

## External sphincter muscle damage undetected during delivery

District of Columbia (DC) Superior Court

The physician performed an episiotomy on a 24-year-old gravida delivering her first baby. According to the medical record, a fourth-degree laceration occurred, but no damage to the anal sphincter muscle was noted.

At an examination 4 weeks later, the patient indicated that she was experiencing urgency during bowel movements; her doctor detected no anatomical problems.

Dissatisfied with her physicians, the woman went to another doctor, who noted “thinness” in her external anal sphincter. During surgery to repair the injury, it was discovered that scar tissue had grown around one third of the anal sphincter, preventing proper repair. She now suffers chronic bowel urgency and leakage.

In suing, the woman said the doctor was negligent for failing to find and properly repair the external sphincter defect at the time of the tear. The doctor maintained that the patient suffered an occult tear. Hospital staff had no recollection of the incident.

■ The jury awarded the plaintiff \$50 million.

## Was cancer missed on breast mass?

Bronx Jefferson County (Ala) Circuit Court

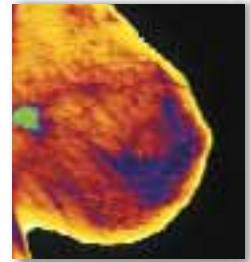
When a pregnant woman presented to her obstetrician for prenatal care, a 1- to 2-cm mass in her breast was detected. She was referred to a surgeon for further evaluation. The doctor diagnosed the mass as a cyst by observation only; he did not perform a fine-needle aspiration or other tests.

Two years later, a mammogram revealed a 3-cm lump, which was excised and found to be cancerous. The woman underwent a radical mastectomy, chemotherapy, and breast reconstruction.

In suing, the woman claimed that earlier diagnosis or monitoring of the mass could have prevented her subsequent treatment.

The doctor denied any negligence and argued the malignant mass was not the same as the one previously detected.

■ The jury returned a defense verdict.



Mammogram indicating cancer

## Fetal demise follows shoulder dystocia associated with macrosomia

Jefferson Parish (La) District Court

One week prior to delivery, a gravida underwent an ultrasound, which placed her infant's estimated fetal weight at 8 lb, 4 oz. During her pregnancy, the patient had gained over 50 lb.

In the second stage of labor, the patient pushed for more than 2 hours. The doctor used forceps from a +2 station to deliver the fetal head. Shoulder dystocia was encountered and a variety of maneuvers were used, including fundal pressure, thus delaying delivery. The baby ultimately died of asphyxia. The infant's birth weight was 11 lb, 5 oz.

In suing, the mother alleged that the doctor underestimated the baby's weight and panicked when she encountered the shoulder dystocia. Further, the physician allegedly asked 2 nurses untrained in dystocia delivery to pull on the baby's head with the forceps. CONTINUED

Expert defense witnesses contended that the baby died in utero before the head was delivered due to a short umbilical cord. The defendant maintained that when forceps were applied, the fetal monitor did not show the baby in distress.

■ The jury awarded the plaintiffs \$900,000. Due to Louisiana's Medical Malpractice Cap provisions, damages were reduced to \$500,000.

### **Fetus with gastroschisis delivered stillborn**

Du Page County (Ill) Circuit Court

**R**esults from a June 1998 ultrasound indicated that the fetus of a 20-year-old gravida had gastroschisis—a congenital condition in which a defect of the abdominal wall causes the intestines and certain organs to extrude outside the body while remaining connected internally.

From July to September, the woman's physicians did not order any additional ultrasounds. In late September, a follow-up ultrasound performed by another obstetrician revealed a low amniotic fluid index and a fetal birth weight in the 3-percentile range. This physician sent the woman's primary obstetricians a typed report, which arrived 2 days later.

After consulting with a perinatologist, the woman's doctors advised her to have an induction of labor. On arrival at the hospital, an ultrasound showed no heartbeat. After labor induction, the stillborn infant was delivered.

