Medical Verdicts

NOTABLE JUDGMENTS AND SETTLEMENTS

Was fetus' wrist injured during cesarean delivery?

AT 34 WEEKS' GESTATION, a 39-year-old woman went to the hospital in preterm labor. Her history included a prior cesarean delivery. Ultrasonography (US) showed that the fetus was in a double-footling breech position. The ObGyn decided to perform a cesarean delivery when the fetal heart-rate monitor indicated distress.

After making a midline incision through the earlier scar, the ObGyn created a low transverse uterine incision with a scalpel. The mother's uterus was thick because labor had not progressed. When the ObGyn was unable to deliver the baby through the low transverse incision, she performed a T-extension of the incision using bandage scissors while placing her free hand inside the uterus to shield the fetus from injury. After extensive manipulation, the baby was delivered and immediately handed to a neonatologist. After surgery, the neonatologist told the mother that the baby had sustained two lacerations to the ulnar side of the right wrist. The newborn was airlifted to another hospital for treatment of sepsis. There, an orthopedic hand surgeon examined the child and determined that the lacerations were superficial and only required sutures. The orthopedist saw the infant a month later and believed there was no significant wrist injury.

When the child began preschool, she started to experience cold intolerance and difficulty writing with her right hand. The child was referred to a pediatric neurologist, who found no nerve damage and ordered occupational therapy.

The original orthopedic surgeon examined the child when she was 7 years old and determined that the flexor carpi ulnaris tendon had been completely severed with a partial injury to the ulnar nerve. He recommended a return visit at age 14 for full assessment of the wrist injury.

PARENTS' CLAIM The ObGyn did not properly shield the fetus when performing the T-extension incision during cesarean delivery. The child's weakness will increase with age, ruling out some occupations.

PHYSICIAN'S DEFENSE The ObGyn was not negligent; she had provided adequate protection of the fetus during both incisions.

VERDICT An Illinois defense verdict was returned.

Woman dies after tubal ligation

AFTER A 42-YEAR-OLD WOMAN underwent tubal ligation, her surgeon was concerned about a possible bowel perforation and admitted her to the hospital. The next morning, a computed tomography (CT) scan of the abdomen did not reveal bowel injury.

That afternoon, when the patient reported shortness of breath, the surgeon called the hospitalist with concern for pulmonary embolism (PE). The hospitalist immediately ordered a CT scan of the chest, initiated PE protocol, and wrote "r/o PE" on the chart. A radiologist reminded the hospitalist of the earlier CT scan with concern for kidney damage from another dye study. The hospitalist cancelled the CT scan and PE protocol. After waiting 17 hours to run any further tests, a CT scan revealed massive bilateral PE. The patient was transferred to the ICU, but died the next day.

PATIENT'S CLAIM The 17-hour delay was negligent.

PHYSICIAN'S DEFENSE There was no negligence. The patient died of septic shock, not PE.

VERDICT A $4 million Virginia verdict was returned.

Child born without hand and forearm

DURING PRENATAL CARE, a mother underwent US at 20 and 36 weeks; both studies were reported as normal. The child was born missing his left hand and part of his left forearm due to a congenital amputation. The child will require prosthetics for life.

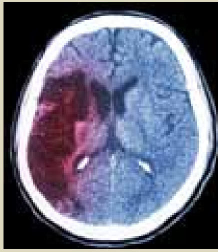
PATIENT'S CLAIM The condition should have been seen during prenatal US; an abortion was still an option at 20 weeks.

DEFENDANTS' DEFENSE US was properly performed and evaluated. It can be difficult to differentiate the right from left extremities.

VERDICT A California 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



After starting Yasmin, woman has stroke with permanent paralysis: $16.5M total award

WHEN A 37-YEAR-OLD WOMAN REPORTED irregular menstruation, her ObGyn prescribed drospirenone/ethinyl estradiol (Yasmin; Bayer). Thirteen days after starting the drug, the patient had a stroke. She is paralyzed on her left side, has limited ability to speak, cannot use her left arm and leg, and requires 24-hour care.

PATIENT'S CLAIM The ObGyn should have recognized that Yasmin was not appropriate for this patient because of the drug's clotting risks. The patient's risk factors included her age (over 35), borderline hypertension, overweight, history of smoking, and high cholesterol. The ObGyn should have offered safer alternatives, such as a progesterone-only pill. The US Food and Drug Administration (FDA) issued a safety warning that all drospirenone-containing drugs may be associated with a higher risk of venous thrombosis during the first 6 months of use.

DEFENDANTS' DEFENSE According to Bayer, Yasmin is safe, and remains on the market. It was an appropriate drug to treat her irregular bleeding.

VERDICT Claims against the medical center that referred the patient to the ObGyn were settled for $2.5 million before trial. A $14 million Illinois verdict was returned against the ObGyn, for a total award of $16.5 million.

Who is at fault when pelvic mesh erodes?

IN JANUARY 2011, an ObGyn implanted the Gynecare TVT Obturator System (TVT-O; Ethicon) during a midurethral sling procedure to treat stress urinary incontinence (SUI) in a woman in her 60s. Shortly thereafter, the ObGyn left practice because of early-onset Alzheimer's disease, and the patient's care was taken over by a gynecologist.

At the 2-month postoperative visit, the gynecologist found that the mesh had eroded into the patient's vagina. The gynecologist simply cut the mesh with a scissor, charted that a small erosion was present, and prescribed estrogen cream.

The patient continued to report pain, discomfort, pressure, difficulty voiding urine, continued incontinence, vaginal discharge, scarring, infection, odor, and bleeding.

