



## Failure to diagnose preeclampsia

**A MOTHER CALLED HER OBGYN** at 34 weeks' gestation with complaints of a headache, swelling, and weight gain. The ObGyn prescribed Tylenol. The next morning, the mother was found unconscious on her kitchen floor. She was taken to the emergency department (ED), where she underwent a cesarean delivery and brain surgery. The child, born prematurely, suffered a stroke that resulted in brain damage and cerebral palsy (CP).

▶**PARENTS' CLAIM** The ObGyn should have immediately evaluated the mother when she called with a headache. Failure to recognize eclampsia led to severe hypertension.

▶**PHYSICIAN'S DEFENSE** When the mother called the ObGyn, she reported a headache and diarrhea, and asked if it was all right to take Tylenol. The ObGyn claimed she asked the mother several questions and the mother's answers included that the headache was not severe and that she'd had it for a few hours. The mother denied blurred vision, abdominal or uterine pain, and reported that she was not vomiting. The ObGyn believed that the mother had a virus and recommended Tylenol. The fetus' stroke had occurred the day prior to the mother's eclamptic episode.

▶**VERDICT** At first, a Pennsylvania defense verdict was returned. After an appeal, the second trial resulted in a \$3.75 million verdict.

was evident. The team arrived and began resuscitation 5 minutes after birth. The delay allowed for a lack of oxygen, which caused brain damage.

▶**DEFENDANTS' DEFENSE** A placental infection caused the baby's distress.

▶**VERDICT** A \$8,583,000 Ohio verdict was returned against the hospital.

## Woman not told cancer had spread to nodes

**A 56-YEAR-OLD WOMAN** underwent right breast mastectomy. The surgeon did not remove any lymph nodes despite radiologic evidence of possible nodal involvement. After the mastectomy, the surgeon advised the patient to see an oncologist.

The patient could not get an appointment with the oncologist for 6 months. During that visit, the oncologist told her that cancer had invaded lymph nodes that had not been removed. The cancer metastasized to a lung. Despite surgery, she was told that recurrence was inevitable.

▶**PATIENT'S CLAIM** Metastasis could have been avoided if the lymph nodes had been removed at mastectomy. The surgeon had not told her about lymph node involvement, which contributed to the delay in seeing the oncologist.

▶**PHYSICIAN'S DEFENSE** Removal of the lymph nodes was not necessary—immediate chemotherapy could have effectively addressed the cancer. The patient was told of the lymph node involvement and clearly advised that prompt chemotherapy was necessary.

▶**VERDICT** A \$500,000 New York verdict was returned for past pain and suffering. Defense posttrial motions were denied. The judge granted the patient's motion for future pain and suffering and awarded \$500,000.

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## Spontaneous home birth goes badly awry

**A WOMAN SPONTANEOUSLY DELIVERED** her fourth baby at home. An ambulance transported the mother and child to the ED. Upon arrival, the child had depressed breathing. The pediatrician ordered a chest x-ray, which indicated a collapsed lung. A chest tube was inserted. The infant was monitored for the next 2 hours, when transfer to another hospital was arranged because her condition worsened. She sustained brain damage from the respiratory problems and died 2 days after birth.

▶**PARENTS' CLAIM** The pediatrician failed to establish an airway and place a central line.

▶**PHYSICIAN'S DEFENSE** The newborn's breathing difficulties were due to aspiration of meconium. The fetus suffered an in-utero hypoxic event due to a small placenta.

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

## NICU team not called early enough

**AN INFANT'S HEART RATE** was 100 bpm at birth. She was blue and not breathing, and suffered seizures in the first 24 hours of life. She was found to have brain damage, CP, and spastic quadriplegia. She requires a feeding tube and is unable to speak or walk.

▶**PARENTS' CLAIM** The nurse should have called the NICU team before the baby's birth because fetal distress



## Brachial plexus injury after emergency surgery

**A WOMAN WENT TO THE HOSPITAL FOR THE BIRTH** of her eighth child. She had received no prenatal care, although she had a history of preeclampsia. Upon arrival at the ED, she had decreased blood pressure. Two on-call ObGyns delivered the baby. Shoulder dystocia was encountered, and after several unsuccessful attempts were made to dislodge the shoulder, a rescue cesarean delivery was performed. The child has a brachial plexus injury.

- ▶ **PARENTS' CLAIM** The ObGyns failed to perform a cesarean delivery in a timely manner, and used excessive force in attempting to free the baby's shoulder.
- ▶ **PHYSICIAN'S DEFENSE** All appropriate measures were taken in an effort to facilitate a prompt and injury-free delivery.
- ▶ **VERDICT** A \$1,250,000 Ohio verdict was returned.

### DID YOU READ

Dr. Barbieri's *Editorial* on brachial plexus injury on page 8?

## Failure to detect fetal growth restriction

**A CHILD WAS DELIVERED BY AN OBGYN** and a neonatologist. The child has CP with developmental delays and spastic quadriplegia. She requires constant care.

- ▶ **PARENTS' CLAIM** The child's CP was caused by an hypoxic event that occurred 3 hours before delivery. The fetus was extremely small, which increased the susceptibility to hypoxic events. The ObGyn was negligent in failing to diagnose fetal growth restriction caused by placental insufficiency. The fetal monitor showed an abnormal heart rate during that 3-hour span. Fetal distress should have prompted action by the ObGyn; a cesarean delivery could have avoided the injury.
- ▶ **DEFENDANTS' DEFENSE** Prenatal tests,

including ultrasonography, indicated that the fetus had grown appropriately. Fetal heart-rate monitors did not reveal problematic heart function. The child's CP was due to chronic hypoxia that could not have been detected or prevented.

- ▶ **VERDICT** A \$6.5 million New York settlement was reached.

## Emergency cesarean after fetal distress

**AFTER A NORMAL PREGNANCY,** an emergency cesarean delivery was performed when the fetal monitor indicated fetal distress. The child suffered hypoxic ischemic encephalopathy resulting in permanent neurologic deficits.

- ▶ **PARENTS' CLAIM** The nurse failed to timely alert the physician of decelerations shown on the fetal heart-rate

monitor. A cesarean should have been performed earlier.

- ▶ **DEFENDANT'S DEFENSE** The cesarean was performed when fetal distress was evident.
- ▶ **VERDICT** A Massachusetts defense verdict was returned.

## Pelvic abscess after hysterectomy

**A WOMAN UNDERWENT** a total vaginal hysterectomy without prophylactic antibiotics. Six days after discharge, she went to the ED with fever, chills, abdominal pain, and diarrhea. She was given antibiotics and admitted after a CT scan and physical examination suggested an infection. At discharge 6 days later, antibiotics were not prescribed because she had been afebrile for over 48 hours. She continued to have abdominal distention, and returned to the hospital the next day with an ultrasound taken elsewhere that revealed a 9-cm pelvic abscess. She underwent bilateral salpingo-oophorectomy and was discharged after 4 days, this time with antibiotics. She continued to have diarrhea, severe abdominal pain, and weight loss for a year.

- ▶ **PATIENT'S CLAIM** Prophylactic antibiotics should have been prescribed prior to surgery, and continued when she left the hospital the first time.
- ▶ **DEFENDANTS' DEFENSE** The case was settled before trial.
- ▶ **VERDICT** A confidential Utah settlement was reached. ☺

*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.*