

January 13, 2014

Verdicts & Settlements

Hour-plus delay leads to newborn's injuries

Plaintiff: Mother should not have been discharged on her first admission

\$4 million

In November 2002, plaintiff mother was admitted to the defendant hospital at 41 1/7 weeks' gestation for an attempted induction of labor. After half a day of induction, the mother indicated that she wanted to go home, and declined further induction of labor.

The resident physician acknowledged the mother's desire to go home, and instructed the mother to come back to the hospital three days later for induction if she did not go into spontaneous labor prior to that time. No plan was made for a fetal assessment in the interval.

Although the records indicated that fetal heart tones were reassuring, a review of the strip showed that there were not only long periods of time where no readable tracing was obtained, but there were also variable decelerations, and some periods of decreased variability.

The following evening, the mother called her prenatal office and reported that she was contracting 20 minutes apart and that the defendants had tried to induce her but that she was sent home. The mother was instructed to go to triage at the defendant hospital for further evaluation.

The mother arrived at the defendant hospital and was noted to be contracting every two minutes. She was moved from triage to the OR when occasional decelerations in the fetal heart rate surfaced. The mother and her baby continued to be monitored in the OR, and the plan was to place an epidural in case there was a need to move towards operative delivery.

More than an hour after arriving, the mother's membranes ruptured, producing thick golden brown meconium. After there was a prolonged episode of an abnormally low fetal heart rate, or bradycardia, the decision was made to move forward with a C-section.

Although the C-section was performed shortly after, the baby was not delivered until more than 1½ hours after the moth-



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er's arrival at the hospital.

Plaintiff alleged that the baby's condition at birth was clearly that of an infant who had been severely and recently asphyxiated. The baby's CT performed at one day of life and her MRI scan performed at three days of life were read as normal and not indicating any congenital abnormalities or antenatal insult.

Plaintiff alleged that the defendants' negligence caused the baby to suffer from cerebral palsy, a seizure disorder, global developmental delay and a nonfunctioning right kidney.

Plaintiff advanced two primary theories of negligence. First, when the mother presented to the defendant hospital for induction, she was permitted to go home despite the fact that the induction was proceeding slowly. Plaintiff alleged that the mother should have never been discharged and sent home, and had she been adequately informed that she should stay in the hospital and continue the induction, she would have stayed.

Secondly, plaintiff contended, when the mother returned to the hospital and was evaluated, it was immediately clear that there was tachycardia, decreased variability and decelerations in the fetal heart rate. However, instead of rushing to deliver the baby, there was a delay of more than an hour resulting in a hypoxic injury to the baby.

Defendants denied any negligence in allowing the mother to leave the hospital after induction of labor, and that the mother should have independently recognized the risks of leaving the hospital. Defendants further claimed that the baby was timely delivered by way of the C-section.

In terms of causation, defendants asserted that the baby's condition at birth was due to a genetic defect and congenital abnormality and not related to the care that her mother had received.

The case settled for \$4 million.

Type of action: Medical malpractice, birth trauma

Type of injuries: Brain damage, cerebral palsy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Nov. 1, 2013

Name of judge: Withheld

Settlement amount: \$4 million

Insurance carrier(s): Withheld

Attorney for plaintiff: Brian J. McKeen

Attorney(s) for defendant: Withheld