Prolonged delivery: child with cerebral palsy awarded $70M

AFTER MORE THAN 4 HOURS of second-stage labor followed by prolonged pushing and crowning, the baby was born depressed. Later, the child was found to have cerebral palsy.

PARENTS' CLAIM The ObGyn was negligent in failing to perform an episiotomy, not attempting vacuum extraction, and not using forceps to assist delivery. Although fetal heart-rate monitoring results deteriorated, the ObGyn did not assess contractions for 30 minutes at one point. Hospital staff members were unable to adequately intubate or ventilate the newborn. The hospital staff disposed of the baby's cord blood. Records were altered.

The parents' counsel proposed that the defendants' insurance company refused all settlement efforts prior to trial because the case venue was known to be conservative regarding jury verdicts.

DEFENDANTS' DEFENSE The hospital and the ObGyn were not negligent; the mother and baby received proper care. Hospital staff acted appropriately.

VERDICT During the trial, the hospital settled for an undisclosed amount. An additional $2 million was offered on behalf of the ObGyn later in the trial, but the parents refused settlement at that time.

A California jury returned a $74.525 million verdict against the ObGyn. The child was awarded $70.725 million for medical expenses, lost earnings, and damages. The parents were awarded $3.8 million for emotional distress.

Was ectopic pregnancy missed?

A WOMAN IN SEVERE ABDOMINAL PAIN saw her internist. CT scans revealed a right ovarian cyst. When pain continued, she saw her ObGyn 3 weeks later, and her bowel was full of hard stool. Ultrasonography (US) showed a multicystic right ovary and a thin endometrial stripe. She was taking birth control pills and her husband had a vasectomy. She was told her abdominal pain was from constipation and ovarian cysts. A week later, she had laparoscopic surgery to remove an ectopic pregnancy.

PATIENT'S CLAIM The ObGyn did not perform a pregnancy test, and did not diagnose an ectopic pregnancy in a timely manner. An earlier diagnosis would have allowed medical rather than surgical resolution.

PHYSICIAN'S DEFENSE It was too early to determine if the pregnancy was intrauterine or ectopic. An earlier diagnosis would have resulted in laparoscopic surgery rather than medical treatment, as the medication (methotrexate) can cause increased pain.

VERDICT An Illinois defense verdict was returned.

Foreshortened vagina inhibits intercourse

A 65-YEAR-OLD WOMAN underwent anterior and posterior colphorrhaphy to repair a cystocele and rectocele, sacrospinous ligament fixation for vaginal prolapse, and a TVT midurethral suspension procedure to correct stress urinary incontinence. During two follow-up visits, the gynecologist determined that she was healing normally.

Within the next few weeks, the patient came to believe that her vagina had been sewn shut. She did not return to her gynecologist, but sought treatment with another physician 6 months later. It was determined that she had a stenotic and foreshortened vagina.

PATIENT'S CLAIM Too much vaginal tissue was removed during surgery.

PHYSICIAN'S DEFENSE The stenotic and foreshortened vagina was an unexpected result of the healing process after surgery.

VERDICT An Illinois defense verdict was returned.

Hydrocephalus in utero not seen until too late

A WOMAN HAD PRENATAL TREATMENT at a federally funded health clinic. A certified nurse midwife (CNM) ordered second-trimester US, with normal results. During the third trimester, the mother switched to a private ObGyn who ordered testing. US indicated the fetus was hydrocephalic. The child was born with cognitive disabilities and will need lifelong care.

PARENTS' CLAIM The CNM ordered US too early in the pregnancy to be of diagnostic value; no further testing was undertaken. When hydrocephalus was seen, an abortion was not legally available because of fetal age.

DEFENDANT'S DEFENSE Even if US had been performed later in the second trimester, the defect would not have shown.

VERDICT A $4 million New Jersey settlement was reached.

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Severe brachial plexus injury

WHEN SHOULDER DYSTOCIA WAS ENCOUNTERED, the ObGyn used standard maneuvers to deliver the child. The baby suffered a severe brachial plexus injury with rupture of C7 nerve and avulsions at C8 and T1.

Nerve-graft surgery at 6 months and tendon transfer surgery at 2 years resulted in recovery of good shoulder and elbow function, but the child has inadequate use of his wrist and hand. Additional surgeries are planned.

PARENTS' CLAIM The ObGyn did not inform the mother that she was at risk for shoulder dystocia, nor did he discuss cesarean delivery. The mother's risk factors included short stature, gestational diabetes, excessive weight gain during pregnancy, and two previous deliveries that involved vacuum assistance and a broken clavicle. The ObGyn applied excessive traction to the fetal head during delivery.

PHYSICIAN'S DEFENSE The mother's risk factors were not severe enough to consider the chance of shoulder dystocia. The baby's injuries were due to the normal forces of labor. Traction placed on the baby's head during delivery was gentle and appropriate.

VERDICT A $5.5 million Iowa verdict was returned.

Faulty testing: baby has Down syndrome

AT 13 WEEKS' GESTATION, a 34-year-old woman underwent chorionic villus sampling (CVS) at a maternal-fetal medicine center. Results showed a normal chromosomal profile. Later, two sonograms indicated possible Down syndrome. The parents were assured that the baby did not have a genetic disorder; amniocentesis was never suggested.

A week before the baby's birth, the parents were told the child has Down syndrome.

PARENTS' CLAIM Maternal tissue, not fetal tissue, had been removed and tested during CVS. The parents would have aborted the fetus had they known she had Down syndrome.

DEFENDANTS' DEFENSE CVS was properly administered.

VERDICT A $3 million Missouri verdict was returned against the center where the testing was performed.

Why did the uterus seem to be growing?

A 52-YEAR-OLD WOMAN'S UTERUS was larger than normal in February 2007. By November 2008, her uterus was the size of a 14-week gestation. In September 2009, she complained of abdominal discomfort. Her uterus was larger than at the previous visit. The gynecologist suggested a hysterectomy, but nothing was scheduled.

In November 2009, she reported increasing pelvic pressure; her uterus was the size of an 18-week gestation. US and MRI showed large masses on both ovaries although the uterus had no masses or fibroids within it. A gynecologic oncologist performed abdominal hysterectomy with bilateral salpingo-oophorectomy and bilateral peri-aortic lymph node dissection. Pathology returned a diagnosis of ovarian cancer. The patient underwent chemotherapy.

PATIENT'S CLAIM The gynecologist was negligent in not ordering testing in 2007 when the larger-than-normal uterus was first detected, or in subsequent visits through September 2009. A more timely reaction would have given her an opportunity to treat the cancer at an earlier stage.

PHYSICIAN'S DEFENSE The case was settled before trial.

VERDICT A $650,000 Maryland settlement was reached.

Erb's palsy after shoulder dystocia

DURING VAGINAL DELIVERY, the ObGyn encountered shoulder dystocia. The child suffered a brachial plexus injury and has Erb's palsy. There was some improvement after two operations, but she still has muscle weakness, arm-length discrepancy, and limited range of motion.

PARENTS' CLAIM The ObGyn applied excessive downward traction on the baby's head when her left shoulder could not pass under the pubic bone.

PHYSICIAN'S DEFENSE The injury was caused by uterine contractions and maternal pushing. Proper maneuvers and gentle pressure were used.

VERDICT A $1.34 million New Jersey verdict was returned.

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.*

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