

Corboy & Demetrio Secures \$9.5 Million Birth Injury Medical Malpractice Settlement

April 2010

Sherman Hospital, a nurse midwife and her sponsoring obstetrician have agreed to pay \$9.5 million to settle a lawsuit filed on behalf of a boy born with cerebral palsy. As a result of the agreement, the lawsuit was dismissed on April 15, 2010. The family was represented by Corboy & Demetrio attorneys Margaret Power and Shawn Kasserman.

Attorney Kasserman stated, "Had the mother received the proper treatment and supervision by the nurse midwife and sponsoring physician at Sherman Hospital, her son would have been born a healthy and vibrant baby. This settlement will allow him to receive the proper and necessary care he will need for the rest of his life."

Baby's Birth

On October 28, 1996, at approximately 1:45 a.m., the expectant mother, 9 months pregnant, was admitted in labor to Sherman Hospital in Elgin, Illinois. Shortly thereafter, Mary Traub, CNM, a nurse midwife, was notified of her arrival and her physical condition.

In accordance with the policies and procedures of Sherman Hospital, a nurse midwife must have a sponsoring physician and employer. In this case, Traub's sponsoring physician and employer was Dr. Jae Eun Han. He was out of the country, so he enlisted Dr. Brad Epstein to be his backup.

During early labor, the fetus intermittently displayed decreases in his heart rate, some of which could be attributed to intermittent umbilical cord compression. After each deceleration the heart rate returned to normal. Traub was notified of these episodes.

At approximately 8:06 a.m., Traub performed a vaginal exam on the mother. At 9:20 a.m. she started pushing and the fetal heart monitor tracing was lost. Fourteen minutes later, Traub noticed a drop in the

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fetal heart rate. She claimed she asked a hospital staff nurse to find a backup obstetrician but none could be located. No record was made of the request and no nurse recalled any such request.

At 9:36 a.m. Traub told the mother to push more forcibly, during which time the baby's heart rate decreased again for a period of approximately 10 to 12 minutes. In response to this drop in the fetal heart rate, Traub wanted to quickly deliver the baby vaginally. The baby was at a high station and Traub resorted to the use of fundal pressure by applying pressure on the mother's uterus to move the fetus down the maternal pelvis for delivery. Pressure was applied by Traub three times for each of her eight remaining contractions, for a total of 24 times.

Fundal pressure is an extremely risky procedure only used when a baby's head is visible and the mother is exhausted. Neither circumstance was present in this case.

The baby boy was born at 10:05 a.m. As a result of compression of the cord, he suffered a lack of oxygen during the final 15 minutes of labor resulting in cerebral palsy.

The Plaintiff alleged that the hospital, nurse midwife and Dr. Han deviated from the standard of care when treating the mother. Dr. Epstein was not notified or consulted early and often enough in order to evaluate and treat her, a non-reassuring fetal monitor strip was not identified, application of fundal pressure was too aggressive and not necessary, and proper policies and procedures were not adequately provided.

It was also alleged that intrauterine resuscitation, a procedure that can be ordered by a nurse midwife without an order from a physician, should have been performed on the mother. It would have involved placing her on her side, giving her oxygen and intravenous fluids and stopping any pushing. And it would have relieved the compression of the umbilical cord which cut off oxygen and blood flow to the baby's brain during the last 15 minutes of labor.

Settlement

Sherman Hospital paid \$7.5 million; Fox Valley Women's Healthcare, employer of Mary Traub, nurse midwife, paid \$1 million and Dr. Han paid \$1 million.

The lawsuit was mediated by retired Judge Daniel Locallo.

To consult with Attorney Power, Kasserman or any other lawyer at [Corboy & Demetrio](#), call 312.346.3191. We are available 24 hours a day, 7 days a week.