

## Discordant fetal growth not noted

### Unknown Massachusetts venue

On the day of delivery of twins at 35 weeks' gestation, a woman went to her doctor's office, where the nurse midwife administered a nonstress test. Because one twin's heart pattern was nonreactive, the mother was sent for evaluation of premature labor.

It was revealed that the cover letter to a report from an ultrasound at 29 weeks reported concordant fetal growth, but numbers within the report differed from data in the cover letter and suggested discordant fetal growth.

Upon hospital admission, the woman's cervix was 1.5 cm dilated and 100% effaced, with the presenting fetus at +1 station. The membranes were intact. The nursing notes indicated that the woman had been evaluated for labor in the morning and that the covering Ob was present, but did not mention that one fetus was nonreactive. After rupture of membranes and placement of an internal scalp lead on twin A (the presenting fetus), the covering Ob left the area and had to be called several times over the next 1.5 hours in response to late decelerations in twin A's fetal heart rate. Scalp blood sampling on twin A revealed severe acidosis.

Delivered by emergency cesarean section, twin A was floppy, blue, and without respiratory effort. (Twin B was healthy.) Five days after birth a head ultrasound revealed a left germinal matrix hemorrhage in twin A, consistent with hypoxic ischemia. He remained in the NICU for a month. He now has cerebral palsy, visual and speech difficulties, and requires a walker and braces.

- The case settled for \$2.9 million.

## D&C did not avert endometrial cancer

### Ocean County (NJ) Superior Court

A 64-year-old woman diagnosed with postmenopausal bleeding underwent a dilation and curettage (D&C) after several ultrasounds. (Results of the D&C were not reported.) Despite continued bleeding, no follow-up testing was done at 3 months.

At a return visit 14 months later, the woman was still bleeding. Tests revealed she had advanced endometrial cancer that had metastasized to her lungs and bones. She died 3 months later.

The claim was that the physician had removed an inadequate amount of tissue during the D&C.

- The case settled for \$400,000.

## Missed cancer leads to death

### Unknown County (NY) Supreme Court

For several years a woman had had routine Pap smears that were read as normal. She came in to her ObGyn the following year complaining of vaginal bleeding and pain; no Pap smear was done because she was menstruating. The Pap smear done 3 months later was also read as normal.

Further evaluation because of continued profuse vaginal bleeding revealed a grapefruit-sized tumor on the woman's cervix. Despite a radical hysterectomy, chemotherapy, and radiation, the woman died from the cancer 3 years after diagnosis.

The suit claimed that the woman's ObGyn was negligent in not palpating the cervix or performing a colposcopy, which may have led to earlier detection of the cancer when it could have been treated

successfully. Later review of prior Pap smears showed the presence of abnormal cells. The plaintiff claimed the ObGyn negligently reported the woman's condition when the Pap smears were sent for evaluation, and that a proper history would have led to the Pap smears being read as abnormal.

The physician contended that the cancer was aggressive and difficult to detect, and that the lab had misread the Pap smears.

- The jury assessed damages at \$11.8 million. The verdict found 55% fault against the physician and the remainder against the laboratory. Because the plaintiff made no claims against the laboratory, the award was expected to be reduced in proportion to the fault assessment.

## Was surgery to blame for ectopic pregnancy?

### Boyle County (Ky) Circuit Court

During laparoscopic surgery to correct endometriosis in a 20-year-old woman, a blood vessel in the abdominal wall was nicked. The gynecologist switched to an open procedure with a transverse incision to repair the bleeding vessel. Patient recovery was prolonged, with slow healing of the incision. A year later, the woman had an ectopic pregnancy.



In suing, the woman claimed that the ectopic pregnancy was related to the open procedure. She asserted that the physician was negligent in nicking the abdominal wall blood vessel and that the low transverse incision during the open surgery complicated the healing process.

The physician denied negligence and countered that the injury was a known potential complication of the laparoscopic procedure. The physician contended that the ectopic pregnancy was related instead to the woman's history of pelvic inflammatory disease.

- The jury returned a defense verdict.

## Incontinence follows hysterectomy

### Unknown Massachusetts venue

A 33-year-old woman with a history of heavy menstrual bleeding underwent a total abdominal hysterectomy. She was discharged a week after the surgery despite continuing complaints of lower abdominal pain. An intravenous pyelogram after readmission revealed ureter injury.

After several unsuccessful attempts to place a stent to repair the injured ureter, a nephrostomy tube was inserted in the women's kidney for urine drainage and she was transferred to another hospital.

During repair surgery, the ureter was found to be encased in suture material, necessitating ureteral reimplantation. Several years after recovery from this surgery, the woman had urinary incontinence that she blamed on the reimplantation.

In suing, the woman claimed her physician was negligent in suturing her ureter during the hysterectomy.

The physician contended that ureter injury is a known risk of hysterectomy and that the current incontinence was unrelated to the ureter reimplantation.

- The case settled for \$150,000.

## Jury: Patient at fault for skipping follow-up

### Brazos County (Tex) District Court

A 42-year-old woman with a 4 x 6 cm mass on her left ovary was given hormone suppression therapy and told to return in a month. She did not return for a year, at which time the mass was found to have enlarged to 9 x 11 cm and surgery was recommended.

Because of adhesions, a laparotomy was performed. The next day the woman complained of back pain, and it was discovered that a ureter had been cut. The woman underwent surgery to repair the ureter.

