

Woman without contraceptive becomes pregnant at residential facility

Los Angeles County (Calif) Superior Court

A mentally retarded woman was transferred to a 50-bed residential care facility where her boyfriend, also mentally retarded, lived.

Her mother was assured that her daughter would receive a contraceptive, starting on the day she was transferred to the facility. However, 6 months passed before she received her first contraceptive injection. It was later discovered that the woman became pregnant before the birth control was administered. The woman's child now suffers from severe neurologic disorders.

In suing, the woman claimed that the facility and its owner were not only negligent, but that these actions constituted dependent adult abuse.

The defendants maintained that they were not required to provide the woman with birth control, and that, due to her right to privacy, they had no right to intervene. They filed a cross-suit against the woman's physician.

■ The case settled for \$2 million. The cross-complaint was dismissed for a waiver of costs.

Did hydrocephalus stem from failure to follow protocol?

Los Angeles County (Calif) Superior Court

A woman presenting to a hospital at 36 4/7 weeks' gestation successfully delivered an infant son. The next day, however, the child developed respiratory distress. He was transferred to another hospital where he was diagnosed with group B streptococcus (GBS) meningitis. He was treated with intravenous antibiotics for 3 weeks and then discharged.

Nine days later, he was readmitted to the hospital with coarse breathing sounds, congestion, and fever. Magnetic resonance imaging results were read as normal; the attending doctor believed the symptoms were related to the resolving GBS infection.

Approximately 7 weeks later, during a routine examination, the child was noted as macrocephalic. Computed tomography confirmed a diagnosis of hydrocephalus.

In suing, the infant patient claimed his meningitis and hydrocephalus stemmed from improper treatment of the GBS. He argued that since his mother presented for delivery at less than 37 weeks' gestation, she should have received prophylactic intravenous antibiotics—as recommended by the American College of Obstetricians and Gynecologists (ACOG) in a protocol announced 3 months prior to his birth. The child, now 6 years old, has been assessed as borderline mentally retarded, which he claims is due to the events following his birth.

The doctor and staff maintained that the standard of care did not require intravenous antibiotics, as the ACOG recommendations were too recently announced to have become routine practice. They further argued that the hydrocephalus was congenital and not related to GBS, and thus antibiotics would not have altered the outcome.

■ The case settled for \$3 million.

Was doctor negligent in episiotomy repair?

Jackson County (Mo) Circuit Court

An episiotomy performed on a 28-year-old woman during delivery extended into a perineal laceration. Five days following the delivery, the repair broke, causing the woman

fecal and gas incontinence. She required follow-up surgery 7 months later to repair the damage.

The woman alleged the doctor was negligent in the repair, and that as a result of this negligence 2 subsequent pregnancies had to be delivered by cesarean.

The physician contended that her injury was a known risk of the procedure. In addition, he suggested the broken repair was caused by factors other than the quality of his repair at birth.

- The jury returned a defense verdict.

Erb's palsy, neurologic problems follow 'traumatic delivery'

Kings County (NY) Supreme Court

Following 3 days of irregular labor pains, a woman at 42 weeks' gestation underwent labor induction. Thirteen hours after initiating the induction, the doctor recorded that the patient was fully dilated.

The physician noted shoulder dystocia after the mother had been pushing for 3 hours. After numerous attempts to extricate the shoulder proved unsuccessful, various staff members applied suprapubic pressure while the physician attempted to deliver the infant.

Upon delivery, the child was limp and flaccid; exhibited no respiration or reflexes; had an abnormal heart rate; and suffered a fractured right humerus, swelling, bruising, and abrasions on his face and head. The medical note indicated "a prolonged labor and a traumatic delivery." The child now suffers from left Erb's palsy, as well as cognitive, language, and attention problems.

The plaintiffs alleged the doctor should have opted for a cesarean delivery, and contended that he administered too much oxytocin during induction and used excessive force at delivery. In addition, they argued that the hospital attempted to cover up the events of the delivery, noting that the final 4 hours of fetal heart rate tracings and the last 90

minutes of labor progress notes were missing from the hospital chart.

