



Premature baby is severely handicapped: \$21M verdict

AT 31 2/7 WEEKS' GESTATION, a woman was admitted to the hospital for hypertension. A maternal-fetal medicine specialist determined that a vaginal delivery was reasonable as long as the mother and fetus remained clinically stable; a cesarean delivery would be required if the status changed.

An ObGyn and nurse midwife took over the mother's care. Before dinoprostone and oxytocin were administered the next morning, a second ObGyn conducted a vaginal exam and found the mother's cervix to be 4-cm dilated. After noon, the fetal heart rate became nonreassuring, with late and prolonged variable decelerations. The baby was born shortly after 5:00 PM with the umbilical cord wrapped around his neck. He was pale, lifeless, and had Apgar scores of 4 and 7 at 1 and 5 minutes, respectively. He required initial positive pressure ventilation due to bradycardia and poor respiratory effort.

The boy has cerebral palsy; although not cognitively impaired, he is severely physically handicapped. He has had several operations because one leg is shorter than the other. He has 65% function of his arms, making it impossible for him to complete normal, daily tasks by himself.

▶ **PARENTS' CLAIM** A cesarean delivery should have been performed 3 hours earlier.

▶ **DEFENDANTS' DEFENSE** Fetal heart-rate monitoring was reassuring during the last 40 minutes of labor. An Apgar score of 7 at 5 minutes is normal. Blood gases taken at birth were normal (7.3 pH). Ultrasonography of the baby's head at age 3 days showed normal findings. Problems were not evident on the head ultrasound until the child was 2 weeks of age, showing that the injury occurred after birth and was due to prematurity. Defendants included both ObGyns, the midwife, and the hospital.

▶ **VERDICT** A \$21 million Maryland verdict was returned, including \$1 million in noneconomic damages that was reduced to \$650,000 under the state cap.

Physician apologized: didn't read biopsy report before surgery

A 34-YEAR-OLD WOMAN with a family history of breast cancer found a lump in her left breast. After fine-needle aspiration, a general surgeon diagnosed cancer and performed a double mastectomy.

At the first postoperative visit, the surgeon told the patient that she did not have breast cancer, and that the fine-needle aspiration results were negative. The surgeon apologized for never looking at the biopsy report prior to surgery, and admitted that if she had seen the report, she would have cancelled surgery.

▶ **PATIENT'S CLAIM** The surgeon was negligent in performing bilateral

mastectomies without first reading biopsy results.

▶ **PHYSICIAN'S DEFENSE** The case was settled before trial.

▶ **VERDICT** Michigan case evaluation delivered an award of \$542,000, which both parties accepted.

Cystoscopy blamed for ureteral obstruction, poor kidney function

WHEN A 59-YEAR-OLD WOMAN underwent gynecologic surgery that included a cystoscopy, her ureters were functioning normally. During the following month, the ObGyn performed several follow-up examinations. A year later, the patient's right ureter was completely obstructed. The obstruction was repaired, but the patient lost function in her right kidney. She must take a drug to improve kidney function for the rest of her life.

▶ **PATIENT'S CLAIM** The obstruction was caused by a ligation that occurred during cystoscopy. The ObGyn should have diagnosed the obstruction during the weeks following surgery.

▶ **PHYSICIAN'S DEFENSE** The cystoscopy was properly performed. The patient had not reported any symptoms after the procedure that suggested the presence of an obstruction. The obstruction gradually developed and could not have been diagnosed earlier.

▶ **VERDICT** A New York 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.



Inferior vena cava damaged during robotic hysterectomy

A HYSTERECTOMY AND SALPINGO-OOPHORECTOMY were performed on a 64-year-old woman using the da Vinci Surgical System. The gynecologist also removed a cancerous endometrial mass and dissected the periaortic lymph nodes. When the gynecologist used the robot to lift a lymph fat pad,

the inferior vena cava was injured and the patient lost 3 L of blood. After converting to laparotomy, a vascular surgeon implanted an artificial graft to repair the inferior vena cava. The patient fully recovered.

► **PATIENT'S CLAIM** The gynecologist did not perform robotic surgery properly, and the patient was not told of all the risks associated with robotic surgery. Due to the uncertainty regarding the graft's effectiveness, the patient developed posttraumatic stress disorder.

► **PHYSICIAN'S DEFENSE** The vascular injury was a known risk associated with the procedure. The vena cava was not lacerated or transected: perforator veins that joined the lymph fat pad were unintentionally pulled out. The injury was most likely due to the application of pressure, not laceration by the surgical instrument.

► **VERDICT** A \$300,000 New York settlement was reached.

READ *The robot is gaining ground in gynecologic surgery.*

Should you be using it? A roundtable discussion with Arnold P. Advincula, MD; Cheryl B. Iglesia, MD; Rosanne M. Kho, MD; Jamal Mourad, DO; Marie Fidela R. Paraiso, MD; and Jason D. Wright, MD (April 2013), found at obgmanagement.com

Fetal distress caused brain injury: \$13.9M

DURING THE LAST 2 HOURS OF LABOR, the mother was febrile, the baby's heart rate rose to over 160 bpm, and fetal monitoring indicated fetal distress. Oxytocin was administered to hasten delivery, but the mother's uterus became hyperstimulated.

After nearly 17 hours of labor, the child was born without respirations. A video of the vaginal birth shows that the child was blue and unresponsive. The baby was resuscitated, and was subsequently found to have cerebral palsy, epilepsy,

and mental retardation. At the time of trial, the 10-year-old girl had the mental capacity of a 3-year-old.

► **PARENTS' CLAIM** The child suffered brain injury due to hypoxic ischemic encephalopathy. A cesarean delivery should have been performed as soon as fetal distress was evident. The doctors and nurses misread the baseline heart rate, and did not react when the baby did not recover well from the mother's contractions. Brain imaging did not show damage caused by infection or meningitis.

► **PHYSICIAN'S DEFENSE** The girl's condition was caused by an infection or meningitis.

► **VERDICT** A confidential settlement was reached with the midwife before trial. The ObGyn was dismissed because he was never alerted to any problem by the labor and delivery team. A \$13.9 million Georgia verdict was returned against the hospital system.

Uterine artery injured during cesarean delivery

AFTER A SCHEDULED CESAREAN delivery, the 29-year-old mother had low blood pressure and an altered state of consciousness. When she was returned to the OR several hours later, her ObGyn found a uterine artery hematoma and laceration. After the laceration was clamped and sutured, uterine atony was noted and an emergency hysterectomy was performed.

► **PATIENT'S CLAIM** The mother is no longer able to bear children. The ObGyn was negligent in lacerating the uterine artery, failing to recognize the laceration during cesarean surgery, failing to properly monitor the patient after surgery, and failing to repair the artery in a timely manner. The patient's low blood pressure and altered state of consciousness should have been an indication that she had severe blood loss. The hospital's nursing staff failed to properly check her vital signs after surgery, and failed to report the abnormalities in blood pressure and consciousness to the ObGyn.

► **DEFENDANTS' DEFENSE** The ObGyn claimed that a uterine laceration is a known risk of cesarean delivery; it can occur in the absence of negligence. The hospital also denied negligence.

► **VERDICT** A Texas defense verdict was returned. ☹