

Labor & Delivery: Court Sees No Negligence.

At twenty-nine weeks the mother who was carrying twins was admitted to the hospital after a leak of fluid that was related to a rupture of one of the amniotic sacs holding one of the fetuses.

Her ob/gyn consulted a perinatologist specializing in high-risk pregnancies who recommended prolonging the pregnancy as much as possible.

After a week in the hospital on fetal monitoring a nurse phoned the ob/gyn to report a deceleration. The ob/gyn decided since there was prompt return to normal that it did not involve hypoxic injury, but did order the patient to be kept NPO in case a c-section became necessary.

The nurses phoned the ob/gyn again that afternoon to report a deceleration and recovery. Two hours later the ob/gyn phoned and was told the mother had abdominal pain but no contractions.

That evening the nurses paged the ob/gyn to report decelerations with the mother's contractions. The ob/gyn ordered a resident physician to start a c-section while she rushed to the hospital.

One of the twins was born with severe brain damage and is severely impaired. The other is completely normal.

There was no breach of the standard of care in the monitoring by the nurses or in the clinical decision-making by the ob/gyn.

CALIFORNIA COURT OF APPEAL
November 4, 2014

The California Court of Appeal accepted the hospital's experts' testimony that the one baby's severe neurological injuries were the result of sepsis which affected him *in utero* but by the time of birth had not yet manifested outward signs the nurses or ob/gyn would have seen.

The nurses carefully watched for signs of fetal distress, reported their findings promptly and accurately to the ob/gyn and carried out her orders without delay. Contreras-Madrigal v. Hollywood, 2014 WL 5573322 (Cal. App., November 4, 2014).

Labor & Delivery: Rural Hospital Did Not Have Means To Induce Labor.

At a prenatal visit at thirty-eight weeks the patient was diagnosed with preeclampsia which her ob/gyn felt necessitated induction as soon as possible.

However, she was sent home from the local rural hospital because the hospital was not able to induce labor that afternoon and was told to call back the next morning.

At 1:45 a.m. she came back to the hospital with severe shortness of breath. She was put on an aircraft for transport to a large urban hospital. She arrested on the way and the aircraft turned around and returned to the rural hospital.

The baby was delivered by c-section. The mother died that same day and the infant died two days later.

The rural hospital was not able to induce labor that afternoon, due to the fact that there already was one patient being induced and the obstetrics ward was at full capacity.

UNITED STATES DISTRICT COURT
ALASKA
November 13, 2014

The US District Court for the District of Alaska made two preliminary rulings.

The issue is off the table whether the rural hospital was required to have sufficient nurses on its staff roster and present at the hospital to induce labor for more than one mother at a time. Right or wrong, that is basically a political decision involving governmental discretion as to allocation of resources, the Court said.

However, the Court agreed to accept expert testimony at trial on behalf of the family questioning the decision that afternoon to defer airlifting the patient elsewhere and to send her home, given that preeclampsia is a potentially life-threatening condition that can only be reversed by immediate delivery. Atcherian v. US, 2014 WL 6066106 (D. Alaska, November 13, 2014).

Restraint-Free Facility: Court Given No Proof Of Negligence.

A seventeen year-old was admitted to long-term care after being rendered a quadriplegic in a hang-gliding accident.

In his twelfth year in the facility the facility adopted a restraint-free policy and stopped using bed rails.

The patient's bed was lowered as far as possible and mats were placed on the floor to cushion a fall if he happened to roll out of bed due to involuntary movements.

He rolled out of bed six times in the next four years, but was not injured, then went almost five years without a fall.

Then one night, fifteen minutes after a routine check, a nurse found him on the floor, face down, dead from positional asphyxiation.

Proving cause-and-effect in a case like this is a complex task which calls for expert testimony.

UNITES STATES COURT OF APPEALS
TENTH CIRCUIT
October 23, 2014

The US Court of Appeals for the Tenth Circuit (North Dakota) did not accept the family's nursing expert's generic testimony that side rails, a bigger bed, a bed alarm, wedges, bolsters and other measures could have prevented his fall.

The Court assumed in general terms that the facility did owe a legal duty to the patient to assess the patient's fall risk and to take appropriate measures.

However, the Court said that use of any form of restraint involves a complex analysis of the specific restraint measure under consideration, its efficacy *versus* its own potential to cause positional asphyxia.

The family's nursing expert was not able to testify with any precision or certainty that use of any one of the restraints or other interventions she suggested more likely than not would have prevented the unfortunate outcome that occurred. Holley v. Evangelical, ___ Fed. Appx. ___, 2014 WL 5368862 (10th Cir., October 23, 2014).