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Five Questions With: Mark J. Brice

By Nancy Kirsch - August 1, 2016 8:51 am

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Mark J. Brice, an attorney with Decof, Decof & Barry, represents plaintiffs in medical malpractice and product liability lawsuits. / COURTESY JOHN MCNAMARA

Mark J. Brice, attorney at Decof, Decof & Barry, has represented children and families in medical malpractice and product liability cases for more than three decades. Board certified as a trial attorney by the American Board of Trial Advocates, he has frequently led seminars and presentations on the subject of medical negligence and pediatric injuries.

As co-counsel with Mark Decof, he obtained the highest medical malpractice verdict and the highest personal injury settlement in Rhode Island history; he also earned one of the highest jury verdicts ever awarded in Newport County. He earned his law degree from Georgetown University, where he graduated with honors and served on the Law Journal. He spoke with Providence Business News about medical malpractice lawsuits and how medical technology is bringing changes to litigation.

PBN: You have been representing patients by suing obstetricians/gynecologists for alleged medical malpractice for more than three decades. What's different now compared to those earlier years, in terms of the kinds of malpractice lawsuits and size of malpractice awards?

BRICE: The types of claims have changed along with changes in technology; however, the typical settlement value for severely injured children has remained strikingly similar for the last couple of decades.



PBN: You were a featured speaker at the American Conference Institute's Annual Advanced Forum on Obstetric Malpractice in late June. Can you share key points from your comments at that forum?

BRICE: The focus of the presentation is the dramatic effect of improvements in imaging in the prenatal, perinatal and neonatal periods. When I began my practice, there was no way to "see" the injury to the brain of the living neonate. As magnetic resonance imaging became available and more widely used, areas of the damaged tissue could be visualized for both physicians and juries. The same is true with the development of focused prenatal ultrasounds that can show highly detailed views of fetal abnormalities and malfunctions. It is my opinion that, in years to come, a much higher percentage of litigation will involve prenatal diagnosis and treatment as opposed to the current emphasis on delivery issues.

PBN: What are the most frequent medical errors made by ob/gyns here in Rhode Island and nationally; have you ever declined to accept a medical malpractice case?

BRICE: The most serious errors are those that lead to permanent injury or death of the child and/or mother. It is difficult to say that any particular error is "frequent" since the number of meritorious cases in Rhode Island is a tiny percentage of the deliveries here. Having said that, failure of communication between and among health care providers is probably the root cause of many of the cases that I've seen.

We regularly reject far more cases than we accept. We take our civic and ethical responsibility to file only meritorious cases very seriously. There are cases where facts need to be developed in litigation that are not apparent in the medical record or where the statute of limitations require the filing of an action before a truly thorough review can be completed. Generally, however, our cases are vetted by highly qualified experts long before they are filed.

PBN: If you could recommend a single change to the health care system that you believe would reduce the frequency and severity of ob/gyn medical errors, what would it be?

BRICE: It may seem a little strange coming from me, but the No. 1 thing I would change is that obstetricians need to be paid more for prenatal screening and diagnosis. Reimbursements for prenatal ultrasound, for example, are absurdly low. I have a great respect for the care that most obstetricians provide most of the time; they shouldn't have to deal with financial issues that directly affect care so often.

PBN: Medical advances now enable physicians to deliver extremely premature infants and perform surgeries in utero, yet less-than-perfect outcomes for these newborns don't necessarily equate to medical malpractice. Do you believe that some of these medical malpractice awards – in excess of \$100 million for a single case – will or should impact physicians' willingness to accept high-risk obstetric patients or engage in innovative surgeries?

BRICE: We understand that, even when the very best care is given, injuries can occur. Although a bad outcome is generally a prerequisite to a malpractice case, it is only one factor of many that must be proven. Media reports of astronomical jury verdicts can be very misleading; virtually all of those verdicts are reduced or vacated in subsequent proceedings. It is my firm opinion that physicians should never let the threat of a malpractice claim prevent them from delivering quality care to their patients.

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