

Medical VERDICTS

NOTABLE JUDGMENTS AND SETTLEMENTS



Failure to find cancer earlier; patient dies: \$4.69M verdict

ON JULY 19, a 26-year-old woman presented to the emergency department (ED) with abnormal vaginal bleeding 3 months after giving birth. She was found to have endometrial thickening and an elevated β human chorionic gonadotropin level.

An ObGyn (Dr. A) assumed that the patient was having a miscarriage and sent her home.

On July 30, when the patient returned to the ED with continued bleeding, lesions on her cervix and urethra were discovered. A second ObGyn, Dr. B, addressed the bleeding, removed the lesion, and ordered testing. On August 17, the patient saw a third ObGyn (Dr. C), who did not conduct an examination.

Days later, the patient suffered a brain hemorrhage that was suspicious for hemorrhagic metastasis. After that, stage IV choriocarcinoma was identified. Although she underwent chemotherapy, the patient died 18 months later.

ESTATE'S CLAIM: All 3 ObGyns failed to take a proper history, conduct adequate examinations, and order appropriate testing. Even at stage IV, 75% of patients with choriocarcinoma survive past 5 years. The stroke rendered chemotherapy less effective and substantially contributed to the patient's death. Failure to diagnose the cancer before the stroke allowed the disease to progress beyond the point at which the patient's life could be saved.

DEFENDANTS' DEFENSE: The ObGyns and hospital claimed that appropriate care was provided and that they were not negligent in failing to consider the diagnosis of a very rare form of cancer.

VERDICT: A \$4.69 million New Jersey verdict was returned, with all 3 physicians held partially liable.

When should delivery have occurred? \$4M verdict

CONCERNED THAT HER FETUS had stopped moving, a mother presented to the ED. Results of fetal heart-rate (FHR) monitoring ordered by the attending ObGyn (Dr. A) were nonreassuring. A second ObGyn (Dr. B) ordered a fetal biophysical profile (BPP); the score was 2 points. Although a low score usually results in immediate delivery, Dr. B

consulted a maternal-fetal medicine (MFM) specialist. After another fetal BPP scored 8 points, the mother was discharged.

The next day, the mother called her ObGyn (Dr. C), who told her to immediately come to his office. A fetal BPP scored 4 points, with non-reassuring fetal heart sounds.

The mother was transported to the hospital for emergency cesarean delivery. At birth, the baby was blue, not breathing, and had meconium in his lungs. After 6 minutes' resuscitation, he began breathing. The child has an hypoxic brain injury.

PARENTS' CLAIM: Based on the non-reassuring FHR readings when the mother first reported lack of fetal movement, and a BPP of 2 points, an immediate cesarean delivery should have been performed. If the child had been delivered in a timely manner, he would have escaped a brain injury. At the very least, the mother should have been kept in the hospital for monitoring.

DEFENDANTS' DEFENSE: Drs. A and B and the hospital claimed that the child did not have a hypoxic injury; he had gastroschisis.

VERDICT: A \$4,098,266 New York verdict was returned.

Hot speculum burns patient: \$547,090 award

A 54-YEAR-OLD WOMAN underwent a hysterectomy performed at a government-operated hospital. After she was anesthetized and unconscious, a second-year resident took a speculum that had been placed in the sterile field by a nurse, and inserted it in the patient's vagina.

When the patient awoke from surgery, she discovered significant burns to her vaginal area, perineum, anus, and buttocks.

PATIENT'S CLAIM: The speculum had just been removed from the autoclave and was very hot. The patient incurred substantial medical bills to treat her injuries and was unable to work for several months. She sued the hospital and resident, alleging

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PHOTO: SHUTTERSTOCK

error by the nurse in placing the hot speculum in the sterile field without cooling it or advising the resident that it was still hot. The resident was blamed for using the speculum without confirming that it was hot.

DEFENDANTS' DEFENSE: The resident claimed that she reasonably relied on the nurse to not place a hot instrument in the surgical field without first cooling it. The hospital, representing the nurse, denied fault, blaming the resident for not checking the speculum.

VERDICT: A \$547,090 Louisiana verdict was awarded by a judge against the resident and the hospital, but it was halved by comparative fault to \$273,545.

Second twin's birth delayed; brain damage: \$1.5M settlement

A 35-YEAR-OLD WOMAN was 30 weeks' pregnant with twins when she was admitted to a hospital at high risk. At 36 weeks' gestation, she went into labor. A resident called the ObGyn to report that the patient was ready to deliver and waiting to push. The ObGyn advised that he was tied up in another procedure and for the mother to wait until he could get there.

Forty minutes later, the ObGyn arrived and the mother was allowed to push. A first-year resident delivered the first twin without incident. The second twin shifted from a cephalic presentation to a double footling breech presentation and his FHR reflected severe bradycardia. Under the supervision of the ObGyn, a fourth-year resident managed the delivery, which took 28 minutes. The second twin's Apgar scores were low. He was intubated and transferred to a children's hospital for brain cooling.

PARENT'S CLAIM: Although excellent care following the birth reduced the degree of brain damage, the delay caused by the ObGyn's late arrival was responsible for the child's injuries.

PHYSICIAN'S DEFENSE: In pretrial findings, a panel of physicians reported that the child did not have a qualifying injury. However, the case settled before the trial began.

VERDICT: A \$1.5 million Virginia settlement was reached. ●

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