

BerkowitzHanna

Understanding Erb's Palsy



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[Erb's palsy](#), also known as brachial palsy, is a serious injury that occurs when a baby's shoulder nerves called the brachial plexus are damaged during delivery. Erb's palsy occurs in 0.9 to 2.6 out of every thousand live births, and 5 to 20 percent of the infants afflicted never fully recover. A significant number of cases are caused by medical malpractice during delivery.

Red Flags for Erb's Palsy

A difficult delivery increases the odds that your baby developed Erb's palsy. Your baby might have Erb's palsy if:

- he fails to move one of his arms or hands
- his eyelid droops on the opposite side of his body from the abnormal hand or arm
- his arm is bent at the elbow and held against his body, or
- one of his arms flops whenever he is rolled from side to side.

Types of Erb's Palsy

The [type of nerve injury](#) that your baby suffered greatly influences his prospects for full recovery. Erb's palsy can be characterized by one of four different types of nerve injuries:

- **Neurapraxia:** In neuropraxia, the nerve is stretched but doesn't tear. Recovery typically occurs spontaneously within three months.
- **Neuroma:** Neuroma is a more serious stretching, and only partial recovery is likely, due to the formation of scar tissue around the nerve.
- **Rupture:** A rupture is a torn nerve. Ruptures do not heal on their own and require surgery to correct.
- **Avulsions:** An avulsion occurs when the nerve is torn away from the spinal cord. Avulsions don't heal on their own, and full recovery is virtually impossible.

Treatment

In mild cases, symptoms typically clear up after a few months with no medical intervention. More severe cases require medication, physical therapy and/or surgery. Prospects are best when surgery is performed during the baby's first year. After the child's second birthday prospects dim significantly, even with surgical intervention.

Serious cases of Erb's palsy persist into adulthood. Long-term care of Erb's palsy victims includes medication, physical therapy and lifestyle accommodations. Certain activities and occupations will be unavailable to your child if his condition persists into adulthood.

How Medical Malpractice Can Cause Erb's Palsy

Medical malpractice can cause Erb's palsy during childbirth in the following ways:

- Pulling the baby's head and neck sideways as they pass through the birth canal
- Pulling the baby's shoulders during delivery
- Pulling the baby's arms during a breech delivery
- Misusing forceps or other delivery tools

When to Call a Lawyer

Because Erb's palsy is so often caused by [medical malpractice](#), you should contact a lawyer as soon as you suspect that your baby is afflicted with it. A good medical malpractice lawyer can investigate and determine the cause of your baby's condition, and he can gather evidence to trace it to medical malpractice. Most Erb's palsy malpractice cases are eventually resolved through private settlement.

The Medical "Standard of Care"

The medical "standard of care" is a critical legal concept in any medical malpractice lawsuit. Put simply, you will have an Erb's palsy claim if and only if your doctor failed to meet the applicable standard of care. Doctors are not expected to be perfect, and an ordinary mistake does not automatically amount to medical malpractice. Nevertheless, doctors are held to a far higher standard of care than most – for instance, a stranger rendering first aid at the scene of an automobile accident.

Pinning Down the Standard of Care

The standard of care can be stated as the level and type of care that a reasonably competent health care practitioner would have provided *under the same circumstances*. The standard of care expected under the circumstances of a breech delivery, for example, would be different from the standard of care expected in an ordinary delivery. Likewise, the standard of care expected of a specialist such as an obstetrician is higher than the standard of care expected of a general practitioner.

The question of whether the health care provider met the standard of care really boils down to one question. "Would a reasonably competent health care provider have provided the same treatment in this situation?" Consequently, it is an inherently ambiguous concept, and in court it is answered by the jury after listening to the testimony of expert medical witnesses (usually other doctors).

