

North Carolina Birth Injury Cases

Written By **Lynwood P. Evans** (lpe@wardandsmith.com) and **Jeremy M. Wilson** (jw@wardandsmith.com)

April 17, 2019



The majority of the time medical professionals, including doctors and nurses, provide excellent care to their patients.

However, sometimes care is provided that falls well below acceptable professional standards. When substandard, negligent medical care results in damages, individuals or their families may

have a potential legal claim.

Sadly, sometimes these cases involve harm that occurs during childbirth. Birth injuries can result in permanent damage, and the need for lifelong medical care or other resources to help the affected child. This article discusses some of the issues involved in birth injury cases.

N.C. Medical Malpractice Law

North Carolina allows an individual or their family to pursue a medical malpractice claim involving birth injuries, or otherwise, by establishing four legal elements: (1) the applicable standard of care; (2) breach of the standard of care by a medical provider; (3) that the injuries suffered were "proximately caused" by the breach; and (4) damages.

The standard of care is the proper approach, practice, or procedure for a particular medical situation that is accepted by the medical community in that geographic location. Breaching the standard of care means failing to provide medical treatment consistent with that particular standard. If this failure causes injury, the injured party is entitled to monetary damages under the law.

It is then up to the injured individual, or their attorney, to prove damages. Compensatory damages can include past, present, and future medical bills; lost future income or earning capacity; and "non-economic" damages, such as pain and suffering. In cases of birth injury that may involve lifelong medical care and permanent effects on the child's quality of life and ability to work, these damages can be substantial.

Specific Issues Involved with Birth Injury Cases

Birth injury cases involve harm that occurs to a new baby because of mistakes made during the childbirth process. The most typical causes of such birth injuries include lack of oxygen to the baby during delivery or physical harm where the baby is manipulated or handled unnecessarily roughly. Oxygen deprivation can cause great stress to an infant, resulting in potential

brain damage. Oxygen deprivation is caused by twisting or pinching of the umbilical cord, a prolonged period of time in the birth canal, or other factors. Medical providers have a duty to closely monitor the baby's condition (often called fetal monitoring) during the labor and delivery process. If the monitoring is not reassuring and dangerous or ominous situations arise, medical providers must act very quickly to avoid injury to the baby, including in some cases, immediately performing a C-Section. An unnecessarily difficult delivery also can result in other conditions like broken bones and nerve damage to the infant.

The types of conditions that can result from these birth injuries include cerebral palsy (CP); peripheral nerve injury (brachial plexus injury); cerebral hypoxia/anoxia; hypoxic-ischemic encephalopathy (HIE); neck, spine, and spinal cord injuries; paralysis; and broken bones. Many times these can be permanent, life-altering injuries.

The damages in such cases can be substantial. An infant may require medical care for the rest of his or her life. There may be lifelong effects on the ability to participate in schooling, get a job, and earn money. The "pain and suffering" component, including related to the permanency of the condition, can be substantial. (Note that "pain and suffering" damages are subject to a monetary cap in North Carolina. There are some limited exceptions to this cap, however, and ongoing arguments about its constitutionality and legal validity.) No amount of money can ever replace the damage done to a child or their family in these situations. Still, the only mechanism our civil legal system has to compensate an injured party is through the payment of money. The law seeks to "balance the harms" incurred, to the extent possible, including by providing for payment of the medical bills and other resources needed to help care for the child for the rest of his or her life, if necessary.

Birth injury cases can be very difficult and complex. Many birth injuries, unfortunately, occur each year without any malpractice occurring. These can occur for natural reasons, or for reasons not understood. Thus, birth injury claims typically require multiple medical experts to review the care and provide opinions on issues such as the standard of care, causation, and the effects of the injuries stemming from the malpractice. In fact, no medical malpractice lawsuit can be filed in a North Carolina court without medical professionals (doctors and nurses) first reviewing the pertinent care and agreeing to testify that the care did not comply with applicable standards.

Conclusion

Medical malpractice claims involving birth injuries are complex, and the applicable body of law is technical and complicated. However, pursuing legal remedies can be incredibly important for the family, in order to help the child receive the lifelong care and other resources they need. If your family believes you may have a medical malpractice claim involving an injury sustained to a baby during childbirth, you may want to consult with an attorney who is experienced with these specific types of cases.

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