



Minor Baby X v Hospital B
Confidential

In this birth defect medical malpractice case, plaintiff's counsel obtained a \$975,000 settlement despite defendant's effort to blame the mother's smoking and her failure to follow good prenatal care, for the baby's disabling cerebral palsy.

Plaintiff mother, pregnant for the first time, treated prenatally with a family practice prenatal clinic. She was a non-compliant patient. She did not attend her first prenatal visit until 21 weeks gestation. On this visit, a last menstrual period (LMP) of 2/6/01 was given and an estimated due date (EDC) of 11/15/01 was documented. Plaintiff's mother then failed to return for the next three visits and also failed to obtain an ultrasound as ordered. She finally returned for prenatal care at approximately 33 weeks. Because of patient non-compliance, her care was transferred to an Ob/Gyn clinic within the same network.

She then began care at the Ob/Gyn clinic and an ultrasound was performed a week after her care was transferred. The third-trimester ultrasound gave an EDC of 12/12/01; which was different from the EDC from the first clinic. The admitting nurse and Ob/Gyn who saw plaintiff's mother claimed she gave an LMP consistent with the ultrasound rather than the date given at the first clinic. They documented the new estimated due date. There was evidence that the nurse may have changed the LMP dates in the medical record but this would have occurred around the time of the visit. There was also evidence that the caregivers at the Ob/Gyn clinic did not see the LMP/EDC from the first clinic.

Plaintiff's mother continued to treat at the Ob/Gyn clinic through 12/6/01. The Ob/Gyn ordered twice weekly non-stress testing through delivery due to non-compliance issues. The mother went for the first three non-stress tests (NSTs) but missed the remaining tests.

On December 12, 2001, plaintiff's mother presented to defendant hospital. Plaintiff was delivered within one hour and 14 minutes by stat C-section. Upon delivery, he had low Apgars, was floppy and blue, and demonstrated no respiratory effort. His heart rate was 20-40 beats per minute, but cord blood gases were normal. A follow-up blood gas performed 45 minutes later showed some metabolic acidosis although the pH was normal.

Plaintiff suffers from cognitive delays and deficits and cerebral palsy.

Plaintiff asserted that delivery should have occurred at least a week earlier using the original LMP from the first clinic. The defendant should not have changed the last menstrual period based on a 3rd trimester ultrasound and history allegedly given by the plaintiff's mother. Further, defendants

should have ordered serial fetal well-being testing to assure fetal status due to the difference in expected due dates. The delivery should have also occurred more quickly on 12/12/01 due to fetal distress. Also, though plaintiff's mother was admittedly non-compliant, defendants should have had an office tracking system as is recommended by the American College of Obstetricians and Gynecologists (ACOG) for following up with non-compliant patients who miss appointments. The first clinic had a tracking system.

Defendants' position was that the injury occurred during the prenatal period as a result of decreased perfusion of oxygen to the fetus partly due to the mother's cigarette smoking during the pregnancy. In addition, defendants claimed plaintiff-minor had a genetic syndrome called Angelman's syndrome. Therefore, sooner delivery would not have made a difference in outcome. Also, the normal cord blood gas proved that this was not a birth injury. Defendants also asserted that their tracking system was fine and the plaintiff's mother was very non-compliant and failed to continue testing that was ordered and that continued testing would have avoided the injury plaintiffs claimed occurred around the time of birth.

Prior to trial, the case settled for \$975,000.

Plaintiff was represented by Jesse Reiter and Juliana Sabatini of Bloomfield Hills.