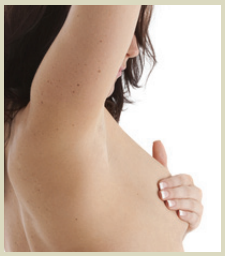

Breast biopsy delayed

DURING A ROUTINE MAMMOGRAM, an enlarged lymph node was found in the patient's armpit. The patient's primary care physician (PCP) ordered follow-up imaging and referred the patient to a surgeon for possible excisional biopsy. The surgeon suggested that the biopsy could be delayed until additional imaging studies were completed.

The patient transferred her care to another surgeon, who immediately performed the biopsy and found stage IV inoperable breast cancer. The patient underwent aggressive chemotherapy for 3 years, but died 39 months after diagnosis.

ESTATE'S CLAIM The first surgeon was negligent for not immediately performing the biopsy.

DEFENDANTS' DEFENSE There was no negligence. An earlier biopsy would not have changed the outcome.

VERDICT A $1.5 million Massachusetts verdict was returned.

Treating bowel injury after uterine ablation

FOLLOWING UTERINE ABLATION performed by a gynecologist, a 35-year-old woman suffered severe abdominal pain. Six days later, the gynecologist and a surgeon performed a hysterectomy.

Three days after discharge, the patient returned to the hospital with an abdominal infection and sepsis. During a third operation, a burn hole was found; the injured portion of bowel was resected. The patient has chronic abdominal pain.

PATIENT'S CLAIM Sepsis and infection could have been avoided if either physician had identified the injury during the second hospitalization and surgery. The patient developed psychological issues as a result of chronic pain.

DEFENDANTS' DEFENSE A settlement was reached with the gynecologist during the trial. The surgeon denied negligence. During the second surgery, he examined her bowel for a possible injury but found none.

VERDICT A $3.5 million Illinois verdict was returned. It included $1.5 million for past pain and suffering that was reduced by $100,000 due to the patient's failure to report for psychological counseling. The jury found the gynecologist 65% at fault and the surgeon 35% at fault.

Mother in permanent vegetative state

WHEN A 30-YEAR-OLD WOMAN went to a hospital in labor, she had gestational hypertension. The next morning, she suffered cardiopulmonary arrest. A healthy baby was born by emergency cesarean delivery, but the mother was left in a permanent vegetative state.

PATIENT'S CLAIM The nurses failed to ensure that the ObGyn came to the hospital and did not report blood pressure data to the ObGyn. Gestational hypertension progressed to preeclampsia. Early delivery should have been induced or magnesium sulfate should have been administered.

DEFENDANTS' DEFENSE A confidential settlement was reached with the ObGyn before trial.

The nurses were right to rely on the ObGyn to make decisions regarding the patient's care. They provided appropriate treatment.

VERDICT A New Jersey defense verdict was returned for the hospital.

What caused the child's brain injuries?

AFTER VAGINAL DELIVERY, the baby was not breathing and required intubation. He had a seizure and displayed signs of oxygen deprivation, hypoxic ischemic injury, and brain damage. The child uses a special walker and can only communicate using a computer that speaks for him.

PARENTS' CLAIM The nurses and ObGyn failed to properly assess the baby. The fetal heart-rate monitor electrode should have been placed on the fetal scalp. A cesarean delivery should have been performed.

DEFENDANTS' DEFENSE The fetal monitor was properly placed. The child's injury occurred 24 to 72 hours prior to birth due to an umbilical cord accident. A cesarean delivery would have not changed the outcome.

VERDICT A Georgia 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

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Did a woman's vaginal infection cause her baby's death?

AT 22 WEEKS' GESTATION, a 26-year-old woman began to leak amniotic fluid and went to the hospital. She was in premature labor. The newborn died 19 minutes after birth.

PARENTS' CLAIM The ObGyn and nurse midwife who provided prenatal care failed to diagnose and treat a vaginal infection. The infection resulted in premature rupture of membranes, leading to premature birth and the baby's death.

DEFENDANTS' DEFENSE A confidential settlement was reached with the ObGyn before trial. The nurse midwife claimed the patient did not have a vaginal infection; she never reported symptoms of a foul-smelling vaginal odor or discharge. Premature rupture of membranes was not caused by a vaginal infection. The newborn's death was related to an umbilical cord defect, the patient's delay in coming to the hospital, and the multiple obstetric procedures the mother had undergone before this pregnancy.

VERDICT A $456,024 New Jersey verdict was returned.

Inadvertent ligation, ureteral obstruction

A 41-YEAR-OLD WOMAN suffered pelvic pain and had a history of endometriosis. In January 2007, a CT scan revealed a ruptured ovarian cyst; her ObGyn performed laparotomy for a hysterectomy and oophorectomy.

During surgery, a resident working under the supervision of the ObGyn inadvertently ligated the left ureter. The injury was close to the bladder near the ureteral vesicle junction. A few days later, cystoscopy showed ureteral obstruction. The patient underwent operative repair with nephrostomy tube placement.

In May 2007, the patient had a third operation to reimplant the ureter. She has chronic flank pain.

PATIENT'S CLAIM The resident and, therefore, the ObGyn, were negligent in the performance of the procedure. Proper bladder dissection would have moved the ureter to a position where it could not have been ligated.

DEFENDANTS' DEFENSE Ureter injury is a known risk of the procedure.

VERDICT An Illinois defense verdict was returned.

Foot drop after tubal ligation?

DURING TUBAL LIGATION, a woman in her 30s was restrained by a belt. Venodyne boots were applied to promote blood circulation.

