



## One twin has cerebral palsy; \$103 million verdict

**AFTER PREMATURE RUPTURE OF MEMBRANES** at 25 weeks' gestation, a woman went to the emergency department (ED) and was later released. Eight days later, she returned to the ED with abdominal pain; a soporific drug was administered. After several hours, it was determined that

she was in labor. Twins were delivered vaginally. One child has cerebral palsy and requires assistance in daily activities, although her cognitive function is intact.

▶ **PARENTS' CLAIM** The mother should not have been released after premature rupture of her membranes. The nurses and ObGyns failed to timely recognize that the mother was in labor, and failed to prevent premature delivery. Proper recognition of contractions would have allowed for administration of a tocolytic to delay delivery. That drug had been effectively administered during the first two trimesters of the pregnancy. A cesarean delivery should have been performed.

▶ **DEFENDANTS' DEFENSE** There was no negligence. The hospital argued that fetal heart-rate monitors did not suggest contractions.

▶ **VERDICT** A \$103 million New York verdict was returned against the hospital; a defense verdict was returned for the physicians.

## Perforated uterus and severed iliac artery after D&C

**A GYNECOLOGIC SURGEON** performed a dilation and curettage (D&C) on a 47-year-old woman. During surgery, the patient suffered a perforated uterus and a severed iliac artery, resulting in a myocardial infarction.

▶ **PATIENT'S CLAIM** The surgeon failed to dilate the cervix appropriately to assess the cervical and endometrial cavity length, and then failed to use proper instrumentation in the uterus. He did not assess uterine shape before the D&C. The patient suffered cognitive and emotional injuries, and will require additional surgery.

▶ **PHYSICIAN'S DEFENSE** The patient's anatomy is abnormal. A perforation

is a known complication of a D&C.

▶ **VERDICT** A \$350,000 Wisconsin settlement was reached.

## Failure to monitor a high-risk patient

**A WOMAN WITH A HEART CONDITION** who routinely took a beta-blocker plus migraine medication also had lupus. Her pregnancy was therefore at high risk for developing intrauterine growth restriction. Her US Navy ObGyn was advised by a maternal-fetal medicine (MFM) specialist to monitor the pregnancy closely with frequent ultrasonography and other tests that were never performed.

The baby was born by emergency cesarean delivery at 36 weeks' gestation. The child suffered severe hypoxia and a brain hemorrhage

just before delivery, which caused serious, permanent physical and neurologic injuries. He needs 24-hour care, is confined to a wheelchair, and requires a feeding tube.

▶ **PATIENT'S CLAIM** The ObGyn failed to monitor the mother for fetal growth restriction as recommended by the MFM specialist.

▶ **DEFENDANTS' DEFENSE** There was no negligence; the mother was treated properly.

▶ **VERDICT** After a \$28 million Virginia verdict was awarded, the parties continued to dispute whether the judgment would be paid under California law (where the child was born) or Virginia law (where the case was filed). Prior to a rehearing, a \$25 million settlement was reached.

## Uterine cancer went undiagnosed

**A WOMAN IN HER 50s** saw her gynecologist in March 2004 to report vaginal staining. She did not return to the physician's office until January 2005, when she reported daily vaginal bleeding. Ultrasonography showed a 4-cm mass in the endometrial cavity, consistent with a large polyp. A hysteroscopy and biopsy revealed that the woman had uterine cancer. She underwent a hysterectomy and radiation therapy, but the cancer metastasized to her lungs and she died in October 2006.

▶ **ESTATE'S CLAIM** The gynecologist failed to diagnose uterine cancer in a timely manner.

▶ **PHYSICIAN'S DEFENSE** The patient's cancer was aggressive; an earlier diagnosis would not have changed the outcome.

▶ **VERDICT** A \$820,000 Massachusetts settlement was reached.



## Severe stenosis closes vaginal opening after TVT-O surgery

**WHEN A 51-YEAR-OLD WOMAN NOTICED A BULGE** in her vagina, she consulted her gynecologist. He determined the cause to be a cystocele and rectocele, and recommended a tension-free vaginal tape-obturator (TVT-O) procedure with anterior and posterior colporrhaphy.

The patient awoke from surgery in severe pain and was told that she had lost a lot of blood. Two weeks later, the physician explained that the stitches, not yet absorbed, were causing an abrasion, and that more vaginal tissue had been removed than planned.

Two more weeks passed, and the patient used a mirror to look at her vagina but could not see the opening. The TVT-O tape had created a ridge of tissue in the anterior vagina, causing severe stenosis. Vaginal dilators were required to expand the vagina. Entrapment of the dorsal clitoral nerve by the TVT-O tape was also discovered. The patient continues to experience dyspareunia and groin pain.

▶**PATIENT'S CLAIM** The gynecologist failed to tell her that, 2 months before surgery, the FDA had issued a public health warning about complications associated with transvaginal placement of surgical mesh during prolapse and urinary incontinence repair. Nor was she informed that the defendant had just completed training in TVT-O surgery, was not fully credentialed, and was proctored during the procedure.

▶**PHYSICIAN'S DEFENSE** The case was settled before the trial concluded.

▶**VERDICT** A \$390,000 Virginia settlement was reached.

▶**PHYSICIAN'S DEFENSE** Proper care was provided.

▶**VERDICT** A \$950,000 Illinois verdict was returned.

## Genetic testing fails to identify cystic fibrosis in one twin

**AFTER HAVING ONE CHILD** with cystic fibrosis (CF), parents underwent genetic testing. Embryos were prepared for in vitro fertilization (IVF) and sent to a genetic-testing laboratory. The lab reported that the embryos were negative for CF. Two embryos were implanted, and the mother gave birth to twins, one of which has CF.

▶**PARENTS' CLAIM** Multiple errors by the genetic-testing laboratory led to an incorrect report on the embryos. The parents claimed wrongful birth.

▶**DEFENDANTS' DEFENSE** The testing laboratory and physician owner argued that amniocentesis should have been performed during the pregnancy to rule out CF.

▶**VERDICT** The trial judge denied the use of the amniocentesis defense because an abortion would have been the only option available, and abortion is against the public policy of Tennessee. The court entered summary judgment on liability for the parents.

A \$13 million verdict was returned, including \$7 million to the parents for emotional distress. ☹

*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.*

## Lumpectomy, though no mass palpated

**A 52-YEAR-OLD WOMAN FOUND A LUMP** in her left breast. Her internist ordered mammography, which identified a 2-cm oval, asymmetrical density in the upper inner quadrant of the left breast. The radiologist recommended ultrasonography (US).

The patient consulted a surgical oncologist, who performed fine-needle aspiration. Pathology identified "clusters of malignant cells consistent with carcinoma," and suggested a confirmatory biopsy. The oncologist recommended lumpectomy and sentinel node biopsy.

On the day of surgery, the patient could not locate the mass. The oncologist testified that he had palpated it. During surgery, gross examination did not show a mass or tumor. Frozen sections of sentinel nodes did not reveal evidence of cancer.

The patient suffered postsurgical seromas and lymphedema. The lymphedema has partially resolved, but causes pain in her left arm and breast.

▶**PATIENT'S CLAIM** The surgical oncologist should have performed US before surgery. It was negligent to continue with surgery when there were negative intraoperative findings for cancer or a mass.