



Infant's brain damage blamed on delayed delivery

DURING DELIVERY, THE MOTHER'S PERINATOLOGIST recognized a severe shoulder dystocia. The perinatologist abandoned vaginal delivery and ordered an emergency cesarean delivery. The mother was transferred to an operating room (OR) with the baby's head out between her legs. In the OR,

the perinatologist pushed the baby's head back into the uterus and performed a cesarean extraction. Nineteen minutes elapsed from when the vaginal delivery was abandoned and the baby was delivered.

The child was unresponsive at birth with no spontaneous movement or respiration. She was intubated and transferred to the NICU, where she was resuscitated. MRI confirmed that the child had hypoxic ischemia and severe, permanent brain damage from acute birth asphyxia. The child is blind, deaf, hypertensive, and has diffuse spasticity. She has a tracheostomy, a gastrostomy tube, and requires 24-hour care.

► **PARENTS' CLAIM** The perinatologist was negligent for abandoning vaginal delivery when delivery was progressing appropriately and there was no fetal distress. If the perinatologist had rotated the baby's shoulder to the oblique position and/or used suprapubic pressure, the shoulder would have become disimpacted and the baby would have been safely delivered within seconds. Delay in delivery allowed for 19 minutes of umbilical cord compression, resulting in brain damage.

► **PHYSICIAN'S DEFENSE** Cesarean delivery was appropriate; the baby did not suffer cord compression. Injury to the brain occurred days before delivery, based on prenatal ultrasonography.

► **VERDICT** A \$5.5 million California settlement was reached.

Failure to diagnose breast cancer: death

A **38-YEAR-OLD WOMAN** went to her primary care physician (PCP) 3 years after giving birth. She reported breast pain, nipple discharge, and a dime-sized lump. The woman was still breastfeeding. An exam by the nurse practitioner (NP) was limited because the patient had breast implants. The NP suspected a galactoceles and advised the patient to stop breastfeeding and apply ice packs. When the patient returned in 2 weeks, only the lump remained. The PCP

determined that she had mastitis.

Five months later, she returned with additional lumps in both breasts, and was referred to a gynecologist. Ultrasonography (US) was ordered, but the patient never followed up. A year later, the patient was found to have metastatic breast cancer and died after 3 years of treatment.

► **ESTATE'S CLAIM** The PCP and NP were negligent for not referring her for a breast biopsy when a lump was first detected.

► **DEFENDANTS' DEFENSE** Proper care was given. An earlier diagnosis would not have changed the outcome.

► **VERDICT** A \$750,000 Massachusetts settlement was reached.

What caused this child's autism?

AFTER 33 HOURS OF LABOR, a baby was delivered vaginally by an ObGyn, nurse, and midwife. The child was diagnosed with autism several years later. His development is delayed, and he suffers cognitive impairment.

► **PARENTS' CLAIM** The child's autism is due to a prolonged hypoxic event during labor. Fetal heart-rate monitoring demonstrated fetal distress, with a bradycardia. A cesarean delivery should have been performed.

► **PHYSICIAN'S DEFENSE** The child has genetic autism unrelated to the birth process.

► **VERDICT** A \$1.35 million New York settlement was reached.

Was oxytocin the culprit?

DURING AN EXTENDED LABOR, the ObGyn continued to give the mother oxytocin, although there were signs of fetal distress. The child was born with brain damage, cannot walk, talk, or see, and requires 24-hour care.

► **PATIENT'S CLAIM** The use of oxytocin was inappropriate given the signs of fetal distress. Oxytocin caused a lack of oxygen to the child, resulting in brain damage. A cesarean delivery should have been performed when fetal distress was identified.

► **DEFENDANTS' DEFENSE** The case was settled before trial.

► **VERDICT** A \$12 million Illinois settlement was reached: \$11 million from the hospital and \$1 million from the ObGyn.

CONTINUED ON PAGE 48

PHOTO: SHUTTERSTOCK



Bowel perforation, sepsis after ovary removal

DURING LEFT OOPHORECTOMY, the ObGyn encountered adhesions. Five days later, the 41-year-old patient reported severe pain. A second procedure revealed sepsis and perforation of the large bowel. A colostomy was performed. The patient underwent additional corrective operations.

► **PATIENT'S CLAIM** The ObGyn was negligent for causing tissue damage to the colon that perforated and escalated into sepsis. A surgeon should have been consulted when the ObGyn found the adhesions, so the bowel could be properly inspected before the abdomen was closed. The physician was also negligent for not recognizing symptoms of sepsis earlier.

► **PHYSICIAN'S DEFENSE** Bowel injury is a known complication of oophorectomy. The patient appeared to be making a fairly good recovery until infection became evident; she was immediately treated.

► **VERDICT** A \$6.3 million New Jersey verdict was returned, including \$300,000 for the husband's loss of consortium.

Traumatic delivery causes seizures

DURING CESAREAN DELIVERY, the ObGyn rotated the baby from a transverse to a cephalic lie, and used a vacuum extractor to deliver the head through the hysterotomy incision.

When the child was 25 hours old, he suffered a seizure that lasted 6 minutes. Focal seizure activity involving the left side of his body and a skull fracture were identified. He was transferred to another hospital, where radiologic studies indicated a middle right cerebral artery infarct. The child developed an ongoing seizure disorder, speech and language delays, and mild, left-sided weakness.

► **PARENTS' CLAIM** The baby's head was not properly delivered through the cesarean incision nor should the ObGyn have used vacuum extraction. The combination of the rotation and use of vacuum caused trauma to the

infant's head. In addition, the baby was placed in the well-baby nursery, which was inappropriate because he was born through thick meconium, resuscitated by a neonatal nurse, and had a depressed skull fracture.

