Did low amniotic fluid cause cerebral palsy?

A BICORNUATE UTERUS and the infant's breech position complicated a woman's pregnancy. At her 39-week prenatal visit, testing showed a low amniotic fluid level, but the woman was sent home. Two days later, she went to the hospital in labor. Her ObGyn first allowed labor to proceed, then performed a cesarean delivery. The father recorded the birth on video camera. The baby was born "essentially lifeless" but with a weak heartbeat. The child was diagnosed with cerebral palsy.

PATIENT'S CLAIM A cesarean delivery should have been performed as soon as it was determined that the amniotic fluid level was low. During surgery, the ObGyn did not choose an incision location that would deliver the baby quickly. The recording evidenced that there was a delay in delivery.

PHYSICIAN'S DEFENSE Elective cesarean delivery was not necessary at the time of the patient's last visit, as one is not performed before 40 weeks' gestation. Cesarean delivery was appropriately performed. The baby had a good heart rate at birth. Brain damage was due to fetal inflammatory response syndrome.

VERDICT A $58 million Connecticut verdict was returned.

Death from meningitis after miscarriage

COMPLAINING OF VAGINAL BLEEDING, a woman in her 20s went to an emergency department. She was found to be about 12 weeks' pregnant. An ObGyn diagnosed spontaneous abortion/miscarriage. Ultrasonography showed that fetal tissue had been expelled, and that no products of conception remained, only blood clots. The woman was given the option of **1)** dilatation and curettage (D&C) or **2)** letting the residual material expel without intervention. She chose the latter, and was discharged with instructions to return if her condition became worse. Three days later, the woman was admitted to another hospital with Group B streptococcal meningitis and a urinary tract infection. She died 2 days later.

ESTATE'S CLAIM A D&C should have been performed. Prophylactic antibiotics should have been prescribed, which would have stopped the infectious process and allowed the decedent to survive.

DEFENDANTS' DEFENSE Prophylactic antibiotics were unnecessary because there were no signs or symptoms of infection when the woman was discharged. Prophylactic antibiotics would not have appropriately treated meningitis, and could have made the infection progress more rapidly by destroying the body's infection-fighting process. There was no need for a D&C, because ultrasonography identified no retained products of conception—indicating that there were no foreign substances to cause an infection.

VERDICT A Maryland defense verdict was returned.

Reduced fetal movement and severe brain damage

AT HER 39-WEEK PRENATAL VISIT, a woman reported that the baby wasn't as active as usual. She was seen by a resident, who did not apply a fetal heart monitor or have the attending ObGyn examine the mother. She was sent home. Two days later, the mother realized the baby was not moving at all, and returned to the clinic. Emergency cesarean delivery was performed. The child has severe brain damage and cerebral palsy.

PATIENT'S CLAIM The resident failed to appropriately respond when the mother reported the baby was not active. The attending ObGyn should have been called, and the baby's heart rate should have been monitored. It was later found that a clotting abnormality had developed, causing an inadequate supply of oxygen to the fetal brain. Proper response to the report of decreased movement would have resulted in the delivery of a healthy child.

PHYSICIANS' DEFENSE Brain damage occurred prior to the mother's 39th-week visit. This was apparent because of the child's joint contractures, which, the defense argued, take a week or longer to develop. (The plaintiff countered that contractures were mild and that the infant was moving his arms and legs a short time after delivery.)

VERDICT A $4,821,000 Missouri verdict was returned.

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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.*

PHOTO: SHUTTERSTOCK

Scalpel breaks during robotic surgery

ROBOT-ASSISTED LAPAROSCOPIC pelvic mass resection was performed on an obese 47-year-old woman. During surgery, the lower blade of an ultrasonic, vibrating scalpel dislodged. Dr. A spent 90 minutes searching for the blade, which he eventually found. The mass was removed and diagnosed as benign. During recovery, the patient became septic, went into acute renal failure, acute respiratory failure, and septic shock. A diagnosis of fecal peritonitis was made.

Dr. B assumed the care of the patient, and later found a colon perforation. Four days after the initial procedure, the patient underwent a colon resection. She was initially treated with a colostomy and then had a successful bowel reanastomosis 7 months after the injury.

PATIENT'S CLAIM Dr. A was negligent in applying too much pressure, dislodging the blade. Dr. A was also faulty in his search for the blade, which was the cause of bowel perforation. Both Drs. A and B were negligent in failing to discover the injury earlier.

PHYSICIANS' DEFENSE The ultrasonic scalpel had a product defect that caused the lower blade to dislodge. The application of pressure wasn't a factor; the 6-hour procedure had caused the robotic arm to overheat, weakening the metal and causing the blade to separate. Dr. A followed appropriate procedures when searching for the blade. The perforation did not occur until 3 days after surgery; it was diagnosed and treated in a timely manner. The removal of adhesions from the sigmoid colon weakened the bowel wall, leading to the perforation; this was a known risk of the procedure.

VERDICT A California defense verdict was reached.

Stroke during in vitro fertilization

DURING IN VITRO FERTILIZATION, a woman suffered a stroke to the right side of her brain, which initially paralyzed the left side of her body. She partially regained movement, but walks with a limp and has diminished dexterity in her right hand and diminished strength.

PATIENT'S CLAIM The ObGyn ignored warning signs of ovarian hyperstimulation syndrome (OHSS), and continued therapy. OHSS caused enlargement of the ovaries and leakage of fluid from the patient's blood vessels into her abdomen. This leakage increased the viscosity of her blood, and enhanced the danger of blood clots. The ObGyn administered intravenous fluids, but did not prescribe an anticoagulant.

PHYSICIAN'S DEFENSE Stroke is a known complication of the surgery.

VERDICT A $1.5 million Virginia verdict was returned.

Umbilical cord in cervix; premature delivery

A WOMAN HAD AN ABNORMAL PAP smear during pregnancy. She was sent to a university hospital and placed on bed rest due to cervical incompetence. Tests indicated that the fetus was healthy. A month later, the baby was born 3 months' premature. He weighed less than 2 lb at birth, and had brain damage and cerebral palsy.

PATIENT'S CLAIM A sonogram performed on the morning of the delivery showed the umbilical cord in the cervix and a low amniotic fluid level. An emergency cesarean delivery should have been performed. Delivery did not occur for another 12 hours; this delay caused oxygen deprivation and brain damage.

DEFENDANTS' DEFENSE The hospital and physicians denied negligence.

VERDICT A $4,100,000 Maryland defense verdict was returned, but was reduced by the statutory cap on noneconomic damages to a net verdict of $3,605,000.

No ObGyn available for emergency cesarean

A WOMAN IN LABOR went to a hospital. When the fetal heart monitor indicated abnormalities, the only ObGyn on duty was busy in a scheduled elective procedure. The on-call resident was assisting with another surgery. After attempting to find another physician, the labor and delivery nurse waited 40 minutes before she put out a code that delivery was imminent. The resident then delivered the child, who was limp and discolored at birth. The child suffered physical and mental impairment, is confined to a wheelchair, and is unable to speak or to care for herself.

PATIENT'S CLAIM An ObGyn should have been available to perform emergency cesarean delivery. The resident was not skilled enough to attempt a high-risk birth. The nurse should not have waited so long to find a physician.

PHYSICIAN'S DEFENSE This is a teaching hospital; the resident was trained to perform delivery. The nurse attempted to find a physician, but all were occupied elsewhere.

VERDICT A $6,015,000 New Jersey verdict was returned against the resident's university employer ($15,000), and the hospital, ObGyn, and nurse ($6 million).