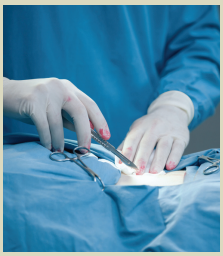

Blue towel left in abdomen: $7.2M verdict

WHEN A 61-YEAR-OLD WOMAN UNDERWENT laparoscopic hysterectomy, her gynecologist, Dr. A, was assisted by another gynecologist (Dr. B), a nurse, and a technician. When Dr. A noted that the uterine artery had been injured, he converted to an open procedure, retracted the bowel, repaired the artery, and completed the operation.

Postdischarge, the patient was febrile and developed abdominal pain and an odorous vaginal discharge. A month later, exploratory surgery revealed a retained blue towel that had been used for bowel retraction. The patient required open healing of the surgical wound and a temporary colostomy. She developed an incisional hernia after colostomy reversal, and hernia repair required resection of a small portion of the bowel.

PATIENT'S CLAIM It was negligent to use a blue towel to retract the bowel. The towel should have been removed from her abdomen before closure.

DEFENDANTS' DEFENSE The technician claimed that she did not provide the towel, did not see the towel used, and that she was not told that the towel had to be tracked. She noted that its color indicated that it lacked a radiopaque tag, and that hospital policy forbade use of untagged towels in an open wound.

Dr. A claimed that he specifically requested a blue towel because it was absorbent, that the technician provided the towel, and that the towel's use prevented the patient from bleeding to death.

VERDICT A $7.2 million New York verdict was returned against both gynecologists and the hospital as the technician's employer.

Miscarriage after D&C

A FEW DAYS AFTER A WOMAN thought she miscarried, her family practitioner (FP) performed a dilation and curettage (D&C).

The patient was at work 12 days later when she expelled a fully formed 14-week fetus into a toilet. She was taken to the emergency department (ED), where the cord was cut. Later that day, she passed placental tissue; a repeat D&C was performed the next day.

PATIENT'S CLAIM The FP did not properly perform the first D&C. Although the pathology report was available to the FP prior to the patient's postoperative visit, the FP failed to inform the patient that no fetal parts had been extracted.

PHYSICIAN'S DEFENSE Because the FP thought that the fetus had been passed prior to the D&C, she believed the pathology report was appropriate.

The patient had been informed of the possibility of retained products of conception after the D&C. The FP had ordered a blood pregnancy test that would have revealed the presence of retained products of conception, but the patient did not have the test. The patient did not contact the FP to report symptoms that felt like labor pains on the day that she passed the fetus.

VERDICT A bench trial resulted in a $51,000 California verdict.

Pregnant woman complains of leg pain; dies of DVT

A 23-YEAR-OLD WOMAN went to the ED with pain and swelling in her lower left leg and calf. The symptoms were reported to her ObGyn, who examined and then discharged her within a few hours, with instructions to come for her regularly scheduled prenatal visit.

The patient died 2 weeks later. The cause of death was determined to be a pulmonary embolus from a thrombus of the left popliteal vein.

ESTATE'S CLAIM The ObGyn was negligent in failing to test the patient for thrombosis in her left leg when she was in the ED or several days later at the office, when she continued to report leg pain.

PHYSICIAN'S DEFENSE The patient did not have signs of thrombosis at the ED or at the subsequent office visit. The pathologist reported that the clot that caused the embolus appeared fresh. The ObGyn surmised that it had formed after the patient's last appointment.

VERDICT A Texas 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.

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PHOTO: SHUTTERSTOCK

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ONLY ON THE WEB
Who delayed delivery? $32.8M verdict.. and more, at obgmanagement.com

Mother took topiramate; child born with cleft lip and palate: $3M verdict

WHEN A WOMAN LEARNED SHE WAS PREGNANT in December 2007, she was taking topiramate (Topamax) to treat migraine headaches. She discussed tapering off but not discontinuing topiramate usage with her neurologist. The patient's ObGyn told her that topiramate was safe to take during pregnancy. The child was born with a cleft lip and palate.

▸PARENTS' CLAIM Janssen Pharmaceuticals, manufacturer of Topamax, failed to provide adequate warnings about the potential risks associated with Topamax until labeling was changed in March 2011. Janssen knew of potential birth defects associated with Topamax use during pregnancy more than a decade before the labeling change; Janssen's associate director of regulatory affairs had testified in an earlier hearing that there was knowledge of related birth defects as early as 1996.

▸DEFENDANTS' DEFENSE There is uncertainty as to whether exposure to Topamax during pregnancy causes birth defects. The neurologist had warned the patient of possible risks associated with taking Topamax during pregnancy, but the patient had refused to discontinue the drug.

▸VERDICT A $3 million Pennsylvania verdict was returned.

Was mother's history of incompetent cervix ignored?

EARLY IN HER SECOND PREGNANCY, a woman told her ObGyn that she had previously miscarried due to an incompetent cervix.

At 24 weeks' gestation, the patient was admitted to the hospital with back and pelvic pain and vaginal bleeding. Shortly after admission, the ObGyn performed a vaginal examination and ordered ultrasonography (US), which showed that the fetus was in the transverse position and the membranes were bulging.

The ObGyn performed an emergency cesarean delivery, but the premature infant died within 2 hours.

▸PARENTS' CLAIM The ObGyn should have performed a cervical cerclage because of the mother's history of an incompetent cervix. The mother should have been placed on bed rest and monitored every 2 weeks for cervical dilation.

▸PHYSICIAN'S DEFENSE The patient underwent regular prenatal evaluations for an incompetent cervix, and the findings were always normal.

