

# HOSPITAL LITIGATION REPORTER

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## In The News

### Hospital to pay \$4.3 million in medical malpractice case

An Ohio hospital has agreed to pay \$4.3 million in connection with the birth of a girl who suffered brain damage during delivery in 2008.

Crystal Rinker was admitted to Mercy Medical Center in March 2008 and was given Pitocin at least twice during the day to induce labor. According to the lawsuit filed in Stark County Common Pleas Court, nurses failed to recognize that the fetus was displaying intolerance to labor.

Ultimately, Rinker underwent a cesarean section. A neonatal team had to resuscitate the baby, who was named Jordan. Jordan, has been diagnosed with cerebral palsy and developmental delay. Attorneys in the case will receive \$1.6 million with the remaining \$2.7 million going to Jordan.

### \$8.8 Million awarded to doctor claiming hospital destroyed his career

A Nevada jury has awarded an anesthesiologist \$8.8 million, finding that University Medical Center wrongfully terminated him and tarnished his reputation.

Dr. Charles Williams was suspended from the hospital after a 2005 kidney transplant. Williams was the anesthesiologist for the surgery, and there were complications. The hospital alleged that Williams was a drug abuser.

Williams claimed that the hospital terminated him in order to protect its transplant program. Williams submitted multiple clean drug tests to the hospital, but he was never welcomed back. The lawsuit alleged that Williams lost his medical practice and his family as a result of the ordeal.

The parties reached an agreement prior to the verdict that Williams would receive \$6.5 million. The money was to be paid within 14 days, and the hospital will forego an appeal.

**Williams v. Univ. Med. Ctr. of S. Nev.**, No. 09-0554 (D. Nev. verdict entered May 26, 2011)

## In The Courts

### Abuse Reporting

Constitutional Law

Immunity

#### Mother's claims alleging healthcare providers wrongly caused her to lose custody may proceed

**Smith v. Barrow Neurological Inst. of St. Joseph's Hosp. & Med. Ctr.**, No. 10-1632 (D. Ariz. May 4, 2011)

The U.S. District Court for the District of Arizona ruled that healthcare providers are not entitled to the dismissal of a mother's claims alleging the providers wrongly caused the mother to lose custody of her minor daughter.

Over a period of at least two years, Leanna Smith's daughter, C.R., experienced several severe medical symptoms, the etiology of some of which was unknown, and underwent several medical procedures related to those symptoms. During all or part of this period, C.R. was covered by the Arizona Health Care Cost Containment System. Dr. Harold ReKate was C.R.'s neurosurgeon for certain periods of time, and resigned from the case at least twice. Charles Alfano was a vice president with Catholic Healthcare West, d/b/a St. Joseph's Hospital and Medical Center, d/b/a Barrow Neurological Institute.

Smith had expressed to Alfano her frustration with the hospital's treatment of C.R. Alfano replied that this issue was not about C.R., that it was personal between him and Smith, and that Smith "would not like what we are going to do to you next." Alfano or someone at his direction submitted a complaint against Smith to Arizona Child Protective Services (CPS). Dr. Bruce White also made a report to CPS asserting that Smith was making poor decisions about C.R.'s treatment.

When C.R. was transferred to the Banner Desert Medical Center, Dr. Scott Elton became her new neurosurgeon. Elton subsequently asserted that the etiology of C.R.'s symptoms was psychological. Four doctors, including Elton, later signed a document asserting that "returning home to mother's care will impede CR recovery and be further Psy-

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chologically and Medically Harmful to CR." C.R. was placed in CPS custody and went into foster care. Subsequently, C.R. developed meningitis.

Smith brought an action against Banner Health System, Banner Desert Medical Center, Elton, Catholic Healthcare, Alfano and ReKate. Count 1 alleged gross negligence and intentional interference with custody of a child. Count 2 alleged violation of civil rights under 42 U.S.C. § 1983 by virtue of (1) false allegations about Smith, (2) depriving Smith of custody of C.R., (3) engaging in the aforementioned actions in retaliation for Smith exercising her First Amendment rights, and (4) an agreement between private and public actors to violate Smith's rights. The defendants moved to dismiss Smith's first two claims.

The district court denied the defendants' motion. In so ruling, the court rejected the defendants' argument that they owed no duty to Smith in light of her being an alleged child abuser. The court noted that Smith did not allege mere negligence in her claim and the defendants cited no law for the proposition that duty is an element of intentional interference with custody of a child.

The district court also rejected the defendants' argument that they were immune under state law and that Smith failed to allege malice to defeat immunity. The court noted, however, that malice was expressly pled in the complaint. Thus, the existence of malice "is a factual question that cannot be resolved on a motion to dismiss. Likewise, the court found no merit in the defendants' argument that there was no state action for purposes of § 1983, noting Smith expressly alleged the existence of an agreement between government defendants and private defendants to violate her constitutional rights.

## Damages

### Wrongful Death

### Constitutional Law

#### Statutory cap applies to noneconomic damages awarded to estate of deceased patient

*Estate of McCall v. United States*, No. 09-16375  
(11th Cir. May 27, 2011)

The Eleventh U.S. Circuit Court of Appeals affirmed a district court's application of a statutory cap to noneconomic damages awarded to the estate of a deceased obstetrical patient in a wrongful death action brought by the estate.

In June 2005, Michelle McCall received prenatal medical care at a U.S. Air Force clinic as an Air Force dependent. McCall developed severe preeclampsia during the third trimester, and labor was induced. Following her delivery of a healthy baby boy, McCall's obstetrician extracted her placenta and repaired several vaginal lacerations.

The attending nurse did not inform the physician that McCall's blood pressure was dangerously low, and McCall ultimately became unresponsive. She did not regain consciousness, and was taken off life support on Feb. 27, 2006.

McCall's estate sued the United States for wrongful death, and a district court found that McCall's noneconomic damages totaled \$2 million. The district court then applied a \$1 million statutory cap to these damages under an applicable Florida statute. The estate appealed, alleging the cap violated the Equal Protection Clause of the Fourteenth Amendment and constituted a taking under the Fifth Amendment.

The Eleventh Circuit concluded that the Florida Legislature identified a legitimate governmental purpose in passing the statutory cap, namely to reduce the cost of medical malpractice premiums and healthcare within the state and, accordingly, the cap did not violate the Equal Protection Clause. Nor did the cap constitute a taking under the Fifth Amendment. The Takings Clause applied to the taking of private

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