

Incorrect intubation results in brain damage

Cook County (Ill) Circuit Court

A newborn required intubation following delivery. However, a nurse anesthetist placed the breathing tube into the right main-stem bronchus instead of the trachea. By the time the problem was discovered and corrected 2 hours later, the baby had suffered pneumothorax of the right lung and a collapse of the left lung, resulting in irreversible brain damage.

In suing, the child—now 17—argued that the doctor was slow to respond to fetal distress on the monitor strips.

The doctor argued that the negligence did not cause the child's brain injury.

■ The case settled for \$18 million from the hospital and \$400,000 from the physician.

Did failure to note fetal distress cause hypoxia, brain damage?

Palestine County (Tex) 349th Judicial District Court

During a patient's labor, a nurse anesthetist administered an epidural spinal block for pain. An Ob/Gyn examined the patient soon after, then left. Shortly after the doctor departed, fetal distress occurred, but the nurses allegedly failed to notice the change in fetal status.

When the baby was delivered approximately 2 hours later, she was limp, apneic, and had a heart rate of 40. Her Apgar scores were 1 at 1 minute, 3 at 5 minutes, and 4 at 10 minutes. The cord pH was abnormal at 6.71. The child now suffers from severe brain damage due to hypoxia.

The mother sued, claiming the doctor and nurses waited too long to deliver the baby and

failed to recognize the fetal distress. She further argued that a fetal scalp electrode should have been used but was not.

Hospital staff contended that the baby's brain injury stemmed from a preexisting maternal condition.

■ The case settled for \$10,025,000.

Woman without breast cancer undergoes mastectomy

Jefferson County (Ala) Circuit Court

When a 55-year-old woman presented to an oncologist with a crease in her left breast, the physician ordered a mammogram as well as fine-needle biopsy of a lesion in that breast.

The patient alleged she was then told she had cancer, and opted for a mastectomy. The doctor testified that he suggested she have a biopsy with a possible mastectomy, but she chose only the mastectomy due to her family medical history.

A mastectomy without a biopsy was performed, along with removal of 11 lymph nodes. Afterward, it was discovered that the patient did not have breast cancer. The patient suffered postoperatively from lymphedema.

■ The jury awarded the plaintiff \$2.4 million.

IUD left in patient after hysterectomy

Cooke County (Tex) District Court

When a 41-year-old woman reported chronic pelvic pain, her doctor recommended a hysterectomy. Several years earlier, the patient had had an intrauterine device (IUD) inserted. Whether the hysterectomy was scheduled in part for the removal of the

IUD was in dispute during the trial.

Following a vaginal hysterectomy, the doctor searched manually for the IUD but was unable to locate it. She concluded that the device had been removed. Eight years later, the intrauterine device was detected still inside the patient; it was removed during an unrelated liver biopsy.

In suing, the woman claimed the doctor was negligent for not removing the IUD and for not alerting her to the pathology report that showed no indication of IUD removal. She alleged that she suffered pelvic pain as a result of the doctor's negligence. She also argued that an abdominal hysterectomy would have been more appropriate than a vaginal hysterectomy.

The doctor contended that a vaginal hysterectomy was appropriate. Further, she observed that an IUD is only 2 to 3 cm long and can be easily missed—even by a physician exercising a high degree of medical care. The physician also maintained that her failure to notify the patient of the possibility that the IUD might still be present did not fall below the standard of care.

- The jury returned a defense verdict.

Was hysterectomy needed for borderline ovarian tumor?

Suffolk County (NY) Supreme Court

Following a sonogram that revealed asymptomatic bilateral ovarian cysts, a 39-year-old woman underwent a left ovarian cystectomy.

When the pathologist reported a borderline ovarian tumor, her physician performed a total abdominal hysterectomy and bilateral salpingo-oophorectomy.

The pathology slides were subsequently sent for review to another hospital. Disagreement arose as to the extent and nature of the ovarian tumor, as well as whether the patient needed chemotherapy. The woman opted to forego chemotherapy

and has done well ever since.

In suing, the woman claimed the hysterectomy was unnecessary.