▸VERDICT A Florida defense verdict was returned.

ObGyn unresponsive to patient's postsurgical phone calls

IN 2009, A 50-YEAR-OLD WOMAN reported occasional right lower quadrant pain to her ObGyn. US results were normal. The menopausal patient's history included three cesarean deliveries, a total abdominal hysterectomy, and a laparoscopic ovarian cystectomy.

When the patient saw her ObGyn in December 2010, she reported intermittent, progressive right lower quadrant pain that radiated down her right leg. She also reported urine loss with coughing or sneezing, and slight pain on intercourse. The ObGyn prescribed oxybutynin chloride (Ditropan) to treat the patient's incontinence.

Three weeks later, the patient reported bilateral lower quadrant pain to her ObGyn, with minor improvement in incontinence.

The ObGyn performed bilateral salpingo-oophorectomy (BSO) in January 2011. Surgery took 3.5 hours due to extensive adhesiolysis.

After discharge, the patient felt ill and vomited. She attempted to reach the ObGyn by phone several times. That evening, the ObGyn prescribed a suppository to treat nausea and vomiting.

The patient went to the ED later that night and was found to have a perforated colon. Emergency surgery to repair the injury included creation of a colostomy, which was repaired 20 months later.

▸PATIENT'S CLAIM A proper workup of her symptoms was not performed; BSO was unnecessary. The ObGyn was negligent for failing to respond in a timely manner to her postdischarge phone calls, and did not properly evaluate her postoperative symptoms.

▸PHYSICIAN'S DEFENSE BSO was warranted. Colon injury is a known complication of the procedure.

▸VERDICT A $716,976 California verdict was returned, but was reduced to $591,967 under the state cap.

PHOTO: SHUTTERSTOCK

Who delayed delivery? $32.8M verdict for child with CP

AN 18-YEAR-OLD WOMAN AT 38 WEEKS' GESTATION went to the hospital in labor. After 3.5 hours, the fetal heart rate dropped to 60 bpm. A nurse repositioned the patient, administered oxygen, and increased intravenous fluids. When the nurse rang the emergency call bell, a second nurse responded. Eighteen minutes after the fetal heart rate first dropped, a nurse rang the call bell again and the on-call ObGyn appeared.

The ObGyn performed a vaginal examination and repositioned the patient. She noted that the fetal heart-rate monitor was not working correctly, and called for an emergency cesarean delivery. The baby was born 42 minutes after the fetal heart rate initially dropped.

The child received a diagnosis of spastic-quadriplegia cerebral palsy (CP). She requires a wheelchair and has severe speech deficits and developmental delays.

▸PARENT'S CLAIM Cesarean delivery was not performed in a timely manner; the delivery delay was responsible for the injury that caused CP. The ObGyn was negligent in not responding to the initial emergency call. The nurses should have summoned the ObGyn earlier.

▸DEFENDANTS' DEFENSE The hospital argued that the nurses followed proper protocol. Furthermore, the hospital noted that the ObGyn did not respond to the first call, and did not request a cesarean delivery for 17 minutes.

The ObGyn claimed that she made the decision to perform cesarean delivery within 5 minutes of her arrival, but it took another 15 minutes to gather the surgical team.

▸VERDICT A $32,882,860 Pennsylvania verdict was returned against the hospital. The ObGyn was vindicated.

Difficult delivery: Zavanelli maneuver

AT 38 5/7 WEEKS' GESTATION, a woman went to the hospital for induction of labor. Twenty-four hours later, she began to push. After an hour of pushing, the mother was exhausted and had a low-grade fever, and the fetal heart rate was slowing. Her ObGyn, Dr. A, attempted vacuum extraction and performed a midline episiotomy. Shoulder dystocia was encountered and maneuvers were used, but without success. Another ObGyn, Dr. B, arrived to assist and also attempted the maneuvers.

The physicians agreed to try the Zavanelli maneuver, which involves pushing the baby's head back inside the vagina and performing a cesarean delivery.

The baby was sent to the neonatal intensive care unit, where her breathing quickly normalized without supplemental oxygen. The child has a brachial plexus injury.

▸PARENTS' CLAIM Dr. A should have performed an earlier cesarean delivery. Excessive traction was used when shoulder dystocia maneuvers were attempted.

▸PHYSICIANS' DEFENSE The ObGyns' actions saved the baby's life and prevented serious injury to both mother and baby.

▸VERDICT An Alabama defense verdict was returned.

Placenta previa found early, but fetus dies

A WOMAN'S FIRST PREGNANCY was complicated by complete placenta previa. A cesarean delivery was scheduled at 36 weeks' gestation. However, before that date, the mother developed vaginal bleeding and was taken to the ED. The covering ObGyn was notified of the mother's arrival within 15 minutes, but did not come to the hospital for 2.5 hours. After examining her, the ObGyn ordered US evaluation and transferred the mother to the obstetric floor. Nursing notes indicate that the fetal heart rate was 120 bpm at that time.

There are no notes from the ObGyn between 5:30 AM and mid-afternoon. There is no record of the fetal heart rate when the mother was taken for US in the afternoon, which revealed fetal demise and a large extraovular hematoma. A cesarean delivery was performed. It was determined that the fetus died from placental abruption.

▸PARENTS' CLAIM The mother was not adequately evaluated and monitored, which led to fetal demise. Delivery could have proceeded while the fetus was still alive.

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

▸VERDICT A $495,000 Massachusetts settlement was reached.

PHOTO: SHUTTERSTOCK