

Conflicting due dates at issue in med-mal case

Mother's non-compliance wasn't all completely to blame, plaintiffs argue

\$975,000

The plaintiff-mother, who was pregnant for the first time, was treated prenatally at a family practice prenatal clinic. She was a non-compliant patient and did not attend her first prenatal visit until 21 weeks' gestation.

On this visit, a last menstrual period (LMP) of Feb. 6, 2001, was given, and an estimated due date, or estimated date of confinement (EDC), of Nov. 15, 2001, was documented. Plaintiff-mother then failed to return to the next three visits and also failed to obtain an ultrasound as ordered. She finally returned for prenatal care at approximately 33 weeks. Because of patient non-compliance, her care was transferred to an OB/GYN clinic within the same network.

She then began OB/GYN care and an ultrasound was performed a week after her care was transferred. The third-trimester ultrasound gave an EDC of Dec. 12, 2001, which was different from the first clinic's EDC.

The admitting nurse and OB/GYN who saw the plaintiff-mother claimed information gained directly from the plaintiff-mother regarding her LMP was consistent with the ultrasound's EDC, rather than the EDC recorded at the first clinic. As such, they documented the new EDC of Dec. 12.

Plaintiff continued to treat at the OB/GYN clinic through Dec. 6, 2001. The OB/GYN ordered twice-weekly non-stress testing through delivery because of non-compliance issues. Plaintiff went for the first three non-stress tests, but missed the re-

maining tests.

On Dec. 12, 2001, the plaintiff presented to the defendant hospital. Plaintiff-minor was delivered within 74 minutes by stat C-section. Upon delivery, he had low Apgar scores, was floppy and blue, and demonstrated no respiratory effort. His heart rate was 20 to 40 beats per minute, but cord blood gases were normal. A follow-up blood gas performed 45 minutes later showed some metabolic acidosis, although the pH was normal.

Plaintiff-minor suffers from cognitive delays and deficits, and cerebral palsy.

The plaintiffs asserted that delivery should have occurred at least a week earlier using the original LMP from the first clinic. The defendants, it was further argued, should not have changed the LMP based on a third-trimester ultrasound and history allegedly given by the plaintiff-mother. It was further argued that the defendants should have ordered serial fetal well-being testing to assure fetal status because of the difference in expected due dates; and the delivery should have occurred more quickly on Dec. 12, 2001, due to fetal distress.

Also, though the plaintiff-mother was admittedly non-compliant, it was argued that the defendants should have had an office tracking system, as recommended by the American College of Obstetricians and Gynecologists (ACOG), for following up with non-compliant patients who miss appointments. The first clinic, the plaintiffs said, had a tracking system.

The defendants' position was that injury occurred during the prenatal period as a result of decreased perfusion of oxygen to the fetus partly because of plaintiff-mother's smoking during the pregnancy. In addition, the defendants claimed plaintiff-minor had a genetic condition called Angelman's syn-



REITER



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Type of action: Medical malpractice, birth trauma

Type of injuries: Brain injury resulting in cerebral palsy, cognitive deficits and delays

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 25, 2008

Tried before: Mediation

Name of judge: Withheld

Settlement amount: \$975,000

Most helpful experts: InFocus Research Group, Shelby Township

Attorney for plaintiff: Jesse M. Reiter, Juliana B. Sabatini

Attorney for defendant: Withheld

Key to winning: Focus group utilization early in discovery

drome. Therefore, sooner delivery would not have made a difference in the outcome. Also, the normal cord blood gas proved that this was not a birth injury.

Through mediation, the case settled for \$975,000.