PATIENT'S CLAIM The belt and/or boot damaged the perineal and tibial nerves in her left leg, causing foot drop. When asked to definitely identify what caused the nerve damage, the patient invoked the doctrine of *res ipsa loquitur* (presumed negligence during surgery).

DEFENDANTS' DEFENSE A $400,000 settlement was reached with the hospital before the trial.

The gynecologist and anesthesiologist denied negligence. The Venodyne boots could not have caused the injury, nor could the belt, which was applied in an area that did not involve the perineal or tibial nerves. The patient did not complain of pain after surgery.

VERDICT A New York defense verdict was returned for the physicians.

Avoid surgical menopause?

AFTER A 10-YEAR HISTORY of endometriosis and chronic pelvic pain, a 38-year-old woman underwent bilateral salpingo-oophorectomy. Postoperatively, she suffered surgical menopause that exacerbated preexisting anxiety and depression.

PATIENT'S CLAIM It was unnecessary to remove the healthy right ovary; having it remain would have avoided early menopause. She would not have consented to the removal of both ovaries had she been properly advised. Alternative treatment was not offered. Her marriage dissolved, her children went to live with their grandparents, and she was unable to work because of complications.

PHYSICIAN'S DEFENSE Proper consent was obtained, including alternatives to surgery. Evidence of ovarian cancer or other medical necessity was not required because full consent was obtained. Removal of the ovaries was proper due to dense pelvic and bowel adhesions, cystic adnexal masses with questionable pathology, and her chronic pelvic pain. The patient's appendix was adhesed, causing an unreasonable risk of ovarian torsion.

VERDICT A Michigan defense verdict was returned.

PHOTO: SHUTTERSTOCK

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Persistent voiding problems

A 52-YEAR-OLD WOMAN was given a diagnosis of stage II anterior pelvic organ prolapse, a high transverse fascial defect, stress urinary incontinence, and distal rectocele. A gynecologist performed robotic supracervical hysterectomy and colposacropexy, with tension-free vaginal tape and perineal repair.

While in the hospital, she required a catheter to void, and was still unable to void 5 days after discharge. The gynecologist identified persistent urinary retention, released the tension-free vaginal tape, and performed a midurethral sling procedure, but the patient continued to have voiding problems.

The gynecologist suspected a neurogenic problem and referred the patient to a neuro-urologist. Continued intermittent catheterization was recommended by the neuro-urologist, but the patient had continued voiding problems and developed a urinary tract infection.

She went to her ObGyn, who performed a sling revision and cystoscopy and removed all the mesh that could be found. The patient underwent additional treatment, with some improvement.

PATIENT'S CLAIM The gynecologist was negligent for failing to offer further surgery to improve the patient's condition.

PHYSICIAN'S DEFENSE There was no negligence. Further dissection in the presence of a neurogenic bladder carried a high risk of incontinence. The patient was told of the risk of urinary retention prior to the first procedure and signed an informed consent.

VERDICT A Virginia defense verdict was returned.

Did pathologists fail to diagnose early breast cancer?

AFTER A 45-YEAR-OLD WOMAN underwent mammography in May 2008 at a local hospital, an oncologist noted a suspicious finding in the right breast. The patient had an incisional biopsy interpreted by Dr. A, a pathologist, and a core biopsy interpreted by Dr. B, another pathologist from the same diagnostic medical group. Both pathologists interpreted the mass as atypia, a benign abnormality.

In 2010, the patient went to a university medical center, where the mass was biopsied and the patient was found to have cancer. She underwent a right mastectomy.

PATIENT'S CLAIM The pathologists failed to diagnose her breast cancer at an early stage. Dr. A should have interpreted the 2008 incisional biopsy as malignant. A diagnosis in 2008 would have avoided the need for a mastectomy, allowing her to have a lumpectomy with chemotherapy.

DEFENDANTS' DEFENSE The 2010 review of the 2008 data was an overinterpretation with hindsight bias; the diagnosis in 2008 was correct.

VERDICT The case against the local hospital and Dr. B were dismissed. The matter continued against Dr. A and the diagnostic medical group. A California defense verdict was returned.

Brachial plexus injury occurs after admitting physician leaves

A WOMAN SOUGHT PRENATAL CARE from her family practitioner (FP). The FP admitted the mother to a hospital for induction of labor at 38 weeks' gestation with concerns of increased uric acid, possible gestational hypertension, and leaking amniotic fluid. Labor progressed and the mother began pushing about 4 PM. After 30 minutes, the FP attempted vacuum extraction three times; the device popped off during one of the attempts.

The FP then left for a planned trip, and an ObGyn assumed her care. The ObGyn chose to allow the mother to rest. At 6 PM, the mother began to feel the urge to push. The ObGyn attempted vacuum extraction. Shoulder dystocia was encountered, and McRoberts and corkscrew maneuvers were used to deliver the fetus.

The child has C5–C6 brachial plexus injury with scapular winging and internal shoulder rotation.

PARENTS' CLAIM A cesarean delivery should have been performed. The ObGyn applied excessive lateral traction, leading to the injury.

DEFENDANTS' DEFENSE The FP and ObGyn argued that a cesarean delivery was not indicated because the fetus was not in distress. Fetal heart-rate monitoring strips were reassuring. The ObGyn denied using excessive lateral traction when freeing the shoulder dystocia.

VERDICT The hospital settled before trial for $300,000. An Illinois defense verdict was returned for the FP. The jury deadlocked as to the ObGyn's negligence.