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Front Page Stories

Unneeded Childhood Hysterectomy Nets \$500,000

An woman has recovered \$500,000 for a needless hysterectomy performed on her when she was eight years old.

The suit, filed after the plaintiff turned nineteen, alleged a hospital lab accidentally switched her blood sample during a childhood evaluation for mental retardation.

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That foul-up led to a mistaken diagnosis of Turner's syndrome, a rare genetic disorder which carries an extremely high incidence of ovarian cancer.

Normally, the malpractice suit would have been barred by the statute of limitations since the plaintiff, a minor when the surgery occurred, had to file the action within one year of her eighteenth birthday.

But Raleigh attorney Don Strickland successfully argued the defendants were equitably estopped from using that defense.

For more than a decade the hospital misled the plaintiff and her parents into believing she in fact had Turner's syndrome - apparently in order to hoodwink the state Crippled Children's Fund into paying for her medical bills.

The smoking gun that unraveled the scheme: claim forms and affidavits which the hospital persuaded the parents to sign, all stating the girl had Turner's syndrome.

"Thus, state funds were being used to treat the results of the negligence," said Strickland.

The proper trigger date for the statute was three years after the hospital asked the parents to sign the last affidavit for presentation to the Fund, according to Strickland - which would have brought her lawsuit within the limitations period.

Despite the hysterectomy, the plaintiff has otherwise developed normally, he said. However, she needs hormone replacement therapy, which carries its own risks such as breast cancer.

The structured settlement, having a present value of \$500,000, is confidential, Strickland said.

Facts

The case arose when teachers in a Head Start program suspected the plaintiff was mentally retarded. They referred her to a local medical center for evaluation, where a genetic analysis was conducted.

A blood sample was referred for cytogenetic analysis and came back positive for Turner's syndrome. The plaintiff's pediatrician recommended removal of her ovaries to prevent the cancer risk.

The child's parents didn't fully understand the condition and opposed the operation, according to Strickland. But a second opinion also recommended surgery - based on the first hospital's written report.

The plaintiff's ovaries and uterus were removed. However, all tissues were found to be normal, as was a follow-up gene study. According to the hospital, the misdiagnosis was caused when the plaintiff's blood sample was switched with another patient's.

The parents were told of the error, according to the hospital's records. But they contended they were told the girl had the disease and had been promised free medical care.

After several attorneys told them they had no legal grounds to sue, the parents dropped the matter, according to Strickland.

The plaintiff didn't retain counsel herself until after her nineteenth birthday, when one of her medical bills wasn't paid.

Looking into the problem, Strickland discovered the medical records showed the hospital had been claiming reimbursement from the Crippled Children's Fund after getting the parents and doctors to certify the girl had the genetic disorder.

When the plaintiff filed a lawsuit, the hospital argued it was barred by the three-year medical malpractice statute of limitations, even as extended for minors to one year after age 18.

But the hospital's own records showed the parents had been misled about their child's condition, which stopped the defendants from raising the limitations issue, Strickland argued.

That argument eventually led to the settlement the case.

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