

## \$2 Million Verdict in Malpractice Lawsuit

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**\$2,000,000 GROSS VERDICT AGAINST DEFENDANT PEDIATRICIANS ONLY - FAILURE TO TIMELY REFER TO CRANIOFACIAL SPECIALIST UPON PRESENTATION OF NEWBORN WITH CRANIAL DEFORMITY - PLAINTIFF LEFT WITH SIGNIFICANT DEFORMITY WHICH COULD HAVE OTHERWISE BEEN AMELIORATED OR MINIMIZED - CODEFENDANT ENT PHYSICIAN WHO SAW PATIENT ON TWO OCCASIONS FOR TORTICOLLIS EXONERATED.**

### *Essex County*

This was a medical malpractice action in which the plaintiff contended that the two defendant pediatricians, who were partners, negligently failed to timely diagnose and refer regarding the infant plaintiff's skull condition, plagiocephaly, a cranial deformity in which the back of the head is flattened and wedge shaped and the forehead protrudes to some extent. The plaintiff maintained that because of the fusing of the plates of the skull which occurs during the first year of life, it is essential that appropriate treatment involving the use of a helmet to correct the shape of the skull be instituted in a timely fashion in order to avoid or minimize a permanent cosmetic deformity. The plaintiff maintained that despite repeated concerns of the parents which were expressed at 15 visits during the first nine months of the infant plaintiff's life, the defendants failed to take any steps until the end of this period. The plaintiff maintained that although helmet therapy was then instituted, it was essentially too late to prevent a significant and permanent cosmetic deformity. The plaintiff also named an ENT specialist as a codefendant. The plaintiff contended that this physician saw the infant plaintiff on two occasions at ages seven and eight months because of torticollis (a condition involving a twisting of the neck) and maintained that he should have also referred the patient to a craniofacial specialist.

The parents maintained that they noticed some flattening of the back of the plaintiff's head and a slight forehead protrusion shortly after birth. The mother contended that she repeatedly told the defendant pediatricians of her concerns and was repeatedly advised that the condition would correct itself. The plaintiff contended that the condition continued to progress and that at nine months of age, they virtually demanded a referral to an appropriate specialist. The infant plaintiff was then referred to the non-party New York University craniofacial center. Helmet therapy, in which the child wore a helmet seven days per week, 24 hours per day except when his hair was washed,

was used for ten months and although the therapy provided relatively substantial improvement as compared to when it began, a significant permanent deformity nonetheless remains.

The plaintiff's craniofacial expert contended that the defendant pediatricians should have referred the infant patient to a craniofacial specialist no later than two to three months after birth. The expert related that the deformity is progressive in nature and unless helmet therapy is instituted in a timely manner, it will be of limited benefit because of the extensive growth of the skull and fusion of the plates which occurs over the first year of life. The plaintiff's expert contended that the earlier the helmet therapy is begun, the greater the chances of an optimal result. This expert opined that if the plaintiff had been referred in a timely manner, his condition probably would have resolved, but conceded that he may have nonetheless suffered some residuals.

The plaintiff further maintained that as of the time the child was referred to the ENT specialist for torticollis at seven months, the deformity was very observable and contended that this defendant should have referred the child to a craniofacial specialist as well. The plaintiff's expert maintained that commencement of therapy at this date would have probably enabled the plaintiff to obtain a better final result, notwithstanding that it was doubtful that it could be fully corrected as of this late time. The torticollis was subsequently resolved by a different, nonparty physician.

The codefendant ENT specialist maintained that the patient was referred for the torticollis involving the neck, that he was not asked to treat the skull, that he inquired about the plagiocephaly and was told by the parents that the pediatricians were handling the matter. The ENT specialist contended that in view of such factors, he acted reasonably and within the standard of care.

