## Baby severely handicapped after premature labor: $42.9M

**A 27-YEAR-OLD MOTHER** had a normal prenatal ultrasonography (US) result in March 2007. In July, she went to the emergency department (ED) with pelvic pressure. A maternal-fetal medicine (MFM) specialist noted that the patient's cervix had shortened to 1.3 cm. US showed that excessive amniotic fluid was causing uterine distention. The patient was monitored by an on-call ObGyn for 3.5 hours before being discharged home on pelvic and modified bed rest.

Two days later, the mother reported frequent contractions to her ObGyn. The baby was born the next day by emergency cesarean delivery at 25 weeks' gestation. The newborn had seizures and a brain hemorrhage. The child has mental disabilities, blindness, spastic quadriparesis, cerebral palsy, gastroesophageal reflux, and complex feeding disorder.

**PARENTS' CLAIM** The on-call ObGyn did not give the patient specific instructions for pelvic and bed rest upon discharge. The MFM specialist and on-call ObGyn failed to admit the patient to the hospital, and failed to administer intravenous steroids (betamethasone) to protect the fetal brain and induce respiratory development.

**DEFENDANTS' DEFENSE** There was no indication during the MFM specialist's examination that delivery was imminent. The use of betamethasone would not have prevented or inhibited premature labor. The infant's problems were due to prematurity and low birth weight.

**VERDICT** A $42.9 million Pennsylvania verdict was returned against the MFM specialist; the on-call ObGyn and hospital were vindicated.

## Pelvic lymph nodes not sampled

**WHEN A 68-YEAR-OLD WOMAN** reported vaginal spotting to her gynecologist (Dr. A) in March 2006, the results of an endometrial biopsy were negative. She saw another gynecologist (Dr. B) for a second opinion when bleeding continued. After dilation and curettage, grade 1B endometrial cancer was identified. The patient underwent a hysterectomy and bilateral salpingo-oophorectomy.

She received a diagnosis of metastatic cancer of the pelvis and pelvic and para-aortic lymph nodes 18 months later. After additional surgery, the patient died in March 2008.

**ESTATE'S CLAIM** Dr. A was negligent in failing to diagnose the cancer in March 2006. Dr. B should have performed pelvic lymphadenectomy at hysterectomy; a lymphadenectomy would have accurately staged metastatic cancer.

**DEFENDANTS' DEFENSE** Care and treatment were appropriate. Performing a lymphadenectomy would have exposed the patient to a significant risk of morbidity.

**VERDICT** A $750,000 California verdict was reduced to $250,000 under the state cap.

## Large baby: Erb's palsy

**SHOULDER DYSTOCIA** was encountered when a 38-year-old woman gave birth. The child later received a diagnosis of Erb's palsy, and has had several operations. At trial, the child had loss of function of the affected arm and wore a brace.

**PARENTS' CLAIM** A vaginal delivery should not have been performed because the mother had gestational diabetes and the baby weighed 8 lb 8 oz at birth. Cesarean delivery was never offered.

**DEFENDANTS' DEFENSE** Labor appeared normal. Proper delivery techniques were used when shoulder dystocia was encountered.

**VERDICT** A $12.9 million Michigan verdict was reduced to $4 million under the state cap.

## Spinal cord injury

**DURING ANESTHESIA ADMINISTRATION** before cesarean delivery, a mother's spinal cord was injured, resulting in irritation of multiple nerve roots. She has chronic nerve pain syndrome.

**PATIENT'S CLAIM** The anesthesiologist was negligent in how he administered the spinal block.

**PHYSICIAN'S DEFENSE** There was no negligence. The injury is a known complication of the procedure.

**VERDICT** An Indiana defense 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.*

PHOTO: SHUTTERSTOCK

## Aorta punctured: $4M verdict

**A 35-YEAR-OLD WOMAN UNDERWENT** laparoscopic cystectomy on her left ovary performed by her gynecologist. During the procedure, the patient's aorta was punctured, and she lost more than half her blood volume. After immediate surgery to repair the aorta, she was hospitalized for 5 days.

**PATIENT'S CLAIM** The injury was due to improper insertion of the laparoscopic instruments; the trocars were improperly angled and too forcefully inserted. The injury was a known risk of the procedure for obese patients, but she is not obese. She has a residual scar and is at increased risk of developing adhesions.

**PHYSICIAN'S DEFENSE** The instruments were properly inserted. The injury is a known risk of the procedure.

**VERDICT** A $4 million New York verdict was returned.

## Resuscitation took 22 minutes

**AT 40 6/7 WEEKS' GESTATION,** a mother went to the ED after her membranes spontaneously ruptured. The child was delivered by vacuum extraction 30 hours later.

At birth, the baby was blue and limp with Apgar scores of 2, 3, and 7, at 1, 5, and 10 minutes, respectively. The infant required 22 minutes of resuscitation. The neonatal record included metabolic acidosis, respiratory distress, possible sepsis, shoulder dystocia, and seizure activity. The child suffered hypoxic ischemic encephalopathy and permanent neurologic injury.

**PARENTS' CLAIM** Cesarean delivery should have been performed due to repetitive decelerations, fetal tachycardia, and increasingly long uterine contractions. Continued use of oxytocin contributed to the infant's injuries.

**DEFENDANTS' DEFENSE** Fetal heart-rate tracings were reassuring during labor. Decreased variability, rising fetal heart rate, and late decelerations are normal during labor and delivery. The infant's blood gas did not fall below 7.0 pH. The use of oxytocin was proper. There was no way to determine cephalopelvic disproportion or the baby's size at 6 days postterm. The mother was opposed to a cesarean delivery and requested vaginal delivery (although no such request was included in the medical records).

