17th Annual Advanced Forum on

OBSTETRIC MALPRACTICE CLAIMS

June 25 – 26, 2018 | The Union League of Philadelphia | Philadelphia

UNPARALLELED MEDICAL INSIGHTS FROM:

Darius J. Adams, M.D.
Goryeb Pediatric Genetics and Metabolism

Rebecca Baergen, M.D.
Weill Cornell Medicine

David A. Clark, M.D.
Albany Medical College

Michael L. Hall M.D. FACOG
University of Colorado Medical Center

Max Wiznitzer, M.D.
CWRU School of Medicine

IN-HOUSE INSURANCE INSIGHTS FROM:

Michael D. Anderson
Medical Insurance Exchange of California

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Richard T. Henderson
Transatlantic Reinsurance

John S. Moore
CNA

Catherine Nguyen, Esq.
The Risk Authority Stanford

Leading counsel, claims specialists, risk managers and medical experts will provide updates and insights on:

- Advances in Genetic Testing and Genomic Medicine
- The Role of Epigenetics in Identifying the Cause of a Condition or Illness
- Hypothermia Treatment for Hypoxic Ischemic Encephalopathy
- Placental Pathology and Adverse Pregnancy Outcomes
- Neonatal Brachial Plexus Palsy – With and Without Shoulder Dystocia
- Induced Labor Malpractice: Pitocin Complications and Injuries
- Strategies for Defending Against Inflated Life Care Plans
- Jury Selection for a Birth Injury Case
- Lessons Learned from the Recent Zika Outbreak
- Damages and the Potential Impact of the ACA Repeal
- Category Two Fetal Heart Monitoring Strips

PLUS! Post-Conference Workshops – Tuesday, June 26th

WORKSHOP A:
Working Group on Overcoming the Challenges Associated with Electronic Medical Records, Patient Portals and Audit Trails in Obstetrics Practice

WORKSHOP B:
Think Tank on Developing Winning Strategies for Daubert Challenges and Hearings

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Be a part of the nation’s premier obstetric malpractice conference and ensure that you stay current on evolving standards of care, emerging theories of liability, and new defense strategies.

Dear Colleague:

Obstetric malpractice cases continue to result in massive verdicts, reaching amounts in excess of $100 million. Claims are evolving in response to advances in medical technology, which can increase the potential for errors in the delivery room. Furthermore, new emerging standards of care are leading to new malpractice claims.

Given these developments, it is essential that all those who are part of the obstetric malpractice continuum, including medical professionals, risk managers, insurance professionals, plaintiffs’ attorneys, and defense counsel, stay current on the latest claims and defense strategies and how they are impacting the practice.

American Conference Institute’s 17th Annual Advanced Forum on Obstetric Malpractice Claims will bring together an unparalleled faculty of medical experts, risk managers, insurance professionals, and plaintiff and defense attorneys who will provide you with the most up-to-date information on complex medical issues as well as litigation hurdles and strategies. Join us as we explore:

- Advances in **GENETIC TESTING & GENOMIC MEDICINE**
- The Role of **EPIGENETICS** in Identifying the Cause of a Condition or Illness
- **HYPOTHERMIA TREATMENT** for HYPOXIC ISCHEMIC ENCEPHALOPATHY
- Understanding the Importance of **PLACENTAL EVALUATION** in Perinatal Malpractice Cases
- Medical and Legal Challenges Related to **SHOULDER DYSTOCIA INJURIES** and **NEONATAL BRACHIAL PLEXUS PALSY**
- Induced Labor Malpractice: **PITOCIN COMPLICATIONS** and Injuries
- Strategies for **DEFENDING AGAINST INFLATED LIFE CARE PLANS**
- **JURY SELECTION** for a Birth Injury Case: Plaintiff and Defense Perspectives
- **RISK PROFILE ASSESSMENT** of an Obstetric Malpractice Case
- **DAMAGES AND THE POTENTIAL IMPACT OF THE ACA REPEAL**
- Lessons Learned from the Recent **ZIKA OUTBREAK**, Including Theories of Liability

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Sincerely,

Nicole L. Pitti, Esq.
Senior Legal Analyst & Program Director
American Conference Institute
N.Pitti@AmericanConference.com

Michael L. Hall M.D. FACOG
University of Colorado Medical Center

**ACI’s Obstetric Malpractice Claims conference is the most professional conference out there that really looks at both sides... the best of the best.**

**WHO YOU WILL MEET and WHY THEY ATTEND:**

**Lawyers, both plaintiff and defense**, who litigate medical malpractice cases attend in order to get a solid grounding on the latest medical issues upon which cases are based. Our faculty of medical and legal experts from around the nation will provide you with the information and strategies that are essential to achieve the best outcomes for your clients.

