

Trying Medical Malpractice Cases When There is a Failure to Diagnose Postpartum Preeclampsia

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Preeclampsia is a maternal hypertensive disorder that complicates approximately 5% of all pregnancies in the U.S. It is among the leading causes of severe maternal injury and death, however, with timely diagnosis and appropriate treatment those risks are all but eliminated.

When preeclampsia occurs in the prenatal period, care providers must carefully monitor and treat the patient with the goal of preventing maternal and fetal injury until delivery is a safe option. Delivery will often effectively treat the condition, but in some patients, the condition will persist or occur for the first time in the postpartum period.

Postpartum preeclampsia is less common, but it is no less dangerous. Risk is highest in the first 48 to 72 hours following delivery, though symptoms can develop weeks later. Thus, it is critical to carefully monitor patients for the condition in the immediate postpartum period. National guidelines have been created to ensure timely diagnosis and treatment in that context.

WHO IS AT RISK?

Women who are at risk for developing postpartum preeclampsia following the birth of their child are generally those who:

- Had preeclampsia prior to delivery
- Have a history of high blood pressure
- Have had high blood pressure during any prior pregnancy
- Have had twins or triplets
- Are 40 years old or older
- Are obese
- Have diabetes
- Have a heart condition related to hypertension

SIGNS AND SYMPTOMS OF POSTPARTUM PREECLAMPSIA

Diagnosis of preeclampsia requires a systolic blood pressure of at least 140 millimeters of mercury

(mmHg) or a diastolic blood pressure of 90mmHg along with evidence of organ dysfunction typically involving the brain, kidneys, liver, lungs or bone marrow. Preeclampsia can occur with the following findings that are considered "Severe Features," any one of which mandates immediate treatment:

- blood pressure greater than 160 mmHg systolic or 110 mmHg diastolic;
- headache;
- visual disturbances;
- elevated creatinine levels;
- liver dysfunction or epigastric pain;
- low platelet count; or
- pulmonary edema — shortness of breath, chest tightness or difficulty taking a deep breath.

APPROPRIATE TREATMENT

The threshold to begin treatment in the postpartum period is a systolic blood pressure of 150 mm Hg or greater, or a diastolic blood pressure of 100 mm Hg or greater on two occasions at least four hours apart. Systolic blood pressure of 160 mm Hg or greater or diastolic BP of 110 mm Hg or greater is considered severe and should be rechecked within 15 minutes. Blood pressure that remains in the severe range for 15 minutes is considered a hypertensive emergency and medication to reduce blood pressure must be started immediately. Similarly, the presence of any of the severe features noted above requires immediate treatment. The medications necessary to treat postpartum preeclampsia should be readily available in a hospital setting and, when administered correctly, carry almost no risk to the patient. Appropriate treatment includes:

- Anti-hypertensive medication to lower blood pressure levels; and
- Anti-seizure medication such as Magnesium Sulfate to help prevent seizures.

Once the medications have been given, the patient must be closely monitored to ensure an adequate re-



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sponse. If a patient fails to respond to the medication, a higher level provider must be consulted immediately.

FAILURE TO DIAGNOSE

Failure to timely diagnose and treat postpartum preeclampsia can lead to catastrophic injury. Left unchecked, the condition can evolve from preeclampsia to eclampsia (seizures), a life-threatening emergency. Additionally, persistently elevated blood pressures can lead to stroke. The resulting complications may include significant and permanent physical and cognitive deficits and even death. Given the clear guidelines for diagnosis and treatment, the failure to timely recognize, diagnose and treat postpartum preeclampsia is usually considered negligent. In these instances, the injured party may have cause to file a legal action for medical malpractice to recover monetary compensation for damages.

