

## SUITS, BIRTHS AND VIDEOTAPE

### Doctors fear blessed event can turn into legal nightmare

By **LISA TEACHEY**  
Houston Chronicle

Since the late 1970s when childbirth returned to a more natural procedure and a family event, videotaping soon followed as delivery room routine.

But with hospitals fearing lawsuits, that may change.

A Houston hospital has banned videotaping of births after recently agreeing to pay a family \$15 million. The family's tape showed negligence during the delivery that left the child blind and with irreversible brain damage. The name of the hospital was not

disclosed as part of the settlement.

A survey by the Houston Chronicle found three local hospitals with no-taping policies — Christus St. Joseph Hospital, Doctor's Hospital-Parkway and Doctor's Hospital-Tidwell. Christus St. Joseph ranks among the top four Houston hospitals in number of deliveries.

Administrators would not comment about the rule, but legal and medical experts say fear of lawsuits is driving such policies nationally.

"This is part of a trend over the last two to three years prompted by medical journals," said Mary

Anne Bobinski, associate dean for academic affairs at the University of Houston Law Center.

"Certainly a \$15 million settlement might cause hospitals and doctors to take one more look at it," Bobinski said.

The June 25 settlement is one of the largest on record for medical malpractice involving an infant, said Richard Mithoff, the attorney representing the family.

An informal poll Mithoff conducted found many more Houston hospitals may ban videocameras in delivery rooms.

"I have been told by hospital representatives they intend to

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## Births

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prohibit videotaping in the future and that prohibition is a result of cases just like this," Mithoff said. "And what is so troubling about all of this is that from the hospital's perspective, as I see it, this is just one more effort to keep the secrecy lid on."

On Feb. 15, 1999, the pregnant woman was accompanied to the hospital by her sister and mother. The sister kept the camera on in the delivery room, Mithoff said. The lack of medical attention by the nurse was documented on the tape.

After the baby was born, she never made any sounds and showed no signs of muscle movement.

Instead of giving the newborn oxygen, the attending nurse verbally coaxed the child, Mithoff said. The nurse waited almost an hour before calling a doctor. Experts in the case said lack of oxygen injured the child.

Mithoff said the new mother's cries can be heard on the videotape. Toward the end, a medical attendant can be heard saying, "Someone better get that tape and destroy it."

"This family would not have known everything that happened but for this videotape," Mithoff said. "The video captured this nightmare."

Dr. Robert Zurawin, president of the Houston Gynecological and Obstetrical Society, said a patient's request to videotape childbirths presents doctors with a conflict.

"We like to satisfy our patient's

Continued

## Videotaping childbirth

Survey of area hospital policies on the videotaping of childbirth:

### Do not allow videotaping

Christus St. Joseph  
 Doctor's Hospital-Parkway  
 Doctor's Hospital-Tidwell

### Allow videotaping with restrictions

Houston Northwest  
 Park Plaza  
 Tomball Regional

### Leave the decision to doctors and their patients

#### Memorial Hermann Healthcare System

Fort Bend Medical  
 Katy Medical  
 Memorial Hermann  
 Memorial Hospital Memorial City  
 Memorial Southeast  
 Memorial Southwest

#### Harris County Hospital District

Ben Taub  
 LBJ Hospital

#### Entrust Health Network (formerly

#### Columbia Healthcare System)

Bayshore  
 Bellaire  
 Clear Lake  
 East Houston Medical  
 Kingwood  
 Spring Branch  
 West Houston  
 Woman's Hospital

#### Independent

Methodist  
 St. Luke's Episcopal

Chronicle

wishes. They want to record it because this is an exciting event," Zurawin said. "But the conflict is it's a permanent record."

Most deliveries are without incident, Zurawin said. But if something does go wrong, the videotape is an instant legal document.

"Not all bad outcomes are the result of malpractice," Zurawin said. "But doctors are concerned it can be used against them. . . . Unfortunately in today's legal climate, if anything goes wrong with anything you get sued. . . . Right or wrong, like it or not, doctors are understandably not eager to have evidence that can be used against them."

Despite a national movement in the late 1970s to make delivery rooms less surgical-like, childbirth is a medical procedure,

Zurawin said.

"All of this happened around the time personal videocameras first came out," Zurawin said. "And the process of birth became social. But you wouldn't videotape a coronary artery bypass. When a woman goes to have a Pap smear, her husband doesn't videotape that."

Some argue that videotapes can exonerate doctors.

"Sometimes it's the best evidence there was no wrongdoing," said Harold Freeman, associate director of legislative affairs of the Texas Medical Association.

Although some partners at the Houston Women's Care Associates allow videotaping of the entire process, Dr. Laurie Swaim does not.

"Most (of her) patients are OK

with it," Swaim said. "This is still a medical procedure and some situations require more intensive care than others. People don't need to have a camera on at that time."

Jim Perdue Sr., a medical malpractice legal expert, said if doctors handle the situation correctly they should not care which parts of the process are taped.

"What do they have to hide?" Perdue asked. "If the idea is 'Well, it's just too gory,' we know that isn't true because you can turn on the Discovery Channel and watch births all the time. You can watch them on the Internet."

Swaim said concerns also could be raised over whether the tape was altered or how things are interpreted.

"If someone is heard saying 'Oops,' how do you know what that means?" Swaim said. "It could be a nurse dropped something but it might be construed as wrongdoing."

Swaim said she follows the recommendation of the American College of Obstetricians and Gynecologists. It strongly discourages any recording of medical and surgical procedures for patient memorabilia because of the liability.

An article in the January issue of the Journal of the American Medical Association found 40 percent of obstetricians in Iowa were more likely to prevent patients from taping births. Of those against taping, 80 percent cited legal concerns.

The Journal of Family Practice published an article in 1998 weighing the pros and cons of videotaping childbirth. The article recommended taking a moderate approach.