



## Undiluted acid used for vulvar surgery

**WIDE LOCAL EXCISION** was performed on a 42-year-old woman with vulvar intraepithelial neoplasm, VIN II, with moderate dysplasia. Her ObGyn performed the surgery.

Instead of applying a diluted solution of acetic acid wash to delineate the borders of the dysplastic area, a highly concentrated acetic acid or trichloroacetic acid was used. The patient suffered severe chemical burns of the vulva that took several months to heal. She has permanent scarring of the vulvar area, severe tenderness, discoloration, and atrophy of the vaginal opening, with a band of thick scar tissue at the posterior fourchette. The perineum, extending to the anal area, is scarred, including a 2-mm plaque layer.

▶**PATIENT'S CLAIM** Sexual intercourse is extremely painful, and therefore impossible. She suffers discomfort at all times. Additional surgery has been recommended to alleviate her condition.

▶**DEFENDANTS' DEFENSE** The case was settled before trial.

▶**VERDICT** A \$600,000 Ohio settlement was reached.

## Large baby with cervical spine injury

**A WOMAN WAS IN LABOR** with her third child. Her first baby was born by cesarean delivery. During the vaginal birth of her second child, shoulder dystocia was encountered; this child weighed 8 lb 4 oz at birth.

Using ultrasonography, the ObGyn determined vaginal birth was appropriate. Shoulder dystocia was encountered and the infant suffered injuries to the cervical spine and right arm. The newborn weighed 9 lb 13 oz.

▶**PATIENT'S CLAIM** The baby's weight was grossly underestimated prior to delivery; ultrasonography was not properly performed or evaluated. The mother's history, large fundal height, estimated fetal weight, and the mother's request for a cesarean delivery should have resulted in the performance of a cesarean delivery.

▶**PHYSICIAN'S DEFENSE** Shoulder dystocia was not reasonably foreseeable. Injuries to the baby were due to the forces of labor.

▶**VERDICT** A confidential Texas settlement was reached.

## Suture causes nerve damage

**PELVIC PROLAPSE RECONSTRUCTION** was performed; surgery included a pubovaginal sling procedure with graft, and repairs of Grade 2 cystocele and Grade 3 rectocele. The gynecologist used transvaginal sutures to attach the mesh to the sacrospinous ligament.

The patient immediately reported pain, tingling, and weakness in her buttocks and legs. The gynecologist diagnosed a hematoma and continued conservative treatment while waiting for the hematoma to resorb.

After 10 days, the patient terminated the gynecologist's services and left the hospital. She saw a neurologist,

who diagnosed proximal sciatic nerve irritation secondary to suturing. When a suture was removed from the sacral spinous ligament plexus, many of the patient's neurologic symptoms immediately resolved. She still has pain and walks with a noticeable limp using a cane.

▶**PATIENT'S CLAIM** The gynecologist failed to determine that a suture was causing nerve damage. Removal of the suture within the first 3 days would have avoided neurologic injury.

▶**PHYSICIAN'S DEFENSE** Postsurgical care was proper. A neurologist was consulted, and a sonogram had ruled out deep vein thrombosis.

▶**VERDICT** A \$1.58 million Illinois verdict was returned.

## Colon damage after embolization

**UTERINE FIBROID EMBOLIZATION** was performed on a 51-year-old woman. The next day, she reported severe abdominal pain and was readmitted. A uterine infection was suspected, and she underwent a hysterectomy. Necrosis of the colon was found; a surgeon removed one-third of the colon and performed a colostomy. She underwent several operations, including rectal-vaginal fistula repair, before the colostomy was corrected.

▶**PATIENT'S CLAIM** Misdirected embolization injured an artery supplying the colon. She continues to suffer ongoing fecal urgency and frequency.

▶**PHYSICIAN'S DEFENSE** An anomalous connection between the patient's uterine artery and mesenteric artery was impossible for the physician to have known prior to the embolization procedure.

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



## \$1.18 M verdict set aside because of Facebook postings

**SEVERAL HOURS AFTER A WOMAN'S LABOR BEGAN,** fetal bradycardia developed precipitously. The on-call ObGyn arrived after 10 minutes and ordered an immediate cesarean delivery, which occurred 22 minutes later. The child suffered a catastrophic, irreversible brain injury. He lived for 39 days before life support was removed and he died.

► **ESTATE'S CLAIM** The nurses did not report decelerations to the ObGyn, and they were slow to notify him of the fetal bradycardia. The child would not have been injured if the nursing staff had reacted appropriately.

► **DEFENDANTS' DEFENSE** Isolated heart-rate decelerations during labor are not troubling. A cord accident occurred, which could not be predicted nor avoided. The ObGyn was called promptly; the emergency cesarean delivery was performed quickly. However, the injury already had occurred and was irreparable.

► **VERDICT** A \$1.18 million Kentucky verdict was returned. The hospital sought a mistrial because Facebook postings by a juror proved the case had been discussed and prejudged. The court found in favor of the hospital on its post-trial motion.

claimed lack of informed consent concerning the risk of stillbirth in the presence of intrauterine growth restriction.

► **PHYSICIANS' DEFENSE** The mother's smoking was mentioned at trial as a possible explanation of why fetal development was delayed. The ObGyn denied negligence.

► **VERDICT** A \$800,000 Maryland verdict was awarded to the parents.

## Three BrCa patients share \$72.6 M

**THREE MENOPAUSAL WOMEN** took Premarin (conjugated estrogens) plus Provera (medroxyprogesterone), and/or Prempro (conjugated estrogens/medroxyprogesterone acetate). Each discontinued hormone therapy after being diagnosed with hormone-positive breast cancer.

► **PATIENTS' CLAIM** The only source of hormonal stimulation for their cancer was the use of estrogen plus progestin.

► **DEFENDANTS' DEFENSE** Science is currently unable to determine precisely what causes breast cancer. Each plaintiff had risk factors.

► **VERDICT** The three cases were consolidated to a reverse-bifurcated trial, with causation and damages assessed first. The Pennsylvania jury found the Wyeth Pharmaceutical products to be factual causes of the patients' cancer, and awarded a total of \$72.6 million in compensatory damages. The parties settled for confidential amounts before the liability phase began. 📌

*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.*

## Bilateral mastectomy: nipples not spared

**A 46-YEAR-OLD WOMAN UNDERWENT** prophylactic bilateral mastectomy. A plastic surgeon drew presurgical markings on the day of surgery; the breast surgeon removed the nipples.

► **PATIENT'S CLAIM** All parties had agreed the nipples would be spared. The plastic surgeon drew improper markings and failed to remind the breast surgeon prior to surgery that the nipples would be preserved.

► **PHYSICIAN'S DEFENSE** The breast surgeon was at fault for misinterpreting the markings.

► **VERDICT** The patient reached a pre-trial settlement with the breast surgeon. The case proceeded against the plastic surgeon. A Maryland defense verdict was returned for the plastic surgeon.

## Signs of intrauterine growth restriction; stillborn child

**AT 24 WEEKS' GESTATION,** a 17-year-old woman who smoked reported spotting. An ultrasound demonstrated significant fetal growth restriction. The mother was hospitalized to assess the spotting; no testing was ordered to assess fetal growth. When blood was not found in the birth canal, she was discharged. During the next month, she saw the ObGyn three times; testing indicated that the fetus was at least 3 weeks behind the stage of pregnancy. The ObGyn did not order additional testing nor consult a specialist. At 31 weeks' gestation, ultrasonography found no fetal heart tones. The stillborn was delivered by cesarean section.

► **ESTATE'S CLAIM** A wrongful death suit was filed by the parents, who also