WHEN NEGLIGENCE IS SUSPECTED

When a prospective client brings a case alleging medical negligence, the medical malpractice team will initiate the process by consulting with the patient and their family. The next step is to review all the available and relevant medical reports, treatment histories, clinical

findings and test results. If it appears that a healthcare provider failed to conform to an acceptable standard of health care, and the client suffered harm as a result of that failure, the team will consult with medical experts to determine if medical negligence occurred. Healthcare professionals are routinely retained by medical malpractice attorneys as practice area experts to help decipher the complex medical information necessary to support the underlying claims of negligence. Their testimony is used to clearly demonstrate how the treating healthcare professionals may have deviated from the applicable standard of care. Other specialists may also be asked to explain the specifics of the patient's condition and the expected future care needs.

EXPERT TESTIMONY

The fields of expertise relevant to medical malpractice cases involving postpartum preeclampsia often include:

- Obstetrics and Gynecology
- Maternal Fetal Medicine
- Obstetrical Nursing
- Neuroradiology
- Neurology
- Physical Medicine and Rehabilitation
- Life Care Planning
- Economics

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ORAL ARGUMENTS

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jured in utero, but born alive and seriously injured, is not a person under the child abuse statute.

The People argued that excluding particular spectators for cause is not a closure but, rather, falls within the court's authority to maintain order in the courtroom. On the child abuse question, the People argued the child's live birth made her a "person" under the plain language of the state child abuse statute, as well as amendments to the statute since the Court of Appeals ruled on the subject in *People v. Lage* in 2009.

Counsel for Jones argued the public trial issue should be dismissed, saying the record doesn't support the state's claims that the family members were excluded for cause. If the court does reach the issue, it should affirm the Court of Appeals' finding that the lower court closed the courtroom to the defendant's parents without satisfying *Waller v. Georgia* and *People v. Hassen*. As for the child abuse charge, Jones' attorney argued the statute's

plain language establishes a fetus is not a "person" and that, since *Lage*, the legislature has repeatedly rejected legislation intended to bring "unborn human beings" within the Criminal Code's definition of "person."

The court also heard arguments in *McCulley v. People* about whether the Court of Appeals erred by concluding the term "conviction," as used in section 16-22-113(3) (c), C.R.S. (2018), of the Colorado Sex Offender Registration Act (SORA), includes a successfully completed deferred judgment.

The final case for Jan. 14 was *People v. Espinoza*. The state Supreme Court will consider whether a lower court erred in finding the defendant's attempted murder crime of violence convictions were based on identical evidence, and therefore not separate crimes of violence.

On Jan. 15, the state's highest court heard arguments in *Destination Maternity* and *Liberty Mutual Insurance v. Burren*. The court will consider whether the Court of Appeals erred in holding that an administrative law judge can't determine an injured worker has reached maximum medical improve-

ment unless an authorized treating physician or an independent medical examiner has made similar findings. The lower court's decision appears to conflict with the plain language of section 8-42-107(8)(b)(III), C.R.S. (2019), which allows the findings of a division independent medical examiner to be overcome by clear and convincing evidence.

In *People v. Figueroa-Lemus*, the court will consider if an order denying a motion to withdraw a guilty plea under Crim. P 32(d) on a pending deferred judgment is a final judgment subject to appeal under CO Rev Stat § 13-4-102 (2017). A second issue in the case is whether an attorney is required to advise a client that pleading guilty to a crime will subject them to mandatory detention for the duration of the defendant's immigration proceedings.

Afternoon arguments on Jan. 15 included two lawsuits brought by a group of six Larimer County residents over a proposed mountain coaster development.

In the first of the two related lawsuits, filed against the Yakutat Land Corporation and Estes Valley Board

of Adjustment, the court will consider five issues. The first is whether the Court of Appeals has jurisdiction under state law if, in the context of a C.R.C.P. 106(a)(4) proceeding, a district court declares a county development code unconstitutional.

The court will also consider if the residents are precluded from seeking judicial review on whether the commissioner or board of adjustment have jurisdiction over the use classification decision. The last three issues deal with whether the board of adjustment abused its discretion or exceeded its jurisdiction in various zoning and planning decisions.

