Was infant's death "no serious harm"?

Palm Beach County (Fla) Circuit Court

A gravida with a high-risk pregnancy presented to a hospital with preterm premature rupture of membranes (PPROM), but was discharged home without delivery of her child.

She returned a few days later still leaking amniotic fluid, but was not examined by the defendant physician. Though fetal monitor records had been lost by the time of trial, a nurse's notes indicate a problematic fetal heart rate—but also state that the defendant was not informed of this development.

The child, born with brain damage, died 1 week after birth.

In suing, the plaintiff alleged negligence in the delayed delivery of her child.

The defendant, who did not have liability insurance, chose not to defend the liability suit, leading to a default judgment. She did defend the damages claim, however, arguing that the plaintiff did not suffer serious harm, as she already had another child.

- The jury awarded the plaintiff $5 million for pain and suffering.

Woman implanted with wrong embryo

San Francisco County (Calif) Superior Court

After 2 years of unsuccessfully trying to conceive, a woman in her late forties gave birth to a healthy baby boy as a result of in vitro fertilization.

Following the child's birth, the patient learned that she had inadvertently received an embryo intended for another couple: The wife in that couple, scheduled for implantation the same day as the plaintiff, was to be fertilized with an embryo consisting of her husband's sperm and a donor egg. The plaintiff received this embryo.

The defendants did not deny negligence, but maintained that once the error was discovered, they acted in the plaintiff's best interests.

- The plaintiff settled for $1 million with the physician and his practice. The case against the scientist who incubated the embryo and his employer was still pending.

Fetal death follows decreased movements

Stamford Judicial District (Conn) Superior Court

Noting decreased fetal movement, a woman at 35 weeks' gestation called her Ob/Gyn, who instructed her to report to the hospital. After performing an examination and nonreactive stress test, the physician discharged the woman, telling her to call if she did not feel 6 strong fetal movements upon returning home.

The woman called that evening, reporting just 2 light fetal movements. The doctor advised her to remain home.

The patient called the next morning to report pain near her pubic bone, at which time a different physician told her to call back if the pain worsened. When her pain intensified, she opted to report directly to the hospital, where she was admitted to labor and delivery.

An ultrasound examination 30 minutes later revealed intrauterine fetal death. Upon delivery, a nuchal cord was discovered.

In suing, the woman claimed that, on the day of her first call, her Ob/Gyn should

have admitted her to the hospital due to a questionable nonstress test. At that time, she argued, a biophysical profile and other tests of fetal well-being should have been performed.

- The parties settled for $1.5 million.

PROM or protein C: Which caused injury?

Hillsborough County (Fla) Circuit Court

A woman at 40 weeks' gestation presented to an Ob/Gyn due to a suspected amniotic leak. After examining the patient, the physician determined no amniotic fluid was present and sent the woman home.

The following day the woman once again presented with a suspected amniotic leak. Upon examination, a second Ob/Gyn observed green mucus, prompting the doctor to admit her to the hospital, where fetal heart monitoring and oxytocin administration were initiated.

Twelve hours after oxytocin was started, the woman was just 4 cm dilated and febrile. When, 3 hours later, fetal monitoring indicated signs of distress, the first Ob/Gyn was called. He soon left, however, to attend to another scheduled delivery.

Six hours later, when the woman's temperature climbed to 101.1° and fetal monitoring indicated a heart rate of 160 to 170 beats per minute, a cesarean delivery was ordered. However, another 90 minutes passed before the procedure was initiated. At that time, fetal monitoring showed an almost flat heart rate with no variability.

The child was born with brain damage and cerebral palsy due to chorioamnionitis.

The plaintiffs sued, claiming the 2 obstetricians were negligent for failing to diagnose a ruptured membrane, administer prophylactic antibiotics to prevent chorioamnionitis, properly follow the patient, and order a timely cesarean section.

The defendants denied negligence, arguing that the child's injury stemmed from a protein C deficiency.

- The jury awarded the plaintiffs $4.6 million.

Delayed cesarean for second twin?

Undisclosed Ohio venue

Following the vaginal birth of the first child in a set of twins, the second child began to experience prolonged deep decelerations. His heart rate remained at 60 to 80 beats per minutes for 17 minutes before a cesarean delivery was ordered. The infant suffered acute hypoxic ischemic encephalopathy.

In suing, the plaintiff argued the defendants were negligent in not initiating cesarean delivery sooner.