**Doctors, nurses and hospital risk/quality assurance managers** attend in order to benchmark their current practices and procedures and develop a deeper understanding of the current state of obstetric malpractice litigation.

**Insurance professionals** attend in order to obtain valuable insights and strategies for assessing professional negligence claims and to better understand litigation strategies and hospital risk management techniques.
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Monday, June 25, 2018
DAY ONE

7:00
Registration and Continental Breakfast

8:00
Co-Chairs’ Welcome Remarks

Joseph S. Picchi
Partner
Galloway, Lucchese, Everson & Picchi

Norman D. Tucker
Of Counsel
Sommers Schwartz

8:15
Obstetric Malpractice Year in Review: Lessons Learned from Emerging Claims Trends and Predictions for New Risks in the Year Ahead

Michael D. Anderson
Senior Claims Representative
Medical Insurance Exchange of California

Molly L. Farrell
Client Advocate
Willis Towers Watson

Richard T. Henderson
Vice President
Transatlantic Reinsurance

John S. Moore
Director, Strategic Claim Unit, Specialty Claim
CNA

MODERATOR:
Joseph S. Picchi
Partner
Galloway, Lucchese, Everson & Picchi

This session will offer an in-depth analysis of current obstetric malpractice case patterns and trends, as well as insights and predictions for future claim developments and coverage implications. These panelists will also provide recommendations for updating defense strategies in response to recent pivotal holdings, and coordinating defense efforts in light of this emerging jurisprudence. This session will substantively set the tone for an interactive and insightful two days.

Points of discussion will include:
- A birds-eye view of what has been happening on a national level in terms of claims trends in the obstetric malpractice space
- Why are we seeing a rise in severity of claims?
- An evaluation of recent case patterns, case settlements, financial and legal decision evaluations and insurance coverage implications
- Assessing the clinicians’ perspective: what they are doing from a loss control perspective
- Adapting defense efforts in the face of evolving risks

9:15
Morning Coffee Break

9:30
Advances in Genetic Testing and Genomic Medicine: Changing the DNA of the Obstetric Malpractice Defense

Darius J. Adams, MD
Medical Director, Jacobs Levy Genomic Medicine and Research Program
Division Chief, Goryeb Pediatric Genetics and Metabolism
Clinical and Biochemical Geneticist

Craig S. Brodsky
Partner
Goodell, DeVries, Leech & Dann, LLP

Tammy L. Wade
Shareholder
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- Examining how recent advances in genetic testing and genomics are creating new opportunities to detect genetic disorders and susceptibilities during pre and perinatal care
- Exploring the latest malpractice cases involving genetic testing, mishandling of genetic testing, and failure to perform genetic testing
- Assessing the current (and evolving) standard of care applicable to health care providers and health care systems in:
  o Adopting and implementing genetic education and screening practices
  o Selecting which genomic techniques to use broadly (as the standard practice) vs. individually in assessing risk
  o Determining how laboratory findings should inform decision making and patient counseling
- Addressing the ethical issues: counseling pregnant patients who discover they carry a certain gene
- Understanding the role of personalized medicine
- Retaining and utilizing appropriate experts in these cases

10:30
The Role of Epigenetics and Other Intrauterine Influences in Identifying the Cause of a Condition or Illness

