

## *Unnecessary Use of Force at Birth Damages Newborn*

Jim Gustafson and Lance Block, along with Gainesville attorney Carl Carillo, recently resolved an obstetrical negligence case in which the defendant obstetrician's decision to manually deliver a 12-pound baby resulted in a brachial plexus injury to the baby. The case was settled for the available policy limits, a confidential amount.

J.D. was the eagerly-anticipated, first-born child of his young parents. Throughout her pregnancy, J.D.'s mother sought prenatal care as instructed by her obstetrician. Nearing the anticipated due date, J.D.'s mother exhibited known risk factors for fetal macrosomia (large birth weight). Fetal macrosomia is a recognized risk factor for shoulder dystocia, a potentially devastating complication of delivery in which the baby's shoulder gets hung up on the mother's pelvis, thereby preventing the baby from descending through the birth canal. If not treated properly, shoulder dystocia can result in a brachial plexus injury (damage to the nerves in the shoulder and neck), brain injury, or even death.

Just days before the scheduled delivery date, the defendant obstetrician noted that J.D. was at least 8 1/2 pounds, but he was unable to get an accurate fetal weight due to complicating conditions. The defendant did nothing further to accurately estimate the fetal weight despite the mother's risk factors for fetal macrosomia. Two days later, J.D.'s mother presented to the hospital for induction of labor. Although she didn't know it, she was about to attempt to deliver a 12-pound baby.

The records revealed a doctor in a hurry. The defendant obstetrician wrote that J.D.'s mother was "fully dilated" at 8:00 p.m. and he instructed her to begin pushing. However, the nurses' notes and the notations on the fetal monitor strips stated that J.D.'s mother was not fully dilated until 8:30 p.m. Despite the fact that she was not even fully dilated, J.D.'s mother was instructed that she was not pushing hard enough. The defendant then wrote that the baby "seemed a tight fit."

Unhappy with J.D.'s high station within the birth canal (-1 or -2), and with the baby's inability to descend further down the birth canal, the defendant began using a vacuum extractor to deliver J.D. A vacuum extractor should not be applied until the baby is at a low station (+2). After applying the vacuum extractor too early to a baby that was too large to fit through the birth

canal, and with the baby at such a high station, the defendant, records show, then pulled on the vacuum extractor for 32 minutes.

At 12 pounds, J.D. was simply too large to fit through his mother's birth canal and his left shoulder got hung up on her pelvis. The defendant responded to the shoulder dystocia by instructing the nurse to apply fundal pressure while he continued to pull on the baby. Application of fundal pressure in the presence of shoulder dystocia is unreasonable obstetrical care because it is known to

cause brachial plexus injuries to babies like J.D. In fact, the labor and delivery nurse testified that she told the defendant she would not apply pressure which might further lodge the shoulder of the baby unless the defendant told her that it was the only way to get the baby out, and only then would she do so. The defendant obstetrician instructed the nurse to apply the pressure.

The fundal pressure did not "get J.D. out." Instead, the pressure tore the nerves from his

spinal cord and the nerves within his neck. Finally, the defendant performed an acceptable maneuver and J.D. was delivered. J.D.'s left arm, with the nerves torn from the spinal cord, was floppy and useless. The maneuver that injured him - fundal pressure - was not only unsuccessful in delivering him, it was unnecessary and had actually delayed his delivery.

The nurses present at the delivery had 50 years' experience between them. J.D. was the only 12-pound baby any of them could recall who was born by vaginal delivery.

At the age of one year, J.D. underwent extensive surgery to attempt repair of the nerve damage to his neck and left shoulder. The surgery involved harvesting nerves out of his legs and feet and transplanting them into his neck and left shoulder to graft them onto the nerves that had been torn from his spinal cord. The surgery returned some of J.D.'s ability to use his left arm and hand, although he will need to continue physical and occupational therapy for years.

The case was settled after the defendant obstetrician testified at deposition, without further discovery. The settlement proceeds were used to purchase a structured settlement annuity to provide for J.D.'s future needs. ■

*"Large-sized baby should never have been forced through the birth canal."*