

Spoilation Of The Evidence: Court Lets Patient Sue.

The next day after the patient was admitted to the hospital in labor she gave birth by cesarean to an infant that had been in breech position inside her uterus.

The child has suffered from numerous medical and developmental issues the parents believe were caused by substandard nursing care during the mother's labor and/or at the time of delivery. They filed a lawsuit against the hospital.

After the parents' malpractice suit was filed the hospital claimed certain records could not be located, including the nursing notes, labor and delivery flow sheets, fetal heart monitor strips and the perioperative nursing notes from the patient's c-section.

SUPREME COURT OF INDIANA
August 10, 2011

In the first phase of the lawsuit, called civil discovery, the parents' lawyers made a formal demand for all of the pertinent medical records from the hospital.

The hospital countered with an affidavit that the records could not be located.

The parents' expert neonatologist then issued a statement that he could not formulate an opinion on the professional negligence issues without the missing records.

The parents' lawyers then amended the lawsuit to include allegations against the hospital of spoliation of the evidence, that is, intentional or negligent action by the hospital which caused alteration or loss of evidence that would allow the parents to succeed with a lawsuit against the hospital.

The Supreme Court of Indiana agreed in general terms that spoliation of the evidence is a valid basis for a lawsuit, but such allegations are not separate from the healthcare malpractice lawsuit and must go through a pre-suit medical review panel, a technicality of Indiana state law. **Howard Regional Health v. Gordon**, ___ N.E. 2d ___, 2011 WL 3501882 (Ind., August 10, 2011).

EMTALA: Hospital Did Not Follow Standard Screening For Pregnant Patient, Grounds Seen For Lawsuit.

The US Emergency Treatment and Active Labor Act (EMTALA) does not expressly set the parameters of an appropriate medical screening examination in the emergency department.

The courts have decided that the patient can sue the hospital if the screening examination failed to comply with the standard screening protocol that the hospital regularly follows for other patients presenting in the emergency department with the same or substantially similar signs and symptoms.

There is no dispute that the hospital had in place a "Gravid with 3rd Trimester Bleeding" protocol which explicitly required a speculum vaginal examination if the patient was bleeding.

Moreover, the protocol in question specified that certain laboratory studies be performed, including CBC, urinalysis, serology, platelet count and other tests.

This patient did not get a vaginal speculum examination or lab tests required by the hospital's standing protocol for third trimester bleeding that would have pinned down the problem.

UNITED STATES DISTRICT COURT
PUERTO RICO
August 15, 2011

The patient gave birth to a premature baby girl whose incomplete development resulted in respiratory complications that led to the baby's death two days after she was born.

She came to the hospital's E.R. at 10:15 p.m. with complaints of vaginal discharge and occasional blood spotting within the previous half hour. She denied pelvic pain, dysuria or fever and she was feeling fetal movements.

The E.R. physician phoned and spoke with her ob/gyn at 10:55 p.m. The plan was to give terbutaline and Vistaryl and discharge her with instructions to come to the office first thing the next morning. She was discharged at 12:15 a.m.

She saw the ob/gyn shortly after 8:00 a.m. Soon after examining her the ob/gyn was on the phone arranging for admission at another hospital where the infant was delivered by cesarean at 12:12 p.m. with low APGAR's and a weight of 2 lbs 14 oz.

Hospital's Standard Screening Not Followed / EMTALA Violation

The US District Court for the District of Puerto Rico said the first hospital violated the US Emergency Medical Treatment and Active Labor Act (EMTALA).

The first hospital's standing protocol for "Gravid with 3rd Trimester Bleeding" required a vaginal speculum exam to differentiate bleeding from bloody show and rule out placenta previa, abruption or rupture of the membranes. The gestational age was to be determined, maternal vital signs taken and fetal heart tones measured by Doppler.

In addition, lab work was supposed to include a CBC along with other testing. According to the patient's medical expert, a CBC in the E.R. that night would have revealed that the patient's pre-term labor at 27+ weeks was due to a decidual or placental infection.

The patient reportedly was only given a cursory pelvic exam and sent home with medications. The protocol for third-trimester bleeding was not even minimally carried out. **Cruz-Vazquez v. Mennonite Gen. Hosp.**, 2011 WL 3607669 (D. Puerto Rico, August 15, 2011).