Was gastroschisis of late onset—or visible on sonograms?

BECAUSE OF ADVANCED AGE and the presence of uterine fibroids, a woman underwent prenatal ultrasonography in the fifth, sixth, and seventh months of pregnancy. The sonograms were performed and interpreted by a specialist in maternal–fetal medicine. The baby was born with most of his intestines outside his abdomen and was transferred to another hospital, where surgery was performed nearly 4 hours after birth, revealing necrosis of a significant length of bowel. The child suffered short-gut syndrome and required intravenous catheter and tube feeding until the age of 5 years. His growth was stunted.

PATIENT'S CLAIM The sonograms showed gastroschisis. If this had been recognized at that time, the birth could have taken place in a hospital where surgical repair could be performed within 2 hours of birth. Because of the delay in surgery, necrosis of most of the small intestine occurred.

PHYSICIAN'S DEFENSE The child suffered late-onset gastroschisis, or ruptured umbilical hernia, which the sonograms did not show. No matter where the child was born, the outcome would have been the same.

VERDICT Illinois defense verdict for the specialist in maternal–fetal medicine. Prior to trial, the hospital and radiologist settled for $35,000 and $200,000, respectively.

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.*

Unsigned death certificate delays cremation of stillborn

FOLLOWING THE STILLBIRTH of their child, a couple waited 3 weeks for the death certificate to be signed. Only then were they given the body for cremation.

PLAINTIFFS' CLAIM Dr. A, the attending physician, was negligent for not signing the baby's death certificate in a timely manner, thus delaying the cremation and causing emotional distress. A death certificate should be signed within 1 day of determining the cause of death or knowing that there will be no further information about the cause.

PHYSICIAN'S DEFENSE According to Dr. A, his stated cause of death was rejected initially. While he was waiting for additional clinical information, Dr. B signed the certificate, giving only a general cause of death. Dr. A claimed his own actions caused no damages.

VERDICT $11,000 California verdict.

MDs find ovarian cyst, then, 7 months later, peritoneal cancer

A 49-YEAR-OLD WOMAN with an ovarian cyst underwent laparoscopy. Dr. C, the ObGyn who performed the surgery, found ovaries that were normal, but also the presence of endometriosis and adhesions. Dr. D and Dr. E provided follow-up care. When the patient visited Dr. E 5 months later complaining of bloating and gastrointestinal pain, ultrasonography was performed. She then followed up with her primary care physician and a gastroenterologist. Three months later, she underwent emergency surgery. Stage IIIC primary papillary serous carcinoma of the peritoneum was discovered in her pelvis and abdomen. Despite multiple surgeries and chemotherapy over the next year and a half, the patient died.

PLAINTIFF'S CLAIM Dr. C should have performed a biopsy during the original laparoscopy; this would have allowed an earlier diagnosis with a better prognosis.

PHYSICIAN'S DEFENSE A biopsy was not required initially; in fact, the cancer was probably either not present or microscopic at that time. Even with a diagnosis then, the odds of survival would have been much the same.

VERDICT Illinois defense verdict. The jury deadlocked, 11 to 1. The parties agreed to a less than unanimous verdict and a high/low agreement of $750,000/$100,000. Then the jury returned a defense verdict.

Still incontinent after undergoing retropubic urethropexy

A 43-YEAR-OLD WOMAN was experiencing urinary incontinence, gynecological pain, and bleeding. Her ObGyn diagnosed pelvic organ prolapse. A month later, the patient underwent a total abdominal hysterectomy with retropubic urethropexy. Following the surgery, the patient continued to be incontinent.

PATIENT'S CLAIM A sling procedure to correct the incontinence should have been performed.

PHYSICIAN'S DEFENSE The proper procedure and technique were used. As the patient was undergoing an abdominal hysterectomy, it was reasonable to perform a retropubic urethropexy at the same time.

VERDICT Texas defense verdict.

