The Nightmare Scenario

• As the urologist on call, in the middle of the night, you receive word of a newborn with a edematous, ecchymotic hemi-scrotum. Ultrasound reveals no flow.
• You elect not to emergently transfer and explore.
• The newborn develops contralateral edema/ecchymosis.
• Exploration reveals bilateral necrotic testes. The child is anorchid for life.
• You are sued for failure to diagnose/treat.
• After a lengthy legal process that takes a great deal of your time and causes you a great amount of stress, you lose the case and the jury gives a massive award to the plaintiff’s parents.
• The award exceeds your insurance coverage and you end up losing everything that you hold dear.
Framing The Argument

• Basic Facts
  • Incidence
  • Asynchronous events

• Anesthesia Risks
  • Specific risks in neonates
  • Regional anesthesia

• Medicolegal Consequences
  • Length of litigation
  • Jury awards
Neonatal Testicular Torsion (NTT): 2011 Literature Review

- Incidence 6.1:100,000
- Bilateral risk: 8%
- Only 1 asynchronous
- 5% Intravaginal
2019 Literature Review

- 7% Bilateral
- 4% Asynchronous
- Overall salvage 7%

Literature Summary

• Asynchronous torsion risk is real (but rare)
  • Reported in multiple literature reviews and case reports
  • It has been reported to occur anywhere from hours after birth to 6 months of age
  • Many in the audience have personally seen it
• Torsion is not always extravaginal
• Salvage has been reported (but rare)
• Ultrasound is not 100% sensitive nor specific
  • Contralateral torsion has been reported with normal ultrasound


Anesthesia Risks in the Newborn

• Infants who undergo surgical procedures in the first few months of life are at higher risk
  • Death
  • Neurodevelopmental abnormalities
• Altered cerebral perfusion
• Metabolic cellular insufficiency
• Production of neurotoxic mediators

What about the GAS Study?

• From 2007-2013, 722 infants undergoing inguinal hernia repair randomized to receive general or awake-regional anesthesia

• Finding: no difference in neurodevelopment outcome at 5-years of age

• Caveats
  • Median duration of anesthesia time was 54 minutes
  • Mean age at surgery about 70 days

Awake-Regional Anesthesia

- Spinal anesthesia has been increasingly utilized in a variety of urological procedures
- Neonatal testicular torsion has been successfully managed with caudal/local anesthesia
- As these techniques become more widely available, the argument to not treat NTT as an emergent condition due to general anesthesia risks will weaken

Medicolegal Consequences: 30 Year Case Review

• Average time between initial presentation and verdict is 5 years
• False-negative ultrasounds present in 64%
• Providers whose patients presented to the ED were less likely to have a successful defense

• Day of life 1 noted to have a “swollen/red” scrotum
• Discharged on day of life 2
• Saw pediatrician on day of life 4: “No concern” but recommended urology evaluation
• Evaluated by a urologist on day of life 15 due to continued scrotal swelling: ultrasound recommended
  • Not actually obtained until 30 days of age
• Findings: bilateral testicular torsion
• Underwent bilateral orchiectomy
• Successful defense verdict for the urologist
  • Argument that the testes were already dead when the urologist was consulted
Right testicular “brusing/swelling” noted at birth

Ultrasound performed on DOL 1: bilateral hydroceles with no evidence of torsion

DOL 3 Pediatrician exam revealed hard, non-transilluminating hemiscrotum, sent to ED

Ultrasound: right testicular torsion. Emergent exploration, orchiectomy performed.

Defense verdict returned based on the negative ultrasound
How Much is a Testicle Worth?

- Doe vs. Doe; 2010 UT Jury Verdicts & Sett. Award: $50,000 (3.5 year old)
- Aaron Krekorian v. Stuart Campbell and the Sutter Auburn Faith Hospital; 2006 Jury Verdicts Award: $150,000 (16-year old)
- 1992 NJ Jury Verdicts Review Award: $250,000 (16-year old)
- ORANDAY, FRANCISCO AND MARIA v. DEFENDANT; 1999 Jury Verdicts Award: $261,000 (infant)
- Name of case: Withheld; 2005 Dolan Media Jury Verdicts Award: $800,000 (37-year old)
- CASE INFORMATION WITHHELD; 2009 MA Jury Verdicts Review Award: $810,000 (14-year old)
- Campbell v. Allegheny University Hospital-Hahnemann Division; 2002 Jury Verdicts Award: $8.5M (24-year old)

Source: LexisNexis
Summary

- Testicular salvage has been reported with NTT
- Asynchronous neonatal testicular torsion does occur
- The risks of taking a neonate to the operating room are decreasing with increasing use of awake-regional anesthesia
- The average length of time of a malpractice claim in this area is 5-years
- Substantial plaintiff verdicts have been awarded for lost testes
“Errors of commission are always better than errors of omission.”

-Bartley Cilento, MD

“Plantiffs’ attorneys love it when doctors do nothing.”

-Grant Cannon, esq.