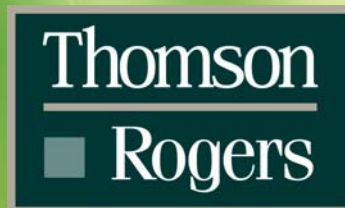


University of Toronto , Faculty of Medicine

4th Annual Obstetrical Malpractice: A Survival Guide for 2008

SHOULDER DYSTOCIA

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Proving Malpractice – The Patient's Burden

- ON A BALANCE OF PROBABILITIES (MORE LIKELY THAN NOT), PATIENT MUST PROVE
 1. A BREACH OF THE STANDARD OF CARE
 2. CAUSATION

PROVING CAUSATION IS A DIFFICULT LEGAL HURDLE FOR PATIENT IN OBSTETRICAL CASES

- WHAT IS CAUSATION:

“Causation is an expression of the relationship that must be found to exist between the tortious act of the wrongdoer and the injury to the victim in order to justify compensation to the latter out of the pocket of the former.”

Snell v. Farrell, [1990], S.C.R. 311

Seattle v. Purvis (B.C.C.A. June 27, 2007)

FACTS:

- Obstetrical care provided by G.P.
- Symphysis fundal height elevated
- EDC October 13, 1996
- Third pregnancy (baby 1, 8 lbs 7oz forceps), (baby 2, 9 lbs induction)
- GP consults with OBS about induction
- Induction October 21 with Oxytocin, under care of GP at Level II hospital, cephalic OP
- OBS consulted for lack of progress
- 2300 hours MD notes: "...I hope CP is not playing its part" relating to slow progress
- GP resumes care, OBS leaves hospital
- 0115 full dilatation
- 0240 patient fatigue
- Mityvac applied

Seattle v. Purvis

FACTS (CONTINUED):

- 0249 baby's head delivered, shoulders impacted
- large episiotomy
- baby's arm fractured
- delivered after 6 minutes after using various measures (McRoberts, Woods Corkscrew) by GP
- born flat, no heart rate, needed resuscitation

Seattle v. Purvis

ISSUES:

1. Should GP have anticipated dystocia and called OBS for assistance before attempt at vacuum?
2. What difference would OBS attendance at delivery make to the outcome (“causation”), as OBS more skilled at dealing with complication

SHOULD OBS HAVE BEEN CALLED

- Yes
- GP was negligent in failing to call for assistance
- Risk factors for dystocia increased, which GP did not appreciate
 - Large baby
 - Failure to progress
- GP consulted OBS earlier for lack of progress, in meantime indicators for potential trouble increased
- Standard of care was breached

CAUSATION

What difference would OBS attendance make to outcome?

- Patient argued OBS would have delivered more expeditiously
- That outcome “might” have been different is not enough
- But, no expert evidence on what the more skilled OBS would have done had he been called (same measures)
- Patient must show that outcome probably would have been better i.e. OBS would have done something differently
- Patient could have called evidence to show:
 - **GP should not have done trial of vacuum**
 - **GP should have done c-section**
 - **GP should have used different intervention**
 - **GP should have abandoned vacuum sooner**
- But no evidence was led on these points

TESTS FOR CAUSATION

- THE “BUT FOR” TEST
 - The injury suffered by the patient does not happen unless the defendant breaches the standard of care
 - Primary test
 - Doesn't always work
- MATERIAL CONTRIBUTION TO RISK
 - Can infer causation in appropriate circumstances
 - Rare
 - Must be impossible for patient to meet but for test
 - Harm suffered must be within ambit of risk created
 - Med mal cases attract this test
- If it is possible to prove on But For basis, you must