



Was the ObGyn's dexterity compromised?

A WOMAN UNDERWENT A HYSTERECTOMY. During surgery, the patient's bladder was injured; the ObGyn called in a urologist to make the repair.

▶PATIENT'S CLAIM The ObGyn failed to inform the patient about the possible complications from hysterectomy. The patient also claimed fraudulent concealment because the ObGyn had suffered a serious injury 3 years earlier that affected his dexterity. At the time of surgery, the ObGyn had a pending lawsuit against the owner of the premises where he fell in which he claimed that he was unable to continue his surgical practice because of the injury. The ObGyn never informed the patient of the extent of his injury or any associated risks related to his injury.

▶DEFENDANTS' DEFENSE The patient was fully informed that bladder injury is a known risk of the procedure. The ObGyn maintained that his injury only affected his ability to stand for many hours while operating. The hospital settled during trial.

▶VERDICT A \$12,000 Louisiana settlement was reached with the hospital. Summary judgment was granted to the ObGyn on the informed consent claim. A \$30,000 verdict was returned on the fraud count.

child continues to have limited use of her left arm and hand even after 3 corrective operations.

▶PARENTS' CLAIM While performing maneuvers to relieve shoulder dystocia, the ObGyn exerted excessive traction on the baby's head, causing a C-5 nerve root injury and complete avulsion at C-8. A cesarean delivery should have been performed.

▶PHYSICIAN'S DEFENSE There was no negligence. The nerve injury was caused by the natural forces of labor and the mother's pushing while the posterior shoulder was wedged behind the mother's sacral promontory.

▶VERDICT A \$1 million Illinois verdict was returned.

Woman dies from toxemia

A 22-YEAR-OLD WOMAN was seen by her ObGyn 4 days after vaginal delivery. Early the next day, the patient had a seizure at home and was transported by ambulance to the hospital. She could not be resuscitated and died. At autopsy, the cause of death was determined to be toxemia from pregnancy.

▶ESTATE'S CLAIM The ObGyn failed to properly diagnose and treat the patient's hypertension.

▶DEFENDANT'S DEFENSE The case was settled during trial.

▶VERDICT A \$775,000 New York settlement was reached.

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.

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Placental abruption: Was child dead?

AT 32 WEEKS' GESTATION, a woman was found to have placental abruption. At the hospital, her ObGyn could not find a fetal heartbeat or detectable fetal movement on ultrasonography. A radiologist performed another ultrasound 30 minutes later and detected a fetal heart rate of 47 bpm. An emergency cesarean delivery was performed. Soon after birth, the child had seizures and was found to have hypoxic ischemic encephalopathy and diffuse brain injury. The child is profoundly disabled.

▶PARENTS' CLAIM The ObGyn was negligent for failing to detect the fetal heart rate and in failing to respond properly to placental abruption.

Cesarean delivery should have been performed immediately after placental abruption was identified.

▶DEFENDANT'S DEFENSE The case was settled at trial.

▶VERDICT A \$13 million Illinois settlement was reached, including \$5 million in cash and \$8 million placed in trust for the child.

Large fetus, shoulder dystocia: Erb's palsy

LABOR WAS INDUCED at 39 weeks' gestation because the fetus was anticipated to be large. During vaginal delivery, shoulder dystocia was encountered. At birth, the baby weighed 9 lb 2 oz. She sustained a brachial plexus injury to the posterior shoulder with permanent nerve root damage and Erb's palsy. The



Blood transfusion delayed for hours: \$14.75M net award

AFTER EMERGENCY CESAREAN DELIVERY, the baby was extremely anemic. The physicians determined that a fetal-maternal hemorrhage had started days before, causing the fetus to lose most of her blood.

An hour after birth, the attending neonatologist ordered blood from the hospital's blood bank and arranged for emergency transport to a neonatal intensive care unit (NICU). Blood transfusion did not occur prior to transport. The child has severe cerebral palsy (CP) and cannot walk or talk at age 8 years.

► **PARENTS' CLAIM** The neonatologist ordered cross-matched blood, which, because it is tested for compatibility, takes longer to supply. Universal donor blood could have been delivered in 20 minutes or less because it is readily available. The ambulance from the receiving hospital took an hour to drive 9 miles between the facilities, a trip that should have taken 12 minutes. The ambulance staff did not call ahead to the medical center to have blood ready for the baby. It took 4.5 hours before the newborn received a blood transfusion, a delay that caused severe injury to the child.

► **DEFENDANTS' DEFENSE** The matter went to trial against the neonatologist and his employer after the other defendants settled.

► **VERDICT** Before trial, an ObGyn and the hospital settled for a combined \$750,000, and the county agreed to a \$12 million settlement. During trial, a \$2 million Illinois settlement was reached.

Pregnant woman has a massive stroke: \$10.9M

PREGNANT WITH HER THIRD CHILD and at 26 weeks' gestation, a 35-year-old woman had a massive intracerebral hemorrhage at home.

The day before, she had contacted her ObGyn's office to report severe headache and abdominal pain. The call was taken by an associate of her ObGyn, who told her there was no need to go to the hospital and suggested that she had a gastrointestinal virus.

The stroke caused severe cognitive impairment, loss of memory,

partial vision loss, dysphasia, and partial paralysis on her right side. At trial, she was still undergoing therapy to regain mobility, speech, and memory. She uses a wheelchair.

► **PATIENT'S CLAIM** The covering ObGyn was negligent for not sending the patient to the hospital when she reported severe headache.

► **DEFENDANTS' DEFENSE** The ObGyn and medical practice denied negligence, contending that the patient's pregnancy was normal and that there was no indication that she was at risk for a stroke.

