



Mizyed v. Scales (Bowie Cnty., TX Dist. Ct.)

Topics Covered: Abusive Litigation Against Physicians

Outcome: Neutral

Issue

The question in this case was whether a trial court should exclude testimony from an expert on the cause of injuries to an infant, which became apparent 21 hours after his birth.

AMA interest

The AMA opposes abusive litigation against physicians.

Case summary

Nadia Walraven was admitted to the hospital for induction of labor. Her physician was James A. Scales, MD. Ms. Walraven was given Pitocin until the delivery. Her son, Kai Mizyed, appeared normal at the time of delivery and for several hours thereafter.

Around 21 hours after the birth, Kai experienced an episode of apnea (suspension of breathing) and cyanosis (bluish skin). Thereafter, he had a positive drug screen for barbiturates and tricyclics. He was transferred to the neo-natal intensive care unit (NICU) and placed under a warmer. He soon became apneic again and did not respond to tactile stimulation. He required ventilation and began to experience seizures. An MRI showed he had right-sided scalp edema (swelling of the scalp). Kai was then transferred to Arkansas Children's Hospital, where he was diagnosed with hypoxic ischemic injury—a brain injury caused by oxygen deprivation.

Kai, through his parents, sued for injuries during his birth. The plaintiffs offered the testimony of their expert, Dr. Martin Gubernick, regarding the cause of his injuries. Dr. Gubernick had testified in his deposition that the mechanical forces of labor exerted on the fetal skull from the use of Pitocin caused a localized ischemic injury to the brain. He asserted that the injury, to only the front portion of the brain and no other organs, was due to lack of blood, which, in turn, was caused by pressure on the blood vessels during delivery.

The defendants asked the court to prohibit Dr. Gubernick from testifying. They argued that his theory of the effects of the mechanical forces of labor was not accepted in the scientific community.

Before the court could rule on the motion to exclude Dr. Gubernick's testimony, the case settled.

Litigation Center involvement

The Litigation Center and the American College of Obstetricians and Gynecologists filed an *amicus* brief to support Dr. Scales. The brief argued that Dr. Gubernick's proposed testimony was without scientific basis.

District Court of Texas brief