
CASE STUDY: TRANSIENT OSTEOPOROSIS OF PREGNANCY

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THE FACTS:

In May 1999, the 35-year-old patient received prenatal care from the defendant obstetrical practice. Her pregnancy proceeded unremarkably until September, when she complained of pain in the buttocks radiating down her leg, which was diagnosed as "mild sciatica." In late November, because of the woman's increasing complaints of pain, the obstetrician ordered an ultrasound, which revealed "no cause for pain sonographically evident."

On December 2, the obstetrician offered to refer the patient to an orthopedist for evaluation, but he did not document the conversation in the woman's record. The woman, however, chose to see an orthopedist who was a lifelong friend. On December 8, that orthopedist examined the patient and diagnosed "sciatica/spasm secondary to pregnancy." After that, the woman's complaints about her sciatica diminished, and the intake records for the hospital where she delivered on January 1, 2000, reflect no complaints of musculoskeletal pain and a pain rating of "0" on a scale of 0 to 10.

After the vaginal delivery, the patient complained of excruciating pain. An x-ray revealed a displaced left femoral neck fracture due to transient osteoporosis of pregnancy. Open reduction and fixation was performed, and 4 months later, the woman underwent a second operation to fixate her pins. In July 2000, the woman underwent left total hip replacement because of avascular necrosis and femoral head collapse.

THE ALLEGATIONS:

The plaintiffs alleged that the defendant obstetricians were negligent in failing to heed the patient's complaints of pain during her third trimester, to undertake diagnostic studies of the woman's hips, and to make an earlier referral to an orthopedist. They further alleged that after the patient's December 8th visit to the orthopedist, the obstetrician should have sought the opinion of another orthopedic specialist because of the woman's "continuing" complaints. The plaintiffs contended that because of the failure to diagnose transient osteoporosis of pregnancy, the defendant obstetricians inappropriately proceeded with vaginal delivery. Cesarean delivery, they claimed, would have prevented total displacement of the femoral head.

DISCOVERY:

At deposition, the patient contended that her complaints of pain continued through the time of delivery. This contradicted the history taken from the patient in the office records of the orthopedic surgeon. The patient also insisted that the defendant obstetrician never referred her to an orthopedist, but that she went "on her own." She further contended that the orthopedist she had seen was a pediatric orthopedist, thus setting up the assertion at trial that the defendants should have referred the patient to an "adult" orthopedist. More significant to the case was the patient's admission during deposition that she never suffered from pain radiating to or originating from her groin. Rather, the pain remained in her buttocks and radiated down the outside of her leg.

Before trial, the orthopedist who examined the patient on December 8 was deposed. She testified that she was "certain" of the diagnosis of sciatica/lumbar back spasm and never considered doing any x-rays or diagnostic studies. She also pointed out that she had advised the patient to return if her condition did not improve, but the woman never came back. Despite her focus on pediatric cases, the orthopedist confirmed that she had experience in diagnosing and treating osteoporosis of pregnancy, and acknowledged that most orthopedists and obstetricians were unlikely to see the condition during the course of their careers. She said she never considered advising the patient to have a cesarean delivery to avoid injury.

At the end of discovery but before trial, the plaintiff's attorney had the treating orthopedist added as a defendant.

THE TRIAL:

At the start of the trial, the plaintiff's theory was that the defendants failed to appropriately diagnose or treat transient osteoporosis of pregnancy, but midway through the proceedings, that changed. Faced with testimony that the defendant's condition not only was rare but her lack of groin pain was atypical, the

plaintiff's new theory was that the defendant physicians should have ordered x-rays or MRIs of the hip in November or December to determine the underlying cause of the patient's complaints. The defendants countered that in November, because of the patient's complaints, they referred her for U/S, which was standard of care in the third trimester. Given the negative results, it was then the orthopedist's responsibility to make further recommendations for an x-ray or MRI. The examining orthopedist, who was then a defendant in the lawsuit, reiterated her testimony that because of the patient's presenting complaints, she never even considered ordering diagnostic studies.

On cross-examination, the plaintiff's expert conceded that because the patient had no groin pain, there was no indication for diagnostic studies of the hips before delivery. The expert further conceded that hip pain and pelvic pressure could be related to normal pregnancy and would not, in and of themselves, give rise to a diagnosis of transient osteoporosis of pregnancy.

The treating obstetricians pointed out that after December 8, the patient did not complain of pain during internal examinations performed in the office. Plaintiff's expert contended that this was because the patient only had to separate her legs "6 inches" during the exam. That theory was rebuffed by the defendant physicians and their expert, and apparently also by the jury, which was predominantly female. Finally, the operating surgeon confirmed that the patient had told him that between November and the date of delivery, her pain had diminished, which meant there was no need for follow-up studies after December 8. The jury rendered a defense verdict.

ANALYSIS:

Defendant physicians are only held to the standards of care that apply to their own specialty. They have a right to rely upon the opinions of specialists in other fields to whom they refer patients. Still, an appreciation of all the medicine involved in any given case is essential to a successful defense. This case largely turned on one subtle bit of testimony: the patient's admission during deposition that she never complained of pain in her groin. Every expert witness conceded at trial that because groin pain was absent, there was no reason to consider a hip injury or the rare possibility of transient osteoporosis of pregnancy.

This case also reflects the oft-mentioned need for accurate and contemporaneous documentation. Because the patient went to an orthopedist, the defendants were able to rely upon that specialist's opinions to defend their own care. If the patient had not gone to the orthopedist, and given the fact that the defendants never documented their referral, the patient might have successfully claimed she was never given the chance to be diagnosed by x-ray or MRI. The defendants were fortunate that the patient—whether because of the defendant's referral or not—took it upon herself to see an orthopedist,

who concurred with the obstetrician's diagnosis and saw no need for further testing. That scenario, more than any other factor, resulted in the defense verdict for the physicians.

This case was tried by Jay Rappaport. A founding partner of Aaronson, Rappaport, Feinstein & Deutsch, LLP, Mr. Rappaport has devoted the last 20 years to professional liability defense litigation and focuses on trial of medical malpractice and product liability cases with seven-figure exposure. Mr. Rappaport is Vice President and a member of the Board of Directors of the New York State Medical Malpractice Defense Bar Association.

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