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Prenatal genetic testing fails: $50M verdict ... and more, at obgmanagement.com

Woman loses both legs after salpingectomy: $64.3M award

DUE TO AN ECTOPIC PREGNANCY, a 29-year-old woman underwent laparoscopic salpingectomy in October 2009. A resident supervised by Dr. A (gynecologist) performed the surgery. Although the patient reported abdominal pain and was febrile, Dr. B (gynecologist) discharged her on postsurgical day 2.

The next day, she returned to the emergency department (ED) with abdominal swelling and pain. Dr. C (ED physician), Dr. D (gynecologist), and Dr. E (general surgeon) examined her. Dr. D began conservative treatment for bowel obstruction. Two days later she was in septic shock. Dr. E repaired a 5-mm injury to the sigmoid colon and created a colostomy. The patient was placed in a medically induced coma for 3 weeks. She experienced cardiac arrest 3 times during her 73-day ICU stay. She underwent skin grafts, and suffered hearing loss as a result of antibiotic treatment. Due to gangrene, both legs were amputated below the knee.

At the trial's conclusion in January 2014, the colostomy had not been reversed. She has difficulty caring for her daughter and has not worked since the initial operation.

PATIENT'S CLAIM The resident, who injured the colon and did not detect the injury during surgery, was improperly supervised by Dr. A. Hospital staff did not communicate the patient's problem reports to the physicians. Dr. B should not have discharged her after surgery; based on her reported symptoms, additional testing was warranted. Drs. C, D, and E did not react to the patient's pain reports in a timely manner, nor treat the resulting sepsis aggressively enough, leading to gangrene.

DEFENDANTS' DEFENSE The patient's colon injury was diagnosed and treated in a timely manner, but her condition deteriorated rapidly. The physicians acted responsibly based on the available information; a computed tomography scan did not show the colon injury. The injury likely occurred after the procedure due to an underlying bowel condition and is a known risk of the procedure. The colostomy can be reversed. Their efforts saved her life.

VERDICT The patient and Dr. E negotiated a $2.3 million settlement. A $62 million New York verdict was returned. The jury found the hospital 40% liable; Dr. A 30% liable; Dr. B 20% liable; and Dr. D 10% liable. Claims were dropped against the resident and Dr. C.

Parents requested earlier cesarean: child has CP

A WOMAN WAS IN LABOR for 2 full days before her ObGyn performed a cesarean delivery. The child was born with abnormal Apgar scores and had seizures. Imaging studies revealed brain damage. She received a diagnosis of cerebral palsy.

PARENTS' CLAIM The parents first requested cesarean delivery early on the second day, but the ObGyn allowed labor to progress. When the fetal heart-rate monitor showed signs of fetal distress 3 hours later, the parents made a second request; the ObGyn continued with vaginal delivery. The child was ultimately born by cesarean delivery. Her brain damage was caused by lack of oxygen from failure to perform an earlier cesarean delivery.

DEFENDANTS' DEFENSE The case was settled during the trial.

VERDICT A $4.25 million Massachusetts settlement was reached.

Bladder injured during cesarean delivery

A 33-YEAR-OLD WOMAN GAVE BIRTH via cesarean delivery performed by her ObGyn. During the procedure, the patient's bladder was lacerated and the injury was immediately repaired. The patient reports occasional urinary incontinence and pain.

PATIENT'S CLAIM The ObGyn should have anticipated that the bladder would be shifted because of the patient's previous cesarean delivery.

PHYSICIAN'S DEFENSE The injury is a known risk of the procedure. The patient had developed adhesions that caused the bladder to become displaced. She does not suffer permanent residual effects from the injury.

VERDICT A $125,000 New York 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: SHUTTERSTOCK

Parents requested specific genetic testing, but child is born with rare chromosomal condition: $50M verdict

PARENTS SOUGHT PRENATAL GENETIC TESTING to determine if their fetus had a specific genetic condition because the father carries a rare chromosomal abnormality called an unbalanced chromosome translocation. This defect can only be identified if the laboratory is told precisely where to look for the specific translocation; it is not detected on routine prenatal genetic testing. After testing, the parents were told that the fetus did not have the chromosomal abnormality.

The child was born with the condition for which testing was sought, resulting in severe physical and cognitive impairments and multiple physical abnormalities. He will require 24-hour care for life.

PARENTS' CLAIM Testing failed to identify the condition; the couple had decided to terminate the pregnancy if the child was affected. Due to budget cuts in the maternal-fetal medicine clinic, the medical center borrowed a genetic counselor from another hospital one day a week. The parents told the genetic counselor of the family's history of the defect and explained that the laboratory's procedures require the referring center to obtain and share the necessary detailed information with the lab. The lab was apparently notified that the couple had a family history of the defect, but the genetic counselor did not transmit specific information to the lab, and lab personnel did not appropriately follow-up.

DEFENDANTS' DEFENSE The medical center blamed the laboratory: the lab's standard procedures state that the lab should call the referring center to obtain the necessary detailed information if it was not provided; the lab employee who handled the specimen did not do so. The lab claimed that the genetic counselor did not transmit the specific information to the lab.

The laboratory disputed the child's need for 24/7 care, maintaining that he could live in a group home with only occasional nursing care.

VERDICT A $50 million Washington verdict was returned against the medical center and laboratory; each defendant will pay $25 million.