► **VERDICT** A \$10,928,188 Ohio verdict was returned.

Was the fetus properly monitored?

ONE MONTH BEFORE HER DUE DATE, a woman was found to have premature rupture of membranes. She had gestational diabetes controlled by diet. She was admitted for induction of labor.

For more than 12 hours, external fetal monitor heart-rate tracings were reassuring. Then tracings began to show variable decelerations. For a period of 90 minutes, it was impossible to evaluate the fetal heart rate because the monitor was not working. An internal monitor was not placed. Just prior to birth, the tracings showed a 15-minute period of fetal tachycardia with the heart rate at 180 bpm. The physician's notes indicated that the baby's head had crowned for a prolonged period of time.

The baby was floppy at birth with Apgar scores of 2, 4, and 6 at 1, 5, and 10 minutes, respectively. The child was resuscitated and transferred to the NICU. She was found to have perinatal asphyxia, severe metabolic acidosis, multiorgan injury, hypoxic ischemic encephalopathy, and seizures. She stayed in the NICU for 1 month. At age 9 years, she has developmental delays and memory problems, but no motor injuries.

► **PARENTS' CLAIM** During the 90 minutes in which the fetal heart-rate monitor was not working properly, the fetus was in distress. An emergency cesarean delivery should have been performed when variable decelerations were seen on tracings.

► **PHYSICIAN'S DEFENSE** The lack of motor injury indicates that the injury was not related to birth.

► **VERDICT** A \$2 million Michigan settlement was reached.

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PHOTO: SHUTTERSTOCK

Rectal tear after vacuum extraction

VACUUM EXTRACTION was used to deliver a 47-year-old woman's child. Later, the mother developed a recto-vaginal fistula that became inflamed and involved vaginal passage of stool. The patient required 2 operations and still has residual complications.

► **PATIENT'S CLAIM** The ObGyn should have found and repaired the rectal tear at delivery. Vacuum extraction was used after only 2 pushes. The mother did not consent to the use of the vacuum extractor.

► **PHYSICIAN'S DEFENSE** The ObGyn admitted that he did not specifically remember this delivery. He claimed that there was informed consent and that the rectal injury was small and easy to overlook.

► **VERDICT** A \$1.02 million New York verdict was returned.

Preeclamptic mother dies after giving birth

A 24-YEAR-OLD WOMAN developed preeclampsia when under prenatal care at a hospital clinic. At 36 weeks' gestation, she presented to the clinic with a headache, "seeing spots," and feeling ill; her blood pressure (BP) was 169/89 mm Hg. She was admitted for induction of labor and treated for preeclampsia with magnesium sulfate. A healthy baby was born 2 days later. The mother continued to have high BP and was prescribed nifedipine.

Her BP was 148/88 mm Hg at discharge. No antihypertensive medications were prescribed. She was given standard postpartum instructions and told to schedule a follow-up appointment in 6 to 8 weeks.

Five days after discharge, she experienced shortness of breath and swelling in her extremities, but did not seek medical attention until the next day, when breathing became labored. When emergency medical services arrived, she was in cardiac arrest. Prolonged resuscitation was required with intubation and artificial respiration. A computed tomography (CT) scan revealed cerebral edema from prolonged hypoxia. She was transferred to another hospital where a neurologist determined that she had suffered a profound anoxic brain injury. She died 3 days later.

► **ESTATE'S CLAIM** The hospital staff was negligent for failing to inform the patient of the signs and symptoms of continuing preeclampsia and for not prescribing antihypertensive medication at discharge. Her follow-up appointment should have been scheduled for 1 week.

► **DEFENDANT'S DEFENSE** The patient was given oral instructions regarding postpartum preeclampsia. The case was settled during trial.

► **VERDICT** A \$50,000 North Carolina settlement was reached.

Was delivery properly managed?

WHEN A 16-YEAR-OLD WOMAN was found to have preeclampsia, she was admitted and labor was induced using oxytocin. An external fetal heart-rate monitor was placed.

Three hours later, her ObGyn took over her care from the attending physician. He saw the patient once in the evening, then left to deliver a baby at another hospital. He maintained telephone contact with labor and delivery nurses, who told him that the mother's labor was progressing as planned. Early the next morning,

the nurse called the ObGyn to report that the mother was fully dilated and ready to deliver. The ObGyn was at the patient's bedside within 30 minutes. After the mother pushed once, the ObGyn determined that a cesarean delivery was necessary.

After birth, the child suffered seizures in the NICU and was transferred to another facility. With CP and microcephaly, he cannot speak, is incontinent, has motor difficulties, and will require 24-hour care for life.

► **PARENT'S CLAIM** Labor was not properly monitored. Oxytocin doses were too large and continued for too long.

► **DEFENDANTS' DEFENSE** The mother's treatment was appropriate and timely. There was no negligence.

► **VERDICT** A confidential Kansas settlement was reached with another defendant during the trial. A defense verdict was returned for the ObGyn.

Evidence of CMV on ultrasonography

DURING HER PREGNANCY IN 2012, a woman contracted congenital cytomegalovirus (CMV), although she did not have any symptoms. The child has CP, a hearing deficiency, and other complications caused by the virus.

► **PARENTS' CLAIM** The ObGyn failed to identify CMV, despite ultrasound evidence that the virus was affecting the fetus. Studies available at the time of the pregnancy show considerable success in treating the condition in utero with hyperimmune globulin antiviral agents.

► **DEFENDANT'S DEFENSE** The case was settled during trial.

► **VERDICT** A confidential Idaho settlement was reached. ☺