The defendant pediatricians denied that the parents made repeated and early complaints of any deformity. The defendant pediatricians also denied that the signs of any abnormalities were readily apparent, contending that they reasonably believed that they were related to the child's sleeping on his back in conformance with recent pediatric guidelines to reduce the risk of SIDS. The plaintiff countered that the mother was a very concerned parent, had brought the child to the defendants' office some 15 times over the first ten months of life because of a variety of factors, including colds, and argued that it was incredible to believe that such a concerned parent would fail to advise the defendants of a perceived cosmetic deficit that was progressing. The plaintiff presented a time line describing the progression of the condition during the first ten months and interspersed the time line with photographs which, the plaintiff maintained, showed a very significant progression, arguing that the defendants' position as to not being advised of the condition should be rejected.

The plaintiff contended that he will suffer a very noticeable deformity for the remainder of his life. The plaintiff's expert psychiatrist contended that the child will probably suffer significant emotional turmoil because of the deficits as he goes through elementary school and that the turmoil will clearly accelerate when he reaches the dating age. The plaintiff further contended that the jury should consider that he will be reminded of the deficit on a daily basis for the rest of his life whenever he looks in a mirror.

The jury exonerated the codefendant ENT specialist. It found each of the pediatricians 47.5% negligent and rendered a gross award of \$2,000,000. They also attributed 5% to the preexisting condition under Scafidi.

#### REFERENCE

Plaintiff's expert craniofacial surgeon: Burt Greenberg from Great Neck, N.Y. Plaintiff's expert pediatric psychiatrist: Andrew Clark from Boston. Defendant pediatricians' expert pediatrician: Charles Scott from Cherry Hill. Codefendant's expert ENT physician: S. Thomas Westerman from Shrewsbury.

Iannuzzi vs. Strader, et al. Docket no. L-9647-99; Judge Jose Linares, 3-13-02.

Attorneys for plaintiff: Ernest P. Fronzuto and David M. Paris of Piro Zinna Cifelli & Paris in Nutley. Attorney for defendant pediatricians: James B. Sharp, Esq. of Reiseman Sharp Brown & Rosenberg in Parsippany. Attorney for exonerated defendant ENT specialist: Jeffrey A. Kromprier of Kromprier & Gordon in Parsippany.

#### COMMENTARY:

The defendant pediatricians had argued that the alleged cosmetic abnormalities were within the acceptable range and contended that an absence of an earlier referral to a craniofacial specialist did not reflect a deviation from the standard of care. It is felt that the plaintiff, in countering this position, made effective use of demonstrative evidence in the form of photographs taken by the parents during the first ten months of the infant's life. The plaintiff used this evidence in a time line to compare the photographs at various points along this ten-month period to argue that based upon this evidence, the plaintiff's expert's position that a referral to a craniofacial surgeon should have been made no later than the age of three months, should be accepted. Additionally, the defendants had denied that the parents' claims of repeatedly expressing concerns should be accepted and the pediatricians' notes contained only several mentions of discussions on the topic. The plaintiff vigorously stressed that in view of the fact that the child was brought to the defendants some 15 times over the first ten-month period for a variety of reasons, including colds, it was clear that the parents were very concerned individuals who would express their worries to the physicians.

Of note is the fact that the jury exonerated the ENT specialist, who saw the plaintiff at the age of seven months and eight months when the plaintiff maintained the abnormalities were especially evident. This defendant successfully argued that since he had been consulted for the neck condition and not the skull, and since he had made inquiry of the parents and were told that the pediatricians were aware of the infant plaintiff's skull condition, he acted sufficiently and within the standard of care.

Regarding damages, the plaintiff argued that the jury should consider that the emotional consequences on this child as he moves through grammar school will be extensive and that this emotional upset will clearly heighten as the plaintiff reaches dating age. Additionally, the plaintiff stressed that he will suffer the emotional turmoil associated with the very noticeable cosmetic skull deformity for the remainder of a lengthy life expectancy and that he will be reminded of the deformity each and every time he looks in a mirror. Finally, it should be noted that the infant plaintiff, age 4 1/2 at trial, was present in court for a very brief period only, enabling the jury to fully appreciate the extent of the deformity while avoiding the risk that the impact of his appearance would be minimized by a more prolonged presence. □