

Labor & Delivery: Lapse In Fetal Monitoring.

The patient was admitted for delivery of her third child. There were reportedly no special risk factors affecting this pregnancy.

A fetal heart monitor was attached in the labor and delivery unit. The fetal heart rate tracings were normal at the start.

The labor and delivery nurse assigned to the patient left the patient alone in her room at 3:30 p.m.

At 4:00 p.m. when the patient's nurse returned to the room she immediately recognized a slow fetal heart rate and called for an emergency cesarean.

The infant was delivered nine minutes later with poor Apgars and had to be taken to neonatal intensive care.

Now the child has serious developmental issues related to hypoxic brain injury at birth. An arbitrator awarded a cash payment of \$3,594,656 for the child in addition to the defendant health maintenance organization's agreement to provide lifetime care which has a present estimated value of more than \$26,000,000.

Lapse in Fetal Monitoring

There was a remote fetal monitor at the nurses station, but apparently no one was present at the nurses station between 3:30 and 4:00 p.m. to keep an eye on the monitor. The fetus's distress was not noted and acted upon until the nurse actually returned to the patient's room.

“Subsequent Remedial Measures”

The legal rules of evidence for civil cases expressly state that “subsequent remedial measures” are not to be taken as evidence of negligence.

Safety improvements after the fact do not necessarily prove negligence. The legal system does not want to penalize defendants in civil lawsuits who learn from their mistakes.

Nevertheless, it reportedly came out during the case that the hospital system changed its policies as a result of this incident and now requires the continuous presence of trained personnel at remote monitoring stations. **“S.A.” v. Kaiser Foundation Hospitals**, 2009 WL 692095 (Med. Mal. Arbitration, California, March 5, 2009).