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Calif. Jury Finds Hospital Negligent Over Unborn Baby's Death

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Law360 (November 5, 2018, 8:47 PM EST) -- A California jury has awarded \$590,000 in a suit accusing a doctor and hospital of causing an unborn baby's death due to a delayed order for an emergency cesarean section, after finding the hospital was negligent but clearing the attending physician of medical malpractice.

Following a three-week trial, the San Bernardino County Superior Court jury found on Nov. 1 that nurses for San Antonio Regional Hospital in Upland, California, were negligent in caring for maternity patient Denise Cundari in a suit accusing the hospital, Dr. Mark Alwan and others of causing the death of Cundari's child by failing to properly monitor the fetal heart rate and failing to timely order an emergency C-section. The suit also claims Cundari suffered a postnatal infection due to the hospital's alleged negligence.

The jury found that Alwan was not negligent but nurses Susan Gearhart and Andrea Sanchez were indeed negligent in their treatment of Cundari, and awarded approximately \$65,000 for past medical expenses and lost income and \$575,000 in past and future noneconomic damages such as pain and suffering, according to Cundari's attorney, Kristy M. Arevalo of [McCune Wright Arevalo LLP](#).

In addition, the jury determined that the child died in utero, an issue of significance in California, which does not recognize wrongful death claims for unborn fetuses.

Arevalo told Law360 on Monday that she was pleased the hospital will be held accountable for its employees' actions.

"We are very pleased that we were able to get justice for our client, Denise Cundari, and that San Antonio Regional Hospital will now be forced to take responsibility for Ms. Cundari's injuries and the death of her baby, Abigail Joycelyn," Arevalo said in a statement.

Arevalo added that because the jury determined that the baby died seconds before being born they weren't able to recover damages for wrongful death.

"If Abigail had taken just one breath outside of the womb, Ms. Cundari would have been entitled to wrongful death damages," she said. "However, under the law we determined that she was entitled to emotional distress damages for the death of her baby even though she was not entitled to wrongful death damages."

[Tyson & Mendes LLP](#) partner Susan Oliver, an attorney for Alwan, said they were satisfied with the jury's decision to fully clear their client of liability in a suit seeking about \$1.7 million in total damages.

"While the plaintiff suffered from an extreme tragedy and underwent extraordinary emotional duress, the jury realized that our client had done every conceivable thing possible to save her baby," she said in a statement.

An attorney for the hospital did not immediately respond to a request for comment Monday.

Co-defendants Drs. Daniel Channell, Thomas Lee and Kamyar Safdari were not parties to the verdict and were cut loose from the case prior to trial, according to court records.

Cundari is represented by Kristy M. Arevalo and Tuan Q. Nguyen of McCune Wright Arevalo LLP.

Alwan is represented by Susan Oliver and Jennifer Lowis of Tyson & Mendes LLP.

San Antonio Regional Hospital is represented by Jeffery W. Grass of [Davis Grass Goldstein & Finlay](#).

The case is Denise Cundari v. Daniel B. Channell M.D. et al., case number CIVDS1701102, in the Superior Court of California for the County of San Bernardino.

--Editing by Jack Karp.

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