- The parties settled for $800,000.

Fecal incontinence due to prolonged delivery?

New York County (NY) Supreme Court

When delivery had not occurred after 3 hours of stage 2 labor, a 30-year-old woman under the care of a certified nurse midwife was transferred from a childbirth facility to a hospital. The obstetrician opted to proceed with vaginal delivery, and ordered an epidural and oxytocin.

After 6 hours of second-stage labor, the physician instructed a second-year resident to apply fundal pressure. Half an hour later, following a midline episiotomy, the midwife delivered an 8-lb, 14-oz child. A 4th-degree perineal tear was identified and repaired by the resident physician.

Several weeks after the delivery, the woman noted symptoms of fecal incontinence. Despite conservative management and 3 surgical interventions, the woman's condition persists.

In suing, the patient claimed that the obstetrician should have ordered a cesarean delivery immediately upon her presentation at the hospital. She claimed that vaginal delivery was inappropriate after a 6.5-hour second stage of labor, and alleged that oxytocin and fundal pressure were contraindicated. Finally, she claimed the episiotomy was improperly performed.

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The defense denied negligence, noting that the woman's injury is a known risk of a properly performed episiotomy and repair. Further, they noted that use of fundal pressure and oxytocin led to the delivery of a healthy infant.

- The jury returned a defense verdict.

Did fetal injury occur before hospital arrival?

Undisclosed California venue

Soon after a woman at full term presented to a hospital, fetal compromise was noted on heart-rate tracings, but no intervention was taken. At birth the child suffered severe acute asphyxia, leading to brain damage, kidney failure, and hypertension.

In suing, the plaintiff claimed that the Ob/Gyn was negligent for not responding to the fetal distress in a timely manner.

The defense argued that the child's injury occurred before the mother presented to the hospital, and maintained that delivery staff acted expeditiously once further deterioration was noted on fetal monitoring.

- The parties settled for $1.3 million.

Was earlier cesarean indicated?

Undisclosed Massachusetts venue

Ultrasound examination of a woman at 16.4 weeks' gestation revealed anterior marginal placenta previa. Three months later, follow-up study showed the condition had resolved, with the placenta in an anterior position.

At 33 weeks, the woman suffered a fall, but did not sustain abdominal trauma. At 35 weeks, she was involved in a motor vehicle accident, but maintained normal fetal movement. At 38 weeks she was treated for suspected urinary tract infection after reporting decreased fetal movement. At 40 weeks, following a normal reactive stress test and observation of a normal, active, vertex fetus, the physician scheduled an induction for 8 days later.

The next day, the plaintiff reported contractions every 5 minutes and decreased fetal movement. At the hospital, no cervical dilation was observed. The fetal heart rate was 140 with accelerations to 150 to 160 and average long-term variability.

She was discharged home, but returned in labor the following day, with a cervical dilation of 6 cm and bulging membranes. The fetal heart rate on arrival was in the 150s; 15 minutes later, decelerations to 90 were noted, with poor beat-to-beat variability. Vaginal examination 10 minutes later revealed meconium with spontaneous rupture of membranes.

An hour later, the fetal heart rate fell to 100, with decelerations to 50 to 60. The child was delivered by emergency cesarean section 17 minutes later. Apgar scores were 0, 0, and 3, and cord pH was 6.86. The child was transferred to another facility and suffered seizures within 12 hours of birth. It was determined that the child suffered perinatal hypoxic ischemic encephalopathy.

The plaintiff sued, arguing that cesarean should have been performed earlier.

The defendants denied negligence, noting normal tests the day prior to birth, and maintaining that the fetal heart rate during labor was not diagnostic of fetal distress.

- The case settled for $400,000 at mediation.

Preterm labor: Missed or not present?

Cook County (Ill) Circuit Court

Due to complaints of "kicking" and shooting back pain, a 44-year-old woman at 25 weeks' gestation was ordered to the hospital by her obstetrician, for evaluation for preterm labor. A nurse conducted the exam from the physician's telephone instructions.

Both palpation and examination via external monitoring revealed no signs of contractions, and the nurse observed that

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the woman's cervix was closed. When the patient noted continued pain, the physician ordered 3 doses of terbutaline. The woman later reported her symptoms had resolved, and was released 3 hours later with instructions to call if she felt pain or kicking more than 4 times per hour.