In suing, the woman asserted the physician was negligent in failing to protect the ureter from injury during the

laparotomy. She claimed she had back pain, chronic depression, loss of bladder control, and disfigurement as a result of the injury.

The physician contended the ureter was injured during clamping of deep pelvic blood vessels to control bleeding and that the ureter had been visualized as intact prior to closure. The physician also claimed negligence on the part of the woman, for failing to return for a follow-up examination when recommended, leading to the growth of the mass, which complicated the surgery.

- The jury returned a defense verdict.

## How was cervical cancer missed?

### Suffolk County (NY) Supreme Court

A woman in her early 50s had irregular vaginal bleeding attributed to fibroids. A hysterectomy was recommended on 2 different occasions a year apart, but the woman declined the procedure each time. The following year she was admitted to a hospital with fever, vomiting, and abdominal pain.

Three days later an exploratory laparotomy revealed a complex mass extending from the bladder peritoneum to the cul-de-sac and involving the lower uterine segment. The anterior mass was removed but not the posterior mass, because the colon was also adhered to the posterior portion of the uterus. The posterior mass was drained. Biopsy results of the anterior mass were negative. After discharge, 2 subsequent Pap smears 3 months apart were negative, but 4 months later a gynecological consultant diagnosed stage IVa cervical cancer. The woman underwent chemotherapy and radiation, and had a colostomy.

In suing, the woman faulted the defendants for failing to discover the cancer during her hospitalization. The defense countered that the woman failed to agree to a hysterectomy when recommended on 2 separate occasions and that

the cancer was not discoverable during her hospitalization based on negative Pap smear results.

- The jury returned a defense verdict.

## Fetal demise leads to award

### Miami County (Ohio) Court of Common Pleas

Prenatal care for a 2nd pregnancy was uneventful until 35 weeks, when preterm labor began. The woman reported rhythmic cramping and increased vaginal pressure. Examination revealed she was dilated to 4 cm and the fetus was at the -1 station with 80% cervical effacement. She was sent home, but was later called and asked to return to the hospital for further examination, at which time she was admitted.

Preterm labor was confirmed and the fetal status was reassuring. She was given 2 doses of steroids during the hospitalization to increase lung maturity in case of early delivery. At discharge she was told to contact her physician's office in case of decreased fetal movement or fluid leakage.

Two days later she called the office because of decreased fetal movement. The medical assistant told the mother that this change was normal as the infant moved down the birth canal and that as long as there was any movement, she did not have to follow up. (Experts for both the defense and the plaintiff testified that this statement was incorrect.) Another 2 days later the woman called the office again to report fluid leakage. The same medical assistant told her to stay home and that these symptoms were normal.

The woman came into the office for a routine visit the next day. Although the chart notes indicated a decrease in movement and regular contractions, during the case the physician claimed the woman reported adequate fetal movement and the woman claimed she was not having contractions. The woman was sent home; 4 days later she called back to report no fetal movement.

Fetal demise was diagnosed. Upon

delivery, a nuchal cord was found.

In suing, the woman claimed that earlier intervention or continued monitoring would have resulted in a healthy infant.

- The jury awarded the plaintiff \$2.5 million.

## **Delivery linked to disability**

### **Suffolk County (Mass) Superior Court**

More than a week overdue, a woman was admitted for labor induction at 7 AM. At 12:30 PM the physician ruptured her membranes. By 4:45 PM labor had progressed slowly and the fetal heart rate tracing was intermittently abnormal. The physician placed the mother on her side and administered oxygen.

The next time a physician saw the woman was nearly 3 hours later, but that physician allegedly did not offer cesarean as an option. Another 2 hours later the physician made several attempts at vacuum extraction delivery, and the mother eventually pushed the fetus out on her own. The infant was depressed and had signs of bruising around her head. MRI and CT scans showed cerebral hemorrhage.

Now 9 years old, the child has severe learning disabilities and wears braces. She sometimes uses a walker because she is prone to falling down.

- The jury awarded the plaintiff \$23.8 million.

## **Brain damage follows group B strep infection**

### **Unknown Massachusetts venue**

A 31-year-old woman was admitted for delivery of her first child 26 hours after her water broke. A rapid test to determine the presence of group B strep was negative. During the next shift the woman had no signs of infection and the fetal heart rate remained normal.

Shortly after the infant was born that night, the woman developed a fever. A sec-

ond rapid test was positive for group B strep infection.

In the nursery the infant began having respiratory distress requiring resuscitation. The infant was eventually diagnosed with group B strep infection and was placed on a heart-lung machine. During the heart-lung treatment the infant had a cerebral hemorrhage, resulting in irreversible brain damage. Now 9 years old, the child has permanent neurological deficits and delayed cognitive development.

In suing, the mother asserted the defense failed to test for, recognize, and treat group B strep infection, claiming her prolonged rupture of membranes is one of the universally recognized risk factors for bacteria transmission. She contended her temperature was not taken within 4 hours before delivery. Moreover, she claimed the rapid tests for group B strep infection are inherently unreliable and that she should have been given prophylactic antibiotics when she passed 18 hours of labor.

- The case went to arbitration with the agreement that any award would be increased by 50%. The arbitrator ruled against 2 of the 3 physicians, awarding \$3.4 million to the minor, \$350,000 to the mother, and \$175,000 to the father, bringing the entire award to more than \$6 million. ■

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