

# OBSTETRIC MALPRACTICE CLAIMS

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*David A. Clark, MD*

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*John P. Elliott, MD*

Medical Director  
Valley Perinatal Services

*Marcus C. Hermansen, MD*

Director of Neonatology, Southern New Hampshire Medical Center

*Aubrey Milunsky, M.D., D.Sc., F.R.C.P., F.A.C.M.G., D.C.H.*

Director, Center for Human Genetics Inc.

*Avrum N. Pollock, MD*

Pediatric Neuroradiologist and Radiologist  
The Children's Hospital of Philadelphia

*Michael G. Ross, MD, MPH*

Chairman, Dept. of Ob/Gyn, Harbor-UCLA Medical Center

*Carolyn M. Salafia, MD, MS*

Director, Research and Development, Placental Analytics, LLC

*Barry S. Schifrin, MD*

Consulting Obstetrician, bpm, Inc.

*Robert A. Zimmerman, MD*

Chief, Neuroradiology & MRI  
The Children's Hospital of Philadelphia

*Richard T. Henderson*

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*Michael D. Anderson*

Senior Claims Representative  
Medical Insurance Exchange of California

*Stephen Ruocco*

Vice President, Healthcare Malpractice Claims Department, AIG

*Robert Shavelle, PhD, FAACPDM*

Technical Director, Life Expectancy Project

June 26-27, 2013 | Union League | Philadelphia, PA



Obtain highly-specialized, practical information from leading medical experts, senior risk management and insurance professionals, and top litigators on:

- **The state of obstetric malpractice:** litigation trends, insurance developments, new theories of liability, emerging defense strategies, evolving standards of care, and more
- **Litigating claims arising from prenatal care** and identifying and managing the risks during the prenatal period
- Determining when **perinatal asphyxia** is the underlying cause of a brain injury
- **Emerging standards of care** for infants born with brain injuries and other emergency situations, including the **use of hypothermia**
- Developing an effective litigation strategy for **claims arising from shoulder dystocia**
- **Fetal monitoring and surveillance:** ensuring the correct interpretation and response and **litigating claims relating to fetal monitoring**
- How **placental pathology and neuroimaging** are impacting assessments of **causation and timing of injuries**
- Assessing the impact of **intrauterine infections and genetic disorders** on the placenta and fetus
- **Minimizing exposure to obstetric malpractice litigation:** identifying key drivers of risk, enhancing incident management practices, and utilizing a systematic approach to process improvement
- Utilizing **expert witness testimony** to support your case on causation, standard of care, and damages
- Determining the monetary value of a case through the effective assessment and use of **life care plans and life expectancy data**

Enhance your attendance by registering for the **Post-Conference Litigation Master Class:**

**Litigation and Trial Techniques for Every Stage of an Obstetric Malpractice Case**

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## Be a part of the nation's premier obstetric malpractice conference and ensure that you keep abreast of the evolving standards of care, emerging theories of liability, and new defense strategies.

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. Further, new standards of care are emerging and with these new standards come new malpractice claims. Given the state of obstetric malpractice, it is essential that all those along the obstetric malpractice continuum, including medical professionals, risk managers, insurance professionals, plaintiffs' attorneys, and defense counsel, be current on the latest claims and defense strategies and how they are impacting the practice.

American Conference Institute's 12th Annual Advanced Forum on Obstetric Malpractice Claims will bring together an unparalleled faculty of medical experts, risk managers, insurance professionals, and leading plaintiffs' and defense attorneys, who will provide you with the most up-to-date information on complex medical issues and litigation hurdles, including:

- Emerging standards of care, including the use of hypothermia
- Perinatal asphyxia and neonatal brain injury
- Shoulder dystocia
- Claims arising from prenatal care
- Fetal monitoring and surveillance
- Placental pathology and neuroimaging and their impact on assessments of causation and timing
- Intrauterine infections and genetic disorders

PLUS, add value to your attendance by also registering for the Post-Conference Litigation Master Class:  
**Litigation and Trial Techniques for Every Stage of an Obstetric Malpractice Case**  
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### WHO SHOULD 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**

## Day One: Wednesday, June 26, 2013

### 7:15 Registration and Continental Breakfast

### 8:00 Co-Chairs' Opening Remarks

*John E. Hall, Jr.*  
Hall Booth Smith, P.C.

*Stephen H. Mackauf*  
Gair, Gair, Conason, Steigman, Mackauf,  
Bloom & Rubinowitz

### 8:05 The State of Obstetric Malpractice: Litigation Trends, Insurance Developments, New Theories of Liability, Emerging Defense Strategies, Evolving Standards of Care, and More

*Barry S. Schifrin, MD*  
Consulting Obstetrician  
bpm, Inc.

