

When Cerebral Palsy is the Result of Medical Malpractice

BY SCOTT ELDREDGE
BURG SIMPSON

Cerebral palsy is a devastating diagnosis that carries life-long ramifications for children with the condition and their families. While the causes of cerebral palsy are sometimes unknown, medical errors are often to blame.

When trying a medical malpractice case dealing with cerebral palsy, there is much to consider. Children affected by this disorder require a lifetime of care and attention, and the financial consequences associated with ongoing assistance can be significant.

In addition to non-economic damages, there are also life-care costs, medical expenses and lost wages, which often reach into the millions of dollars.

WHAT IS CEREBRAL PALSY?

Cerebral palsy encompasses a broad range of developmental disorders caused by an injury to the immature and developing brain. Some cases are caused prior to birth, and the signs and symptoms of cerebral palsy vary considerably from child to child. Cerebral palsy is a permanent condition that affects motor skills, and many children with cerebral palsy are unable to walk. Others find it difficult or impossible to speak, feed themselves or manage any of the ordinary functions associated with daily living. Some children have completely normal intellectual abilities, while others experience severe cognitive impairment. Vision and hearing losses are not unusual, but unlike progressive nervous system disorders, cerebral palsy symptoms generally do not worsen over time. Muscle

rigidity and consequential shortening of muscles, however, can worsen over time if not appropriately treated.

Although there are many potential causes of cerebral palsy, delayed delivery during the birth process is often the primary cause. A standard defense in these cases is to assign blame to anyone or anything other than the healthcare professionals who attended the delivery. Other possibilities range from genetic defects, maternal infection, trauma that occurred prior to hospital admission and fetal infections. Obstetricians know that lack of

- Multi-organ involvement
- Seizures
- Elevated liver function tests
- Elevated kidney function tests
- Injury through post-birth imaging
- The child's pH levels and base deficit

Blood samples taken from the umbilical cord may reveal important information as to the timing and nature of the injury.

Seek to determine if magnetic resonance imaging of the neonate was taken shortly after birth. Scans acquired during this time may be par-

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oxygen to the fetal brain prior to birth is also a known cause of cerebral palsy. The combination of a lack of oxygen and lack of blood flow can bring about a condition known as hypoxic ischemic encephalopathy, which manifests as brain damage.

CAUSATION

Causation is usually a highly contested aspect of birth trauma cases. Medical malpractice lawyers are encouraged to search for key terms in the medical records to help prove a case. While malpractice carriers have recommended to those they insure not to use certain terminology in medical records, these terms are still used on occasion.

Search for words that include "birth trauma," "birth asphyxia," and "hypoxic insult." Carefully examine entries associated with "hypoxic ischemic encephalopathy," as that is an issue an attorney will likely have to prove. In a recent case, the record indicated the expectant mother had noted decreased fetal movement in the days prior to birth. The defense seized on that comment and argued that was when the fetus suffered his anoxic insult. We were able to successfully defuse this issue by noting a similar amount of decreased movement had also occurred prior to the deliveries of the mother's other healthy infants. Expect the defendants to focus attention on any issue or fact that will deflect liability and causation.

Cerebral palsy is associated with hypoxic ischemic encephalopathy (i.e. evidence of brain damage brought on as a result of a hypoxic ischemic insult). This can be manifested in many ways. Search for evidence of:

ticularly useful in determining the timing of a cerebral insult and will help establish causation. You will need the assistance of a qualified pediatric neuroradiologist to interpret the images and establish the time frame of the events. While the timing may not be precise, it may provide a window of time in encompassing when the delivery occurred. Do not rely solely on the interpretation from the reading neuroradiologist. They may not have the requisite skill or experience in interpreting neonatal scans. Many times, competent pediatric neuroradiologists significantly disagree with the initial reviewing neuroradiologist's opinion. In these instances, it is important to obtain the opinion of an experienced medical professional who specializes in the interpretation of newborn scans.

Do not be deterred from investigating a case because you have been told that the infant suffered from a stroke near the time of birth. While the stroke may have been the cause of brain damage, it still may be a case where the hypoxic-ischemic insult was the cause of the stroke (i.e. earlier delivery would have prevented the fetal distress which caused the stroke). Well-coordinated and qualified experts can help shed light on these complex timing issues.

MEDICAL EXPERTS

Physicians and medical professionals are retained to help decipher the complex medical information necessary to support the underlying claim of negligence and how the treating physicians may have deviated from the applicable standard of care. Other

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cluding governmental, nonprofit academic medical centers, community hospitals and senior care providers.

She received a law degree from the University of North Carolina School of Law and a bachelor's degree from Wake Forest University.

Holland & Hart announced Thursday that attorney **Brooke Simons** recently joined the firm's Denver office as an associate in its trust and estate litigation group.

Simons represents trustees, fiduciaries, heirs and beneficiaries in matters involving complex trust, estate and probate proceedings.

Simons received a law degree from William & Mary School of Law and a bachelor's degree from the University of Mississippi. She is admitted to practice in Virginia, and her application for admission to Colorado is pending.

