

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Hyperbilirubinemia: Jury Faults Physician, Nurses, Awards Substantial Verdict To Infant.

The mother filed suit on behalf of her infant son against the hospital where he was born and against the attending physician.

During his two-day hospital stay following his birth the infant had jaundice due to an increasing bilirubin level.

The mother observed a yellowness in her baby's eyes during the first twenty-four hours and she reported what she saw to a nurse.

The next day when the mother saw that the yellowness was still present she requested that the infant be examined by a physician.

Instead of getting a physician's exam the nurse assured the mother that the yellowness would go away and that she should not worry about it.

The infant was discharged less than forty-eight hours after birth with instructions to his mother to follow up with the physician in a week.

The hospital's procedures, however, mandated that an infant discharged less than forty-eight hours after birth was to be seen by a physician within the next twenty-four hours.

Over the next few days the infant became progressively more ill. He had to be rushed to another hospital for ten days during which time he was diagnosed with severe brain damage secondary to hyperbilirubinemia.



***The hospital's nurses failed to report to the attending pediatrician during the first twenty-four hours that the mother had observed yellowness in the infant's eyes and failed to get him examined.***

***The mother should have been instructed to have the baby seen within twenty-four hours of discharge.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
August 17, 2016

The jury awarded the infant nearly \$14 million for pain and suffering and life-long lost income.

The jury's verdict apportioned the substantial verdict 75% against the hospital as the nurses' employer and 25% against the physician.

The New York Supreme Court affirmed a decision for the infant on condition the mother agree to accept \$2 million less than the sum awarded.

Without elaborating, the Court ruled that the evidence at trial was sufficient to support a ruling that the hospital's nursing staff departed from good and accepted practice and that that departure was a proximate cause of the infant's brain injury. The evidence also supported a finding of liability on the part of the physician.

The Court also accepted the jury's determination that the hospital through its nurses was primarily at fault.

The \$7.5 million policy limit of the hospital's insurance has been paid into the registry of the Kings County New York Supreme Court.

According to the Appellate Division, that will forestall the accrual of additional interest against the hospital on that portion of the hospital's total liability exposure. ***Sence v. Atoyntan***, \_\_\_ N.Y.S.3d \_\_\_, 2016 WL 4371600 (N.Y. App., August 17, 2016).

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