Mother: 3 ObGyns, nursing staff are all liable for my stillbirth

EIGHT MONTHS INTO HER PREGNANCY, a morbidly obese 27-year-old woman experienced vaginal bleeding. She was examined by Dr. A, an ObGyn. After initial difficulty finding a fetal heart rate, he detected it after 1 hour and sent the woman home. At 42 weeks into her pregnancy, she returned for induction of labor. The nurses found the cervix to be thick and closed. The patient was discharged after Dr. B, another ObGyn, was consulted. She was seen by Dr. C, a third ObGyn, when she returned the next day. At first, the fetal heartbeat was detected, but within a few hours it could no longer be found. An emergency cesarean delivery was ordered, but the infant was stillborn.

PATIENT'S CLAIM Dr. A was negligent for not following the patient more closely after her visit at 8 months. Dr. B should have kept her overnight in the hospital for monitoring. Dr. C delayed ordering the cesarean delivery. And the nurses failed to assess, monitor, and communicate her condition.

PHYSICIANS' DEFENSE Dr. B claimed (1) his assessment was reasonable based on the patient's presentation, and (2) attempting a vaginal delivery was preferable because of the mother's size, so there was no need to rush a cesarean delivery. Dr. C claimed he ordered the cesarean delivery in a timely manner. And the hospital claimed its nurses properly monitored the patient and informed Dr. C of her condition. Also, the fetus died of a thrombosis of the umbilical cord—which could not be detected or prevented—4 to 6 hours before the woman arrived at the hospital.

VERDICT Kentucky defense verdict.

Needle fragment left near uterus. Should the patient be told?

A WOMAN IN HER THIRTIES with uterine fibroids underwent a myomectomy performed by her gynecologist. The patient was not told that a small piece of the surgical needle broke off during the procedure and remained in the vicinity of her uterus. When she developed a bowel obstruction a few months later, she went to the emergency room, where the same gynecologist treated her and sent her home. Eventually, she was treated by another physician, who reviewed her medical records and informed her of the broken surgical needle mishap—which was not associated with the bowel obstruction.

PATIENT'S CLAIM The presence of the broken needle posed a threat to her health. She should have been told and given the option for its surgical removal.

PHYSICIAN'S DEFENSE The portion of the needle that had broken off was insignificant in size and was no medical threat. Breakage of a needle was a known risk of the procedure, and she was not informed because it had no medical significance.

VERDICT New Jersey defense verdict.

Aggressive D & C to blame for Asherman's syndrome?

A 32-YEAR-OLD WOMAN who had recently given birth presented at the hospital with vaginal bleeding. Her ObGyn performed a dilation and curettage (D & C) procedure, with suction curettage followed by curettage with a sharp curette. This stopped the bleeding, and the patient was put on a 3-month birth-control regimen. When her menstruation did not resume after 3 months, the ObGyn diagnosed Asherman's syndrome.

PATIENT'S CLAIM (1) The ObGyn should have checked her medical records more carefully, because the D & C was contraindicated. (2) She should have been treated with medical management rather than surgery. (3) The pathology report from the D & C indicated that the uterus and cervix were scraped overzealously during the sharp-curette phase.

PHYSICIAN'S DEFENSE The patient's symptoms and a hematocrit of 28 showed she was hemodynamically unstable and—in the absence of surgery—at risk of rapid decompensation and death. Also, Asherman's syndrome is a known risk of a D & C.

VERDICT A $700,000 New York verdict.

Woman learns too late her lump is not swollen milk gland

WHEN A 30-YEAR-OLD WOMAN went to Dr. K for prenatal care, she asked him to check a lump on her left breast. He diagnosed a milk gland that was swollen due to previous breastfeeding—but she had never breastfed. A sonogram was ordered and showed two masses that could be dermal or breast lesions; an excisional biopsy was ordered. Dr. K signed the report, but did not discuss it with the patient. For the remainder of her pregnancy, there was no follow-up examination of the lump. At her

6-month postdelivery checkup, the lump was not mentioned and a biopsy was not ordered. On her next visit, she was seen by Dr. L, whom she asked to examine the lump. No follow-up testing was performed when he concluded the lump was a swollen milk gland. When frequent stomach-related problems sent her to the emergency room, Dr. L prescribed pain medications and sent her home. Several months later, the patient underwent back surgery performed by Dr. M. The following day she learned that the breast lump was, in fact, cancer and that it had spread—and she now had two tumors on her spine and three on her brain. She had a mastectomy and underwent radiation treatment. Three years later, she died.

- **PLAINTIFF'S CLAIM** Dr. K was negligent for failing to order the recommended biopsy
- **PHYSICIAN'S DEFENSE** Dr. K admitted negligence, but argued causation. Death was caused by the cancer; nothing he did—or did not do—affected the outcome.
- **VERDICT** $15,000 California verdict against Dr. K. Confidential settlement with Dr. L and his group.

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 (www.verdictslaska.com). The available information about the cases presented here is sometimes incomplete; pertinent details of a given situation therefore may be unavailable. 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.