



And The Defense Wins

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DRI members [Harold Stephens](#) and [Michael P. Huff](#) of **Bradley Arant Boult Cummings LLP** in Huntsville, Alabama, recently obtained a defense verdict in a medical malpractice case. The case involved allegations that their physician client, an OB/GYN, improperly performed a bilateral tubal ligation on the plaintiff without her consent and also failed to suture the plaintiff's uterus properly following a C-section delivery.

The plaintiff was a 36-year-old female who delivered her fifth child (seventh pregnancy) via a C-section, after confirmation via ultrasound of a breech presentation. The plaintiff alleged that after the C-section, she endured months of extreme abdominal pain until a subsequent treating OB/GYN performed surgery and allegedly found her uterus "sewn" shut and her cervix left open to the abdominal cavity. Prior to the post-delivery surgery, an ultrasound revealed the presence of a left ovarian cyst. However, the subsequent treating OB/GYN made no mention of finding a cyst during his exploratory laparotomy. He did report significant inflammatory findings; however, a post-surgery pathology report indicated no infection was present. The subsequent treating doctor also acknowledged that the irregularities he found in the plaintiff's anatomy were in precisely the same areas where he was dissecting with sharp scissors. At trial, the defense expert testified that the subsequent treating physician was likely the cause of the condition he purportedly found, based upon how he performed the second procedure. The expert further testified that the sutures used to close the C-section incision would have been absorbed at the time of the second surgery, making it impossible for the subsequent physician to have found the uterus "sewn" shut. The type of sutures used to close in the original C-section would have been dissolved weeks earlier.

The plaintiff also alleged that she did not consent to a bilateral tubal ligation. The plaintiff and her OB/GYN both testified that an ultrasound that was performed at 34-weeks indicated a breech presentation. Both agreed that the physician defendant spoke at that time with the plaintiff about a C-section, as well as a tubal ligation. The physician testified that the plaintiff at that time expressed a desire for a bilateral tubal ligation. The plaintiff testified she did not. While the first consent form signed by the plaintiff did not reference the tubal ligation procedure, a second consent form was signed that included the tubal ligation, after an ultrasound was performed to confirm the breech presentation and the necessity of a C-section. The plaintiff denied ever signing the second consent form. A forensic handwriting expert presented by the defense testified that, based upon his analysis of various forms that the plaintiff admitted to signing and his review of the original signature on the tubal consent form, he was certain that the signature on the tubal consent form was that of the plaintiff.

After a week of trial, the jury returned a verdict in favor of the physician and co-defendant hospital.

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