Premature infant has CP: $14.5M verdict

AFTER LEARNING THAT, 14 YEARS EARLIER, a 36-year-old woman had undergone an emergency cesarean delivery at 32 weeks' gestation, her health-care providers planned a cesarean delivery for the new pregnancy. The woman was admitted to the hospital in preterm labor. Three days later, she was discharged, but readmitted twice more over a 2-week period. At each admission, preterm labor was halted using medication and bed rest.

The patient's water broke and she was admitted to the hospital at 25 weeks' gestation, about a week after the previous admission. Shortly after admission, the patient asked about a cesarean delivery, but no action was taken. When her ObGyn arrived at the hospital 5 hours later, the patient asked for a cesarean delivery; the ObGyn said he wanted to wait to see how her labor was progressing. After 3 hours, the fetus showed signs of distress, and an emergency cesarean delivery was undertaken. The infant experienced a massive brain hemorrhage, resulting in cerebral palsy (CP). The child has cognitive delays, visual impairment, and additional problems; he will require lifelong care.

PARENTS' CLAIM The ObGyn and hospital were negligent in discharging the woman from admission for preterm labor. Cesarean delivery should have been performed much earlier due to nonreassuring fetal heart tones. Severe variable decelerations caused cerebral blood flow fluctuations that led to the hemorrhage.

DEFENDANTS' DEFENSE The child's prematurity and a severe placental infection led to the injuries. Nothing would have changed the outcome.

VERDICT A $14.5 million Ohio verdict was returned, including $1.5 million for the mother.

Costs returned after verdict for the defense

A 65-YEAR-OLD WOMAN underwent a hysterectomy for treatment of uterine cancer performed by a gynecologic oncologist. Postoperatively, the patient developed an infection. A small-bowel injury was surgically repaired. The patient was hospitalized for 4 months for treatment of sepsis.

PATIENT'S CLAIM The physician was negligent for injuring the patient's bowel and then failing to identify and repair the injury during surgery.

PHYSICIAN'S DEFENSE There was no negligence. The patient had significant adhesions from prior surgeries. The physician noted minor serosal tears of the bowel, several of which were repaired during surgery. He checked the length of the bowel for tears/perforations several times during the procedure, but found none. The patient had areas of weakness in her bowel, one of which broke down after surgery. The perforation was repaired in a timely manner.

VERDICT A Michigan defense verdict was returned. The physician was awarded $14,535 in costs.

Colon injury after cystectomy

A 21-YEAR-OLD WOMAN UNDERWENT laparoscopic ovarian cystectomy, performed by her gynecologist, and was discharged the next day. Eight days later, the patient went to the emergency department (ED) with pelvic pain. Testing revealed a perforated colon with peritonitis. She underwent repair by laparotomy, including bowel resection and colostomy, which was reversed several months later. She has not regained regular bowel function, cannot digest food that has not been finely sliced, and constantly uses laxatives.

PATIENT'S CLAIM The colon injury occurred during cystectomy because the gynecologist was negligent in failing to maintain proper anatomical landmarks. The injury should have been recognized at the time of surgery by injecting saline solution into the colon. She had not been informed of the risk of colon injury.

DEFENDANT'S DEFENSE Colon injury is a known complication of cystectomy. The injury could have occurred after surgery due to a minor nick of the colon that was undetectable during surgery. Proper informed consent was acquired.

VERDICT A $340,000 New York settlement was reached.

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

Mother hemorrhages, dies after delivery: $1M settlement

A 19-YEAR-OLD WOMAN PRESENTED AT FULL TERM to a community hospital. After several hours of labor, an emergency cesarean delivery was performed due to arrested descent.

Fifteen minutes after delivery, the mother exhibited moderate bleeding with decreasing blood pressure and tachycardia. The post-anesthesia care unit nurse assessed the patient's uterus as "boggy," and alerted the ObGyn, who immediately reacted by expressing clots from the uterus. He noted that the fundus was firm. He ordered intravenous (IV) oxytocin, but the patient continued to hemorrhage. Fifteen minutes later, the patient's vital signs worsened. The ObGyn ordered blood products, uterotonics, and an additional IV line for fluid resuscitation. He began to massage the fundus and expressed clots.

When the patient did not stabilize, she was returned to the OR. After attempting to stop the bleeding with O'Leary stitches, the ObGyn performed a hysterectomy. Six hours after surgery, and after transfusion of a total of 12 units of blood, the woman coded multiple times. She died 14 hours after delivery. Cause of death was disseminated intravascular coagulopathy caused by an atonic uterus.

ESTATE'S CLAIM The ObGyn failed to recognize the extent of the postpartum hemorrhage and should have acted more aggressively with resuscitation. He should have returned her to the OR earlier. The ObGyn was negligent in waiting 45 minutes for cross-matched blood rather than using universal donor O-negative blood that was readily available.

PHYSICIAN'S DEFENSE The ObGyn denied negligence and maintained that he had acted properly. He returned the patient to the OR within 90 minutes of first learning of the hemorrhage.

VERDICT A $1 million Virginia settlement was reached.

Infant born with broken arms, collarbone, facial bones

A 23-YEAR-OLD WOMAN had gestational diabetes. She is 5'9" tall and weighed 300 lb while pregnant. She went to the hospital in labor.

During delivery, shoulder dystocia was encountered. The ObGyn performed a variety of techniques, including the McRobert's maneuver. Forceps were eventually used for delivery.

Both of the newborn's arms were broken, and she had a broken collarbone and facial fractures. The mother also suffered significant vaginal lacerations and required an episiotomy. She continues to complain of bladder and bowel problems.

