



Failure to convert to laparotomy: \$6.25M settlement

A 67-YEAR-OLD WOMAN with urinary incontinence underwent robot-assisted laparoscopic prolapse surgery and hysterectomy. Complications arose, including an injury to the transverse colon. Post-operatively, the patient developed sepsis and had multiple surgeries. At the time of trial, she used a colostomy bag and had a malabsorption syndrome that required frequent intravenous treatment for dehydration.

- ▶ **PATIENT'S CLAIM:** The gynecologist deviated from the standard of care by failing to convert from a laparoscopic procedure to an open procedure when complications developed.
- ▶ **DEFENDANTS' DEFENSE:** The procedure was properly performed.
- ▶ **VERDICT:** A \$6.25 million New Jersey settlement was reached, paid jointly by the gynecologist and the medical center.

▶ **PARENTS' CLAIM:** The mother should have been offered vaginal progesterone, which is cheaper. Given the high risk of preterm birth, steroids administered earlier would have improved fetal development. Cesarean delivery should have been performed.

▶ **DEFENDANTS' DEFENSE:** Vaginal progesterone was not available at the time. Starting steroids earlier would not have improved fetal outcome. A cesarean delivery was not possible because the baby was in the birth canal.

▶ **VERDICT:** A \$3,500,000 Michigan settlement was reached.

Fallopian tubes grow back, pregnancy

A COUPLE DECIDED they did not want more children and sought counseling from the woman's ObGyn, who recommended laparoscopic tubal ligation. Several months after surgery, the patient became pregnant and gave birth to a son.

▶ **PARENTS' CLAIM:** The additional child placed an economic hardship on the family, now raising 4 children. The youngest child has language delays and learning disabilities.

▶ **PHYSICIAN'S DEFENSE:** Regrowth of the fallopian tubes resulting in unwanted pregnancy is a known complication of tubal ligation.

▶ **VERDICT:** A \$397,000 Maryland verdict was returned, including funds for the cost of raising the fourth child and to cope with the child's special needs.

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.

CONTINUED ON PAGE 48

Circumcision requires revision

A DAY AFTER BIRTH, a baby underwent circumcision performed by the mother's ObGyn. Revision surgery was performed 2.5 years later. When the boy was age 7 years, urethral stricture developed and was treated.

▶ **PARENTS' CLAIM:** Circumcision was improperly performed. Once the child was able to talk, he said that his penis constantly hurt. Pain was only relieved by revision surgery.

▶ **PHYSICIAN'S DEFENSE:** There was no negligence. Redundant foreskin is often left following a circumcision.

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

a high-risk prenatal clinic. At that time, she was offered synthetic progesterone (170HP) injections, but she declined because of the cost. She declined 170HP several times. Nine weeks after her initial visit, she declined 170HP despite ultrasonography (US) showing a shortened cervical length (25 mm) for the gestational age. In 2 weeks, when the cervical length measured 9 mm, she was hospitalized to rule out preterm labor but, before tests began, she left the hospital. Five days later, when her cervical length was 11 mm, she received the first 170HP injection. In the next month she received 4 injections, but she failed to show for the fifth injection and US. The next day, she went to the hospital with cramping. She was given steroids and medication to stop labor. US results indicated that the baby was in breech position. The mother consented to cesarean delivery, but the baby was born vaginally an hour later. The child has mild brain damage, CP, developmental delays, and learning disabilities.

Mother with CP has child with CP

A PREGNANT WOMAN with cerebral palsy (CP) reported a prior preterm delivery at 24 weeks' gestation to



Challenges in managing labor

AT 37 WEEKS' GESTATION, a woman was hospitalized in labor. At 1:15 PM, she was dilated 3 cm. At 1:30 PM, she was dilated 4–5 cm with increasing contractions and a reassuring fetal heart rate (FHR). The ObGyn covering for the mother's ObGyn ordered oxytocin augmentation, which started at 2:45 PM.

Shortly thereafter, contractions became more frequent and uterine tachysystole was observed. At 4:12 PM, FHR showed multiple deep decelerations with slow recovery. The baseline dropped to a 90-bpm range and remained that way for 17 minutes. At that point, the ObGyn stopped oxytocin and administered terbutaline; the FHR returned to baseline.

After vaginal delivery, the baby's Apgar scores were 8 and 9 at 1 and 5 minutes, respectively. Two days later, the baby had seizures and was transferred to the neonatal intensive care unit. An electroencephalogram confirmed seizure activity. Initial imaging results were normal. However, magnetic resonance imaging performed a week after delivery showed bilateral brain damage. The child has spastic diplegia, is unable to ambulate, and is blind.

► **PARENTS' CLAIM:** A suit was filed against the hospital and both ObGyns. The hospital settled before trial. The case was discontinued against the primary ObGyn.

The covering ObGyn allegedly made 4 departures from accepted medical practice that caused the child's injury: ordering and administering oxytocin, failing to closely monitor the FHR, failing to timely administer terbutaline, and failing to timely respond to and correct tachysystole.

► **PHYSICIAN'S DEFENSE:** The child's injury occurred before or after labor. The pregnancy was complicated by multiple kidney infections. A week before delivery, US revealed a blood-flow abnormality. An intranatal hypoxic event did not cause the injury, proven by the fact that, after terbutaline was administered, the FHR promptly normalized.

► **VERDICT:** A \$3 million New York settlement was reached with the hospital. A \$134 million verdict was returned against the covering ObGyn.

Brachial plexus injury during delivery

AT 38 WEEKS' GESTATION, a mother was admitted to the hospital for induction of labor. Increasing doses of oxytocin were administered. Near midnight, FHR monitoring indicated fetal distress. The ObGyn was called and he ordered cesarean delivery. Once he arrived and examined

the mother, he found no fetal concerns and decided to proceed with the original birth plan. At 3:30 AM, the patient was fully dilated and in active labor. The ObGyn used a vacuum extractor. Upon delivery of the baby's head, the ObGyn encountered shoulder dystocia and called for assistance. The child was born with a near-total brachial plexus injury: avulsions of all 5 brachial plexus nerves with trauma to the

cervical nerve roots at C5–C8 and T1. The child has undergone multiple nerve grafts and orthopedic operations.

► **PARENTS' CLAIM:** Fetal distress should have prompted the ObGyn to perform cesarean delivery. There was no reason to use vacuum extraction. Based on the severity of the outcome, the ObGyn must have applied excessive force and inappropriate traction during delivery maneuvers.

► **PHYSICIAN'S DEFENSE:** The standard of care did not require a cesarean delivery. The vacuum extractor did not cause shoulder dystocia. The ObGyn did not apply excessive force or traction to complete the delivery. The extent of the outcome was partially due to a fetal anomaly and hypotonia.

► **VERDICT:** An Illinois defense verdict was returned.

HPV-positive Pap tests results never reported

A SINGLE MOTHER OF 4 CHILDREN underwent Papanicolaou (Pap) tests in 2004, 2005, and 2007 at a federally funded clinic. Each time, she tested positive for oncogenic human papillomaviruses. In 2011, the patient died of cervical cancer.

► **ESTATE'S CLAIM:** The patient was never notified that the results of the 3 Pap tests were abnormal because all correspondence was sent to an outdated address although she had been treated at the same clinic for other issues during that period of time. Cervical dysplasia identified in 2004 progressed to cancer and metastasized, leading to her death 7 years later.

► **DEFENDANTS' DEFENSE:** The case was settled during trial.

► **VERDICT:** A \$4,950,000 Illinois settlement was reached. ☺