Could hypoxic injury have been avoided?

A woman at full term contacted her ObGyn when she experienced a spontaneous membrane rupture with release of brownish-green fluid. She was advised to go to bed and call back later. Several hours later, she went to the hospital, where a nurse attended to her care. Fetal monitoring showed recurrent late decelerations and reduced variability. Meconium was observed on a pad under the woman, who asked for and received medication for pain. While she was left unattended for 1.5 hours, the fetal monitor continued to indicate different levels of fetal distress. The infant, delivered by cesarean section, required rigorous resuscitation and was placed in the NICU in critical condition. A positive Kleihauer–Betke test significant for fetomaternal bleed indicated the infant had suffered a severe hypoxic injury. The child was diagnosed with multiple neurological deficits.

PATIENT'S CLAIM Failure to promptly respond to signs of fetal distress and perform a timely cesarean section was negligent, and led to hypoxic ischemic encephalopathy, hypotension, hypoglycemia, metabolic acidosis, cerebral palsy, right hemiparesis, and developmental delays. The mother should have been admitted to the hospital when the membranes ruptured; fetal distress was not recognized; fetal well-being was not properly assessed; and emergent c-section should have been performed. Also, the mother should not have been given the pain medication when the heart tracings were nonreassuring.

DOCTOR'S DEFENSE There was no negligence. The child's injuries were due to anemia resulting from severe chronic fetomaternal hemorrhage that occurred before hospitalization. Also, the child's Apgar score did not indicate an acute hypoxic event during labor and delivery.

VERDICT $2,747,000 settlement.

Was bowel perforated during or after surgery?

A 35-year-old woman was referred to an ObGyn for an urgent hysterectomy at hospital 1. Three days after the surgery, she had follow-up repair surgery performed at hospital 2. She underwent 4 surgical procedures, including colostomy and colostomy reversal, and was hospitalized for 4 weeks.

PATIENT'S CLAIM The ObGyn negligently perforated her bowel during the initial surgery, and 3 days later fecal matter spilled into her abdomen.

DOCTOR'S DEFENSE The bowel perforation could have occurred either during surgery or afterwards due to the patient's underlying pathology. Bowel perforation was a known risk of the procedure.

VERDICT Defense verdict.

Maternal hypertension, placental abruption, and brain-damaged newborn

A woman with elevated blood pressure gave birth to a brain-damaged child, who will need lifelong care.

PATIENT'S CLAIM The ObGyn should have admitted the woman to the hospital at 28.5 weeks because of elevated blood pressure and other clinical symptoms.

DOCTOR'S DEFENSE A thorough workup of the patient, including monitoring over a 4-

hour period, laboratory studies, and fetal heart monitoring, was done, and the patient was referred for a biophysical profile the next morning. An emergency cesarean section was performed 4 days later because of an acute placental abruption, and earlier hospitalization would have been of no benefit.

VERDICT A defense verdict was returned for the ObGyn. The hospital settled for an undisclosed amount prior to trial, after the court directed a finding of negligence against it for failing to timely monitor for fetal distress.

Gestational diabetes led to macrosomia and permanent Erb's palsy

A woman with a history of gestational diabetes was diagnosed once again with gestational diabetes 21 weeks into a 2nd pregnancy. Her primary care physician put her on a restricted diet, but did not order insulin therapy. At 42 weeks, the patient was admitted to the hospital for labor induction. The estimated fetal weight was 8 lb. The medical group's on-call physician, who had never seen the patient, encountered shoulder dystocia while delivering the infant, who actually weighed 10 lb. The child, who had brachial plexus paralysis of the right arm, underwent sural nerve graft surgery.

PATIENT'S CLAIM The on-call doctor performing the delivery did not use the proper maneuvers to safely deliver the child when shoulder dystocia was encountered, resulting in brachial plexus paralysis. Also, the primary care physician did not monitor her gestational diabetes properly, which allowed the infant to become macrosomic, thus increasing the likelihood of shoulder dystocia.

DOCTOR'S DEFENSE There was no negligence.

VERDICT A $1,221,780 present value was returned. A $1,000,000 settlement was reached after the verdict, with the minor's portion placed in a structured settlement.

Was cesarean section delayed after abnormal biophysical profile?

A diabetic woman with a twin pregnancy had an ultrasound showing twin size discordancy, which was not charted. Near term, she presented in late morning to her prenatal treating office with decreased fetal movement. A nonstress test was nonreactive, with a nonreassuring pattern. In midafternoon, an ultrasound biophysical profile exam performed at the hospital was abnormal. Two repeat tests over the next few hours yielded borderline and abnormal results. A cesarean section was performed in early evening. One twin was born without injury, but the other twin had cerebral palsy and mental retardation.

PATIENT'S CLAIM A bedside ultrasound biophysical profile should have been obtained promptly in the hospital. The initial abnormal results, possible twin discordancy, decreased fetal movement, and nonreactive nonstress test with nonreassuring pattern should have prompted an earlier c-section.

DOCTOR'S DEFENSE Not reported.

VERDICT $1,000,050 settlement.

"Patient knew ureteral injury was a risk"

A 39-year-old woman underwent a hysterectomy, during which a ureteral injury occurred. A urologist was brought in to reimplant the right ureter.

PATIENT'S CLAIM The ObGyn was negligent for causing the ureteral injury.

DOCTOR'S DEFENSE The patient had been informed that bladder tear was a known risk of the surgery.

VERDICT Defense verdict. ■

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. Any illustrations are generic and do not represent a specific legal case.