



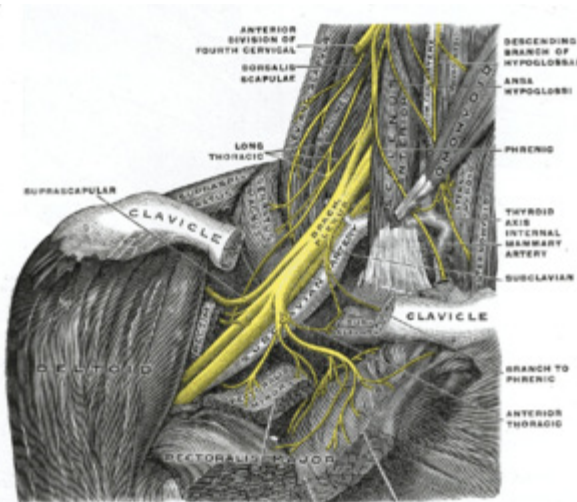
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Protecting the Rights of Injured Workers

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Lawyer Sues Alleging Article About Brachial Plexus Injuries is False

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The [Day on Torts](#) blog reports of an interesting lawsuit filed by Massachusetts attorney [Kenneth Levine](#). In the lawsuit, *Gorbey v. American Journal of Obstetrics & Gynecology*, No. 1:11-CV- 11259-NMG (pending in the U. S. District Court for the District of Massachusetts), Levine alleges that the authors of a medical article about brachial plexus injuries that was published in the *OB-GYN Journal* knowingly relied on a false case report as the basis for the article.

Brachial plexus injuries are described at the National Institute of Health's [website](#) as follows:

The brachial plexus is a network of nerves that conducts signals from the spine to the shoulder, arm, and hand. Brachial plexus injuries are caused by damage to those nerves. Symptoms may include a limp or paralyzed arm; lack of muscle control in the arm, hand, or wrist; and a lack of feeling or sensation in the arm or hand...In infants, brachial plexus injuries may happen during birth if the baby's shoulder is stretched during passage in the birth canal...

This lawsuit is significant because the article in question is being used to support the claim that this type of injury can occur without any action on the part of a physician. In the article, the authors conclude that a brachial plexus injury can occur in the absence of physician interference, basing their conclusions on what they purport is the "first unambiguous case of a baby born vaginally without physician traction, and even without the occurrence of shoulder dystocia, that resulted in a permanent brachial plexus injury."

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However, as explained above, Levine alleges in the lawsuit that this claim is based on a case report regarding a birth that the authors of the article knew contained false information. Specifically, it is alleged that one author of the article, who was actually involved in the birth upon which the case report was based, later admitted during a deposition that she did in fact use downward traction during the delivery described in the case report and the labor and delivery notes of that birth also indicate that shoulder dystocia was present as well. Furthermore, it is claimed that the other co-author admitted while testifying during an [Illinois medical malpractice lawsuit](#) that he did not read the labor and delivery notes before authoring the case report.

In the lawsuit, Levine claims that the corporate defendants, including the magazine's publisher, were made aware of the inaccuracies in the article after it was published, but refused to retract it.

This lawsuit is important because the article is being relied upon to defend doctors accused of medical malpractice when it is alleged that their actions during the birth of an infant resulted in brachial plexus injuries that could have otherwise been prevented. If it is true that the case report relied upon in the article is based on false information, then physicians shouldn't be allowed to rely on this article to defend their actions and the OB-GYN Journal should be required to retract the article. It will be interesting to follow this case. Hopefully, if Levine's claims are correct, he will prevail and physicians accused of this type of medical malpractice will no longer be able to use this article in their defense.

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