

Litigating Birth Injuries and Medical Malpractice

Injuries that occur during labor and childbirth can be some of the most damaging to an infant, and there are many ways in which miscommunication or simple negligence can result in such severe outcomes. In this feature, Attorney and Board Certified Diagnostic Radiologist Armand Leone discusses the role that medical malpractice can play in causing birth injuries and how such cases ought to be handled.

Can you provide some background into what constitutes a 'birth injury' and their prevalence in the US today?

A birth injury involves a physical injury to a baby that occurs as a result of some event during labor and childbirth. While birth injuries are rare and occur in only six or seven births per 1,000 deliveries, they can be a devastating event with emotional, physical and financial implications to their parents and families. Birth injuries range from minor temporary injuries such as bruising and swelling to more permanent spinal cord and brain injuries that require life-long care or can even lead to death.



How can malpractice on the part of medical practitioners cause or contribute to the formation of birth injuries?

Medical practitioners care greatly for their patients but, on rare occasion, they fail to recognize signs of problems during labor and delivery. Whether they are an obstetrical nurse, nurse midwife, obstetrician or maternal fetal medicine specialist, miscommunication can occur during labor and delivery.

In addition, during a pregnancy, test results can be missed or misinterpreted by a medical practitioner, resulting in a lapse of care that causes harm to a mother and baby. For example, failure to recognize elevated blood pressure during pregnancy or recognize irregular fetal heart rate patterns are also serious medical errors. Most medical errors do not result in harm, but if a critical test is not ordered and performed, the ability to intervene and prevent the injury is lost.



What are the most common causes of birth injuries that you encounter in your work? Are these most often caused by complications during pregnancy, labor or delivery?

Common prenatal causes of birth injuries often involve the failure to diagnose or manage conditions that occur during pregnancy, such as gestational hypertension (high blood pressure) and gestational diabetes, which put the baby at risk at the time of delivery. Both conditions require screening and testing in order to make the diagnosis. Vigilant management of the condition is then required to make sure the mother and fetus do not suffer adverse effects.

For example, gestational hypertension poses the risk of kidney and neurological damage to the mother and the risk of growth restriction and low weight at birth to the fetus, which can pose further risks for neurological injury. Failure to manage diabetes that develops during pregnancy also puts the baby at risk for macrosomia and shoulder dystocia during birth, as well as for hypoglycemia after birth.

Common causes of birth injury during labor and delivery involve failure to recognize the signs of and relieve developing fetal hypoxia, which is a condition where the baby does not receive enough oxygen for a sustained period of time during labor. The underlying conditions causing the decreased oxygenated blood flow to the fetus include nuchal cords, premature placental separation, and uteroplacental insufficiency. Depending on the cause and the severity of the underlying condition, the failure to intervene in a timely manner can sometimes lead to brain injury in the baby. Bleeding under the scalp (cephalohematoma) and sometimes more serious bleeds inside the skull can occur from operative delivery with forceps or a vacuum. In some cases, neurological injury can result.

Shoulder dystocia can occur during a



vaginal delivery if the baby's shoulder becomes stuck behind the pubic bone of the mother and the baby cannot slip under it. Providers are trained to perform various maneuvers to dislodge the shoulder and safely allow the baby to be expelled by the mother. If dystocia is not recognized or if there is pulling on the baby's head in an attempt to pull the baby out, the nerves in the neck can be stretched or ruptured with resultant injuries to the function of the arm.

Remembering that most deliveries are carefully and skillfully performed by the obstetrical team and do not result in any harm to the mother or baby, if proper care is not followed during all stages of the pregnancy, labor, delivery and the neonatal period, serious injuries can occur to both mother and baby.

In the event that a birth injury or defect is suspected to have been caused by medical negligence, what legal recourse is available in your jurisdiction?

Medical negligence claims are usually brought in state court unless there is diversity of citizenship among the parties,

which may then require adjudication in federal court. Next, there must be a medical basis for the negligence claim which establishes that there was a departure from the required standard of medical care. This requires an experienced birth injury attorney who can sort through the medical records and discern whether the injury was an unfortunate unpreventable injury or the result of potential medical malpractice.

The next set of proofs require connecting the error to the injury that resulted. Once liability and causation have been established, the damages that can be recovered include the costs of past and future health care for the child, compensation for the child's pain and suffering, as well as emotional damages for parents. When the injuries are severe and permanent, the cost of properly caring for these children can be in the millions of dollars.

What first steps should a victim take in such a case?

First, focus on getting the best care possible for the injured baby. Brain-injured infants often need pediatric neurology care for brain cooling right after birth and seizure control later

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on. These children may also require gastroenterology care if they are unable to feed themselves and require feeding through a tube. Physical and rehabilitation medicine physicians often provide therapy to reduce spasm and increase musculoskeletal health.

Next, contacting an experienced birth injury attorney is important in order to obtain information and evidence that may be required later to establish medical negligence. Keeping track of all doctor visits, medical bills and costs for all of the special needs of the child is very important. Only after a full evaluation of the medical information and careful planning can a birth injury lawsuit be brought.

In what ways do your qualifications as both a Board-Certified Radiologist and an Attorney leave you well-placed to advise on matters concerning birth injuries?

Birth injuries often require evaluation of radiological imaging, such as ultrasounds, CT scans and MRI scans. Understanding the legal implications of the findings

on these imaging studies provides a distinct advantage in litigating these cases. Detailed medical knowledge of what the images show is important when deposing defense experts, as well as in our cross-examination of the defendant/medical practitioner. It is important to be able to read the x-rays that show the baby's injuries when deposing experts and when showing the injuries to the jury.

How do these skills inform your approach to medical malpractice law?

Being experienced in both medicine and law allows me to build a firm scientific and medical foundation for our cases, without which no lawsuit can succeed no matter how talented the attorney. That is my first task. Once a case has a strong medical basis, it must then go through the discovery process where depositions of physicians and medical experts require someone who is able to competently question the defense medical experts to debunk their attempts at undermining an otherwise proper case.



About Armand Leone

Armand Leone is a partner and head of the medical malpractice practice at Britcher, Leone & Sergio, LLC, bringing his medical background as a Board-Certified Diagnostic Radiologist to his practice as an attorney. A Fellow of the College of Legal Medicine and a Fellow of the New York Academy of Medicine with experience working with multiple medical experts in complex cases, he has been honored by New Jersey Law Journal as an 'Unsung Hero' at its 2020 "New Jersey Legal Awards."

About Britcher, Leone & Sergio, LLC

Britcher, Leone & Sergio, LLC is a law firm specializing in personal injury and medical malpractice matters, with offices in Glen Rock and Morristown, New Jersey. The firm is focused on such matters as serious/catastrophic injury, birth injury, vehicular accidents, product liability, nursing home negligence, wrongful death and defective drugs and medical devices.



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