MALPRACTICE CASEBOOK

Vacuum use blamed for fetal injury

MANITOWAC COUNTY (WIS) CIRCUIT COURT—A gravida presented to a hospital at term for induction of labor. The woman was placed on 56 mU of oxytocin and, after 18 hours, the cervix completely dilated. During that time, the nurse twice reduced the oxytocin due to concerns about decreasing variability in the fetal heart rate. However, the Ob/Gyn instructed the nurse to resume induction and let labor continue. The nurse then withdrew the oxytocin when late decelerations developed. Eventually, the decelerations disappeared and variability improved.

Early the next morning, the physician assessed the patient and noted that the fetal station was +1, the baby's head was occiput posterior, and the mother had a narrow pubic arch. He attempted a vacuum delivery. After 20 minutes with only minimal progress and some rotation, he switched to forceps, delivered the fetal head, and encountered shoulder dystocia.

The attempted rotation with the vacuum caused cord compression.

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At birth, the baby was hypotonic and needed to be resuscitated, and her Apgars were 0 and 3. A 3-month MRI showed bilateral symmetrical basal ganglia damage. The child has severe cerebral palsy and spastic quadriparesis and needs a feeding tube.

In suing, the parents argued that the attempted rotation with the vacuum caused cord compression and deprived the fetus of adequate oxygen. The physician claimed he was using the + or -3 classification system for the station of the fetal head, as opposed to the + or -5 system. Therefore, he stated, his decision to opt for vacuum delivery when the fetal head was at +1 was within the standard of care.

The case settled before trial for $3.5 million.

Did chemical burns cause dyspareunia?

SAN DIEGO COUNTY (CALIF) SUPERIOR COURT—A 21-year-old woman was treated for genital warts. At the end of her treatment, the physician applied what he believed to be a 5% acetic acid solution to her vulvar tissue. However, the nurse accidentally handed the doctor an 80% solution.

In suing, the patient claimed that the acid burned the "deep dermal" layer of her skin, causing subclinical neural damage and dyspareunia. As a result, she required biofeedback therapy, vaginal dilation, estrogen replacement therapy, and psychological counseling.

The Ob/Gyn argued that a minimal amount of 80% acetic acid was used and that the first- and second-degree genital burns the woman received were superficial, resolving within 3 months. Furthermore, he claimed that the source of the patient's problems was vulvar vestibulitis, a condition that existed prior to her chemical burns.

The jury awarded the plaintiff $126,000.

Did delayed delivery result in infant brain damage?

LOS ANGELES COUNTY (CALIF) SUPERIOR COURT—On June 22, a gravida presented to a clinic complaining she had not felt fetal movement for the past week. On June 24, an ultrasound revealed marked oligohydramnios. The patient immediately underwent a nonstress test, which demonstrated a nonreassuring fetal heart rate (FHR) pattern at 3:30 p.m. As such, the family practitioner determined that the baby needed to be delivered by cesarean section and promptly contacted an Ob/Gyn. The physician was called again at 4:30 p.m. and arrived at 5:18 p.m. The baby was delivered via cesarean section at 6:08 p.m.

At delivery, the infant was heavily stained with meconium and the umbilical cord was wrapped around his neck 4 times. The child is now blind, microcephalic, tube-fed, and requires supplemental oxygen.

In suing, the parents contended that the Ob/Gyn was negligent for the following: not ascertaining the true nature of the fetal distress at 3:30 p.m., arriving at the hospital approximately 1 hour and 45 minutes after the initial call, and waiting 50 minutes to deliver the infant.

The physician maintained that the neurologic

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damage occurred 3 to 5 hours prior to delivery based on the presentation of the infant at delivery, the placental pathology, and the FHR tracing.

The jury returned a defense verdict.

Patient blames undetected infection for hysterectomy

DUTCHESS COUNTY (NY) SUPREME COURT—After suffering a miscarriage on March 18, a woman underwent dilatation and evacuation (D & E). Following the procedure, she experienced lower abdominal pain, abnormal bleeding, and dyspareunia. A hysterosalpingogram was performed on May 26. Later that year, she developed pelvic inflammatory disease (PID) and underwent a diagnostic laparoscopy. Two years later, a hysterectomy and bilateral oophorectomy were performed.

The pathology report after the hysterectomy showed adenomyosis.

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In suing, the woman claimed that she developed an upper-reproductive-tract infection as a result of the hysterosalpingogram, which went undetected and led to PID. In addition, she argued that the obstetrician should have conducted diagnostic tests and prescribed antibiotics, thereby eliminating the need for hysterectomy.

The physician maintained that the patient had no signs or symptoms of an upper-reproductive-tract infection during her pelvic examinations; therefore, no testing was necessary. The defendant also argued that the patient did not suffer from PID but claimed the pathology report following her hysterectomy showed adenomyosis.

The jury returned a defense verdict.

Egg retrieval plus heparin and aspirin Rx cause bleeding, death

PHILADELPHIA (PA) COURT OF COMMON PLEAS—A woman with infertility and antiphospholipid antibody syndrome (APA) was advised to have heparin and aspirin therapy in addition to invitro fertilization. On the day of oocyte retrieval, 18 eggs were harvested. An ultrasound was performed immediately afterward, which showed a large amount of free fluid in the patient's pelvis.

About 3 hours later, the patient underwent treatment for APA at another site, during which she became hypotensive. The nurse terminated the therapy and contacted the woman's physician, who arrived about 90 minutes later. When he examined the patient, she was lethargic and hallucinating. At that time, her husband, an Ob/Gyn, was contacted. He transported her to the hospital where he worked and performed emergency surgery, discovering a massive hemoperitoneum. The bleeding was controlled, and the patient was transferred to an ICU postoperatively. However, 2 days later she suffered a cardiac arrest; 9 days later, she died.

In suing, the husband claimed the ultrasound had demonstrated a large amount of blood in his wife's abdomen. Further, he argued that his wife bled for 5 hours while under the physician's care.

The physician countered that he had not been made aware of the ultrasound findings. Additionally, he claimed the woman should have been taken to an emergency room and that her husband was emotionally distracted during the surgery. Furthermore, he maintained that since the decedent and her husband were both physicians, they were aware of the risks involved in administering aspirin during egg retrieval, including the possibility of internal bleeding.

The jury awarded the plaintiff $25 million.

Did delayed preeclampsia diagnosis lead to stillbirth?

CAMDEN COUNTY (NJ) SUPERIOR COURT—A 35-year-old gravida presented to her doctor at 7 months' gestation for high blood pressure. Tests revealed elevated protein levels in her urine, indicating preeclampsia. The physician advised the patient to lie on her side for 2 hours a day. Two days after her office visit, she developed massive vaginal bleeding and a placental abruption was diagnosed. The physician performed an emergency cesarean and delivered a stillborn. The patient remained hospitalized for 8 days after developing an infection.

In suing, the patient claimed the physician failed to diagnose her preeclampsia quickly and accurately.

In his defense, the physician argued that the patient had preeclampsia during delivery, but not during her office visit.

The jury awarded the plaintiff $500,000 and the husband $350,000 for emotional distress.

The cases presented here were compiled by Lewis L. Laska, editor of Medical Malpractice Verdicts, Settlements & Experts. While there are instances when the available information is incomplete, these cases represent the types of clinical situations that typically result in litigation.