The woman was previously scheduled for a prenatal visit 9 hours later. Upon presenting for that appointment, she reported 3 to 4 brief contractions in the intervening hours. Examination revealed cervical dilation of 2 to 3 cm with a bulging bag. She was transferred to the hospital, but did not experience any contractions during transport. Upon arrival at the hospital, her cervix was to 3 to 4 cm dilated. The child was delivered via cesarean section 2 hours later.

The child suffered cerebral palsy and spastic quadriplegia and required a tracheostomy tube. He is currently confined to a wheelchair.

The plaintiff sued the hospital, the medical group, and the obstetrician, claiming negligence for failing to properly treat preterm labor.

The defendants maintained that the woman was not experiencing preterm labor at her initial visit. Instead, they argued that an incompetent cervix aggravated by chorioamnionitis led to the preterm labor, and claimed that the outcome could not have been prevented.

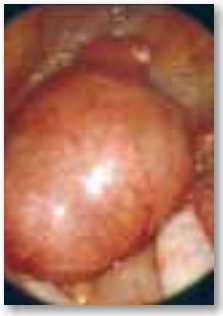
- The hospital settled for $600,000 prior to trial. The jury returned a defense verdict for the obstetrician and the medical group.

Ureter injury follows unneeded hysterectomy

Orange County (NY) Supreme Court

With complaints of menorrhagia and dyspareunia, a 23-year-old woman with a previous tubal ligation presented to her Ob/Gyn. A course of oral contraceptives proved unsuccessful.

Ultrasound examination revealed an enlarged uterus. The physician informed the woman she had uterine fibroids and recommended a hysterectomy. At surgery, however, no fibroids were discovered. In the course of the procedure, the woman's right ureter was severed. She developed a ureterovaginal fistula. Despite several corrective procedures, she claims to still suffer from urinary incontinence.



Uterine fibroids

In suing, the plaintiff argued that the physician was negligent in not offering an alternative to hysterectomy, such as dilation and curettage.

The defendants maintained that the patient was fully informed, and argued that the hysterectomy was appropriate. Further, they noted that ureter injury is a known complication of the procedure, and alleged that the woman's symptoms had resolved.

- The jury awarded the plaintiff $600,000.

Shoulder dystocia: Fundal pressure used?

St. Louis (Mo) Circuit Court

When shoulder dystocia was encountered in the course of delivery, a clinician opted to use vacuum extraction, though the mother had pushed for just 16 minutes. The child was born with brachial plexus injury, which, despite subsequent surgery, left the affected arm 2 inches shorter than the uninjured arm, with partially limited function.

The plaintiff claimed vacuum extraction was used prematurely and contributed to the injury. She also argued that, per the delivery note, fundal pressure that was initiated prior to the dystocia was continued once the complication arose, when the clinician should have switched to suprapubic pressure.

The defense argued that a notation error was made in the delivery record, and that suprapubic pressure was indeed used.

- The jury returned a defense verdict.

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Cesarean denied for macrosomic baby

Davis County (Utah) District Court

A woman in her fourth pregnancy presented to a physician. Her first pregnancy, 18 years prior, was notable for 36-hour labor followed by delivery of a 9-lb infant; the next 2 pregnancies resulted in miscarriage.

The doctor deemed the patient a high-risk pregnancy and ordered sonograms every 2 weeks. When sonography in her sixth month indicated a fetal weight over 7 lb, the woman requested a cesarean delivery. A sonogram performed in her ninth month suggested a fetal weight over 10 lb, but the physician doubted the accuracy of these calculations and scheduled an induction to take place in 2 days.

Following a vaginal delivery complicated by shoulder dystocia and aided by episiotomy, the woman gave birth to a 9-lb, 13-oz child. The child suffered from Erb's palsy, but the condition resolved. The mother, however, sustained a 3rd-degree laceration, postpartum hemorrhaging, and injury to the pelvic joints and vaginal area.

In suing, she claimed the physician did not properly evaluate the child's birth weight, and was negligent in not granting her request for a cesarean.

- The doctor settled for $27,000 with the mother and $5,000 with the child. ■

The cases in this column are selected by the editors of OBG MANAGEMENT from Medical Malpractice Verdicts, Settlements & Experts, with permission of the editor, Lewis Laska, of Nashville, Tenn (www.verdictslaska.com). While there are instances when the available information is incomplete, these cases represent the types of clinical situations that typically result in litigation.

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