



Had *C difficile* cleared before chemotherapy?

THE DIAGNOSIS WAS BREAST CANCER for a 54-year-old woman. In May 2006, a surgeon performed a mastectomy and prescribed postoperative antibiotics.

In July, the patient became ill and was treated for *Clostridium difficile* infection. She began a course of chemotherapy in August, after telling her oncologist about the earlier infection. The patient later developed acute colitis and underwent emergency colectomy. She has a permanent ileostomy, has had 14 additional operations, and continues to suffer complications of severe colitis.

▶ **PATIENT'S CLAIM** The surgeon was at fault for prescribing antibiotics after mastectomy. The oncologist was negligent in failing to test for *C difficile* before starting chemotherapy. The antibiotics caused *C difficile* infection. Because her immune system was compromised by chemotherapy, *C difficile* caused colitis.

▶ **PHYSICIANS' DEFENSE** The surgeon's defense was not reported. The oncologist claimed he was not negligent; he questioned whether the patient had *C difficile* infection at all.

▶ **VERDICT** The surgeon settled for an undisclosed amount before trial. A \$4.5 million Oklahoma verdict was returned against the oncologist.

Uterine rupture and placental abruption found at C-section

A WOMAN WAS IN ACTIVE LABOR at 41 weeks' gestation when admitted to the hospital. After 9 hours of labor, cesarean delivery was performed because the fetal heart-rate tracing showed tachycardia, with potential fetal distress.

At delivery, it was discovered that the uterus had ruptured and the placenta had abrupted. The child was asphyxic and bradycardic at birth. She suffered brain damage that resulted in severe cognitive deficits and cerebral palsy. At 5 years, she is unable to speak, walk, sit up, or feed herself.

▶ **PATIENT'S CLAIM** Although the fetal heart-rate tracing showed fetal distress, several hours passed before cesarean delivery was performed.

Oxytocin should not have been administered during labor because the drug is contraindicated in the presence of an abnormal fetal heart rate.

▶ **DEFENDANTS' DEFENSE** Hospital physicians and staff reacted properly and in a timely manner when the heart-rate tracing showed fetal distress. Uterine rupture and placental abruption could not have been foreseen.

▶ **VERDICT** A \$5.8 million Texas settlement was reached.

Fibrocystic mass becomes cancerous

A WOMAN UNDERWENT regular annual breast exams because of fibrocystic breast disease. Her primary care physician noted a breast mass in 1997, and continued to follow the mass. A biopsy in 1999 revealed fibrosis. In January 2002, breast cancer was diagnosed in the same mass, and

the woman underwent mastectomy.

▶ **PATIENT'S CLAIM** The physician was negligent in failing to diagnose breast cancer earlier. She had classic signs of cancer, including a persistent mass with changing symptoms.

▶ **PHYSICIAN'S DEFENSE** The mass had been closely monitored, so that when changes were noted in December 2001, a referral was made and cancer diagnosed.

▶ **VERDICT** A Louisiana defense verdict was returned.

Was mother's labor monitored properly?

DURING DELIVERY, a woman experienced vaginal bleeding without pain or contractions. The nurses did not consider the bleeding excessive and did not detect any urgency to her labor until several hours later. The baby did not survive, and it was determined the mother suffered from vasa previa. She had been given a diagnosis of placenta previa at 15 weeks, but a sonogram at 20 weeks showed resolution.

▶ **PATIENT'S CLAIM** The mother's condition should have been monitored more closely. Vaginal bleeding during labor and delivery should have been responded to more urgently, given the history of placenta previa.

▶ **DEFENDANTS' DEFENSE** The hospital and the nurses claimed that the woman was properly treated.

▶ **VERDICT** An Alabama defense verdict was returned.

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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PHOTO: HEMERA/THINKSTOCK

Heart attack and death after epidural

AT AGE 34, A WOMAN WENT to the hospital for cesarean delivery of her third child. Within minutes of receiving epidural anesthesia, she became agitated and complained of difficulty breathing. She went into cardiopulmonary arrest, and resuscitation efforts were unsuccessful. The child survived.

