

FAILURE TO TEST FOR GENETIC DISORDERS RESULTS IN SECOND CHILD WITH SEVERE BIRTH DEFECTS

Aiden Estrada was born in Tampa, Florida on June 28, 2002, to parents Amara and Daniel Estrada. Almost immediately, the anticipated joy at seeing their first-born child was overcome by the tragedy and sadness of realizing that the child suffered multiple, severe birth defects. Aiden had a cleft palate, an abnormally-placed urethral opening, undescended testicles, and other severe abnormalities. Concerned about the possibility of birth defects that might recur in future pregnancies, the Estradas sought advice from Dr. Boris Kousseff, chief geneticist at the University of South Florida (USF). Dr. Kousseff examined Aiden three days after his birth, and conducted numerous other examinations over the next several months. The doctor, however, did not reach any diagnosis for Aiden's condition. The Estradas told Dr. Kousseff that they would not have a second child if that child could have the same birth defects as Aiden. The doctor told the Estradas that Aiden's abnormalities did not indicate any genetic disorder, and they could expect pregnancies with normal children. He also told them they could "make sure" there would be no recurrence by performing ultrasounds during the next pregnancy.

After Aiden's birth, the Estradas moved from Tampa to Orlando for Amara's new veterinary job. In November 2002, when Aiden was being evaluated for the Early Intervention Program in Orlando, another geneticist did a brief exam. Dr. Lynda Pollack was the pediatrician in charge of the program. Dr. Pollack also failed to



Aiden Estrada and his baby brother Caleb

diagnose Aiden's condition as a genetic risk for future pregnancies. The new job in Orlando proved to be too rigorous to manage with Aiden's considerable need for care weighing on the family. The Estradas decided to move to Gainesville, Florida, where they both found jobs with more flexible hours at the University of Florida. Amara became pregnant for the second time. During this pregnancy, she saw an obstetrician who specialized in performing ultrasounds. That doctor performed his own ultrasound evaluation on every prenatal visit with Amara, per Dr. Kousseff's advice.

Aiden's brother, Caleb, was born on November 18, 2004, at Shands Hospital in Gainesville. Like a recurring nightmare, the Estradas quickly realized that Caleb had been born with the same birth defects that afflicted his brother. Within an hour of his birth, doctors at Shands diagnosed Caleb as

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**Over
\$23.5 Million
Verdict:
MEDICAL NEGLIGENCE**

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Failure to test for genetic disorders results in second child with severe birth defects

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suffering from Smith-Lemli-Opitz syndrome, and told the Estradas that their older son likely suffered from the same thing. Smith-Lemli-Opitz syndrome was first diagnosed in 1964. It is a genetic disorder that affects newborns who are unable to produce enough cholesterol for healthy development, and often results in a variety of birth abnormalities.

Dr. Kousseff had worked 23 years at USF and had seen this syndrome in at least seven patients before the Estradas. He had even written an abstract on a patient with the genetic disorder. Despite this, USF, through its employee Dr. Kousseff, failed to properly test for a genetic disorder, failed to exercise a prudent level of care, skill, and treatment, and, tragically, failed to warn the Estradas of the 25 percent risk that the syndrome would recur in another child.

The Estradas now face the enormous burden of caring for two special-needs sons. The children are sustained with feeding tubes because they cannot eat on their own. They cannot speak. While Aiden recently began walking, doctors are not sure if Caleb ever will. Both children are mentally retarded. Neither child will ever be able to care for himself. The family asked SDSBS attorneys Chris Searcy and John Shipley to represent them in a complaint filed against the University for wrongful birth.

Because USF is a government agency, damages are capped. USF will only be required to pay \$200,000 of the total \$21.1 million verdict. Caleb will require lifetime care. "This case makes a strong argument for removing the damages cap for unresponsive government agencies," said Chris Searcy.

After two weeks of testimony, Circuit Judge William Levens ruled that USF's negligence resulted in Caleb's wrongful birth. The jury was directed to decide how much was due to the family for the cost of Caleb's care for the rest of his life, and for the family's pain and suffering. The jury took 2 ½ hours to award the Estradas a total of \$23,553,000. The jury assigned USF 90% of the liability for the mistake, and assigned Dr. Pollack (not named in the lawsuit) 10% of the liability. The quest for the Estradas' relief, however, is not yet over. Because USF is a government agency, damages are capped and the University will only be required to pay \$200,000 of the total \$21.1 million verdict against it. The Estradas' attorneys will seek a claims bill for the remainder of the verdict at the next session of the Florida legislature. The process could take years. "This case makes a strong argument for removing the damages cap for unresponsive government agencies," said Chris Searcy. ■



EARL DENNEY ELECTED TO AMERICAN BOARD OF TRIAL ADVOCATES

SDSBS attorney **Earl Denney** was recently elected to membership in the American Board of Trial Advocates (ABOTA) and the Palm Beach Chapter of ABOTA. Mr. Denney was elected by the National Board of Directors at their June 30, 2007 meeting. ABOTA noted that Mr. Denney's election "further evidences [his] high personal character, honorable reputation, and proficiency as a trial lawyer." Membership is by invitation only. ABOTA has a membership of more than 6,300 trial lawyers representing equally the plaintiff and defense bars, as well as judges, with 93 chapters in the United States. Its primary mission has been the preservation of the civil jury trial rights guaranteed by the Seventh Amendment to the U. S. Constitution. ■

*"I consider trial by jury
as the only anchor
yet imagined by man
by which a government
can be held to the principles
of its Constitution."*

- - Thomas Jefferson