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Could cerclage have saved this pregnancy? What did the jury conclude? Read this and more "Medical Verdicts" at [www.obgmanagement.com](http://www.obgmanagement.com)

## No mammogram despite family history

A 36-year-old woman with a family history of breast cancer, fibrocystic breast disease, and galactorrhea had been a patient of the defendant for 5 years. During this time, he had examined her regularly but did not recommend a mammogram. When she finally requested a mammogram, he ordered it. Cancer was indicated by the study, and she was diagnosed with stage IV breast cancer.

**Patient's claim** The defendant was negligent for not ordering mammograms sooner.

**Doctor's defense** A mammogram has no medical benefit for a 36-year-old, and he had acted properly.

**Verdict** A \$1.25 million New York settlement.

## Mother leaves bed, child has brain damage

An obstetric patient at an osteopathic hospital was treated mainly by resident physicians during her pregnancy. Because of mild preeclampsia, she presented for labor induction 1 to 2 weeks before her due date. Her labor was managed by a senior resident according to the protocol for an obstetric clinic patient, but the assigned attending physician never saw or examined her. During labor, variable fetal heart decelerations developed due to cord compression, and became more severe, but the fetus recovered when the mother was repositioned.

The fetal heart monitor was disconnected for 10 minutes to allow the mother to get out of bed to use the

bathroom. Following this, reinstatement of fetal monitoring demonstrated a non-reassuring fetal tracing, and the patient had an emergency cesarean section. The cesarean section took 14 minutes to perform. The child suffered severe brain damage. The long-term effects include profound mental retardation, spastic quadriplegia, cerebral palsy, and the need for tube feeding.

**Patient's claim** (1) She had a dysfunctional labor pattern because her cervix was not dilating. (2) The option of a cesarean section should have been presented to her. (3) While the monitor was disconnected, the fetus moved, causing cord compression and fetal distress. (4) She should have been catheterized instead of being allowed to leave her bed and go to the bathroom.

**Doctor's defense** (1) The patient showed normal labor progress. (2) The fetal monitor indicated good variability and repeated fetal heart rate accelerations, so it was proper to allow the patient to go to the bathroom. (3) A rare type of umbilical cord accident caused the brain damage.

**Verdict** \$15.4 million Michigan verdict against the hospital only.

## Can CVS identify Down syndrome in twins?

A 38-year-old woman was pregnant with twins. Because of her age, she was at a higher risk of giving birth to a Down syndrome baby. When her physicians recommended amniocentesis at 16 to 18 weeks' gestation to test for Down syndrome, she declined because she believed this was too late for her to

The cases in this column are selected by the editors of OBG MANAGEMENT from Medical Malpractice Verdicts, Settlements & Experts, with permission of the editor, Lewis Laska, Nashville, Tenn ([www.verdictslaska.com](http://www.verdictslaska.com)). The available information about the cases is sometimes incomplete; pertinent details may be unavailable. Moreover, the cases may or may not have merit. Still, these cases represent types of clinical situations that may result in litigation and are meant to illustrate variation in verdicts and awards.

have an abortion if the test was positive. When a blood screening test at 21 weeks' gestation indicated an increased risk of fetal Down syndrome, she again declined amniocentesis because she could not end the pregnancy at this late date. When the twins were born, both had Down syndrome.

**Patient's claim** The physicians were negligent for failing to inform her of chorionic villus sampling at 11 weeks' gestation, which could have identified Down syndrome. If she had known, she would have had the test done and then terminated her pregnancy when Down syndrome was found.

**Doctor's defense** Their care of the patient was reasonable and proper. The testing they offered was the standard of care. Also, chorionic villus sampling would not have identified Down syndrome. Even if the patient had been informed earlier in the pregnancy, she would not have had an abortion.

**Verdict** \$4 million Virginia verdict.

### **Did septum in uterus cause fetal loss?**

A woman in her 20s was pregnant for the fourth time. Her three previous pregnancies had miscarried—one in the early weeks of pregnancy, and two in the second trimester.

The physician group that was caring for her considered the possibility of an incompetent cervix and requested—but never received—her prior medical records. Because she went into labor and her membranes ruptured before her cervix dilated, her physicians concluded that the miscarriages were inconsistent with an incompetent cervix. She underwent regular ultrasonography during the fourth pregnancy, which progressed normally.

In week 20, she reported a vaginal discharge and was sent to the hospital, where nothing abnormal was found. She was discharged home that day, but

returned the following day with a dilated cervix and membranes protruding into the vagina. The fetus died in utero, and her physicians noted that she was a candidate for a cerclage in the future. During litigation, the release of the patient's subsequent medical records was ordered. She was found to have a septum inside her uterus, causing the uterus to be much smaller than normal.

**Patient's claim** A cerclage should have been performed, and the septum should have been found and treated. Even with the septum, she could carry a child to term.

**Doctor's defense** A cerclage was not a risk-free procedure, and there were no clear signs of an incompetent cervix. The septum made the uterus too small for a pregnancy to be carried to term. Also the septum could not be diagnosed while the woman was still pregnant.

**Verdict** Michigan defense verdict.

### **Hysterectomy, then hematuria, then stroke**

Following an abdominal hysterectomy, the urine of a 53-year-old patient was found to be bloody, and then she suffered a stroke. After tests were performed, a laceration of the bladder's dome and posterior wall was repaired in follow-up surgery.

**Patient's claim** The laceration occurred during the hysterectomy. She suffered a stroke as a result of blood loss from that injury. She has residual impairment of attention, memory, and vision. There was negligence in performing the surgery and for failing to diagnose and treat the laceration in a timely manner.

**Doctor's defense** The laceration happened during the repair surgery—or else a small laceration was made larger by the postoperative diagnostic imaging studies. Also, bleeding, lacerations, and punctures are known risks of abdominal hysterectomy.

**Verdict** \$400,000 New York settlement with the surgeon. The claims against the assisting physician and the hospital were discontinued. ■