PATIENT'S CLAIM A vaginal delivery should not have been attempted due to the mother's gestational diabetes and the risk of having a macrosomic baby. A cesarean delivery should have been performed. The ObGyn did not use the proper techniques when delivering the child after shoulder dystocia was encountered.

PHYSICIAN'S DEFENSE The ObGyn denied negligence. He claimed that the baby recovered well from her injuries. The mother underwent surgery and now has excellent bladder and bowel control.

VERDICT A confidential Louisiana settlement was reached with the hospital before trial. A defense verdict was returned for the ObGyn.

Protein found in urine at 39 weeks' gestation: mother and child die

AT 39 WEEKS' GESTATION, a woman saw her ObGyn for a prenatal visit. During the examination, the ObGyn found high levels of protein in the woman's urine, an accumulation of fluid in her ankles, and the highest blood pressure (BP) reading of the woman's pregnancy. However, because the BP reading was lower than that required to diagnose preeclampsia, the ObGyn sent the patient home and scheduled the next prenatal visit for the following week. The woman and her unborn child died 5 days later.

ESTATE'S CLAIM The ObGyn was negligent in failing to order a urine study and more closely monitor the mother's symptoms when signs of preeclampsia were evident at 39 weeks' gestation. Delivery of the child would have resolved the problem and saved both lives.

PHYSICIAN'S DEFENSE The case was settled during the trial.

VERDICT A $3 million Illinois settlement was reached.

PHOTO: SHUTTERSTOCK

Baby dies from group B strep

A 16-YEAR-OLD WOMAN PLANNED DELIVERY at a local hospital. Her ObGyn's practice regularly sends the hospital its patients' prenatal records, starting at 25 weeks' gestation. At 33 weeks, the ObGyn took a vaginal culture to test for group B *Streptococcus* (GBS) bacteria. The laboratory reported positive GBS results to a computer in the ObGyn's office, but the results were not entered into the patient's chart.

The mother went to the ED in labor a week later; she was evaluated and discharged. Several days later, she returned to the ED, but was again discharged. She returned the next day, now in gestational week 36. An on-call ObGyn admitted her. A labor and delivery nurse claimed that the ObGyn's office reported that the mother was GBS negative, so the nurse placed a negative sign in the prenatal record in the chart. When the patient's ObGyn arrived at the hospital, he noticed the negative sign in the chart.

At birth, the baby's Apgar scores were 7 at 1 minute and 7 at 5 minutes. She appeared limp and was grunting. A pediatrician diagnosed transient respiratory problems related to prematurity. The baby continued to deteriorate; antibiotics were ordered 7 hours after birth. After the child was transported to another facility, she died. The cause of death was GBS sepsis and pneumonia.

PARENTS' CLAIM The ObGyn was negligent in failing to properly and timely note the positive GBS test result in the mother's chart. The ObGyn's office staff was negligent in miscommunicating the GBS status to the nurse.

DEFENDANTS' DEFENSE The ObGyn usually noted laboratory results at the next prenatal visit, but the mother gave birth before that occurred. The on-call ObGyn failed to give antibiotics when the mother presented in preterm labor with unknown GBS status. The hospital did not have a protocol that required the on-call ObGyn to prescribe prophylactic antibiotics in this context. The nurse was negligent for failing to verify the oral telephone report of GBS-negative status with a written or faxed laboratory report.

The ObGyn surmised that the infection had occurred in utero, not during birth; antibiotics would not have changed the outcome.

VERDICT The parents settled with the hospital for a confidential amount. An Arizona defense verdict was returned for the ObGyn.

Child has quadraparetic CP after oxytocin-augmented delivery

A PREGNANT WOMAN was hospitalized for 23-hour observation with blood work and obstetric ultrasonography. The admitting nurse noted that the patient was having mild contractions and that fetal heart tones were 130 bpm with moderate variability. The mother's cervix was dilated to 2.5 cm, 70% effaced, at –1 station, with intact and bulging membranes and normal maternal vital signs. The ObGyn ordered intravenous ampicillin and sent the mother to labor and delivery. He prescribed oxytocin (6 mU/min), but, after its initiation, oxytocin was discontinued for almost 2 hours. When the mother had five contractions in 10 minutes, oxytocin was restarted at 8 mU/min. The oxytocin dosage was later increased to 10 mU/min, and then to 12 mU/min.

When shoulder dystocia was encountered, various maneuvers were performed. The baby was delivered using vacuum extraction. The newborn was immediately sent to the neonatal intensive care unit (NICU) with a suspected humerus fracture and poor respiration. Mechanical ventilation and treatment for hypoperfusion were initiated. She had persistently low Apgar scores, intracranial hemorrhaging, seizures, severe metabolic acidosis, and hypoxic ischemic encephalopathy. She has quadraparetic cerebral palsy with related disabilities.

PARENTS' CLAIM The ObGyn and hospital were negligent in the treatment of the mother during labor and delivery, causing the child to be born with serious injuries.

DEFENDANTS' DEFENSE The case was settled during the trial.

VERDICT A $4,250,000 Texas settlement was reached, including $75,000 for the parents, and the remainder placed into a trust for the child.

RELATED ARTICLES

- ***New group B strep guidelines clarify management of key groups***
  (News for your Practice; March 2011)
- ***Routine use of oxytocin at birth: just the right amount to prevent postpartum hemorrhage.***
  Robert L. Barbieri, MD
  (Editorial; July 2012)

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