

Was surgery telecast without consent, as patient claims?

A 48-YEAR-OLD WOMAN underwent a minimally invasive hysteroscopic myomectomy. The surgery was telecast live for Ethicon, which paid the surgeon an honorarium of \$500. The patient subsequently developed metastatic ovarian cancer. She sued her gynecologist for failing to detect her ovarian cancer in a timely manner. At the time of trial she was in hospice care. During discovery, she asked that a copy of the telecast be produced. The day before trial, her counsel found the video on the Internet and obtained a copy. It did not reveal any identifying information about the patient.

▶ **PATIENT'S CLAIM** The defendant was negligent for failure to: (1) send her for genetic testing/counseling based on her family history; (2) recommend/perform a hysterectomy, as her family history required aggressive treatment; (3) obtain informed consent for the surgery; (4) disclose that the surgery was to be telecast live for Ethicon; and (5) disclose that he received an honorarium. The patient also claimed she was given a diagnosis of ovarian cancer 11 months after the surgery.

▶ **PHYSICIAN'S DEFENSE** At her first visit, the patient indicated she had already been counseled and didn't need more counseling. She also refused a hysterectomy, choosing instead a minimally invasive procedure. The standard of care at the time did not require referral for genetic counseling/testing. The patient was informed about the tele-

cast, but disclosing the honorarium to her was not required.

▶ **VERDICT** Illinois defense verdict. Ethicon was granted summary judgment, and the plaintiff voluntarily dismissed the physician from the misappropriation of identity claim.

One twin lives and other dies in delayed C-section

A WOMAN PREGNANT with twins presented at the hospital at 35.5 weeks' gestation with spontaneous rupture of membranes. Dr. A, the ObGyn on call at the time, determined that both twins were in the breech position and the male twin had ruptured membranes. He ordered fetal heart monitoring. The following morning, Dr. B ordered an immediate cesarean delivery because of the possibility of a prolapsed cord. After a 2-hour delay, the twins were delivered—the female successfully, but the male twin was stillborn. The baby's body was placed in the mother's hospital room until it was removed for autopsy 2 days later.

▶ **PATIENT'S CLAIM** (1) Dr. A should have ordered an immediate cesarean delivery. (2) Dr. B should have made sure that the cesarean delivery he ordered was performed more timely. (3) Because of the patient's large size, fetal heart rates could not be monitored properly. (4) The hospital should not have left the child's body in the mother's room for 2 days.

▶ **PHYSICIAN'S DEFENSE** Dr. A claimed an immediate cesarean delivery was not necessary.

▶ **VERDICT** Indiana defense verdict for Dr. A. Claims against Dr. B and the hospital were dismissed on summary judgment.

\$19.6M for mother's incontinence and child's CP

A 37-YEAR-OLD WOMAN'S labor and delivery were managed by Dr. A, a resident, and Dr. B, an obstetrician. Following labor induction, the mother's temperature rose and the heart rates of both mother and fetus increased. Believing the mother could have chorioamnionitis, Dr. A and Dr. B decided on a forceps delivery. During the delivery, the mother suffered a 4th degree laceration of the vagina. Dr. A repaired the laceration.

▶ **PATIENT'S CLAIM** Repair of the laceration was not effective, and she suffers permanent residual incontinence as a result. Also, the child suffered cerebral palsy resulting from injury during delivery.

▶ **PHYSICIANS' DEFENSE** The mother made a good recovery. The child did not suffer a brain injury. Rather he has tibial torsion and is pigeon-toed—which caused problems with his gait.

▶ **VERDICT** \$19.6 million New York verdict: \$11,965,000 for the mother and \$7,650,000 for the child. Ⓞ

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