

# Philadelphia Jury Awards \$1.2 Million in Baby's Death

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The logo for 'The Legal Intelligencer' is displayed in a stylized, gothic-style font. The text is black with a subtle drop shadow, giving it a three-dimensional appearance. It is set against a light beige rectangular background. A thin, dark red horizontal line runs beneath the entire logo area.

A Philadelphia jury awarded a \$1.2 million verdict to the parents of a baby with multiple congenital defects who died while hospitalized at Children's Hospital of Philadelphia in 2006.

The Philadelphia Court of Common Pleas verdict of \$1,223,750 was announced Nov. 10. The jury decided in favor of the plaintiffs 10-2. Judge Joseph A. Dych presided over the trial.

The parents of Abena Kyei, Kwasi Agyeman Kyei and Sheila Amponsah, claimed that after Abena Kyei was admitted to the hospital she had respiratory distress that worsened, but was

not appropriately responded to before cardiac arrest killed her, according to the plaintiffs' pretrial memorandum.

In addition to CHOP, the other named defendants were Dr. Megan Lavoie, a resident at the time, Dr. Kristin Cam, an intern at the time, Dr. Sophia Hussen, an intern at the time, and Melissa Borrell, a nurse still in training.

Abena was born with multiple anomalies, according to plaintiffs' and defense pretrial memorandums. She had a heart defect called Tetralogy of Fallot, which involves four separate defects, required surgery two weeks after Abena's birth and was going to require further surgery.

Her kidneys were smaller than normal. She was born without a uterus. And she had achromosomal disorder.

Plaintiffs' attorney Mark A. Hoffman of Kline & Specter said he and co-counsel were "totally

upfront" with the jury that Abena had multiple medical problems. People born with Tetralogy of Fallot have a 70 to 80 percent long-term survival rate, Hoffman said.

"We were very, very honest with the jury," Hoffman said. "We were upfront this was a child who had significant medical problems. The theme of the case [was] when you have a child with significant medical problems you don't leave them with your most inexperienced physicians."

Hoffman said Abena was sent home to "be a baby" after her heart surgery so she could grow and gain weight before undergoing a second-stage heart repair surgery.

Abena, then 5 months old, was admitted on precautionary measures to CHOP Nov. 6, 2006, after Abena's parents reported she had been vomiting to the nephrology doctors taking care of Abena, the plaintiffs' memorandum said.

Among the many actions the plaintiffs' memorandum criticized in Abena's care between her admittance to CHOP at 3 p.m. and the pronouncement of her death at 9:20 p.m. was the pulse oximetry alarm monitoring the oxygen level in Abena's blood being set to go off if Abena's oxygen saturation fell below 70 percent, while her oxygen saturation level had been at 78 percent when she was admitted.

The plaintiffs also said in their memorandum that Borrell did not respond to the alarm system indicating Abena's heart problems.

At 8 p.m., a nurse supervisor was summoned to Abena's bedside by Abena's mother, who said her baby was not moving, according to the plaintiffs' memorandum. Nurse supervisor Katherine O'Neill was unable to obtain pulse oximeter readings on Abena's foot and hand, and O'Neill left the baby to procure a new pulse oximetry monitoring lead from the supply closet, the plaintiffs' papers said.

Borrell said she had been in the patient's room no more than five minutes before, defense papers said. O'Neill said Abena

appeared well before she left the room to get the new monitoring lead and she paged Cam because she was having trouble getting a pulse oximetry reading, defense papers said. Upon O'Neill's return, Abena was found to have no obtainable blood pressure and a heart rate of 55 beats per minute, plaintiffs' papers said. Cam began bagging the baby, and a code team was called, defense papers said. The code team attempted resuscitation for 80 minutes.

During the trial, Hoffman said, Dr. Gil Wernovsky testified that after Abena's death he reviewed the trends on the patient bedside monitor and it showed her heart rate precipitously dropped at 8 p.m. The defendants' memorandum said Wernovsky concluded in his review that the patient's code was due to an "acute onset."

Hoffman argued that Abena's heart went into arrest for five or six minutes and no life-saving resuscitation was undertaken when it could have been.

The jury awarded \$673,750 in Wrongful Death Act damages and \$550,000 in Survival Act Claim damages.

The jury attributed 29 percent of the causal negligence of Abena's death to Lavoie, 28 percent causal negligence to Hussen, 28 percent to Cam and 15 percent to Borrell.

Defense counsel Benjamin A. Post of Post & Post said he will be filing post-trial motions.

Post, who had the opportunity to speak to the jury after the verdict, said in an interview he thinks the jury was

overwhelmed by sympathy. The residents did not do anything wrong, Post said. "I think the care was exquisite," he said.

Hoffman said he did not speak to the jury.