The second case, which pits the residents against the Larimer County Board of Commissioners and the Yakutat Land Corporation, raises the question of whether the board of commissioners had jurisdiction to review the appeal of a zoning official. If the board did have jurisdiction, the court will also consider whether the board or the zoning official abused their discretion in determining the zoning code use classification. •

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CANDOR ACT

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out what happened and prevent it from happening again.

"On the provider side, it's called 'Candor' for a reason. ... They really should feel free to be honest and to apologize," Parker said. "On the patient side, I think it's important for us as lawyers to recognize that it's not at all about the lawyers. While we can be present, really this is between the provider and the patient."

Martin said from a provider's perspective, the Candor Act alleviates frustration related to not having the opportunity to talk with patients outside of legal proceedings. She added it's dissatisfying for physicians who feel they can't be transparent with patients about harmful incidents if they've been advised not

to talk to the patients. The philosophy of transparency is also built into the Seven Pillars, an established approach

harmful health care incidents. Martin said the Candor Act's intent shares the Seven Pillars process's philosophy but

the process.

Iowa and Oregon have Candor laws of their own, and Martin has attended workshops about Iowa's law. She said she heard both providers and patients talk about the benefits of the confidential, non-adversarial process. Keeping trust between patients and providers matters especially in small communities, Martin said, where there are limited options for health care facilities so patients will have to keep coming back even after a harmful incident.

"When you go to court, all your medical history is out in front of everyone," she said. "If something happens at a hospital, for example, and it's the only hospital in a small community, the patient and the family want to know that they will be safe coming back to that hospital." •

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rooted in promptly reporting, investigating and finding solutions after

goes further because it has legal protections for communications under

BLOCKBUSTER

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cussion involving personal injury," he said.

O'Connell, managing partner of Queener Law's Denver office, said she's excited about a panel she will participate in called "Business of Small Firms," which will also feature

Jennifer Chamberlain of Bowman & Chamberlain.

"I'm actually interested to hear the crowd interaction on how to run a small solo practice, because we're seeing a growth in either small partnership or solo practices in Colorado statewide," O'Connell said. She expects small practices to be a recurring topic across the convention, citing as

an example a talk by J. Christopher Elliott of Bachus & Schanker about the role of small firms in mass torts cases.

"As far as what I'm most looking forward to, I think it's the overarching theme of Blockbuster. We've really tried to keep it with an eye to practical application," O'Connell said. While some conferences can get very abstract and theoretical, she said, Blockbuster

has tried to focus on the issues CTLA members encounter on a day-to-day basis.

Blockbuster is a private CLE event for CTLA members only, but Ziev encouraged people who meet CTLA's requirements to join the organization. Same-day registration will be available the morning of the event. •

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SEXUAL ASSAULT

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you can be to handle any situation and protect your employees, customers and ultimately, the business you've worked so hard to build. •

—Doug Stevens is special counsel with Caplan & Earnest. He recently presented on this topic at the annual Wilderness Risk Management Conference with Dave Dennis, the global safety and risk management director with Rustic Pathways and

POST-PARTUM PREECLAMPSIA

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All healthcare providers who work in the field of obstetrics, including physicians, midwives, nurse practitioners, and nurses, have an obligation to be aware of the complications associated with pregnancy. They must carefully monitor and evaluate their patients in order to appropriately manage their care.

Postpartum preeclampsia is a well-known, life threatening complication. In order to significantly reduce the harm that can result from that disorder, national guidelines have been firmly established. Health care providers have a duty to recognize, diagnose and treat postpartum preeclampsia symptoms quickly to prevent stroke, seizures and other serious injury. When measures to prevent or mitigate the condition

are not implemented, and a patient suffers an injury as a result of that negligence, that patient and their family may be entitled to significant compensation. •

—Scott Eldredge is a shareholder with Burg Simpson Eldredge Hersh & Jardine and the practice group leader of the firm's medical malpractice department. Marc Johnson is an associate at Burg Simpson Eldredge Hersh & Jardine and represents patients and their families in medical malpractice litigation.