

## WISCONSIN

## MEDICAL MALPRACTICE

Childbirth — Failure to Monitor — Delayed Treatment

## Defendants didn't recognize change in fetal heart rate

MIXED VERDICT \$11,447,370

**CASE** Amy Jelinek and Chad Jelinek, individually and as general guardians for Laine Jelinek, a minor, and Laine Jelinek, by his guardian ad litem, Curtis Kirkhuff v. Glenda Pinkham, C.N.M., Gundersen Lutheran Medical Center, Shannan K. Stephens, M.D. and Injured Patients and Families Compensation Fund, No. 06-CV-134

**COURT** Crawford County Circuit Court, WI

**JUDGE** Michael Kirchman

**DATE** 10/17/2008

**PLAINTIFF ATTORNEY(S)** Jeffrey M. Goldberg, Jeffrey M. Goldberg Law Offices, Chicago, IL

**DEFENSE ATTORNEY(S)** William F. Bauer, Coyne, Schultz, Becker & Bauer, S.C., Madison, WI (Gundersen Lutheran Medical Center)  
James R. Gutglass, Gutglass, Erickson, Bonville & Larson, S.C., Milwaukee, WI (Glenda Pinkham, C.N.M.)  
David E. McFarlane, Bell, Gierhart & Moore, S.C., Madison, WI (Shannan K. Stephens, M.D.)  
Curtis S. Swanson, Corneille Law Group, LLC, Madison, WI (Injured Patients and Families Compensation Fund)

**FACTS & ALLEGATIONS** On Aug. 7, 2005, plaintiff Laine Jelinek was delivered via vacuum delivery at Gundersen Lutheran Medical Center in La Crosse. He was born severely cyanotic, non-responsive and without respirations. Mother plaintiff Amy Jelinek, 28, was admitted to the hospital that morning and fetal monitoring strips were interpreted as reassuring.

At approximately 8 a.m., nurse midwife Glenda Pinkham took over care from the prior nurse midwife and elected to start Pitocin, since Jelinek had not changed dilation in over three hours.

The Pitocin was continued throughout the morning and increased at various times, and this continued into the early afternoon with very slow, if any progress being made. The mother had

been 5 centimeters dilated at 5 a.m. and had still not reached full dilation by 4 p.m. The on-duty labor and delivery nurse was Michelle Dwyer.

On-duty obstetrician Shannan Stephens saw Jelinek at 6:05 p.m. and elected to perform a vacuum delivery. The vacuum was first applied at 6:16 p.m., at which time the fetal monitoring pattern became ominous. Laine was delivered at 6:48 p.m., with APGAR scores 3, 3 and 3, with a cord blood pH of 6.98. He was eventually diagnosed with brain damage.

Amy Jelinek and husband Chad Jelinek, individually and on behalf of their son, sued Pinkham, Gundersen Lutheran Medical Center, Stephens and the Wisconsin Injured Patients and Families Compensation Fund (excess medical malpractice coverage for state health care providers) for medical malpractice.

Plaintiffs' counsel argued that the defendants failed to recognize the change in fetal heart rate status and lack of progress of labor, which should have required a Cesarean section prior to 5 p.m. The delays caused Laine to be born severely metabolically acidotic, counsel argued.

Plaintiffs' counsel maintained that even though the monitoring strip showed a non-reassuring pattern, neither Pinkham nor Dwyer took any appropriate actions to commence resuscitation. Dwyer noted in her chart that it was difficult to determine the baseline and she could not tell if there were accelerations or decelerations and yet did nothing to intervene by instituting either an internal electrode, stopping Pitocin or alerting a physician, according to plaintiffs' counsel.

The Jelineks alleged that at approximately 4:20 p.m., Pinkham instructed the mother to start pushing even though she was not yet fully dilated. Shortly after this occurred the fetal monitor strip became very non-reassuring with multiple decelerations and change in the fetal baseline rate. Jelinek claimed that when she became exhausted at 6 p.m., Pinkham sought the assistance of the Stephens who had never seen the patient before.