Colorado Attorney General **Phil Weiser** announced Thursday he has selected **Lisa Neal-Graves** to serve on his leadership team as the Colorado Department of Law's Chief Innovation Officer. Neal-Graves is the first person in the nation to serve in such a role in an attorney general's office.

Neal-Graves will establish processes and find technology solutions to help attorneys and staff in the office.

Before joining the office, Neal-

Graves was vice president of the cloud strategic product group at Zayo Group in Boulder. She has also held leadership positions at Intel Corporation. Neal-Graves has also served in senior positions at Unisys, Serviceware, Chase Business Services, Deloitte Consulting and AT&T Corporation. She serves on the board of directors for the Parker Performing Arts School and the Colorado Council of Black Nurses, and on the board of advisors for Harper DB in Denver.

Neal-Graves received a law degree from the University of Colorado Law School, master's degrees from the University of Colorado, Boulder and Michigan State University and a bachelor's degree from Hampton University.

GOOD FOR YOU

Brownstein Hyatt Farber Schreck announced Tuesday that **Jeff Jay**, an associate in the firm's Denver office, has been appointed to the board of directors of Family HomeStead. The nonprofit organization helps families with children overcome the homelessness crisis by moving to next-step housing, having adequate income to support next-step housing and addressing the underlying causes that led to their homelessness.

As part of his three-year term, Jay will assist Family HomeStead with organizational oversight and monitoring of program goal and policies. •

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specialists may be asked to explain the specifics pertaining to the child's disabilities and/or injuries at the time of the trial, and throughout the course of the child's life. In all medical malpractice cases, the testimony of medical experts is required. Medical experts may include:

- An obstetrician to review the fetal heart tracings to establish if there was evidence fetal distress
- Labor and delivery nurses
- Maternal fetal medicine specialist
- Pediatric neurologist
- Pediatric neuroradiologist
- Perinatologist
- Developmental psychologist
- Physical therapist
- Pathologist
- Life-care planner
- Economist

POST-BIRTH CAUSES OF CEREBRAL PALSY

High Levels of Bilirubin: With the advent of managed care and early discharge of patients, often times babies will be sent home with dangerously high bilirubin levels in their blood. Left unchecked, this excess bilirubin can cause cerebral palsy.

Delayed Resuscitation: It is not uncommon for some newborns to require resuscitation after birth. There

are standard protocols in place that dictate the sequence of medical interventions necessary to properly treat these infants. If qualified and trained practitioners fail to adhere to these protocols, an infant who might otherwise have escaped injury may suffer damage after delivery. If you suspect there has been an improper or delayed resuscitation, have the records reviewed carefully by a well-qualified neonatologist. The American Academy of Pediatrics has written resuscitation manuals which can be used to help evaluate the care provided after delivery. You may have a case where errors occurred both prior to and after delivery.

Not too many years ago, we had the honor and privilege to attend the high-school graduation of a young woman with cerebral palsy whom we represented from the time she was two weeks old. Her case was challenging, but we settled on very favorable terms right before trial. Although she continues to suffer from the effects of the disorder, her spirit remains strong and her future is bright.

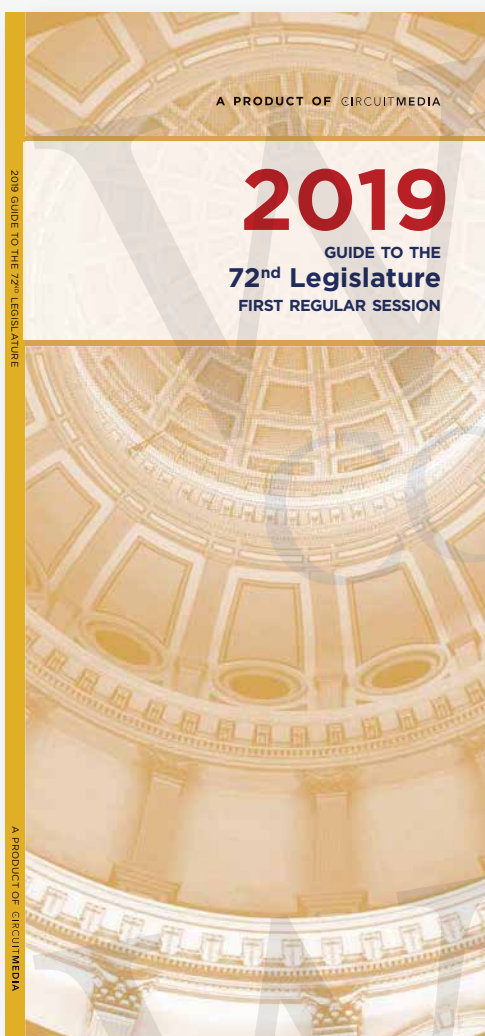
These kinds of cases can bring you the deep personal satisfaction of knowing your hard work, dedication and ability as an attorney to advocate for your client's best interests has made a positive and life-long impact on their lives. •

— Scott Eldredge is a named partner at Burg Simpson and practice group leader of the firm's medical malpractice division.

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