

Labor & Delivery: Monitor Strips Missing, Court Approves Jury Instruction On Spoliation.

The child is now showing cognitive deficits alleged to be related to oxygen deprivation around the time of birth.

His parents' lawsuit against the hospital where he was born pointed to the fact the nurses' progress notes mentioned decelerations of the fetal heart rate at various times during the mother's labor.

However, the fetal monitor strips are nowhere to be found.

Because the absence of the fetal monitor strips puts the parents at a significant disadvantage in proving their case, they are entitled to a special jury instruction at trial.

NEW YORK SUPREME COURT
APPELLATE DIVISION
June 15, 2010

The New York Supreme Court, Appellate Division, ruled that the jury will be given the following instruction:

The defendant hospital was required by state law to maintain the fetal monitor strips and failed to do so without adequate explanation.

Accordingly, when weighing the evidence, the jury may infer that the monitor strips would not have supported the hospital's position on the question whether there were fetal heart decelerations and/or variability and would not have contradicted the parents' experts' opinions that such decelerations and/or variability were present during the mother's labor.

The jury is permitted but is not required to draw an inference against the hospital and is permitted but not required to rule against the hospital on these key evidentiary points. Coleman v. Putnam Hosp. Center, __ N.Y.S.2d __, 2010 WL 2404345 (N.Y. App., June 15, 2010).