OB-GYN Malpractice Prevention

Volume 5, Number 10 (pages 73 – 80) October 1998

The practical monthly advisor on legal risk management for obstetrics and gynecology

In this issue:

You be the Judge

Is GYN Who Continued HRT Liable for Failure To Detect Uterine Cancer? 77

Case Lessons

$3.3 Million Award: OB Hesitates In Response to Potential Abruption 77

$2.2 Million Verdict: Doctor Misses Pregnancy, Is Sued For Wrongful Birth 79

$300,000 Verdict: Defendant Loses Case Although Patient Recovered From Blocked Ureter 79

Letter to the Editor

Doctor Questions Advice On Enhanced Pap Test Screening 80

$3.3 Million Award

OB Hesitates in Response To Potential Abruption

Nugget: Have another physician examine a patient who reports potentially serious signs or symptoms if you cannot respond immediately.

Case: A woman began mild, irregular contractions 5 days before her due date. After 3 hours, she experienced sudden, severe, and persistent lower-back pain. She called her OB, who called back and told her to go to the hospital. She arrived at the emergency room 15 minutes later and was put on a fetal monitor that recorded a fetal heart rate of 80-90 BPM. A nurse put the mother on her side, started her on oxygen, and called her doctor. He called back 5 minutes later and ordered an IV of lactated Ringer's. Nine minutes later, the nurse called the OB again to report no improvement, and he left for the hospital. When the OB-GYN reached the patient 22 minutes after the second call, he ruptured the membranes and found meconium. He ordered a c-section, which was performed more than an hour after the mother arrived at the hospital. The baby was left with cerebral palsy, retardation, and paralysis, and died at age 6.

Question: Was the OB-GYN liable for the child's injury and death?

Answer: You bet. The jury ordered him to pay the parents $2.8 million plus interest, for a total of $3.3 million.

Lesson: The OB-GYN in this case failed to respond adequately to signs of potential placental abruption. "It could have been other things, but abruption should have been part of the differential diagnosis," says **John W. Baldante, JD,** of Philadelphia, who won this case for the parents. "The clinical signs should have triggered some action."

"Since the OB sent the mother to the hospital after she reported the severe back pain, he either should have gone in to examine her or had her assessed by another obstetrician. Instead, this doctor failed even to send the mother directly to labor and delivery," Baldante says.

"Once there was evidence of fetal bradycardia, and certainly with 5 to 9 minutes of persistent fetal bradycardia, he should have gone to the hospital immediately and put hospital staff on stand-by," the attorney insists.

According to Baldante, one reason the OB lost the case was because his testimony was inconsistent with the facts. "He said [the mother] didn't tell him about her symptoms, but then he couldn't explain why he told her to go to the hospital since there was no other reason for her to go," he says.

In addition, the lawyer notes, the doctor gave the impression that he did not enjoy interactions with patients. Baldante stresses the importance of physicians' making the time to give patients personal attention. "Interacting with patients is often put on the back burner and considered a burden," he says. "They rely way too much on the system to take care of patients — whether that's labor or delivery or electronic fetal monitoring. Patients are starving to talk to doctors. I'm astonished how often I talk with patients who don't have a meritorious claim but want to sue because the don't feel heard," he says.