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Birth Injury FAQ

Q: What's the difference between a birth defect and a birth injury?

A: Birth injuries are generally caused by something that went wrong during child delivery itself, while birth defects usually involve harm to a baby that arose prior to birth, due to something that happened during or before the pregnancy.

Q: What kinds of situations give rise to a lawsuit for birth injuries?

A: Most of these cases occur when a doctor fails to adequately assess or respond to conditions and complications during a woman's pregnancy or delivery, or when a woman takes a prescription drug during pregnancy that causes harm to the baby.

Q: Will a lawsuit always be successful if a baby is harmed through a birth injury?

A: No. Some birth defects (or injuries) are unavoidable. The key question is whether medical providers and/or a pharmaceutical company failed to give you or your baby adequate medical care or medication advice during pregnancy and/or delivery.

Q: What is medical malpractice?

A: Medical malpractice is negligence committed by a professional health care provider--a doctor, nurse, dentist, technician, hospital or hospital worker--whose performance of duties departs from a standard of practice of those with similar training and experience, resulting in harm to a patient or patients. The profession itself sets the standard for malpractice by its own custom and practice.

Q: How common are birth injuries?

A: It has been estimated that, for every 1000 babies born in the U.S., five will be injured during birth.

Q: In a lawsuit for birth injury, how does a jury determine if a doctor's actions were within the standards of good medical practice?

A: A jury will consider testimony by experts--usually other doctors, who will testify whether they believe your physician's actions followed standard medical practice or fell below the accepted standard of care. A specialist, like an obstetrician, is held to a higher standard of care--that of a specialist--than would be expected of a non-specialist.

Q: I've heard about "teratogens" causing birth defects. What are they?

A: A teratogen is a chemical or agent that causes birth defects in a child. A number of drugs have been found to be teratogens, and many of these were initially meant to aid a woman's pregnancy. These include Delalutin, a drug administered to pregnant women for the prevention of miscarriages, and Bendectin, a medication given to pregnant women, to fight nausea.

Q: How common are birth defects?

A: Estimates are that 7% of all babies are born with a birth defect or irregularity, from very minor to severe.

Q: As a birth defect (or injury), what is cerebral palsy?

A: Cerebral palsy is the generic term for a number of disorders affecting a baby's brain function and body movement. Cerebral palsy can be the result of an injury to a baby's brain in the womb, during delivery, or some time after birth. It can also be caused by a lack of oxygen flow to a baby's brain during delivery.

Q: Who will receive money after a successful lawsuit for a birth defect (or injury)?

A: If a living child suffers harm due to an avoidable birth injury, damages awarded as part of a successful lawsuit will typically go to the child, sometimes in the form of a trust. Parents can receive compensation for emotional distress damages in some situations.

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