

## Fetal Remains: Court Upholds Parents' Right To Sue Hospital.

The five-months pregnant patient was admitted through the E.R. with premature labor contractions.

The next day her male fetus was pronounced dead shortly after spontaneous delivery. The physician charted that the mother reported a heartbeat for the a brief interval she was allowed to hold him.

The physician and the labor and delivery nurse would not testify in court that there was a heartbeat. The judge in the US District Court for the District of Hawaii stated for the record, nevertheless, that no resuscitation was or should have been attempted because a fetus at twenty weeks, even with a heartbeat or apparent respiratory effort, is not viable outside the womb.

### **Birth Certificate**

#### **Loss of Fetal Remains**

It took more than five months for the parents to get a birth certificate. Hospital risk management insisted the event be classified as a stillbirth, for which no birth certificate could be issued, rather than the death of an infant born alive, for which a birth certificate was appropriate.

Eventually the hospital's patient advocate prevailed. The data was sent to the State and a birth certificate was issued for a son Gregory.

The court expressly declined to fault the hospital over the birth certificate issue.

However, once the parents got the birth certificate they asked a funeral home to access the remains from the hospital morgue for a Catholic funeral mass and burial, but the remains were gone and their disappearance could not be accounted for.

The best anyone could figure was that the remains were dissected and thrown out.

The court expressly ruled that the parents do have the right to sue for loss of the remains and entered judgment on their behalf against the hospital on the issue of liability.

The court at this point has reserved judgment on the amount of compensation, noting that the mother is still suffering from depression and anxiety attacks for which she is currently seeing a therapist and taking anti-depressant medication. **Ritchie v. Wahiawa General Hosp., 2009 WL 127770 (D. Hawaii, January 20, 2009).**

***Hospital personnel knew or should have known the remains were in storage pending resolution of the question whether a birth certificate was to be issued.***

***The parents have sufficient evidence that the hospital's negligence is the only possible explanation for the loss of the remains.***

***It could only have been the carelessness of some unidentified hospital employee at some unknown point in time between the last point anyone remembered seeing the remains and the mortuary came to get them.***

***The remains could only be accessed by someone with authorized access to the morgue but with no authorization to remove them.***

***It is true that the hospital's overall policies and procedures for operation of the morgue do meet the legal standard of care.***

***That argument fails, however, as a defense to this lawsuit because the hospital's policies and procedures were not followed.***

***That is, there is no plausible explanation for what happened other than a violation of the hospital's policies and procedures by someone who had access.***

UNITED STATES DISTRICT COURT  
HAWAII  
January 20, 2009