► **PHYSICIAN'S DEFENSE** Delivery was not traumatic; all treatment was appropriate.

► **VERDICT** A \$4.6 million New York settlement was reached with the hospital and ObGyn's insurer.

Mother gets severe headache during birth

A 35-YEAR-OLD WOMAN began having a severe headache during delivery that continued after birth. She was discharged from the hospital and collapsed at home a day later. She was returned to the ED, where she was left in a hallway for 6 hours. She lost consciousness while in the hallway. Imaging and neurologic evaluation determined that she suffered a hypoxic brain injury from

intracranial bleeding. She has slow response time, difficulty with all aspects of everyday life, and requires full-time attendant care.

► **PATIENT'S CLAIM** Although she complained of a headache, no testing was done prior to her hospital discharge. Treatment was extremely delayed in the ED; an earlier diagnosis could have prevented brain damage.

► **PHYSICIAN'S DEFENSE** Nothing could have prevented the brain damage.

► **VERDICT** A \$3.5 million California settlement was mediated.

Shoulder dystocia; brachial plexus injury

WHEN SHOULDER DYSTOCIA was encountered during delivery, the ObGyn applied gentle pressure to deliver the head. He was assisted by an ObGyn resident. The child was born with a brachial plexus injury, causing left-arm paralysis. She underwent surgery that increased her range of motion, but she will need years of physical therapy.

► **PATIENT'S CLAIM** The ObGyn applied excessive traction and the resident improperly applied fundal pressure.

► **DEFENDANTS' DEFENSE** Only gentle traction was used. The resident did not apply fundal pressure.

► **VERDICT** A New York jury found the ObGyn at fault and awarded the patient \$3.5 million. The resident was vindicated.

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

CONTINUED ON PAGE 49



Was premature baby viable?

AN EXPECTANT MOTHER MISCARRIED AT HOME at 6 months' gestation, and an ambulance was called. After the EMTs helped the mother to the ambulance, they retrieved the fetus. When the baby was seen moving its head, the EMTs requested assistance from the advanced life support (ALS) team. ALS personnel visually assessed the fetus, determined it

was nonviable, and placed the baby in a small container. The mother and baby arrived at the hospital 17 minutes after the ambulance was called.

At the hospital, a nurse noticed that the fetus was warm and had a heartbeat. The baby was taken to a special-care nursery for resuscitation and then transferred to another hospital's NICU. The baby died after 46 days from severe brain damage due to lack of oxygen.

► **PARENTS' CLAIM** The EMTs and ALS team should have provided better evaluation and treatment for the infant; they were not trained to determine an infant's viability. Placing the infant inside a plastic bag inside a box with a lid further deprived the baby of oxygen.

► **DEFENDANTS' DEFENSE** The case was settled before trial.

► **VERDICT** A \$1 million Massachusetts settlement was reached.

excessive force by pulling on the baby's head to complete the delivery. Standard of care required the ObGyn to take a more gentle approach to achieve delivery.

► **PHYSICIAN'S DEFENSE** Delivery was performed appropriately, and did not deviate from standard of care.

► **VERDICT** A \$20.881 million Maryland verdict was returned, including \$20 million for pain and suffering. The total award was reduced to \$1,531,082 when the pain and suffering award was cut to \$650,000 under the state's statutory cap.

Preterm birth from an asymptomatic UTI?

A BABY WAS BORN AT 31 WEEKS' gestation. The child has cerebral palsy, spastic quadriplegia, and requires assistance in all aspects of life.

► **PARENTS' CLAIM** Chorioamnionitis from a urinary tract infection (UTI) caused preterm birth. Urinalysis performed 7 weeks earlier indicated an infection, but the second-year resident caring for the mother failed to treat the UTI. The resident should have obtained a confirming urine culture, prescribed antibiotics, and monitored the mother more closely. The resident was poorly supervised.

► **DEFENDANTS' DEFENSE** Chorioamnionitis developed just before birth and could not be detected or prevented. A UTI cannot remain asymptomatic for 7 weeks and still cause premature birth. The mother was at increased risk of premature delivery because she had given birth to an anencephalic infant a year earlier. She began prenatal care in the middle of her pregnancy and ignored a referral to a high-risk maternal fetal specialist.

► **VERDICT** A New York defense verdict was returned. Ⓢ

Were records altered because of a delayed diagnosis?

A WOMAN FOUND A LUMP in her left breast. A gynecologist ordered mammography. In January 2006, the radiologist requested ultrasonography (US), and reported that it conclusively indicated that the mass was a cyst. The gynecologist told the patient the tests were normal; further action was unnecessary. The patient saw the gynecologist four more times before being referred to a breast surgeon. In June 2006, she underwent surgical resection and chemotherapy for a malignant breast tumor.

► **PATIENT'S CLAIM** The gynecologist was negligent for not referring the patient to a surgeon earlier. The gynecologist altered records: excerpts from the mammogram and US reports had been scanned in with a notation that

the gynecologist had told the patient to follow up with a surgeon. When the gynecologist faxed the same reports to the surgeon, the annotations were absent. The gynecologist also changed the December 2005 chart, which referred to an US she never ordered.

► **PHYSICIAN'S DEFENSE** The gynecologist stated that she regularly "merged" two reports into one document in her practice.

► **VERDICT** A \$700,000 Pennsylvania verdict was returned.

Excessive force or standard of care?

SHOULDER DYSTOCIA occurred during labor. The child sustained left brachial plexus palsy. At age 6, his left arm is paralyzed and smaller than the right arm. He has trouble performing normal daily tasks.

► **PATIENT'S CLAIM** The ObGyn used