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

*John E. Hall, Jr.*  
Hall Booth Smith, P.C.

- How obstetric malpractice litigation is playing out across the country
- Emerging theories of liability and claims trends from the plaintiffs' bar
  - Reptile theory
- The rise of neonatal resuscitation as an area of liability for the neonatologist and the conflict it creates with intrapartum management
- Guidelines regarding resuscitation
- New defense strategies – what has worked and why
- Frequency of birth trauma claims – is the volume of cases trending up or down?
- Surveying payouts in obstetric malpractice cases from around the nation
- Increasing focus of insurance companies on obstetric malpractice
  - Impact on resource allocation
- Assessing current and emerging literature regarding injuries
- C-section trends and their implication for malpractice claims
- Trends regarding frequency of VBACs and complications arising from VBACs
- Impact of cerebral palsy litigation on the frequency of non-medically necessary C-sections
- How obstetric procedures and standards of care are evolving and the implications for malpractice litigation
- How healthcare reforms may affect the obstetric malpractice landscape

### 9:05 Identifying and Managing the Risks During Prenatal Care: Premature Delivery, Late Delivery, Preeclampsia, Gestational Diabetes, and the Claims That Arise From Such Complications

*Charles W. Fisher*  
Kitch Drutchas Wagner Valitutti & Sherbrook

*Luke M. Pittoni*  
Heidell, Pittoni, Murphy & Bach, LLP

- Identifying women who have an increased risk of premature delivery
  - How this risk fluctuates over the course of the pregnancy
  - Assessing the effectiveness of the various tests
- Fetal risk factors
- Managing the risk factors for pre-term delivery: preeclampsia, gestational diabetes, and pre-term labor
- Determining the optimum time for delivery
  - Key factors
- Causation: what complications are directly attributable to premature delivery and not to other causes?
- Complications that can arise from a late delivery – and how to manage them
- Evaluating current practices
  - Implementing policies and procedures that will reduce liability

### 10:05 Networking and Refreshment Break

### 10:15 Fetal Monitoring and Surveillance: Ensuring the Correct Interpretation and Response

*John P. Elliott, MD*  
Medical Director  
Valley Perinatal Services

*Michael G. Ross, MD, MPH*  
Professor of Ob/Gyn and Public Health  
UCLA School of Medicine and Public Health  
Chairman, Department of Ob/Gyn  
Harbor-UCLA Medical Center

- Assessing the nomenclature changes for fetal strip categorization (Category I, Category II, Category III)
  - Impact on labor management and the standard of care
  - Impact on litigation strategies and impeachment of experts
- Ensuring accurate readings and interpretations of fetal strips
  - Determining what, if any, intervention is warranted
- Assessing emerging technologies that can assist with evaluations and interpretations of fetal heart rate patterns
- Common claims of negligence involving EFM
- Degree of sophistication of training of obstetrical nurses regarding fetal monitoring
- Potential liability resulting from a lack of fetal monitoring scrutiny by a physician
- Avoiding the pitfalls of overreliance on fetal heart rate algorithms

- Use by the plaintiffs' bar of poor fetal heart monitoring strips as evidence of ensuing hypoxia
  - Establishing an effective defense
- Determining when and for how long to monitor
  - Under what circumstances monitoring can be temporarily halted
- Utilizing EFM to detect the degree and extent of fetal hypoxia

### 11:35 Neonatal Brain Injury: Assessing the Standard of Care and Determining the Timing and Causation of an Injury

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*Marcus C. Hermansen, MD*  
 Director of Neonatology  
 Southern New Hampshire Medical Center  
 Associate Professor of Pediatrics and OB/GYN  
 Dartmouth Medical School

*Aubrey Milunsky, M.D., D.Sc., F.R.C.P., F.A.C.M.G., D.C.H.*  
 Professor of Human Genetics, Pediatrics, Pathology and Obstetrics and Gynecology, Boston University School of Medicine; Director, Center for Human Genetics, Inc.

- Determining the timing of a brain injury
- Pinpointing the underlying cause of a brain injury
- Hypoxic ischemic encephalopathy or genetic disorder?
- Perinatal asphyxia and neonatal brain injury: how can the link be established?
  - Explaining the lack of decline in the incidence of cerebral palsy
  - The 2003 Neonatal Encephalopathy and Cerebral Palsy Criteria
  - How much CP is caused by asphyxia and what are the other causes?
  - Infections and cytokines as a cause of brain damage
  - Can asphyxia cause brain damage other than cerebral palsy?
- Is hypothermia treatment the emerging standard of care for infants born with asphyxia?
  - Recommendations of the AAP and AHA
- New and emerging plaintiffs' theories and defense strategies relating to a failure to introduce hypothermia
- Assessing the efficacy of brain cooling
- Determining when a treating obstetrician should send an infant for brain cooling
  - Signs of fetal distress
  - Timing considerations
  - Risks of brain cooling treatment
  - Liability analysis