Necrotizing fasciitis after surgery

A 57-YEAR-OLD WOMAN UNDERWENT surgery to repair vaginal vault prolapse, rectocele, and enterocele, performed by her gynecologist. Several days after discharge, the patient returned to the hospital with an infection in her leg that had evolved into necrotizing fasciitis. She underwent five fasciotomies and was hospitalized for 3 weeks.

PATIENT'S CLAIM The gynecologist should have administered prophylactic antibiotics before, during, and after surgery. The patient has massive scarring of her leg.

PHYSICIAN'S DEFENSE The infection was not a result of failing to administer antibiotics. The patient failed to seek timely treatment of symptoms that developed after surgery.

VERDICT A $400,000 New York verdict was returned but reduced because the jury found the patient 49% at fault.

Oxytocin blamed for child's CP

A MOTHER HAD BARIATRIC SURGERY 12 months before becoming pregnant, and she smoked during pregnancy. She developed placental insufficiency and labor was induced shortly after she reached 37 weeks' gestation.

During delivery, the mother was given oxytocin to increase the frequency and strength of contractions. Nurses repeatedly stopped the oxytocin in response to decelerations in the fetal heart rate, but physicians ordered the oxytocin resumed, even after fetal heart-rate monitoring showed fetal distress.

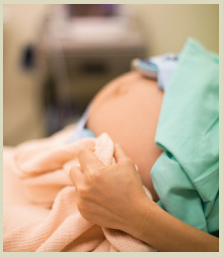
Three days after birth, the child was transferred to another hospital, and was found to have cerebral palsy and other injuries. At age 5, the child is nonverbal, cannot walk, and requires a feeding tube.

PARENTS' CLAIM Oxytocin should have been stopped and a cesarean delivery performed when fetal distress was first noted.

DEFENDANTS' DEFENSE There was no need for cesarean delivery. Apgar scores, blood gases, and fetal presentation indicated that the injury occurred prior to labor.

VERDICT A $6 million Texas settlement was reached during the trial.

PHOTO: THINKSTOCK



Mother discharged despite severe abdominal pain

A WOMAN HAD PRENATAL CARE at different locations. Her history included two cesarean deliveries.

Reporting severe abdominal pain, she was taken from a homeless shelter to an ED by ambulance. The mother was uncertain of the fetus' gestational age; a 4th-year obstetric resident determined by physical examination that the pregnancy was at 36.5 weeks. The resident discussed the case with the attending ObGyn, who said to discharge the mother if her pain was gone. After 11 hours, the mother was returned to the shelter.

The mother returned to the ED 12 hours later. Thirty-five minutes after fetal distress was identified, an emergency cesarean delivery was performed. At birth, the child was found to be at 38 to 39 weeks' gestation. He received a diagnosis of severe hypoxic ischemic encephalopathy and was transferred to a children's hospital for brain cooling.

The child lives in a long-term care facility and is dependent on a ventilator and gastronomy tube.

PARENT'S CLAIM The mother should not have been discharged after the first visit. A cesarean delivery should have been performed at that time. The attending ObGyn never saw the mother.

DEFENDANTS' DEFENSE The mother should have given her correct due date, which was in her prenatal records based on previous ultrasonography. The first discharge was proper, as the pain had improved. The homeless shelter should have called an ambulance earlier for the second admission.

VERDICT A $7.5 million California settlement was reached, plus payment of medical expenses exceeding $300,000.

Timing of child's injury disputed

VAGINAL BIRTH AFTER CESAREAN (VBAC) had been planned. After reporting to her ObGyn that she was in labor, a mother went to the ED.

During the next few hours, hospital staff called the ObGyn twice to report that fetal monitor strips indicated tachycardia. The ObGyn then spoke to the mother by phone and told her that cesarean delivery was necessary but could wait for him to get to the hospital. After the ObGyn arrived, he removed the fetal heart-rate monitor to prepare the mother's abdomen; cesarean delivery occurred 15 minutes later.

The child has spastic dystonic quadriplegia and requires 24-hour care.

PARENT'S CLAIM The ObGyn should have come to the hospital and performed cesarean delivery when he was first notified that the fetus was tachycardic. The baby suffered an hypoxic ischemic event in the 15-minute period between when the monitor was removed and birth, causing hypoxic ischemic encephalopathy.

PHYSICIAN'S DEFENSE There was no indication of a need for earlier delivery. The brain injury occurred prior to labor and delivery.

VERDICT The hospital settled for a confidential amount before the trial. An Illinois defense verdict was returned for the ObGyn.

Were mammograms properly interpreted?

AFTER REPORTING A LUMP in her breast, a 39-year-old woman underwent mammography in 2008 and 2009. Two different radiologists reported their findings as negative for cancer.

In 2010, the patient was found to have breast cancer. She underwent a mastectomy, chemotherapy, and radiation therapy, and was given a 75%–80% chance of 5-year survival.

PATIENT'S CLAIM The ObGyn failed to follow-up on the patient's reports of a breast lump. The radiologists did not correctly interpret the 2008 and 2009 mammograms. If cancer had been detected earlier, treatment would have been less extreme.

PHYSICIANS' DEFENSE The ObGyn claimed that he would have felt a lump if it was present. The first radiologist claimed that the 2008 mammography report was correct, noting that the patient's cancer was a lobular carcinoma that does not always show on mammography or in patients with dense breasts, which this patient has.

VERDICT A directed verdict was granted to the radiologist who interpreted the 2009 mammography, as the results were lost. An Ohio defense verdict was returned for the ObGyn and the other radiologist.

PHOTO: SHUTTERSTOCK