Causation

Causation is another critical element in a medical malpractice lawsuit. Suppose, for example, that your doctor failed to meet the medical standard of care during a breech delivery by opting for a vaginal birth instead of a C-section. Even though your doctor failed to meet the standard of care, you must still prove that your doctor's failure to meet the standard of care is what caused your baby to develop Erb's palsy.

Calculating Damages

Before formulating a claim for damages, you need an independent medical evaluation from a doctor not involved in your potential malpractice claim. The severity and duration of Erb's Palsy varies greatly from victim to victim, and in order to accurately calculate damages, you are going to need to know the severity and duration of the affliction.

The Critical Importance of Accurately Calculating Future Damages

In some cases, Erb's Palsy is a permanent condition that requires a lifetime of treatment, not all of which is covered under most health insurance policies. If you underestimate future damages, your child could end up running out of money years or even decades later. By then it will be too late, because there will be no way for him to reopen his claim and ask for more money.

Beware the Statute of Limitations

The [Connecticut statute of limitations](#) sets the deadline by which you must either file a lawsuit or abandon your claim. If you miss the deadline, even a private settlement will be out of the question – no defendant or malpractice insurance company will settle with you once they know you can no longer force them to pay. The deadline is two years after the date of the injury, although exceptions sometimes apply.

Frequently Asked Questions (FAQs)

What are the long-term symptoms of Erb's palsy?

Depending on the severity of the case, Erb's palsy can cause the following symptoms:

- Weakness of one of the shoulders, arms or hands
- A drooping eyelid on the opposite side of the body from the weakness or paralysis
- Moderate to severe pain
- Rotated arm
- The affected arm is shorter than the other arm

- Atrophy of the arm muscles
- Slow healing from injury and frequent infections in the affected area
- Impaired development of the circulatory system in the affected area
- Impaired temperature regulation in the affected area
- Numbness in the affected area
- Paralysis of the affected area

What kinds of damages should I claim?

You should claim the following losses, to the extent that they apply:

- Direct medical expenses including costs for medication, therapy, doctor's appointments, surgery and transportation to and from appointments
- Cost of home care
- Lost earnings, if you have missed work to care for your child
- Pain and suffering (for physical pain) and emotional trauma suffered by your child

What are some of the risk factors associated with Erb's palsy?

The most pertinent risk factors are:

- Obese mother
- High weight gain during pregnancy
- Older mother
- Physically small mother
- Small pelvis (in the mother)
- Diabetes in the mother
- High birth weight
- Overdue delivery (more than nine months)
- Prolonged labor
- Breech delivery

The presence of one or more of these risk factors does not necessarily mean there was no medical malpractice.

Your Plan of Action

When you are grieving the calamity that befell your baby, you might feel utterly overwhelmed and not "up to" pursuing a medical malpractice claim. Nevertheless, you need to act quickly and decisively to secure compensation and provide for your baby's future.

- Job one, of course, is to ensure that your baby receives proper treatment. If you fear that your doctor may be concealing an Erb's palsy diagnosis out of fear of a lawsuit, you should consider changing doctors.
- Your very next step should be to retain a medical malpractice lawyer to represent you as soon as possible. A top-notch medical malpractice lawyer will agree to take your case on contingency – which means that you will owe nothing until your financial compensation actually arrives, and your lawyer's services will be free of charge if he fails to win

compensation for you. After you do this, most of the rest of the work will be undertaken by your lawyer.

- Your lawyer will gather information from you, and then proceed to investigate and gather admissible evidence for your claim.
- At some point your lawyer will probably open settlement negotiations with your health care provider's medical malpractice insurance company.
- Only if negotiations fail, will your case likely proceed to trial. Even after a lawsuit is filed, negotiations often continue and settlement before trial remains likely.

Hiring an Attorney

Your choice of attorney will probably turn out to be the most important decision you make in the entire case. Select a law firm with plenty of experience in medical malpractice claims and a strong track record of winning in court. A [good birth injury lawyer](#) will take charge of your case and leave you to concentrate on caring for your baby and recovering from your own emotional wounds.

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