

## \$28 million award against government for failure to test

A WOMAN delivered her first child a month early, due to fetal distress, at Balboa Naval Medical Center, where he was determined to have brain damage and given a diagnosis of cerebral palsy. She was told that his problems were due to premature separation of the placenta. When discussing the risks of a second pregnancy with physicians at Bethesda Medical Center 2.5 years later, she told them she had lupus, migraine, and supraventricular tachycardia, which caused palpitations—and that she was taking a  $\beta$ -blocker and another medication. These physicians told her that the risk of brain hemorrhage—which had caused her child's injuries—could be reduced with regular ultrasonography (US) growth studies and tests to track fetal movement and heart rate. When the physicians asked her the results of such studies—routine in a woman with her history—during her pregnancy, she said there had been no such studies. She later learned that a specialist had been consulted during that pregnancy, and that testing had been recommended. This was never discussed with her, nor the testing performed. The child, now age 9, has an IQ of 48 and functions at the level of a 3-year-old.

▶ **PATIENT'S CLAIM** Intrauterine growth restriction occurred during her pregnancy because of the  $\beta$ -blocker she was taking. Additional monitoring should have been conducted when this was recognized.

▶ **PHYSICIAN'S DEFENSE** Not reported.

▶ **VERDICT** \$28 million award in Virginia, resulting from a claim brought under the Federal Torts Claim Act.

## Patient says lymph node sampling was unnecessary

A 53-YEAR-OLD WOMAN went to Dr. A, her ObGyn, complaining of heavy discharge since menopause. A workup indicated an enlarged uterus with well-differentiated adenocarcinoma. Dr. A consulted with gynecologic oncologist Dr. B, and they decided on a two-phase surgical plan. Dr. A was the primary surgeon in the first phase, which involved a hysterectomy with removal of the fallopian tubes and ovaries. Surgical specimens showed that the uterine cancer was noninvasive. In the second phase, Dr. B removed the pelvic, periaortic, and renal lymph nodes. Frozen section analysis of the specimens indicated no invasive or metastatic disease. The permanent section, available 48 hours after surgery, revealed moderately differentiated adenocarcinoma with a 2-cm tumor mass, but no evidence of metastatic disease. The patient reported to the emergency room with abdominal pain 9 days after the surgery. A ureteral injury was found. A ureteral stent was placed, and stricture developed, requiring further procedures.

▶ **PATIENT'S CLAIM** A hemoclip placed on the ureter during the periaortic lymph node dissection caused injury to the ureter. This phase of the surgery was unnecessary and inappropriate because preoperative evidence and specimen analysis indicated that the cancer was noninvasive—so there was no need for lymph node sampling.

▶ **PHYSICIAN'S DEFENSE** Dr. A said he was entitled to rely on Dr. B's recommendations for the treatment, as Dr. B was an expert in the field. Dr. B indicated that results from frozen samples can be unreliable, and that the

risk of injury to the ureter was low.

▶ **VERDICT** California defense verdict.

## Lump is cancer—not sebaceous cyst as diagnosed

A WOMAN had a growing breast lump that was diagnosed as a sebaceous cyst by her gynecologist. She was advised to have it drained if it became painful, but was given no formal referral. Eleven months later, the patient was given a diagnosis of stage IV cancer.

▶ **PATIENT'S CLAIM** A biopsy should have been performed when she first presented with the lump. Following the cancer diagnosis, the gynecologist altered the medical records when he added a note. Because of the note, the jury might believe that he had referred the patient to the diagnosing physician at that initial visit.

▶ **PHYSICIAN'S DEFENSE** The patient did not have regular mammograms or US and, instead of following traditional protocols, underwent alternative treatment. When he learned of the cancer diagnosis, he added a note in the chart and said he had spoken with the diagnosing physician. The note was circled and in a different pen, and it did not alter information in the chart.

▶ **VERDICT** \$3.9 million Pennsylvania verdict, which was reduced to \$2.5 million because the patient was found to be 35% at fault. ☹

*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 (www.verdictslaska.com). The available information about the cases presented here is sometimes incomplete; pertinent details of a given situation therefore may be unavailable. 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.*