### 1:00 Networking Luncheon for Speakers and Attendees

### 2:00 Advanced Methods for Assessing Causation Part I: Using Neuroimaging to Determine the Timing and Origin of the Injury

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*Robert A. Zimmerman, MD*  
 Chief, Neuroradiology & MRI  
 Department of Radiology  
 The Children's Hospital of Philadelphia

*Avrum N. Pollock, MD*  
 Pediatric Neuroradiologist and Radiologist  
 Department of Radiology  
 The Children's Hospital of Philadelphia

- Assessing the most recent developments in neuroradiology and their impact on obstetric malpractice litigation
- Reading the signs of traumatic brain injury: what to look for
- Using cranial imaging studies to identify newborn asphyxia
- Examples of how neuroimaging can be used to exclude birth asphyxia as the cause of a later identified neurological deficit (such as cerebral palsy)

### 3:20 Networking and Refreshment Break

### 3:30 Using Expert Witnesses to Effectively Support Your Case on Causation and Standard of Care

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*Barry S. Schifrin, MD*  
 Consulting Obstetrician  
 bpm, Inc.

*J. Mark Coulson*  
 Miles & Stockbridge P.C.

- Identifying and retaining appropriate expert witnesses
- Key evidentiary issues
- The role and duties of the expert witness
- Depositions
  - Preparing your witness
  - How to get the most out of your witness
  - Tips and techniques for deposing an expert witness
- Cross-examination of the expert witness
  - What challenges to expect and how to prepare for them
  - Tips for preparing the witness
- How an expert can develop or refute causation of an injury to the child
  - What went wrong and why?
  - Would intervention have made a difference?

### 4:20 Assessing the Monetary Value of a Case, Determining Damages, and Making the Decision to Settle

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*Stephen Ruocco*  
 Vice President  
 Healthcare Malpractice Claims Department  
 AIG

*Richard T. Henderson*  
 Vice President  
 Transatlantic Reinsurance Company

*Robert Shavelle, PhD, FAACPDM*  
 Technical Director  
 Life Expectancy Project

*John E. Hall, Jr.*  
 Hall Booth Smith, P.C.

*Richard J. Federowicz*

Dickie, McCamey & Chilcote, P.C.

- Verdict and settlement trends
- Claims trends: Are plaintiffs' attorneys bringing more high-dollar claims?
- Life expectancy for children with cerebral palsy
- Evaluating and valuing life care plans
- Use and misuse of life care plans
- Developing your strategy as relates to life care plans and life expectancy
- Impact of life care plans on settlement considerations for plaintiffs and defendants
- Determining when a settlement is the best option for your client
- Key strategies and tactics for negotiating the best settlements for your clients
- How past expenses affect future assessments
- Using economists to establish or rebut damages claims
  - o Potential pitfalls

#### 5:45 Conference Adjourns

### Day Two: Thursday, June 27, 2013

#### 7:30 Continental Breakfast

#### 8:00 Shoulder Dystocia: Managing the Risks and Developing an Effective Litigation Strategy

*Arnold W. Cohen, MD*

Chairman, Department of Obstetrics & Gynecology  
Albert Einstein Medical Center

*William F. Cunningham*

Cunningham Meyer & Vedrine, P.C.

*Stephen H. Mackauf*

Gair, Gair, Conason, Steigman, Mackauf,  
Bloom & Rubinowitz

- Understanding the key risk factors for dystocia and how they are managed
  - o Recurrence risks
  - o Intrapartum risk factors
- How predictable is shoulder dystocia?
- Causation in shoulder dystocia: determining how and when the injury arose
- Assessing whether to perform a prophylactic C-section in order to avoid the risk of shoulder dystocia
  - o What is the threshold regarding the risk of shoulder dystocia?
- Effectively managing dystocia in the delivery room
  - o Prophylactic techniques
  - o Limitations and complications that can arise
  - o Downward traction
- Managing maternal complications
- Assessing the relationship between shoulder dystocia and:
  - o brachial plexus injury/palsy
  - o umbilical artery acidosis

- New and emerging plaintiffs' theories relating to complications arising from shoulder dystocia
- Strategies for defending the shoulder dystocia case
  - o Common claims and best defenses
  - o Expert witnesses

