

Macrosomal Fetus: Court Says Physicians, Nurse Midwives Followed The Standard Of Care.

The patient gave birth vaginally to 12 pound 4 1/2 ounce baby. She had previously delivered a 6 pound 8 ounce baby vaginally.

Due to the size of this baby, she had a partial third-degree laceration of the perineum right below the area of her episiotomy, which was promptly and properly repaired.

Due to shoulder dystocia, her baby experienced a shoulder dislocation resulting in a brachial plexus injury with associated mild Erbs palsy.

She sued the US Government under the Federal Tort Claims Act, alleging negligence by the nurse midwives who provided her prenatal and perinatal care at a Federally-funded clinic and the physician who delivered her baby. The US District Court for the District of New Jersey saw no negligence and dismissed the case.

Prenatal Care

The nurse midwives saw to it she got three ultrasounds at sixteen, twenty and thirty weeks, which showed appropriate interval growth. Except for 20/20 hindsight there was no basis for her to claim another ultrasound was indicated right before she went into labor.

The nurse midwives did two glucose tests to confirm she was not diabetic or suffering from gestational diabetes.

An amniocentesis was done which revealed no chromosomal abnormality.

Four days before her expected due date the nurse midwives palpated the uterus (Leopold's maneuver) and estimated an 8 to 8 1/2 pound fetus. There was no proof, absent 20/20 hindsight, this was done incorrectly.

No one discussed a cesarean with her during prenatal care and it was not done emergently during labor. Given her seemingly normal prenatal course, the fact she had delivered vaginally once before, a cesarean was not indicated and would have posed a whole host of unnecessary risks of its own, the court believed. **Campbell v. U.S.**, 2005 WL 1387652 (D. N.J., June 10, 2005).

The patient received care at a Federally-funded clinic.

She can sue the Federal government just like she could sue a private individual under the law of the state where it occurred.

To sue for professional negligence the patient has to prove through her expert witnesses to a reasonable degree of medical certainty that failure to perform certain tests during pregnancy increased the risk of harm to her and her infant.

To sue for lack of informed consent the patient must prove that her caregivers withheld pertinent medical information concerning the risks of the procedure or treatment and the alternatives and concerning the potential outcomes if the procedure or treatment was not undertaken.

For her to sue them, her caregivers must not have met the reasonably-prudent standard for disclosure, an undisclosed risk must have occurred, a reasonable person would not have consented if that risk had been disclosed, and injury occurred as a result.

UNITED STATES DISTRICT COURT
NEW JERSEY
June 10, 2005

Nursing Home Liability: State Investigation Proves Nothing, Court Rules.

The daughter of a deceased nursing home resident sued the nursing home for negligence.

The daughter's lawsuit alleged the resident was placed sitting upright for extended periods of time without proper and frequent re-positioning and as a result developed extensive decubitus ulcers which progressed and led to his death.

The nursing home argued for summary dismissal on the grounds that the state had investigated the daughter's allegations and state investigators had decided the allegations could not be proven.

The Texas Department of Human Services investigated the daughter's allegations of inadequate care and gross neglect.

The mere fact the agency conducted an investigation and found that the daughter's allegations could not be substantiated does not prove that no negligent acts or omissions occurred.

A jury could still find that abuse or neglect did occur and could award damages.

UNITED STATES DISTRICT COURT
TEXAS
June 7, 2005

The US District Court for the Northern District of Texas ruled that that argument is not valid grounds for summary dismissal of the lawsuit in the nursing home's favor. A jury will decide the case. **Redden v. Senior Living Properties, L.L.C.**, 2005 WL 1356441 (N.D. Tex., June 7, 2005).