Did delayed cesarean delivery cause child's brain damage?

SEVERAL HOURS AFTER A WOMAN ARRIVED at a hospital in labor, the fetal heart rate dropped to 60 beats/min. The on-call ObGyn performed a cesarean delivery 90 minutes later. The child has permanent neurologic disabilities, receives nourishment through a gastric tube, and will require full-time assistance for life.

PATIENT'S CLAIM The 90-minute delay in performing cesarean delivery caused brain damage. A compressed umbilical cord reduced the oxygen supply, compromised the fetal heart rate, and led to brain damage. There were delays in notifying the physician, assembling the surgical team, and taking the mother to the operating room. The ObGyn failed to inform the mother she could have an expedited cesarean section under local anesthesia.

DEFENDANTS' DEFENSE The ObGyn claimed that a placental infection caused the child's brain damage. The hospital claimed that the physician was called immediately, the surgical team was gathered as quickly as possible, and cesarean delivery was performed in a timely manner.

VERDICT An $8.5 million New Jersey settlement was reached, including $6 million for the child and $2.5 million for the parents.

PPH untreated—blood could not be found

AT AGE 36, A WOMAN GAVE BIRTH to her first child by cesarean delivery. She developed postpartum hemorrhage, but surgery was not performed because physicians believed the hospital did not have enough matched blood for a transfusion. The woman died.

It was later determined that the hospital *did* have the appropriate blood in its refrigerator. The estate reached a confidential settlement with the delivering physician, leaving only the hospital as defendant at trial.

ESTATE'S CLAIM The hospital failed to maintain an adequate stock of blood, failed to follow policy in procuring emergency blood, and failed to provide blood in a timely manner.

In discovery, the estate learned that a janitor had been sent to procure blood, despite hospital policy requiring that emergency blood be delivered by law enforcement. An order to type and screen the patient's blood was given before cesarean delivery, but was not carried out for hours. The woman was type A-negative, which the hospital did not stock. The hospital did have A-positive and O-positive blood, which could have been used, but the physicians were not told it was available.

HOSPITAL'S DEFENSE The physician should have performed surgery. Blood was not needed for the procedure that would have saved the woman's life. Her death was due to peripartum cardiomyopathy.

VERDICT A $4,623,924 Minnesota verdict was returned.

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Were non-stress tests interpreted accurately?

A MOTHER BEGAN TO EXPERIENCE irregular contractions and decreased fetal movement at 38 weeks' gestation. Her ObGyn sent her to the emergency department for a non-stress test and fetal ultrasonography. The tests were interpreted as normal, and she was discharged.

When she saw her ObGyn the next day, he repeated the non-stress test, and found the results to be reassuring and reactive.

Two days later, the ObGyn was unable to find a fetal heartbeat. He sent the woman to the hospital, where a diagnosis of intrauterine fetal demise at term was made. After attempts to induce labor were unsuccessful, a cesarean delivery was performed, and a 10-lb, 8-oz stillborn baby was delivered. The pathologist was unable to define a cause of death at autopsy.

PATIENT'S CLAIM The physician was negligent in failing to properly interpret the non-stress tests. Because of the mother's symptoms, additional testing should have been performed that would have revealed fetal compromise, and led to delivery of a healthy baby.

PHYSICIAN'S DEFENSE The treatment provided was appropriate. The non-stress tests were properly interpreted.

VERDICT An Illinois defense verdict was returned.

PHOTO: SHUTTERSTOCK

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.*

Child's arm paralyzed despite mother's expressed concern

WHEN PREGNANT A SECOND TIME, a woman reported to Dr. A, a member of an ObGyn group, that she had a history of gestational diabetes, and that her first child had been large but had been delivered vaginally. At 28 weeks' gestation, screening was negative for gestational diabetes. Two prenatal sonograms, performed at 35 and 37 weeks' gestation, showed a large fetus.

The woman went into labor at 39 weeks. Dr. B, an associate of Dr. A, encountered shoulder dystocia, but freed the shoulder and completed the vaginal delivery. The baby had Apgar scores of 2, 3, and 7. He was given a diagnosis of separation of four of five nerve roots in his shoulder and has complete paralysis of the right arm, from biceps to fingers.

PATIENT'S CLAIM Knowing the mother's history, the ObGyns were negligent in not diagnosing gestational diabetes. A cesarean delivery should have been performed because the fetus was known to be large; in fact, the mother requested cesarean delivery during labor—because she could tell the baby was larger than her first child—but the request was refused. Proper maneuvers were not used when shoulder dystocia occurred.

PHYSICIANS' DEFENSE The prenatal charts were not sent to the hospital, so the results of the sonograms were unavailable. The fetus experienced intermittent hypoxia during delivery, resulting in a "floppy baby" more susceptible to injury during normal maneuvers. Shoulder dystocia was treated properly.

VERDICT A $1.6 million Ohio verdict was returned against the ObGyn group.

Midwife "pulled too hard"; child injured

A NURSE MIDWIFE ENCOUNTERED shoulder dystocia. Without calling for her back-up physician, she delivered the child. The baby suffers from a moderate brachial plexus injury.

PLAINTIFF'S CLAIM The midwife should have called in the physician when shoulder dystocia was encountered. The midwife pulled too hard on the child's head, causing the injury.

DEFENDANT'S DEFENSE The midwife properly treated shoulder dystocia.

VERDICT A $950,000 North Carolina verdict was returned.

Would earlier cancer diagnosis have changed prognosis?

AFTER LAPAROSCOPIC ADHESIOLYSIS failed to resolve severe abdominal pain, a 52-year-old woman underwent removal of her ovaries and fallopian tubes in 2005. A pathologist reported that the tissue was a benign serous papillary tumor with psammoma bodies. Two years later, the woman's abdominal pain returned, and, over the next 8 months, her primary physician sent her for several magnetic resonance imaging scans that revealed little change in the lower pelvis.

A diagnostic laparoscopy in 2008 found low-grade IIIC primary peritoneal carcinoma thought to have originated from her ovaries and fallopian tubes. The surgeon testified that there was cancer everywhere in the woman's peritoneal cavity. After comparing pathology slides from the two procedures, the surgeon believed the tissue was virtually identical, and that the patient had been misdiagnosed in 2005.

PATIENT'S CLAIM The pathologist was at fault for not diagnosing cancer or borderline cancer in 2005. Had it been diagnosed then, the patient's chances of survival would have been increased by almost 70%.

PHYSICIAN'S DEFENSE According to a gynecologic pathology expert who reviewed both tissue samples, the 2005 diagnosis was reasonable. An earlier diagnosis would not have changed the woman's prognosis.

VERDICT A Washington defense verdict was returned.

Skull fracture and brain hemorrhage in infant

AFTER 11 HOURS OF LABOR, a mother developed fever. The fetal heart rate fluctuated until the baby was delivered 3 hours later. When the cervix was fully dilated, the mother's pushing failed to result in fetal descent, and a cesarean delivery was performed. The child suffered seizures shortly after birth; magnetic resonance imaging and computed tomography scans revealed a linear skull fracture with subarachnoid hemorrhage. The discharge summary for the baby indicated hypotonia, birth depression, and acidosis.

PATIENT'S CLAIM During prenatal treatment, the ObGyn suggested the mother might require cesarean delivery because of her small stature (height, <5 ft). The injuries to the baby could have been avoided; when an arrest of labor occurred soon after the mother's arrival at the hospital, a cesarean delivery should have been performed.

PHYSICIAN'S DEFENSE An arrest of labor did not occur; treatment provided was proper and timely

VERDICT A New York defense verdict was returned.