David A. Clark, MD
Chair, Dept. of Pediatrics
Albany Medical College

William F. Cunningham
Founding Partner
Cunningham, Meyer & Vedrine

David J. Krolikowski
Shareholder
Marshall Dennehey Warner Coleman & Goggin

- Assessing new and emerging research regarding the impact of epigenetic factors on the personal genomes of an initially healthy baby
- Understanding specific conditions with epigenetic contributions
- An examination of cases where a baby is born with completely normal genetic material, yet develops a subsequent condition due to intrauterine influences (e.g. nutrition, medication, environmental toxins, stress, tobacco use, etc.)
  o Notable considerations for defending litigation of these cases

11:30
Hypothermia Treatment for Hypoxic Ischemic Encephalopathy [HIE]: Identifying Errors that Most Often Lead to Malpractice Claims

Andrew S. Kaufman
Partner
Kaufman Borgeest & Ryan LLP

Andrew J. Stern
Senior Partner
Kline & Specter P.C.

Max Wiznitzer, MD
Pediatric Neurology
CWRU School of Medicine

- Examining the latest brain/body cooling protocols and guidelines
- Understanding how these new guidelines are affecting the standard of care for treating newborns with HIE
- Assessing recent notable malpractice cases involving hypothermia therapy, including errors involving:
  o Failure to prevent HIE in the first place
  o Failure to inform the parents of hypothermia therapy as a treatment option
  o Failure to begin cooling soon enough
  o Failure to transfer infant to facility with hypothermia capabilities
  o Failure to have in place and/or follow organizational policies and protocols for hypothermia therapy
- Plaintiff and defense strategies for establishing and defeating claims of negligence and proximate cause in these cases
- Assessing the impact of hypothermia treatment on life expectancy in cerebral palsy cases
- Utilizing hypothermia for neonatal injury other than HIE
- Problems in assessing damages before a child reaches 7 years of age

12:30
Networking Lunch for Speakers and Delegates

DON’T MISS! 2 Brand New Post-Conference Workshops.
Details on page 7.
1:30 Medical and Legal Challenges Related to Shoulder Dystocia Injuries and Neonatal Brachial Plexus Palsy
Marc Brecher
Shareholder
Wapner, Newman, Wigrizer, Brecher, & Miller

Thomas M. Chairs
Co-Managing Partner
Gordon Rees Scully Mansukhani, LLP

Eric Stockman
Partner
Stockman O’Connor PLLC

Shoulder dystocia injuries and injuries to the brachial plexus in newborns are presenting an increasing malpractice problem, not only for physicians who provide obstetric care, but also for those who administer immediate postnatal treatment for neonates who have these injuries. Although trauma remains the probable etiology for many brachial plexus injuries, other non-traumatic etiologies must also be considered. This panel will explore topics including:

- The latest medical and legal theories and principles related to brachial plexus injuries – both with and without shoulder dystocia
- Examining recent cases involving fundal pressure, expulsive forces, clinician applied forces, and failure to detect macrosomia
- Understanding the key risk factors for shoulder dystocia and how they should be managed
- Recommendations for practitioners to reduce the risk of malpractice lawsuits related to shoulder dystocia injuries and brachial plexus palsy
- Assessing when and why infants should be referred for possible nerve repair and analyzing the success rate of early nerve grafting in reducing long term severe injury

2:30 Placental Pathology and Adverse Pregnancy Outcomes: Understanding the Importance of Placental Evaluation in Perinatal Malpractice Cases
Rebecca Baergen, M.D.
Professor of Pathology and Laboratory Medicine
Chief of Perinatal and Obstetric Pathology
Weill Cornell Medicine

Stacey Cischke
Partner
Hughes Socol Piers Resnick & Dym, Ltd.

Nearly all significant abnormal events during a pregnancy will leave behind a discoverable “fingerprint.” In recent years, there have been significant advances in research regarding the ability to explain prenatal, as well as short and long-term postnatal adverse outcomes, by using placental pathology examination. This panel will explore:

- The latest ways placental pathology is evaluated and used to decipher adverse pregnancy outcomes, including timing and causation of injury
- How this pathology evidence is interpreted and utilized in litigation to support and dispute claims

3:30 Strategies for Defending Against Inflated Life Care Plans
Catherine Nguyen
Assistant Vice President, Claims and Litigation
The Risk Authority Stanford

Joseph S. Picchi
Partner
Galloway, Lucchese, Everson & Picchi

Michael P. Quinn, Jr.
Attorney
Decof, Decof & Barry, P.C.

