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Malpractice to cost \$13 million

Jury orders Torrance medical group to pay damages in bungled birth

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[Quote:]

**“She is alert now and she smiles, but she’ll be in special schools for the rest of her life.”
— BRUCE FAGEL, former emergency room doctor and attorney for the Cuenca family,
about 19-month-old Chloe Cuenca**

A Torrance medical group was hit with a \$13 million malpractice verdict Wednesday after a Supreme Court jury decided the group and its obstetrician were responsible for the cerebral palsy and mental retardation of a Gardena toddler.

Chloe Cuenca, now 19 months old, was born lifeless at Torrance Memorial Medical Center and had to be resuscitated because a new doctor failed to spot signs of fetal distress, jurors decided. At mid-labor, the doctor went off to deliver another baby.

The defendants, Friendly Hills Medical Group and Dr. Mitchell Adler, probably will appeal the verdict, said defense attorney David O’Keefe, who added that the large verdict was based on “extreme empathy for a severely damaged child.”

Finally delivered by Caesarean section after Adler tried to deliver her with forceps and vacuum suction, Chloe had been deprived of oxygen for 10 to 12 minutes.

“The doctors wanted to take her off life support, but the parents refused,” said Bruce Fagel, a former emergency room doctor and attorney for the Cuenca family.

“She is alert now and she smiles, but she’ll be in special schools for the rest of her life. And her mother has been caring for her 24 hours a day, seven days a week.”

The jury’s verdict means Antonette and Charles Cuenca, who have another daughter, 8, will be able to afford in-home nursing care. Charles Cuenca is a hotel worker in Long Beach.

The verdict states that the family will receive \$214,000 a year for the length of Chloe’s life. The family also will get \$770,000 up front, which is an estimate of the toddler’s lost earning potential.

Torrance Memorial Medical Center settled its case with the Cuencas before trial, for an “undisclosed but substantial” sum, Fagel said.

Over the two-week trial in front of Torrance Superior Court Judge Jean Matusinka, jurors heard of Chloe’s dramatic arrival into the world on Sept. 28, 1996.

At first, Antonette Cuenca’s labor appeared normal. But during an hour and 40 minutes of pushing, the fetal monitor showed the baby had significant drops in heart rate, experts testified.

It was at that point that Adler left Cuenca for more than 30 minutes to attend to another baby’s delivery, Fagel said. After several more attempts at delivery, with forceps and suction, after the doctor’s return, Chloe was delivered by Caesarean section.

Could he do it all?

“This doctor wanted to prove himself, I think, because he was new and he wanted to show he could do it all himself,” Fagel said.

Adler, who had finished an obstetrics residency at USC in 1994, had delivered just eight babies during two years in private practice before joining the Friendly Hills group two months before Chloe's birth, Fagel said.

Adler, who is defended as an "excellent obstetrician" by O'Keefe, is still employed by Friendly Hills, which has had a change of ownership since the incident.

The jury deliberated for 2 ½ days this week before the defense offered the Cuenca family \$950,000 to settle the case, attorneys said. Ten minutes later, jurors returned with a substantially larger verdict.

Reduction expected

That \$13 million most likely will be cut by \$500,000 immediately by Matusinka, lawyers on either side said, because the panel gave Chloe more than the \$250,000 maximum allowable for pain and suffering.

Jurors also gave Charles Cuenca \$250,000 for infliction of emotional distress. But that also will be cut from the verdict because recent higher court decisions have said the father is not allowed such damages if he wasn't present to see the pain inflicted, attorneys said.

Still, Fagel said, "For a 17-year life expectancy, this is a very large award."

The defense likely will file a motion asking for a new trial before an appeal, O'Keefe said.

"We feel the verdict was erroneous because it was based on emotion and not a fair and objective evaluation of the facts," O'Keefe said.