**VERDICT** A $55 million Pennsylvania verdict was returned.

## Injury during ovarian remnant resection

**A WOMAN IN HER 40s** reported lower left quadrant pain. A previous oophorectomy report indicated that ovarian tissue attached to the bowel had not been removed. Thinking the pain might be related to residual ovarian tissue, her gynecologist recommended resection. During surgery, the patient's bowel was injured. Four additional operations were required, including bowel resection with colostomy, and then colostomy reversal 5 months later.

**PATIENT'S CLAIM** The gynecologist was negligent in failing to properly perform surgery. The surgeon's report from the oophorectomy indicated that there were extensive adhesions, which increased the risk of complications from surgery to remove the remnant. Ovarian remnant syndrome could have been treated with medication to induce menopause.

**PHYSICIAN'S DEFENSE** The patient might have suffered injury from medication-induced menopause. Surgery was appropriate; the injury is a known risk of the procedure.

**VERDICT** A $200,000 New York verdict was returned.

## Severe infection after birth

**A 32-YEAR-OLD WOMAN** left the hospital within hours of giving birth because her mother was ill. Before discharge, she reported severe abdominal pain and was examined by a first-year resident. The patient returned to the hospital 6 hours later with a severe uterine infection. She was hospitalized for a month.

**PATIENT'S CLAIM** The resident failed to properly assess her symptom reports, failed to order testing, and was negligent in allowing her to leave the hospital.

**DEFENDANTS' DEFENSE** The patient left the hospital against medical recommendations. She might have acquired the infection after leaving the hospital.

**VERDICT** A $285,000 Michigan verdict was returned. The patient was found to be 40% at fault.

PHOTO: SHUTTERSTOCK

## Terminal bradycardia: $12M verdict with mixed fault

**FOUR DAYS AFTER HER DUE DATE,** a mother's blood pressure was elevated, and labor was induced. Two days after oxytocin was started, decelerations occurred. The ObGyn was called after the second deceleration, and witnessed the fourth deceleration about an hour later. After six decelerations, the fetal heart rate dropped to 70 bpm and did not return to baseline. A cesarean delivery was performed 26 minutes later. The child was born with a severe brain injury.

**PARENTS' CLAIM** The nurses and ObGyn failed to recognize, report, and address nonreassuring fetal heart signs, and did not discontinue oxytocin after the second deceleration. Hospital protocols were ignored. An earlier cesarean delivery would have avoided injury; the fetus was without oxygen from the sixth deceleration until delivery.

**DEFENDANTS' DEFENSE** There was no causation between the alleged violation of hospital protocols and the outcome. The ObGyn was appropriately notified. The injury was caused by terminal bradycardia during a prolonged deceleration that resulted from cord compression; it was unpredictable.

The ObGyn claimed earlier delivery was not indicated. Decelerations did not predict a bradycardic event from which the fetus would not recover nor indicate a need to stop oxytocin. The fetal heart rate had always recovered until the final deceleration. Bradycardia is unpredictable.

**VERDICT** A $12.165 million Hawaii verdict was returned, with the ObGyn 35% at fault, and the hospital 65% at fault.

## Breast biopsy mixup; she didn't have cancer

**A 53-YEAR-OLD WOMAN** reported right breast pain. Mammography revealed scattered fibroglandular elements. Targeted US showed a solid nodule that could be an intramammary lymph node or small fibroadenoma. After an office-based biopsy, the breast surgeon (Dr. A) told the patient that she had breast cancer.

Because Dr. A was not in her health insurance plan, the patient took her imaging studies and biopsy results to Dr. B, another surgeon. Dr. B performed a mastectomy with lymphadenectomy. There was no evidence of malignancy in the pathologic review of breast and lymph tissue.

**PATIENT'S CLAIM** Dr. A performed biopsies on several women that same day; all were sent to the same laboratory for analysis. Dr. A and the laboratory failed to properly label and handle the biopsy specimens. Incorrect diagnosis caused her to undergo unnecessary mastectomy, lymph node biopsy, and a long, complicated breast reconstruction.

**DEFENDANTS' DEFENSE** The case was settled at trial.

**VERDICT** A $1,780,000 Virginia settlement was reached.

## Clues missed; baby has CP, other injuries

**A 19-YEAR-OLD MOTHER** had regular prenatal care. In early June, she weighed 221 lb and had a fundal height of 36 cm. The certified nurse midwife (CNM) noted little fetal movement, was uncertain of the fetal position, and made a note to check the amniotic fluid at the next visit. A week later, US did not indicate a decrease in amniotic fluid. Records do not indicate that the amniotic fluid index was checked at the next visit (38 weeks' gestation).

Two days later, the patient reported decreased fetal movement. At the ED, nonreassuring fetal heart tracings were recorded. Fifteen minutes later, the fetal heart rate fell to 50 bpm and did not recover. The on-call ObGyn artificially ruptured the membranes and placed a direct fetal lead. An emergency cesarean delivery was performed in 15 minutes through thick meconium.

Apgar scores were 0, 2, and 4 at 1, 5, and 10 minutes, respectively. The baby weighed 4 lb 4 oz, and was transferred to a children's hospital, where she stayed for 6 weeks. She suffered seizures and was tube fed. The child has cerebral palsy and profound neurologic impairment. At age 7, she is unable to speak.

**PATIENT'S CLAIM** The CNM was negligent for not being more proactive when she questioned the amniotic fluid index and noted reduced fetal movement in early June and at subsequent visits. The presence of meconium at birth attested that the fetus had been in distress.

**DEFENDANTS' DEFENSE** The case was settled at trial.

**VERDICT** A $2 million Massachusetts settlement was reached.

PHOTO: SHUTTERSTOCK