Tammy L. Wade
Shareholder
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When defending cases that involve catastrophic obstetric injuries, it is becoming more and more common to anticipate life care plans that reach well into the eight figure range. Particularly in obstetric cases where jury sympathy is abundant, life care plans are an effective tool to convince juries to compensate the plaintiff with astronomical awards, even if, in some instances, the life care plan bears little relationship to the therapy, treatment or accommodations which the injured party may truly need. This panel will provide essential insights and strategies for:

- Defending against a life care plan that is seemingly inflated, improperly researched or simply mismatched for the particular plaintiff
- Cross-examining a life care planner at trial
- Establishing whether the life care planner is qualified
- Identifying and utilizing potential experts to challenge overstated life care plans

4:30 Preventing Category Two Fetal Heart Monitoring Strip Liability: Safeguarding Against Incorrect Readings and Responses
Stephen Brzezinski
Principal
Kitch Drutchas Wagner Valitutti & Sherbrook

Jack Gresh
Partner
Hall Booth Smith, P.C.

Carol Nelson Shepherd
Shareholder
Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig LLP

- Ensuring accurate readings and interpretations of fetal monitoring strips
- Assessing emerging technologies that can assist with evaluations and interpretations of fetal heart rate patterns
- Analyzing common claims of negligence involving fetal monitoring strips and the effective defenses in these cases
- Addressing claims involving insufficient training of nurses in reading and handling monitoring strips, and disputes between doctors and nurses when a strip is misread
- Avoiding the pitfalls of overreliance on fetal heart rate algorithms

3:15 Afternoon Refreshment Break

5:30 Conference Adjourns to Day Two

Tuesday, June 26, 2018
DAY TWO

7:30 Continental Breakfast

8:00 Co-Chairs Opening Remarks and Recap of Day One

8:15 Induced Labor Malpractice: Exploring Pitocin Complications and Injuries
Michael L. Hall M.D. FACOG
Associate Clinical Professor
University of Colorado Medical Center

Lisa B. Weinstein
Director, Leader of Birth Injury Litigation Division
Grant & Eisenhofer, P.A.

- Assessing the latest cases and studies involving significant patient harm caused by Pitocin errors
- Examining recent Pitocin misuse settlements and verdicts, including cases involving:
  - When and under what circumstances Pitocin was used
  - The dosage of Pitocin used
  - Monitoring of the patient during and following usage of the drug
- Evaluating the rise in C-section rates resulting from fear of Pitocin errors
- Assessing Electronic Fetal Monitoring patterns associated with Pitocin misuse and poor neonatal outcomes

9:00 Lessons Learned from the Recent Zika Outbreak: Understanding Fetal Disease Pathologies and Related Theories of Liability
Victoria L. Vance
Partner
Tucker Ellis LLP

Max Wiznitzer, MD
Pediatric Neurology
CWRU School of Medicine

- Assessing the challenges faced by OBs in determining whether birth defects potentially related to the Zika virus infection are in fact a result of the Zika virus
- Determining whether birth defects strongly linked to Zika are due to transmission of Zika virus alone, or whether there are other contributing factors
- Analyzing the fetal neuropathology involved in Zika cases
- Understanding the critical importance of sufficiently monitoring and documenting cases with birth defects potentially related to a Zika virus infection
• Identifying best protocols and practices when a mother has been exposed and/or is a carrier, and for treating infants diagnosed with the Zika virus
• Communication and Resolution Programs—how institutions can adopt a policy of apology and disclosure
• Lessons learned from the recent Zika outbreak that can be applied to the next potential crisis
  o Is there a way to identify the “next” Zika?

9:45
Morning Coffee Break

10:00
Assessing the Risk Profile of an Obstetric Malpractice Case: Conducting an Effective Damages Work-Up, Developing Strategies for Mitigating Damages and Anticipating the Potential Impact of the ACA Repeal

Adam Bobkin
Of Counsel
Mauro Lilling Naparty LLP

Norman D. Tucker
Of Counsel
Sommers Schwartz

Thomas J. Dawson, III
Chief Executive Officer
TD&P Consulting, Inc.