A $30.9 million verdict in the case of induced VBAC

ATTEMPTING A VAGINAL BIRTH after cesarean (VBAC), a woman arrived at the hospital for induced delivery of her child. During labor, the uterus ruptured and placental abruption occurred. For approximately 20 minutes, the fetus was deprived of oxygen. A cesarean delivery was performed, and the child was diagnosed with severe brain damage and cerebral palsy.

▸ **PATIENT'S CLAIM** Uterine rupture was caused by hyperstimulation with oxytocin. After the loss of the fetal heart rate, the nurses delayed more than 15 minutes before notifying a physician.

▸ **PHYSICIAN'S DEFENSE** The patient was informed of the increased risk of rupture when attempting VBAC. The nurses were following physician orders regarding use of oxytocin. Until the time of rupture and abruption, the uterus was not hyperstimulated and the heart rate was normal.

▸ **VERDICT** $30,953,181 Ohio verdict against the hospital only. The case was settled under a confidential high/low agreement reached before the verdict.

While on HRT, patient with serious health concerns has stroke

DR. F PRESCRIBED oral hormone replacement therapy (HRT) to treat the menopausal symptoms of a 46-year-old patient. The following year he prescribed an estrogen patch and continued treating her for another 3 years until he died. Then Dr. G took over the patient's care. She remained on some form of HRT until she suffered a stroke 2 years later. She suffered significant cognitive impairment and could no longer drive or work.

▸ **PATIENT'S CLAIM** She should have been evaluated more thoroughly and weaned from artificial hormones. She had high blood pressure and high cholesterol, was overweight, and had a family history of cardiovascular problems.

▸ **PHYSICIAN'S DEFENSE** The patient's stroke was not necessarily related to HRT. In fact, it could have been caused by her cardiac condition.

▸ **VERDICT** Missouri defense verdict.

Was laparoscopy to remove an ovary contraindicated?

A 39-YEAR-OLD WOMAN underwent multiple surgeries performed by her ObGyn: tubal ligation, dilation and curettage, hysteroscopy, and emergent hysterectomy. Following the hysterectomy, during which the ovaries were not removed, she had significant left upper quadrant pain. Ultrasonography revealed two cysts on the left ovary. During recommended surgery to remove the ovary, the physician continued laparoscopic dissection despite complications caused by extensive omental adhesions. The surgery lasted 5 hours, after which the patient required 2 days of hospitalization. Within 24 hours of leaving the hospital, she returned to the emergency room with fever, nausea, vomiting, and abdominal pain. A CT scan indicated a probable leak from the sigmoid colon. Follow-up surgery showed perforation of the sigmoid colon and a colostomy was placed. The patient developed acute respiratory distress syndrome and required intubation and mechanical ventilation during a 2-week hospitalization.

▸ **PATIENT'S CLAIM** Because of her prior abdominal surgeries, laparoscopic surgery was contraindicated. Once begun, it should have been converted to an open procedure. Also, the physician should have recognized the injury to the sigmoid colon and treated it immediately.

▸ **PHYSICIAN'S DEFENSE** Perforation is a known risk of laparoscopy, and the patient was informed of this.

▸ **VERDICT** $437,438 Maryland verdict.

Nephrectomy is necessary after ureteral injury

A 52-YEAR-OLD WOMAN with a history of fibroids was told by her ObGyn, Dr. H, that the tumors had grown. After undergoing a recommended hysterectomy performed by Dr. H, the patient experienced ongoing pain. Three months after the surgery, she consulted Dr. J, who diagnosed ureteral obstruction. The patient then underwent surgical repair of the obstruction, but suffered permanent kidney damage. Nephrectomy was performed a month later.

▸ **PATIENT'S CLAIM** Dr. H was negligent because he injured the ureter during the hysterectomy and was also negligent for failing to recognize the injury.

▸ **PHYSICIAN'S DEFENSE** Ureteral injury is a known complication of the procedure. Also, the patient's symptoms were inconsistent with such an injury.

▸ **VERDICT** Tennessee defense verdict.

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