The defendants maintained that a trial of labor was appropriate, and that the brachial plexus injury stemmed from the dystocia, not excessive force. They also argued the child did not suffer brain damage at the time of delivery.

- The jury awarded the plaintiffs \$2.5 million against the physician. The hospital was found not liable.

Did misuse of forceps cause dyspareunia?

Miami-Dade County (Fla) Circuit Court

The day after delivering a healthy baby boy with the assistance of forceps, a 28-year-old woman complained of severe vulvar pain. Her physician assured her that vaginal swelling and bruising were common following forceps delivery. A few weeks later, the woman was seen by the physician's partner, who observed the injury and referred the patient for further treatment. She was ultimately diagnosed with pudendal nerve damage, and underwent a variety of pain-control procedures by a number of different physicians.

The plaintiff alleged that misuse and misapplication of the forceps caused her injury, which has led to chronic vulvar pain and dyspareunia.

The defendants maintained that the delivery was carried out appropriately, and claimed the woman's injury was due to the child moving through the birth canal, not to the forceps.

- The jury returned a defense verdict.

Towel left in abdomen found 8 years later

US District Court (Utah) District of Utah

After undergoing a total abdominal hysterectomy, a woman in her thirties noted feeling bloated and unwell. She was told these symptoms were not uncommon and was discharged 5 days later.

Eight years following the surgery, a surgical towel was discovered in her abdomen. It was surgically removed.

In suing, the woman alleged that the doctor and staff involved with the hysterectomy were negligent in using a towel without a radio-opaque marker. She further argued that the clinicians did not properly count the materials used in the procedure.

The doctor denied responsibility, claiming that the nurses or technicians were responsible for accounting for all towels. The defendants also alleged that the towel may have been left in her abdomen during earlier cesarean sections, and noted that any injuries stemming from the towel were unlikely to be serious.

■ The case against the hospital settled for \$150,000. The claim against the doctor went to trial; a jury found the hospital personnel responsible. The plaintiff has appealed the verdict.

Did injury at cystectomy lead to need for dialysis?

District of Columbia Superior Court

While removing a large cyst from a 46-year-old diabetic woman, a physician feared he may have cut or ligated the patient's right ureter. Based on an indigo carmine dye test, however, he determined the ureter remained undamaged.

In the days following the procedure, the patient began to experience back pain, blood in the urine, nausea, fever, elevated creatinine, and other signs of ureteral damage. The physician, however, waited 8 days before consulting with a urologist, who concluded the patient had an obstruction of the right ureter.

Surgery 4 days later revealed the injury was beyond repair, and the patient's right ureter and right kidney were removed. In the following months, the woman's overall kidney function declined sharply, and she was

ultimately placed on dialysis.

In suing, the woman claimed her physician did not properly assess the status, location, and integrity of the right ureter, and did not appropriately address her postoperative symptoms. She further claimed that the injury accelerated her need for dialysis and thus shortened her life expectancy by 6 to 7 years.

The doctor argued that he did not violate the standard of care, and that the woman's preexisting renal condition, not the injury, created the need for dialysis. He maintained that the patient's noncompliance with previous recommendations and a lack of more aggressive medical treatment were also, in part, to blame for the injury.

■ The case settled for \$3 million.

Did failure to note calcifications delay breast cancer diagnosis?

Lavaca County (Tex) District Court

Twenty-two months after undergoing a mammogram that was reported as normal, a woman in her forties detected a mass in her breast. A biopsy confirmed stage II breast cancer.

In suing, the woman claimed that the radiologist who read her mammogram was negligent for not identifying suspicious calcifications or recommending further evaluation. She argued that the delay in diagnosis allowed the malignancy to advance, thus lowering her life expectancy and making lymph node dissection, chemotherapy, and radiation necessary.

The physician argued that the mass was not visible in the mammogram and that the delay did not have a significant effect on her life expectancy.

■ The case settled for \$300,000. ■

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.