

Jury faults ObGyns for silence on abortion

Tarrant County (Tex) 342nd District Court

A woman gave birth to an infant with rare congenital abnormalities. The parents alleged sonograms indicated abnormalities early on in the course of the pregnancy. In suing, they faulted the obstetrician and the referring maternal-fetal medicine specialist for failing to advise of the option to terminate the pregnancy.

- The jury awarded the plaintiff \$5.8 million.

Was bowel perforation surgical or spontaneous?

US District Court, Western District of Tennessee

A woman was discharged 4 days after a total abdominal hysterectomy and oophorectomy, during which dense adhesions were encountered between the bowel and left ovary. Six days later she presented to the emergency department with complaints of abdominal pain and stool problems. A CT scan showed accumulation of free gas.

Immediate exploratory surgery revealed a 2.5-cm perforation of the bowel that was repaired. Several more surgeries were required because of massive fecal contamination, including a partial colectomy and a temporary colostomy.

In suing, the woman faulted the surgeon for injuring the bowel and failing to recognize the injury. She maintained that prompt discovery of the injury would have minimized complications.

The defense claimed that the bowel had spontaneously perforated within a day of the repair surgery, and showed pathology slide evidence of a recent event.

- The jury returned a defense verdict.

Unsupervised resident performed circumcision

New York County (NY) Supreme Court

A 2-day-old infant underwent circumcision by an unsupervised second-year ObGyn resident. The resident removed a substantial portion of glans tissue. Despite 2 subsequent repair surgeries, the infant was left with a deformed penis and altered urine flow.

In suing, the plaintiff faulted the hospital for failing to adequately supervise the resident. The resident claimed it was reasonable to perform the surgery without supervision after 10 successful proctored procedures and that the result was an acceptable risk. The hospital admitted liability.

- The jury awarded the plaintiff \$1.5 million.

Foot drop after oophorectomy

Bronx County (NY) Supreme Court

After laparoscopic oophorectomy for an ovarian cyst, a woman complained of foot drop. Despite physical therapy, the woman maintained her gait did not improve.

In suing, the woman claimed the oophorectomy was unnecessary because the cyst was benign; that the operation lasted too long; and that the physician positioned her leg poorly during the procedure, leading to compression of the superficial peroneal nerve and the foot drop.

The defense denied negligence and asserted the woman's condition was a complication of surgery.

- The jury awarded the plaintiff \$25,800.

The cases in this column are selected by the editors of OBG MANAGEMENT from *Medical Malpractice Verdicts, Settlements & Experts*, with permission of the editor, Lewis Laska, Nashville, Tenn (www.verdictslaska.com). The available information about the cases is sometimes incomplete; pertinent details may be unavailable. Moreover, the cases may or may not have merit. Still, these cases represent types of clinical situations that may result in litigation and are meant to illustrate variation in verdicts and awards.

Lax protocols blamed for delayed birth

Honolulu County (Hawaii) Circuit Court

A woman admitted for delivery was under the care of her family physician, who ruptured her membranes. Within 1 to 2 minutes the fetal heart tracing showed a prolonged deceleration from 150 to 60 bpm lasting 4.5 minutes. A vaginal exam revealed a loop of cord along the left side of the infant's head. During the next 28 minutes, the fetal heart rate ranged from 60 to 120 bpm with evidence of significant fetal distress, including several instances in which the heart rate was lost altogether.

The physician lifted the infant's head, reducing the cord, and instructed the mother to push. The infant was born with a fractured right humerus, a small subdural bleed, and an intracerebral contusion.

The child now has limited cognition, residing in a nursing home for 24-hour care. He has a gastric tube and a tracheostomy.

In suing, the family claimed the infant sustained severe brain damage from anoxia. They claimed the physician was negligent in failing

to order a cesarean section. They claimed the hospital lacked a written on-call protocol and call list, resulting in the primary OB being busy in another hospital and the back-up OB being more than 45 minutes away.

The physician asserted he was unaware of a prolapsed cord at the time and that the records were written in retrospect. The hospital maintained its on-call policy was correct. The defendants claimed the infant's injuries were related to something other than anoxia from the prolapsed cord.

- The case settled for \$11 million.

Membranes ruptured unintentionally

Suffolk County (NY) Supreme Court

A 21-year-old woman was admitted to a labor and delivery unit, and the on-call OB was called. Because of abnormal fetal monitor readings, the nurse requested immediate assistance from an available OB. That OB determined that the woman was dilated 5 cm, that her amniotic membrane was intact, and that the fetus was in a vertex position with a probable cord presentation. Upon his arrival, the on-call OB assumed care.

During another vaginal exam the membranes ruptured, necessitating an emergency c-section. The infant was born 18 minutes later with an Apgar score of 1 that remained at that level after 1, 5, 10, and 15 minutes.

The infant was eventually diagnosed with hypoxic ischemic encephalopathy. Now wheelchair-bound, the child has cerebral palsy, quadriparesis, and severe mental retardation, and cannot care for herself.

The mother alleged the birth canal exam ruptured the membranes, causing cord prolapse that resulted in asphyxiation. She claimed a delivery team member should have elevated the infant's head off the cord.

The defense admitted that the vaginal exam ruptured the membranes, but maintained it was necessary to determine the exact status of the mother's labor and to investigate for placental abruption.

- The jury returned a defense verdict after the hospital settled for \$2 million. ■

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