In suing, the mother alleged her 2 primary obstetricians failed to communicate properly regarding what tests should monitor fetal growth. Further, they failed to advise her on how much fetal activity to expect and how to respond to decreased movement. In addition, she argued that the doctors failed to order a stat ultrasound and did not appropriately follow up with the physician who performed the late-September ultrasound. She also maintained that the third obstetrician was obligated to telephone her primary Ob/Gyns

with the portentous findings. She contended that the fetus died as a result of cord compression and that delivery a few days prior would have saved the baby's life.

The lead obstetricians claimed the pregnancy appeared normal and the patient was advised of how to determine proper fetal activity. The third physician argued that ultrasound findings prior to fetal demise were within the normal range for a fetus with gastroschisis.

■ The jury returned a defense verdict.

### **Vaginal, not cervical, cancer found after hysterectomy**

Orange County (Calif) Superior Court

**A** 47-year-old woman presented to an Ob/Gyn with a Pap smear indicating cervical intraepithelial neoplasia (CIN) 2. The doctor performed a colposcopy of the cervix and an endocervical curettage, but did not find any abnormalities. The physician then performed a loop electrosurgical excision procedure (LEEP), which was also normal.

He later performed liquid-based cytology (Thin-Prep; Cytoc Corp; Boxborough, Mass), which showed the abnormality from the prior Pap had worsened to CIN 3. Another LEEP was performed, but neither abnormal cells nor dysplasia were revealed.

Believing the abnormalities must be higher in the endocervical canal, the doctor recommended a hysterectomy and oophorectomy. Postoperatively, it was determined that there was no evidence of cancer. Six months later, however, the woman was diagnosed with vaginal cancer.

In suing, the patient contended that the Ob/Gyn was negligent for focusing his cancer search only on her cervix, and not performing a colposcopy of her vagina. She argued that had he checked the vagina for abnormalities, the cancer would have been found and treated in its infancy and her life expectancy extended. She further maintained that the hysterectomy was unnecessary.

The doctor argued that the abnormal Pap offered no indication that colposcopic examination of the vagina was needed. He maintained that the hysterectomy and oophorectomy were reasonable under the circumstances. He added that even if the vaginal cancer had been diagnosed earlier, the treatment required and the patient's life expectancy would have been the same.

- The jury returned a defense verdict.

### **Late cervical cancer diagnosis leads to death**

Cook County (Ill) Circuit Court

**O**n 4 visits between August 1996 and February 1997, a woman complained to her gynecologist of vaginal bleeding. The woman's condition was diagnosed as cervicitis.

Despite a January 1997 Pap smear that was read as normal, the patient was diagnosed with cervical cancer in February 1997. In November 1999 she died as a result of her condition.

In suing, the patient's family claimed the woman's abnormal vaginal bleeding should have prompted a biopsy to rule out cervical cancer. The family also claimed the cytology lab and 2 cytotechnologists were negligent for allegedly misreading Pap smears conducted 1 and 3 years before the diagnosis.

The doctors argued that they were within the standard of care in relying on the patient's history of negative Pap smears, considering that she was at low risk for cervical cancer and that, given her history, cervicitis was more likely than cancer to cause her bleeding.

- The jury awarded the plaintiff \$5.25 million against the physicians, but the doctors settled for \$3 million while the jury was deliberating. In addition, the cytology lab settled for \$1.1 million. ■

*The cases presented here were compiled by Lewis L. Laska, editor of Medical Malpractice Verdicts, Settlements & Experts (www.verdictslaska.com). While there are instances when the available information is incomplete, these cases represent the types of clinical situations that typically result in litigation.*

## **Watch for UPDATE ON CERVICAL DISEASE**

**By Thomas C. Wright, Jr., MD**  
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### **Coming in March**

You, our readers, tell us you want to know **what developments are driving changes in clinical practice.**

In response, we developed **UPDATE.**

**Experts in Ob/Gyn and Women's Health** will review the decisive studies, the emerging clinical issues, and the new drugs, devices, and techniques that are changing patient care.

### **Watch for future UPDATES**

**April** Chronic pelvic pain

**May** Menopause

**June** Gynecologic infections

**July** Gynecologic cancers

**August** Contraception

**September** Technology

**October** Pelvic floor surgery

**November** Osteoporosis

**December** Urinary incontinence