



Faulty equipment blamed for improper diagnosis: \$78M

AT 36 WEEKS' GESTATION, a woman went to the emergency department (ED) with abdominal pain. After ultrasonography (US), a nurse told her the fetus had died in utero, but the mother continued to feel fetal movement. The ED physician requested a second US, but it took 75 minutes for a radiology technician to arrive. This US showed a beating fetal heart with placental abruption. After cesarean delivery, the child was found to have cerebral palsy.

▶ **PATIENT'S CLAIM** The first US was performed by an inexperienced technician using outdated equipment and the wrong transducer. An experienced technician with newer equipment should have been immediately available. The ED physician did not react when fetal distress was first identified.

▶ **DEFENDANTS' DEFENSE** The ED physician was told that the baby had died. Perhaps the child's heart had started again by the time the second US was performed and a heartbeat found. The hospital denied negligence.

▶ **VERDICT** A Pennsylvania jury found the ED physician not negligent; the hospital was 100% at fault. A \$78.5 million verdict included \$1.5 million in emotional distress to the mother, \$10 million in pain and suffering for the child, \$2 million in lost future earnings, and the rest in future medical expenses.

Ligated ureter found after hysterectomy

A 50-YEAR-OLD WOMAN underwent laparoscopically assisted vaginal hysterectomy. She went to the ED with pain 6 days later. Imaging studies indicated a ligated ureter; a nephrostomy tube was placed. She required a nephrostomy bag for 4 months and underwent two repair operations.

▶ **PATIENT'S CLAIM** The patient's ureter was ligated and/or constricted during surgery. The gynecologist was negligent in failing to recognize and repair the injury during surgery.

▶ **PHYSICIAN'S DEFENSE** The ureter was not ligated during surgery; therefore it could not have been discovered. In addition, injury to a ureter is a known risk of the procedure.

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

Myomectomy after cesarean; mother dies

IMMEDIATELY AFTER A WOMAN with preeclampsia had a cesarean delivery, she underwent a myomectomy. The day before discharge, her abdominal incision opened and a clear liquid drained. The day after discharge, she went to the ED with intense abdominal pain. Necrotizing fasciitis was found and debridement surgery performed. She was transferred to another hospital but died of sepsis several days later.

▶ **ESTATE'S CLAIM** The infection occurred because the myomectomy was performed immediately following cesarean delivery. Prophylactic antibiotics were not prescribed before surgery. The mother was not fully informed as to the risks of concurrent operations. The ObGyns

failed to recognize the infection before discharging the patient.

▶ **PHYSICIANS' DEFENSE** The patient was fully informed of the risks of surgery; it was reasonable to perform myomectomy immediately following cesarean delivery. There were no signs or symptoms of infection before discharge. Cesarean incisions open about 30% of the time—not a cause for concern. Prophylactic antibiotics for cesarean procedures are not standard of care. The patient's infection was caused by a rapidly spreading, rare bacterium.

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

TOLAC to cesarean: baby has cerebral palsy

A WOMAN WANTED A TRIAL OF LABOR after a previous cesarean delivery (TOLAC). During labor, fetal distress was noted, and a cesarean delivery was performed. Uterine rupture had occurred. The baby has spastic cerebral palsy with significantly impaired neuromotor and cognitive abilities.

▶ **PARENTS' CLAIM** The hospital staff and physicians overlooked earlier fetal distress. A timelier delivery would have prevented the child's injuries.

▶ **DEFENDANTS' DEFENSE** The hospital reached a confidential settlement. The ObGyns claimed fetal tracings were not suggestive of uterine rupture; they met the standard of care.

▶ **VERDICT** A Texas 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.



Problems escalate after amniocentesis

WHEN GESTATIONAL DIABETES WAS DIAGNOSED at 33 weeks' gestation, a family practitioner (FP) referred the mother to an ObGyn practice. Two ObGyns performed amniocentesis to check fetal lung maturity. After the procedure, fetal distress was noted, and the ObGyns instructed the FP to induce labor.

The baby suffered brain damage, had seizures, and has cerebral palsy. She was born without kidney function. By age 10, she had 2 kidney transplant operations and functions at a pre-kindergarten level.

► **PATIENT'S CLAIM** The mother was not fully informed of the risks of and alternatives to amniocentesis. Although complications arose before amniocentesis, the test proceeded. The ObGyns were negligent in not performing cesarean delivery when fetal distress was detected.

► **DEFENDANTS' DEFENSE** The FP and hospital settled prior to trial. The ObGyns claimed that their care was an appropriate alternative to the actions the patient claimed should have been taken.

► **VERDICT** Costs for the child's care had reached \$1.4 million before trial. A \$9 million Virginia verdict was returned that included \$7 million for the child and \$2 million for the mother, but the settlement was reduced by the state cap.

infection, prescribed antibiotics and pain medication, and sent her home.

A few hours later, she returned to the ED by ambulance suffering from eclamptic seizures. Her BP was 174/121 mm Hg, and no fetal heart tones were heard. She delivered a stillborn child by cesarean delivery.

► **PATIENT'S CLAIM** The ED physicians were negligent in failing to diagnose preeclampsia at the first two visits.

► **PHYSICIANS' DEFENSE** The first ED physician settled for \$45,000 while serving a prison sentence after conviction on two sex-abuse felonies related to his treatment of female patients at the same ED. The second ED physician denied negligence.

► **VERDICT** A \$50,000 Alabama verdict was returned for compensatory damages for the mother and \$600,000 punitive damages for the stillborn child.

Did HT cause breast cancer?

A 52-YEAR-OLD WOMAN was prescribed conjugated estrogens/medroxyprogesterone acetate (Prempro, Wyeth, Inc.) for hormone therapy by her gynecologist.

After taking the drug for 5 years, the patient developed invasive breast cancer. She underwent a lumpectomy, chemotherapy, and three reconstructive surgeries.

► **PATIENT'S CLAIM** The manufacturer failed to warn of a woman's risk of developing breast cancer while taking the product.

► **DEFENDANT'S DEFENSE** Prempro alone does not cause cancer. The drug is just one of many contributing factors that may or may not increase the risk of developing breast cancer.

► **VERDICT** A \$3.75 million Connecticut verdict was returned for the patient plus \$250,000 to her husband for loss of consortium.

Failure to diagnose preeclampsia—twice

AT 28 WEEKS' GESTATION, a woman with a history of hypertension went to an ED with headache, nausea, vomiting, cramping, and ringing in her ears. After waiting 4 hours before being seen, her BP was 150/108 mm Hg and normal fetal heart tones were heard. The ED physician diagnosed otitis media and discharged her.

Later that evening, the patient returned to the ED with similar symptoms. A urine specimen showed significant proteinuria and the fetal heart rate was 158 bpm. A second ED physician diagnosed a urinary tract

Inflated Foley catheter injures mother

DURING A LONG AND DIFFICULT LABOR, an ObGyn used forceps to complete delivery of a 31-year-old woman's first child. The baby was healthy, but the mother has suffered urinary incontinence since delivery. Despite several repair operations, the condition remains.

► **PATIENT'S CLAIM** The ObGyn was negligent in failing to remove a fully inflated Foley catheter before beginning delivery, leading to a urethral sphincter injury.

► **PHYSICIAN'S DEFENSE** The decision regarding removal of the catheter was a matter of hospital policy. The ObGyn blamed improper catheter placement on the nurses.

► **VERDICT** A Kentucky defense verdict was returned. ☹

PHOTO: SHUTTERSTOCK