

A REPORT TO CLIENTS & ATTORNEYS  
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# OF COUNSEL

## Failure to Monitor Mother and Baby During Labor Results in Severe Damage

**Settlement just under eight figures provides care for child's lifetime.**

In the summer of 1999, a young couple was looking forward to the birth of their second child, a little girl. Their first-born daughter was especially excited about having a baby sister. The pregnant mother established prenatal care with a local obstetrician. The 31-year-old woman was in excellent health, experiencing a normal, healthy pregnancy. Prenatal screening tests, including several tests designed to determine whether the baby had any genetic disorder, all reported normal. Neither the mother nor father had any family history of genetic problems. There was no indication that the obstetrician should be concerned about any genetic abnormality.

By August 1999, the obstetrician noted that the baby was measuring larger in size than expected for a baby at her gestational age, and she decided to induce labor. The mother was admitted to a local



hospital and placed under the care of the hospital's labor and delivery nurses. The assigned nurse was expected to closely monitor and report the progress of the mother's labor to ensure that the baby responded appropriately.

Unfortunately, communications between the nurse and the obstetrician failed tragically during the most critical time in the labor process. Despite the fact that the woman was already experiencing labor contractions, the nurse began administering Cytotec (misoprostol), a prostaglandin used to induce labor. This powerful drug can cause hyper-stimulation and severe uterine contractions that may result in injury to the baby; it should not have been given to a patient already in labor. The nurse never advised the doctor about the contractions before administering the drug shortly before 10:00 p.m. *(Continued on page ten.)*

## Misfilled Methadone Prescription Causes Woman's Death

**Patient received ten times intended dose of medication.**

As Florida's population continues to increase in average age, we note a related increase in prescription misfill cases. Since elderly people typically take more medications than younger people, the risk for the older population is greater. SDSBS attorneys **Karen Terry** and **Jack Scarola** recently represented two adult children regarding the wrongful death of their 87-year-old mother, Mrs. A, who died of methadone toxicity due to a misfilled prescription.

Mrs. A had been given ten times the intended dose of the medication.

The horrific chain of events leading to Mrs. A's death began on March 14, 2007. She was residing in an assisted-living facility and under the care of a physician. Mrs. A had never before taken methadone, a potent narcotic. An order was written by her physician for 2.5 mg of methadone to be given to her three times each day. The pharmacy misfilled the order, delivering the drug in doses of 25 mg. The pharmacy later explained that the misfill occurred because they had failed to see the decimal point between the "2" and the "5" and blamed the physician for not writing the order more clearly. Mrs. A's caregivers administered a total of 75 mg of methadone on the first day. That excessive dosage continued *(Continued on page seven.)*

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*(Continued from page one.)*

The baby's baseline heart rate had been normal and steady, as noted in reports earlier in the evening. Just minutes after the administration of Cytotec, the baby began to show signs of fetal tachycardia – an increased heart rate. The nurse did not advise the doctor of the abrupt change. She also failed to document that the patient's contractions had increased in frequency and severity, a clear sign of excessive uterine activity. The nurse failed to recognize that these changes in both mother and baby were of serious concern.

At 1:00 a.m. the next morning, the baby's heart rate began decelerating, well below normal. The nurse called the doctor an hour later. The doctor inserted an internal fetal monitor in the mother to more closely trace the baby's heart rate. The doctor then left, expecting the nurse to continue monitoring the situation and keep her advised of the baby's status. The heart rate monitor continued to show a variable and persistent deceleration of the baby's heart rate over the next several hours. The baby was clearly in distress. Despite the continued deterioration of the baby's heart rate, the nurse remained silent, failing to contact the doctor. The doctor later testified that the monitor reports were indicative of a serious problem, and that had she been informed of the situation earlier, she would have delivered the baby right away. The nurse, however, never notified the doctor of the heart rate changes and, instead, wrote in her nursing chart, "mild variables." This notation clearly underscored the condition of the baby.

By 6:00 a.m., contractions had pushed the baby into the birth canal where the head became wedged. The doctor ordered a cesarean section and the baby was delivered. Despite earlier concerns about the baby's heart rate problems and the severe and extensive contractions experienced by the mother, the hospital did not perform any extraordinary evaluation of the baby's condition. The hospital recorded the newborn infant as normal, with Apgar scores (which evaluate the baby's color, heart rate, response to stimuli, muscle tone, and respiration) nearly perfect. The baby was transferred to the hospital's regular nursery. Not long after, the baby experienced dif-



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**The attorneys obtained the medical records and discovered that she had been given the drug. They also uncovered the fetal heart rate monitor reports disclosing reckless and negligent care of mother and baby.**

ficulty breathing and was transferred to the hospital's neonatal intensive care unit. Over the next several months, the parents noticed that their child was experiencing serious developmental difficulties. A brain scan was performed at six months of age and the radiologist interpreted it as normal. Doctors began testing the baby for numerous genetic disorders. Eventually, it was discovered that the child had a permanent brain injury. She could not walk, talk, or feed herself. She suffered seizures continually. She would require medical care for the rest of her life. The parents were devastated and bewildered by their child's condition. For several years, doctors continued to focus on a possible *(Continued on next page.)*

genetic disorder to explain the child's inability to develop properly. None of the medical personnel informed the parents of the documented indications of the infant's distress during labor, or of the nurse's failures to report the condition of mother and baby to the doctor in a timely manner.

When the child was five years old, a new doctor suggested that she may have had a birth-related brain injury. About the same time, the mother was watching a television news program featuring SDSBS attorneys **Darryl Lewis** and **Sia Baker-Barnes** in an interview concerning a case involving the drug Cytotec. She wondered if she had been given the same drug and if that could explain her child's problems. She contacted the attorneys and asked them to help her. Mr. Lewis and Ms. Baker-Barnes obtained the woman's medical records and discovered that the woman had been given the drug. They also uncovered the fetal heart rate monitor reports that disclosed the medical personnel's reckless and negligent care of mother and baby. Defendants argued that the child's condition was caused by a genetic disorder of some kind, not by events during childbirth.

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*... the defendants switched their arguments to claim that the lawsuit was barred by a statute of limitation. Mr. Lewis and Ms. Baker-Barnes identified exemptions from the limitation which permitted the case to be filed.*

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In deposition, doctor and nurse eventually admitted that they should have been more attentive to the mother and baby during labor. After plaintiffs' attorneys obtained several depositions demonstrating that doctors never investigated the true cause of the baby's injury, the defendants switched their arguments to claim that the lawsuit was barred by a statute of limitation. Mr. Lewis and Ms. Baker-Barnes identified exemptions from the limitation which permitted the case to be filed.

Facing an impending trial date, the defendants relented and agreed to a settlement in an amount just under eight figures. The family was grateful to have the ability to provide their child the optimal medical care she will need for the rest of her life. And they were grateful for the peace of mind that came from finally understanding how their baby was injured. ♦

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