

Adoption: Nurse, Social Worker Misrepresented Baby's Health Status, Court Lets Parents Sue.

Four days after the baby's birth the prospective adoptive parents travelled from their home out of state to the hospital to meet with the hospital's director of nursing and social worker to discuss adopting a baby whose mother had planned prior to birth to give up for adoption.

The prospective adoptive mother had already told the social worker before making the trip that she had already turned down three infants who might have been special-needs children. She would be relying on the hospital's employees' judgment that this was a healthy child in making the decision whether or not to adopt this baby.

The nursing director and social worker expressly assured the mother that the child was healthy and normal in all respects except for being lactose intolerant.

Parents Not Told

Child Had Severe Neurological Deficits

In fact, a large hypoechoic area in the fetus's brain had shown up on an outpatient prenatal ultrasound done at the hospital. It spelled a lifetime of developmental delays, mental retardation, paralysis and other severe neurological deficits.

The Court of Appeals of Indiana noted for the record that the biological mother's outpatient prenatal records were not in her inpatient maternity chart. It was not clear that the nursing director or the social worker knew about the prenatal ultrasound or the baby's true condition or deliberately tried to deceive the prospective parents. However, that did not change the fact the adoptive parents had the right to sue.

The hospital, through the actions of the nursing director and the social worker, took upon itself a legal duty to provide accurate information about the child to the prospective adoptive parents.

The hospital's policies for whether or not to include outpatient records in the inpatient chart were not relevant to the legal outcome. Nor could the hospital rely upon the Health Insurance Portability and Accountability Act (HIPAA) as a shield to civil liability for committing misrepresentation. **Jeffrey v. Methodist Hosp.**, __ N.E. 2d __, 2011 WL 5057721 (Ind. App., October 25, 2011).

One who, in the course of a business or professional transaction, supplies false information for the guidance of others is subject to liability for the loss caused to them by their justifiable reliance upon the information if there has been a failure to exercise reasonable care in obtaining or communicating the information.

The hospital's employees knew the prospective adoptive parents would be relying on their knowledge and professional expertise in making the decision to adopt and that they would not want to adopt this child if they knew that the child was in fact a child with very special medical needs.

The biological mother had signed two separate authorizations, one for release of her own and one for release of her infant's medical records which fully satisfied the Federal medical confidentiality requirements of HIPAA.

The hospital has a master patient index which should have been consulted to determine if the biological mother had more than one chart, that is, an outpatient prenatal chart as well as an inpatient maternity chart.

COURT OF APPEALS OF INDIANA
October 25, 2011

Labor & Delivery: Mother's, Not Fetus's Heart Rate Was Monitored.

The fetus's heart rate reportedly went unmonitored for several hours because the monitor was picking up the mother's rather than the fetus's heart beat.

The fetus was in distress but the nurses and physicians did not know about it because of the problem with the monitor. Reportedly there also were no blood gasses being obtained.

Temporary loss of the fetal heart tone can occur due to fetal movement.

Labor and delivery nurses should know it is not difficult to tell when the instrument is measuring the mother's, not the fetus's heart rate. The mother's is significantly lower.

When in doubt, read the mother's with a pulse oximeter and the fetus's with a fetal scalp electrode.

UNITED STATES DISTRICT COURT
ALABAMA
November 3, 2011

The US District Court for the Middle District of Alabama accepted expert testimony to the effect that any trained labor and delivery nurse should be able to pick up on the fact the mother's rather than the fetus's heart rate is showing on the monitor. The evidence pointed not only to negligence by the nurses but also to a larger failure by the institution to train its nurses and evaluate their competence.

In the hospital's favor, the Court did rule that the statute of limitations on the parents' claims, but not the infant's, had run before the suit was filed, removing certain elements of damages from the jury's consideration when the trial comes up. **M.D.P. v. Houston Co. Healthcare**, __ F. Supp. 2d __, 2011 WL 5244393 (M.D. Ala., November 3, 2011).