The plaintiffs' fetal medicine expert testified that Pinkham and Dwyer failed to accurately read the fetal monitor tracing and properly respond to the patterns of the tracing. The plaintiffs' labor and delivery nursing expert echoed this opinion as to Dwyer, adding that she didn't take the appropriate steps that were required by the standard of care.

The defendants denied the allegations, claiming the fetal monitor strips were reassuring the entire time because there was variability. The defense indicated that Laine, being born depressed, would not have been expected based upon the review of the fetal monitor strips.

Obstetricians James Dolan and Virginia Lupo both testified that the placenta showed chorioamnionitis of at least 72 hours duration, which would indicate that the newborn would have been exposed to an infected environment, and that the injury actually occurred days prior to his birth.

The plaintiffs' placental pathologist refuted the testimonies by Dolan and Lupo, concluding through her microscopic analysis that chorioamnionitis had occurred much earlier than they suggested.

## WISCONSIN

**INJURIES/DAMAGES** *birth defect; brain damage; cerebral palsy; encephalopathy; loss of society*

Laine was released three weeks after delivery and thereafter received constant care. About a year later, he received a funduplication with a G-tube. Pediatric neurologist Stephen Glass testified that Laine's neurological condition resulted from hypoxic-ischemic encephalopathy, which he attributed to the defendants' negligence. He was diagnosed with cerebral palsy.

The plaintiffs' physical medicine expert said that Laine, who is nonambulatory and nonverbal, would never be able to walk, talk, work or live independently. However, he could have a relatively normal life expectancy. Jurors viewed a day-in-the-life video of Laine, who was present for a day during trial.

Basing his earning capacity on a high-school education, the Jelineks sought \$1.2 million on behalf of their son and a life care plan ranging from \$8 million to \$12 million.

The parents testified that they were devastated that Laine would never live a normal, independent life.

The defense's two neuradiology experts opined that Laine's MRI didn't show the type of injury that one would see from an acute level of lack of oxygen as the plaintiffs claimed.

The defense's two pediatric neurology experts both testified that due to the minor's debilitating physical condition, his life expectancy was only five to seven years.

Given the minor's short life expectancy, the Jelineks would be able to provide their son with care, which would cost less than \$1 million, including loss of earnings, according to the defense.

**RESULT** The jury found that Pinkham and Dwyer were negligent in their care and treatment of Laine and Amy Jelinek, and that their negligence was a cause to the minor's injury, but Stephens was not negligent. Pinkham was found 84 percent liable and Dwyer was found 16 percent liable. The plaintiffs were awarded \$11,447,369.93.

**AMY JELINEK AND**

**CHAD JELINEK** \$2,500,000 loss of society, companionship

**LAINÉ JELINEK** \$310,370 past medical cost  
\$5,000,000 future medical cost  
\$387,000 future lost earnings  
\$3,250,000 pain & suffering and disability  
\$8,947,370

**INSURER(S)** Physicians Insurance Co. (primary insurer)  
Injured Patients and Families Compensation Fund (excess insurer)

**TRIAL DETAILS** Trial Length: 3 weeks  
Trial Deliberations: 7 hours  
Jury Vote: 12-0

**PLAINTIFF  
EXPERT(S)**

Theonia Boyd, M.D., placental pathology, Springfield, MA

Mary D'Alton, M.D., fetal medicine, New York, NY

Charlotte Daniels, R.N., labor & delivery, Stephen Glass, M.D., pediatric neurology, Woodinville, WA

Charles Linke, Ph.D., economics, Champaign, IL

Gary Yarkony, M.D., physical medicine, Elgin, IL

**DEFENSE  
EXPERT(S)**

Paula Cascio, R.N., labor & delivery, Rockford, IL

Richard V. Colan, M.D., pediatric neurology, Milwaukee, WI

James Dolan, M.D., birth defects, Park Ridge, IL

David Jones, Ph.D., economics, St. Paul, MN

Ann Lovegrove, life care planning, Madison, WI

Virginia R. Lupo, M.D., fetal medicine, Minneapolis, MN

Joel Meyer, M.D., neuroradiology, Chicago, IL

Mark D. Simms, M.D., pediatric neurology, Milwaukee, WI

Robert A. Zimmerman, M.D., neuroradiology, Philadelphia, PA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

—Aaron Jenkins