#### 9:15 Infections, Metabolic Disorders, and Genetic Defects: Determining When an Injury Occurred

*David A. Clark, MD*

Chair, Department of Pediatrics  
Albany Medical College

*Andrew S. Kaufman*

Kaufman Borgeest & Ryan LLP

- The impact of intrauterine infections and genetic disorders on the placenta and fetus
- Assessing the role of cytokines in the development of long-term neurological defects
- Ascertaining if cytokines were created by hypoxic/ischemic injury or infection
- Detecting signs or symptoms of infection prior to delivery
  - o Standard of care
- Infection as a causal element of cerebral palsy
- Assessing new and emerging research regarding the link between genetics and cerebral palsy
  - o Implications for obstetric malpractice claims
- Considerations when engaging in genetic counseling
- Appropriately and effectively communicating test results to patients

#### 10:15 Networking and Refreshment Break

#### 10:25 Advanced Methods for Assessing Causation Part II: Using Placental Pathology to Determine the Etiology and Timing of an Injury

*Carolyn M. Salafia, MD, MS*

Director, Research and Development  
Placental Analytics, LLC

- How an analysis of placental tissue is conducted and what it may reveal
- Clinical examples of ways in which placental pathology can indicate the cause of many cases of poor pregnancy outcome
- How the placenta responds to a poor intrauterine environment
  - o Timing

#### 11:10 Minimizing Exposure to Obstetric Malpractice Litigation: Implementing Preventive Measures, Reducing Risk, and Managing Adverse Outcomes

*Joseph S. Picchi*

Galloway, Lucchese, Everson & Picchi

*Norman D. Tucker*

Sommers Schwartz

- Identifying key drivers of risk
- Enhancing incident management practices
- Utilizing a systematic approach to process improvement
- Developing protocols to enable calm and coordinated team responses in critical situations and reinforce the use of safe practices
  - o Shoulder dystocia
  - o Postpartum hemorrhage
  - o Operative vaginal delivery
  - o Hyperstimulation/tachysystole
- Implementing enhanced documentation tools to capture relevant information in the electronic medical record
- Developing a culture of safety
  - o Engagement of staff
  - o Periodic refresher training
  - o Use of simulation
- Initiating timely communication with patients and families following an adverse event
- “I’m sorry” – Is this the new paradigm for handling birth injury claims?
- Implementing a joint professional liability program
- Achieving measurable results
  - o Improved clinical outcomes
  - o Decreased exposure

12:15 **Conference Ends – Lunch for Master Class Participants**

## POST-CONFERENCE MASTER CLASS

Thursday, June 27, 2013

1:00 p.m. – 4:00 p.m.

### Litigation and Trial Techniques for Every Stage of an Obstetric Malpractice Case

*Luke M. Pittoni*

Heidell, Pittoni, Murphy & Bach, LLP

*Stephen H. Mackauf*

Gair, Gair, Conason, Steigman, Mackauf, Bloom & Rubinowitz

Obstetric malpractice cases are extremely difficult to litigate. In order to effectively examine and cross-examine the expert witnesses retained in these cases, you must understand the technical details and medical jargon that are inherent in this field of medicine. Moreover, you must master the trial techniques and strategies that are specific to obstetric malpractice cases. This interactive Master Class will provide you with the tools that you need to obtain the best results for your clients in these difficult cases.

Topics to be addressed include:

- Investigating the facts concerning liability, causation and damages: what is relevant?
- Formulating a document and e-discovery plan that defends against overly aggressive requests while ensuring compliance
- Developing cost-effective, compliant, and practical e-discovery and document retention policies and procedures
- The scope of information that defendant hospitals and medical professionals must turn over to plaintiffs’ attorneys
- E-discovery as it applies to:
  - o Communication with patients through email and texting; databases; medical records
- Ensuring preservation of relevant documents
  - o How long must information be preserved?
- Risks and sanctions that attorneys face if the e-discovery process is not handled properly
- Confidentiality and privacy issues that arise with patient information
- Using metadata to establish relevant dates and times
- Ensuring that litigation is not driven by the cost of discovery
- Ensuring that your client is prepared for trial
- Trial briefs and motions in limine
- Overcoming the challenges of representing the institutional client
- Jury selection
- Giving an effective opening statement
- Effective use of exhibits
- Final arguments and closing statement
- Making the case for or against damages
  - o What types of damages and how much?
  - o Damages experts
- Settlement considerations – strategies for success

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# OBSTETRIC MALPRACTICE CLAIMS

June 26-27, 2013 | Union League | Philadelphia, PA

Hear from leading physicians, risk managers, and insurance professionals from around the nation, as well as top plaintiffs' attorneys and defense counsel

Plus, don't miss the Post-Conference Litigation Master Class:

Litigation and Trial Techniques for Every Stage of an Obstetric Malpractice Case

June 27, 2013 | 1:00 p.m. – 4:00 p.m.

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