PATIENT'S CLAIM The polypropylene mesh used during the midurethral sling procedure has been shown to be incompatible with human tissue. It promotes an immune response, which stimulates degradation of the pelvic tissue and can contribute to the development of severe adverse reactions to the mesh. Ethicon negligently designed, manufactured, marketed, labeled, and packaged the pelvic mesh products.

DEFENDANTS' DEFENSE Proper warnings were provided about the health risks associated with polypropylene mesh products. The medical device was not properly sized.

VERDICT A Texas jury rejected the patient's claims that Ethicon did not provide proper warnings about the sling's health risks and declined to award punitive damages.

However, the jury decided that the mesh implant was defectively designed, and returned a $1.2 million verdict against Ethicon.

Was suspected bowel injury treated properly?

A 40-YEAR-OLD WOMAN was referred to an ObGyn after reporting abnormal uterine bleeding to her primary care physician. The patient had very light menses every few weeks. The ObGyn performed an ablation procedure, without relief. A month later, the ObGyn performed robot-assisted laparoscopic hysterectomy. The next day, the patient reported abdominal pain. Suspecting a bowel injury, the ObGyn ordered a CT scan; the bowel appeared normal, so the ObGyn referred the patient to a surgeon. During exploratory laparotomy, the surgeon found and repaired a bowel injury. The patient developed significant complications from a necrotizing infection that included respiratory distress and ongoing wound care.

PATIENT'S CLAIM Conservative treatment should have been offered before surgery. The ObGyn should have waited longer after the ablation procedure before doing the hysterectomy. The ObGyn should have checked for a possible bowel injury before closing the hysterectomy.

PHYSICIAN'S DEFENSE The bowel injury is a known complication of the procedure and was recognized and repaired in a timely manner.

VERDICT A Kentucky defense verdict was returned.

PHOTO: SHUTTERSTOCK

Pap smear improperly interpreted: Woman dies from cervical cancer

A 37-YEAR-OLD WOMAN UNDERWENT A PAP SMEAR in 2008 that was read by a cytotechnologist as normal. Two years later, the patient was found to have a golf-ball–sized cancerous tumor. She died from cervical cancer in 2011.

ESTATE'S CLAIM The cytotechnologist was negligent in misreading the 2008 Pap smear. If treatment had been started in 2008, the cancer could have been resolved with a simple conization biopsy.

DEFENDANTS' DEFENSE The Pap smear interpretation was reasonable. The cancer could not have been diagnosed in 2008. The patient was at fault for failing to follow-up Pap smears during the next 2 years.

VERDICT After assigning 75% fault to the cytotechnologist and 25% fault to the patient, a Florida jury returned a $20,870,200 verdict, which was reduced to $15,816,699.

Disastrous off-label use of anticoagulation

WHEN A PELVIC ABSCESS WAS FOUND, a 50-year-old woman was admitted to the hospital for treatment. She was taking warfarin due to a history of venous thromboembolism.

Before the procedure, her physicians attempted to temporarily reverse her anticoagulation by administering Factor IX Complex (Profilnine SD, Grifols Biologicals). The dose ordered for the patient was nearly double the maximum recommended weight-based dose. Almost immediately after receiving the infusion, the patient went into cardiopulmonary arrest and died. An autopsy found the cause of death to be pulmonary emboli (PE).

ESTATE'S CLAIM An excessive dose of Profilnine caused PE. At the time of the incident, Profilnine was not FDA approved for warfarin reversal, although some off-label uses were recognized in emergent situations, such as intracranial bleeds.

DEFENDANTS' DEFENSE The case was settled during the trial.

VERDICT A $1.25 million Virginia settlement was reached.

Vesicovaginal fistula from ureteral injury

AT A WOMEN'S HEALTH CLINIC, a patient reported continuous, heavy vaginal bleeding; pain; and shortness of breath when walking. She had a history of endometritis and multiple abdominal surgeries. Examination disclosed a profuse vaginal discharge, a normal cervix, and an enlarged uterus. The patient consented to abdominal hysterectomy and bilateral salpingo-oophorectomy performed by an ObGyn assisted by a resident.

During surgery, the ObGyn found that the patient's uterus was at 16 to 20 weeks' gestation size, with multiple serosal uterine fibroids and frank pus and necrosed fibroid tumors within the uterine cavity. The procedure took longer than planned because of extensive adhesions. After surgery, the patient was anemic and was given a beta-blocker for tachycardia. She was discharged 3 days later with 48 hours' worth of intravenous antibiotics.

A month later, the patient reported urinary incontinence. She saw a urologist, who found a vesicovaginal fistula. The patient underwent nephrostomy-tube placement. Right ureterolysis and a right ureteral reimplant was performed 4 months later.

PATIENT'S CLAIM The ObGyn injured the right ureter during surgery.

DEFENDANTS' DEFENSE The ureter injury is a known risk of the procedure. The injury was due to an infection or delayed effects of ischemia. The patient had a good recovery with no residual injury.

VERDICT A Michigan defense verdict was returned.

Why did mother die after delivering twins?

AFTER A 35-YEAR-OLD WOMAN gave birth to twins by cesarean delivery, she died. At autopsy, 4 liters of blood were found in her abdomen.

ESTATE'S CLAIM The ObGyn failed to recognize and treat an arterial or venous bleed during surgery.

DEFENDANTS' DEFENSE The patient died from amniotic fluid embolism. Autopsy results showed right ventricular heart failure, respiratory failure, and disseminated intravascular coagulation.

VERDICT A Florida defense verdict was returned.

PHOTO: SHUTTERSTOCK