cesarean delivery was started. The child suffered a hypoxic brain injury. He has spastic quadriplegia, cannot speak, and requires a respirator and feeding tube.

► **PARENTS' CLAIM** The mother suffered a ruptured uterus during labor that was not recognized by the ObGyn or nursing staff.

► **DEFENDANTS' DEFENSE** A settlement was reached during trial.

► **VERDICT** A \$7.5 million New Jersey settlement was reached. ☺

PHOTO: SHUTTERSTOCK