▶ **ESTATE'S CLAIM** A total spinal block occurred; the anesthesiologist failed to recognize and treat it in a timely manner.

▶ **PHYSICIAN'S DEFENSE** Medications were properly administered; a total spinal block had not occurred. The patient had a history of Hodgkin's lymphoma with chemotherapy, and radiation treatment of the chest. Autopsy indicated the cause of death was Castleman's disease, a rare lymphoproliferative disease, which had not been diagnosed during her life.

▶ **VERDICT** A \$800,000 Virginia verdict was returned.

Retained sponge causes obstruction

AFTER CESAREAN DELIVERY, the nurses reported a complete sponge count. Immediately after surgery, the mother reported lower-left quadrant pain that resolved, then recurred. Several complaints to her ObGyn were dismissed. After 2.5 months, the ObGyn referred the patient to her primary care physician. An abdominal CT scan revealed a retained surgical sponge, with bowel perforation. The ObGyn attempted surgery, but the sponge was partially adhered to bowel. Colorectal surgeons had to resect two sections of small intestine to remove the infected

sponge and abscess. She continues to have medical problems and has been hospitalized for an obstruction.

▶ **PATIENT'S CLAIM** The nurses were negligent in failing to correctly count the sponges. The ObGyn was negligent for leaving the sponge in the patient's abdomen, and for not responding to her complaints by determining the cause of her pain.

▶ **DEFENDANTS' DEFENSE** The nurses admitted liability but contended that the ObGyn was also at fault under the captain-of-the-ship doctrine. The ObGyn denied negligence, arguing that it was the nurses' responsibility to count the sponges and that he acted properly by referring the patient to her primary care physician.

▶ **VERDICT** The Pennsylvania jury found the hospital and nurses negligent and awarded a \$525,000 verdict. A defense verdict was returned for the ObGyn.

Hypoxic ischemic encephalopathy

A WOMAN WENT TO THE HOSPITAL in labor. Her ObGyn was consulted by telephone at 10:20 PM. At 5:40 AM, a positive scalp stimulation test indicated the fetus was healthy. The nurse called the ObGyn, who was en route to the hospital. At 6:04 AM, the fetal heart rate dropped to 60 bpm. The nurse again contacted the ObGyn, and then called in a midwife, who took no effective action to complete delivery.

At 6:16 AM, the covering physician was summoned, but the ObGyn arrived and took charge. When he saw that the fetal heart rate was still 60 bpm, he performed a central episiotomy and delivered the infant at 6:23 AM using vacuum extraction. The infant suffered perinatal

depression with hypoxic ischemic encephalopathy and brain damage.

▶ **PATIENT'S CLAIM** The injuries were caused by continued low fetal heart rate. The hospital nurse, midwife, and covering physician were negligent in not reacting to the low fetal heart rate by performing emergency cesarean delivery. The ObGyn was negligent for not coming to the hospital earlier.

▶ **DEFENDANTS' DEFENSE** The hospital staff acted properly. The ObGyn was in touch with the hospital staff and came when labor became active. When he saw that the fetal heart rate was low, he saved the child's life.

▶ **VERDICT** A \$7 million settlement was reached with the hospital; a defense verdict was returned for the ObGyn.

Incontinence or ovarian cancer?

A WOMAN IN HER 50s saw a urologist in November 2004 because of urinary incontinence. The urologist prescribed medication. During the next 2 years, there were additional examinations and treatment, but incontinence continued. In January 2007, a diagnosis of ovarian cancer was made. She died after the suit was filed.

▶ **ESTATE'S CLAIM** Ovarian cancer should have been diagnosed in November 2004. The cancer could have been treated, and the patient would have survived. Incontinence is a symptom of that type of ovarian cancer.

▶ **PHYSICIAN'S DEFENSE** The tests in November 2004 indicated that the decedent's incontinence was from muscle weakness. Cancer did not develop until late 2006.

▶ **VERDICT** A New York defense verdict was returned. ☺