

Labor & Delivery: Court Sees Nursing Negligence As Cause Of Baby's Neurological Injuries.

In a complicated labor and delivery birth injury case, the California Court of Appeal struggled with different formulations the court precedents have used to define the concept of medical causation.

Three Necessary Elements

Professional Negligence Cases

To prevail in a lawsuit for medical or nursing negligence, the patient or patient's representative must prove the doctor or nurse was negligent, that harm occurred, and that the harm was caused by the doctor's or nurse's negligence.

All three of these essential elements must be proven to the judge's and jury's satisfaction or the patient's case must be dismissed as groundless.

In this case the lower court judge threw out the case against the hospital which employed the labor and delivery nurses, despite the fact there was strong evidence of their negligence and conclusive evidence of severe neurological birth injury to the newborn.

The Court of Appeal ruled the patients' (mother's and baby's) nursing expert's testimony fulfilled the legal requirement of proof of causation, rendering their case valid against the hospital, and overruled the lower court judge.

High-Risk Obstetric Patient Nursing Responsibilities

The Court of Appeal agreed with the patients' nursing expert that it is a nursing responsibility to classify a labor and delivery patient as high-risk when the nurses first observe abnormal decelerations in the fetal heart tracings.

At that point it becomes a nursing responsibility to ascertain that nursing staff are present with the mother who are fully competent to monitor and assist with a high-risk delivery.

It is also a nursing responsibility when a labor and delivery patient is first classified by the nurses as high-risk to ascertain who is the attending physician, where exactly the physician is presently located and exactly how the physician can be contacted.

As an essential element of the case a patient or patient's representative suing for negligence must prove a proximate causal connection between the alleged medically negligent act and the harm for which compensation is sought.

Cause must be proven with reasonable medical probability based on competent expert testimony.

An adverse result may be considered a medical probability if it is more likely than not that the injury to the patient was caused by the defendant healthcare professional.

The defendant healthcare professional's conduct has to have been a substantial factor in bringing about the particular result.

Conduct is a substantial factor in bringing about a harmful result if the conduct has created a force or series of forces which are in continuous and active operation up to the time the actual harm occurs.

If in the absence of the defendant's negligence it is reasonably probable the patient would have had a better result, cause is proven.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
October 5, 2004

Identifying Backup Physician Nursing Responsibility

More vitally, when a patient has been classified by the nurses as high-risk, the nurses must ascertain who is the backup obstetrician and must plan how to call in the backup immediately if necessary.

In this case the primary ob/gyn was in surgery with another patient during a critical time frame in the mother's labor, rendering him completely unavailable to the nurses' high-risk patient, an intolerable situation in the Court's view.

Pushing / Decelerations No Physician Present

The nurses had the mother push twice, seven hours after ominous decelerations were first seen, without a physician present. These pushes each produced two more periods of extended fetal heart rate deceleration which should have been seen as signs that an emergency cesarean was indicated.

The nurses also failed to ascertain that the mother was fully dilated before having her push, an error the Court thought was especially significant in conjunction with signs of ongoing fetal hypoxia.

Pitocin Left Running

After the mother had pushed and the fetal heart rate had slowed unacceptably, the nurses neglected to stop the pitocin, a critical error in the opinion of the patients' nursing and medical experts.

Physicians Also Negligent

In any negligence lawsuit, more than one party can be at fault and ruled liable to pay damages.

It is no defense for nurses to argue that one or more physicians were also negligent. Nurses have legal responsibilities independent of what the doctors are or are not doing for their patients.

On a practical level the patients' lawyers usually want to maximize their clients' chances of obtaining a large recovery by suing each of the doctors as well as the hospital if the hospital's staff have been negligent. ***Nichols v. Good Samaritan Hosp., 2004 WL 2222384 (Cal. App., October 5, 2004).***

Legal Ethics: Lawyer Made Improper Contact With Witness, Faces Sanctions.

An attorney represented an employee of a nursing home who had filed a workers compensation claim.

The lawyer went to the nursing home to obtain background information for his client's claim through a proper legal deposition of the nursing home's office manager.

He left after the legal deposition, but then came back unannounced and questioned the director of nursing for the whereabouts of three nurses who he believed may have witnessed his client's injury taking place.

A lawyer is strictly prohibited by the Bar Association's Rules of Professional Conduct from contacting a person who is or employee of a corporation that is represented by another lawyer without getting permission from the other lawyer.

SUPREME COURT OF KENTUCKY
September 23, 2004

The Supreme Court of Kentucky ruled the lawyer guilty of unprofessional conduct and formally reprimanded him.

It is strictly unethical for a lawyer to communicate with a person or with an employee of a corporation whom the lawyer knows to be represented by legal counsel with respect to the matter at issue, without notifying and getting permission from the person's or corporation's legal counsel. The nursing director herself was not guilty of any wrongdoing. ***Callis v. Kentucky Bar Ass'n., ___ S.W. 3d ___, 2004 WL 2128543 (Ky., September 23, 2004).***

Premature Labor: Pitocin Drip Was Nursing Error, Father Still Has No Right To Sue.

The mother went into labor prematurely after the nurse erroneously started a pitocin drip.

However, going into labor, although painful, is not what the law contemplates as an injury for purposes of filing a negligence lawsuit. Labor is the natural consequence of pregnancy.

The baby was born prematurely, with low birth weight, respiratory problems and hyperbilirubemia.

In this case that is also not considered an injury for purposes of filing a lawsuit, because after the baby left the hospital's neonatal intensive care unit in satisfactory condition there was no reason to expect further complications.

The father was there when it all happened. Because he was not actually injured himself he can at most only qualify as what the common law refers to as a bystander.

To be eligible to sue for damages a bystander must show that someone very close was actually injured as a result of negligence.

CALIFORNIA COURT OF APPEAL
UNPUBLISHED OPINION
October 4, 2004

The mother was hospitalized at thirty-two weeks for treatment to prevent premature labor. She was given repeated IV infusions of magnesium sulfate which was successfully preventing active labor.

Nurse Gave Pitocin

Instead of Magnesium Sulfate

Seventeen days into her hospital stay a nurse mistakenly gave the mother IV pitocin, a medication the California Court of Appeal pointed out in its unpublished opinion is used to induce labor rather than retard or prevent labor from starting.

The mother gave birth to her daughter at thirty-four weeks. The daughter's birth weight was less than five pounds and she had respiratory distress, hyperbilirubemia and possible sepsis. She needed nine days hospitalization in the hospital's neonatal intensive care unit.

Mother and daughter were eventually discharged in good condition with no solid reason to expect further complications from the premature delivery or birth.

Father Sues As Bystander

The father, however, sued the hospital on his own for negligent infliction of emotional distress.

He was in the room when a nurse found and corrected the error another nurse had committed starting the pitocin drip. He heard the nurse explain that the wrong medication had been given and was producing exactly the opposite of the intended result. He was also at the hospital for much of his daughter's nine-day stay in neonatal intensive care.

The court ruled, however, following established legal case precedents, that a bystander can sue for emotional distress only when a family member is actually injured due to another's negligence.

As the nursing error was corrected and no actual harm occurred to either of the bystander's family members, the father as a bystander had no grounds to sue. ***Batchelder v. Loma Linda Univ. Med. Ctr., 2004 WL 2211572 (Cal. App., October 4, 2004).***