• Strategies for conducting an accurate and effective damages work-up and planning for future medicals in an obstetric malpractice case
• Assessing the impact of the ACA and its potential repeal on the formulation of damages
• Understanding how damages are arrived at by plaintiff counsel and what insurance companies should do to respond to those damages claims
• Identifying the alternative sources of support that are available to defray some costs that should not be part of the defendant’s responsibility (e.g. Medicaid, State Special Ed, CHIPS, SSD, etc.)
  o Understanding what sources are available, who qualifies for them, and how they may affect settlement monies
• Assessing the role of the structured settlement annuity in 2018:
  o Conducting a cost comparison of identical settlement structures between 2007-2017
  o Examining how the increased cost of structured settlement annuities have affected the cost of care and ultimate settlement numbers
  o Integrating structured settlements with available collateral sources to successfully settle catastrophic obstetric cases

11:15
Selecting a Jury for a Birth Injury Case: Plaintiff and Defense Perspectives and Strategies

Tracie A. Vizza
Partner
O’Brien & Ryan, LLP

Debra A. Weinrich
Partner
White and Williams LLP

James Wilkens
Counsel
Sullivan Papain Block McGrath & Cannavo P.C.

• Assessing what both plaintiff and defense counsel look for when determining acceptable jurors
• Applying the lessons learned from jury focus groups to your jury selection process
• Making use of critical insights provided by jury consultants to obtain a more favorable jury

12:00
Conference Ends – Lunch for Workshop Participants Begins

HOTEL INFORMATION

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Join the Conversation @ACILegal #ACIObstetricMal
As we move through 2018, hospitals and health systems continue to face many challenges in implementing, maintaining and upgrading their electronic medical record systems. Practitioners are continuing to face not only technical hurdles, but also challenges ranging from security to use strategy to inadequate human interaction. As healthcare systems are still adapting to the "new normal," there are many areas of EMR that open practitioners including obstetricians and related healthcare providers up to malpractice risks. This working group will provide key insights on EMR challenges including:

- Assessing the latest obstetric malpractice risks associated with Health Information Exchanges, electronic health records and patient portals
- Overcoming the challenges of implementing an electronic platform and training users
- Providing assurance of the integrity of the electronic record and the associated raw data
- Understanding the use of electronic medical records in documenting labor and delivery and how that impacts the defensibility of a case
- Assessing the challenges associated with cloning records and the retroactive manipulation of electronic records
- Implementing enhanced documentation tools to capture relevant information in the electronic record

**Working Group on Overcoming the Challenges Associated with Electronic Medical Records, Patient Portals and Audit Trails in Obstetrics Practice**

**Moderator:**

Maggie M. Finkelstein  
Partner  
Gordon Rees Scully Mansukhani, LLP

Debra A. Weinrich  
Partner  
White and Williams LLP

Victoria L. Vance  
Partner  
Tucker Ellis LLP

Stacey Cischke  
Partner  
Hughes Socol Piers Resnick & Dym, Ltd.

**Information Exchanges, electronic health records and patient portals**

- Overcoming the obstacles associated with making efficient information exchanges between systems
- Addressing the challenges surrounding the use of electronic health records and patient portals

**Challenges and Hearings Think Tank:**

- Developing strategies for challenging an opponent's expert in obstetric malpractice cases
- Successfully withstanding a Daubert challenge to your own expert

**Moderator:**

David J. Krolkowski  
Shareholder  
Marshall Dennehey Warner Coleman & Goggin

**Panelists:**

Norman D. Tucker  
Of Counsel  
Sommers Schwartz

Craig S. Brodsky  
Partner  
Goodell, DeVries, Leech & Dann, LLP

**Topics of Discussion:**

- Identifying when a Daubert challenge is needed
- Adequately preparing to execute a Daubert challenge
- Modulating the extent of the Daubert challenge to suit your case
- Minimizing the chance of a backfire by the opposing party
- Defending against and withstanding a Daubert challenge made against your own expert
- Beating a Daubert challenge before it is even raised
- Ensuring that your expert’s testimony remains within the scope of their specialty
- Preparing for the hearing with the opposing party’s objections in mind

**Registration Information**

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