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Trial Reports

Medical Malpractice

Child's Unnecessary Hysterectomy - Genetic Misdiagnosis - Turner's Syndrome - Limitations Issue - Settlement

Brief Statement of Claim: The plaintiff's teachers at a Head Start program suspected she might be mentally retarded and referred her to a local medical center for evaluation. A blood sample was drawn and sent for cytogenetic analysis, which came back positive for Turner's syndrome. Turner's syndrome is characterized by an extremely high incidence of ovarian cancer. The plaintiff's pediatrician recommended a prophylactic removal of the ovaries.

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The child's parents, not fully understanding her condition and opposed to the operation, sought a second opinion from a nearby medical center. Based on the first hospital's written report, the second center concurred in the recommendation, resulting in the removal of the plaintiff's ovaries when she was eight years old. During that surgery, growths were found on her uterus and

the parents consented to a hysterectomy as well.

After surgery, all tissues were found to be normal, as was a repeat cytogenetic study. According to the hospital, the blood of this patient and another were switched, resulting in a mistaken diagnosis.

Principal Injuries (in order of severity): Removal of ovaries and uterus, with need for hormone replacement therapy. The child, now in her 20s, has otherwise done well, developing normally with an IQ similar to that of her parents. She holds a regular job and has not had extensive psychological treatment.

Special Damages: n/a

Tried or settled: Settled

Case Name and number: (Names withheld under confidentiality agreement)

Date Concluded: July 1995

Name of Judge: n/a

Amount: Structured settlement costing the defendants \$500,000.

Insurance Carrier: n/a

Expert Witnesses and areas of expertise: n/a

Attorneys for plaintiff: Don Strickland and Don Beskind of Twigg's, Abrams, Strickland & Trehy, P.A., Raleigh; and Lynne Holtkamp, Durham

Other Useful Info: According to the hospital records, the parents were told of the error after it was discovered. The parents agreed that they had been told something, but believed they were told the child did have Turner's syndrome. They also remembered something about a promise of free medical care. Thereafter, they consulted various attorneys without experience in medical negligence litigation, all of whom told them a suit could not be brought. As a result, the parents dropped the matter.

After her 19th birthday, the child obtained counsel when one of her medical bills wasn't paid. Medical records showed the hospital had been claiming reimbursement from the state's Crippled Children's Fund. Records also showed the hospital had been requiring the parents and doctors involved sign claim forms and affidavits saying the child had Turner's syndrome. Thus, state funds were being used to treat the results of the negligence, according to the plaintiffs.

When the claim was first brought, the hospital contended that it was barred by the three-year medical malpractice statute of limitations, even if extended for a minor to one year after the child's eighteenth birthday. The plaintiffs argued the hospital was equitably estopped from using the statute as a defense because it had misled the parents about the nature of their child's injuries. The plaintiffs suggested the proper statute date was three years from the last affidavit the parents had been asked to sign.

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