

Solid defense fails in Erb's palsy lawsuit

I applaud the efforts by Samuel Zylstra, MD, and colleagues to determine how to avoid being sued for the effects of shoulder dystocia ("Cutting the medicolegal risk of shoulder dystocia," September 2004). Unfortunately, even when everything is done correctly and documented, the case can be taken out of your hands by a judge.

I was sued by a patient after the delivery of her second child resulted in Erb's palsy. She was induced at term for elevated blood pressure. (She had previously delivered at 36 weeks with pregnancy-induced hypertension.) Within an hour of starting oxytocin, she entered active labor and, with artificial rupture of membranes, progressed from 5 cm to complete in 30 minutes. She pushed twice, the head was delivered, and a mild shoulder dystocia occurred. This was resolved with the McRoberts maneuver and suprapubic pressure. The delivery was accomplished easily, but the baby suffered Erb's palsy of the posterior arm. This was all documented in the chart.

At trial, our expert testified on videotape that injury can occur to the posterior arm in utero, and can also be caused by the propulsive effect of rapid labor and delivery. Despite this, the judge, citing the Daubert principle—which is supposed to protect doctors from the testimony of non-experts—threw out my expert's testimony in that area because this mechanism of injury is still "hypothetical" and not documented in textbooks. I lost the case.

The plaintiffs asked for \$1 million, but

the jury awarded them only \$300,000. My record is scarred nonetheless, and my faith in the legal system is gone.

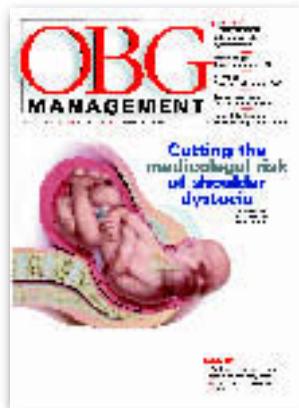
Jean Reinhold, MD
Westlake, Ohio

New Web site on shoulder dystocia

I wanted to let you know about a Web site I recently launched on the topic of shoulder dystocia. It can be found at www.shoulderdystociainfo.com.

My goal is to provide patients and the medical and legal communities with literature-based information on shoulder dystocia and brachial-plexus injuries. The site explores in depth the evidence for and against the predictability and preventability of shoulder dystocia, based on a review of more than 258 articles. It includes instructive illustrations.

Henry Lerner, MD
Clinical Instructor in Ob/Gyn
Harvard Medical School, Boston



Another maneuver for documentation form

On the clip-and-save documentation form that accompanied the article on shoulder dystocia, the authors omitted one of the most important and valuable maneuvers: reaching into the uterus to deliver the posterior arm first. ■

Charles Kastone, MD
South Miami, Fla

"The judge threw out my expert's testimony, citing it as 'hypothetical' and not documented in textbooks."