

Miscarriage: Lawsuit Raises Questions Re Hospital's Handling Of The Remains.

The mother was informed by her obstetrician at a routine prenatal visit that the fetus inside her had expired at approximately fifteen weeks gestation.

The obstetrician had her admitted to the hospital for delivery of the deceased fetus.

The Parents' Expressed Wishes

The parents expressly told the obstetrician they did not want an autopsy or any laboratory work done on the fetus. They wanted the fetus to be cremated.

The nurse went on to tell the couple the fetus would, in fact, be cremated, along with other fetuses, not at this hospital but at another hospital which had the appropriate facilities. The couple concurred with the plan and agreed that the ashes could be commingled with the others and they did not need to get them back.

Hospital Pathology Department's Actions

A month after discharge from the hospital the couple received a bill for \$645 from the medical group with which the hospital pathologist was associated.

They assumed it was a mistake and ignored the bill for several months until they started getting phone calls from a collection agency. The collection agency said it was for pathology testing of the placenta. Before paying the bill, however, the patient accessed her records from the hospital.

In fact, the hospital pathology department had gone ahead with post-mortem testing on the fetus several days after the mother left the hospital.

Lawsuit Raises Questions

Re Pathology Work on Other Fetuses

At this point the issue is whether the parents' attorneys are entitled to subpoena any medical records regarding nineteen other non-live-born fetuses at the hospital. The Supreme Court of Alabama has ruled the lawyers can subpoena the records pertaining to disposition of those fetuses, but not the confidential records of the patients' miscarriages or stillborn deliveries. **Ex parte St. Vincent's Hosp.**, __ So. 2d __, 2008 WL 274754 (Ala., February 1, 2008).

This case raises the highly charged question whether a fetus delivered dead at fifteen weeks is the remains of a deceased loved one, or merely a garden-variety pathology specimen.

The traditional common law said that the remains of a loved one are strictly the family's property.

Although a corpse has no monetary value as personal property it has a great deal of sentimental value.

Misappropriation or mishandling of a love one's remains traditionally gave the family a right to sue for the guilty party for substantial non-economic damages.

At this point in the litigation the parents' attorneys are using the pre-trial discovery process to see if a pattern exists of ignoring parents' wishes as to miscarried remains at the hospital.

The medical records of nineteen other mothers' miscarriages or stillborn labors and deliveries will remain strictly confidential.

However, the records regarding disposition of the fetal remains will come to light in this lawsuit.

SUPREME COURT OF ALABAMA
February 1, 2008