

Labor & Delivery: Baby Not Sent To NICU, Judge Finds No Negligence.

The judge in the Court of Claims of New York ruled that the newborn's nursing and medical caregivers were not negligent for making the decision not to send the newborn to the neonatal intensive care unit immediately after her birth.

The infant had zero color at one and five minutes, but at thirteen minutes she was pink and remained centrally pink after being weaned from supplemental oxygen.

COURT OF CLAIMS OF NEW YORK
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The infant was screaming shortly after birth but had a bluish-grayish color. A nurse immediately began blow-by oxygen which seemed to calm her. Her APGAR scores were eight at one and at five minutes of life, but she remained blue for approximately thirteen minutes.

The Court credited the hospital's obstetrics expert's testimony that it is not accepted practice to send an infant with poor color to the intensive care unit immediately, but to wait ten to fifteen minutes to see if the color improves, as was done in this case.

The regular newborn nursery would be capable of providing supplemental oxygen, monitoring the infant's oxygenation and monitoring blood glucose.

It was also not a departure from the standard of care under the circumstances for the nurses not to have called a neonatologist immediately to the birthing room.

The infant, it was eventually learned, had been born with tracheal stenosis which caused bleeding when she was finally sent to intensive care and intubated. She had to have two surgeries for that problem and surgery for a patent ductus arteriosus, none of which could be blamed on the decision not to send her to intensive care right after birth. ***Karant v. State of New York, 2010 WL 5893786 (N.Y. Ct. Cl., July 27, 2010).***