The doctor argued that because an ovarian tumor's course is unpredictable and because microscopic tumor implants may have been present on the uterus, a hysterectomy was in the patient's best interest.

- During a retrial, the jury returned a defense verdict.

Was terminal breast cancer a result of late diagnosis?

Cuyahoga County (Ohio) Court of Common Pleas

From 1996 to 1998, a 62-year-old woman had 3 mammograms—all of which were read as normal. In 2000, she was diagnosed with intraductal carcinoma stage IIB of the right breast.



The patient underwent extensive chemotherapy and, at the time of trial, her life expectancy was reported to be several weeks to months.

In suing, the woman claimed that there were several suspicious calcifications on her mammogram from 1998 that should have prompted the doctor to order further studies or a biopsy.

The doctor contended that his interpretation was accurate and well within the standard of care. In addition, he argued that an earlier diagnosis would not have changed the patient's outcome.

- The jury returned a defense verdict.

Blind amniocentesis leads to 19 punctures, fetal demise

Pima County (Ariz) Superior Court

A 21-year-old gravida unsure of her due date underwent an ultrasound examination, which revealed that she was between 36 and 37 weeks' gestation. The following day, the woman went into labor.

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The doctor ordered an amniocentesis to confirm fetal lung maturity. He twice attempted to conduct a blind amniocentesis, but both times failed to obtain amniotic fluid. On the third try he pulled blood-tinged amniotic fluid.

Within the hour, monitoring revealed fetal distress. An emergency cesarean was performed, but the child died 36 hours after birth. An autopsy revealed that the baby's brain was punctured 19 times by the amniocentesis needle.

The parents sued, claiming that during the first 2 amniocentesis attempts the doctor "fished" around in the mother's belly for the amniotic fluid pocket. They argued that attempting a blind amniocentesis when ultrasound was available was below the standard of care.

■ The parties settled before trial for a confidential sum.

Fetal death follows twin-to-twin transfusion

Fulton County (Ga) State Court

A gravida—37 years old, expecting twins, and with a history of preterm labor—was admitted to a hospital at 31 weeks' gestation. A biophysical profile showed a score of 8/8 for one twin and 6/8 for the other, with absent end-diastolic flow.

The doctor ordered a repeat biophysical study for the following day. Prior to the test, however, one fetus developed a terminal bradycardia. An emergency delivery was performed, but the neonate died as a result of twin-to-twin transfusion syndrome. The other twin spent several weeks in the neonatal intensive care unit and survived with no complications.

In suing, the mother alleged that the doctor should have repeated the biophysical test sooner or placed the twins on electronic fetal monitoring. She maintained that better monitoring would have alerted the doctor to the

twin's failing condition and prompted delivery in time to save him.

The doctor contended that proper care was administered.

■ The jury returned a defense verdict.

Athetoid quadriplegia, deafness follow bloody discharge in newborn

Undisclosed County (Calif) Superior Court

Six hours after the birth of a seemingly healthy baby girl, hospital nurses discovered blood in the infant's diaper. The child's next several diapers also exhibited bloody discharge.

A nurse informed the parents that the baby was experiencing pseudomenses because of hormone withdrawal, and assured them that the problem would resolve itself within 24 to 48 hours.

Eighteen hours later, after another bloody diaper was discovered, a pediatrician was finally called. The physician ordered several lab tests. Results revealed a total bilirubin of 40.

The child was diagnosed with hemolytic hyperbilirubinemia and transferred to a tertiary neonatal center where she underwent several blood transfusions. She now suffers from spastic athetoid quadriplegia with profound deafness.

In suing, the child argued that had a bilirubin test been performed immediately, a timely diagnosis would have been made.

The nurses contended that only small blood spots were present on the diaper, which is common in newborn females and typical of pseudomenses. Further, the hospital maintained that earlier diagnosis would not have prevented the child's injuries.

■ The case settled for \$5.5 million. ■

The cases presented here were compiled by Lewis L. Laska, editor of Medical Malpractice Verdicts, Settlements & Experts. While there are instances when the available information is incomplete, these cases represent the types of clinical situations that typically result in litigation.