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# Hospitals and Doctors Sued for Failing to Immunize

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*Editor's note: The following article was published in Needle Tips in September 1994, and continues to be requested by persons interested in instances where patients or their relatives have sued hospitals, clinics, and/or physicians for failing to immunize against vaccine-preventable diseases.*

*If you know of cases similar to the ones described below, please contact the Immunization Action Coalition's executive director, Deborah L. Wexler, MD, at [deborah@immunize.org](mailto:deborah@immunize.org).*

Three lawsuits against physicians and hospitals who failed to immunize came to the attention of the Immunization Action Coalition (IAC) in the December 1993 issue of CDC's *Immunization Action News*. Since the publication of that article, IAC has sought further information about these cases. To date, four additional lawsuits were identified and descriptions of all seven cases follow.

- ◆ **Case #1: Hepatitis B** — In 1989 on the West Coast, a woman was identified as being chronically infected with hepatitis B during her prenatal care. However, this information was not transmitted to the newborn nursery at the time of delivery. Her baby received neither HBIG nor hepatitis B vaccine and the infant subsequently became chronically infected. The mother sued the hospital, the obstetrician, and the pediatrician. A substantial settlement was awarded.
- ◆ **Case #2: Hepatitis B** — In a large Midwestern city in approximately 1988, a woman was screened in pregnancy and was found to be HBsAg positive. Her baby was born and appropriately immunized at birth with HBIG and hepatitis B vaccine. The baby returned for well-child care with a healthcare provider who was at the hospital-based clinic. The parents asked if the baby needed a second dose of hepatitis B vaccine. The provider reviewed the birth record and told the parents that the vaccine was not necessary and did not give the follow-up dose. The healthcare provider did not understand the indications for hepatitis B vaccine. At 12 months of age, the child was found to have chronic persistent hepatitis B by the hospital's follow-
- up clinic that tracks the infants born to HBsAg positive mothers. The hospital was sued and the case was settled out of court.
- ◆ **Case #3: Measles** — A 26-year-old woman who worked in a private clinic as a nurse's aide in California contracted measles and died in February 1990. The clinic in which she worked had seen patients with measles and this was her only known exposure. This woman had received one dose of MMR as a child. In late 1989, the ACIP recommended a second dose of measles vaccine for new employees in medical facilities, since they are at higher risk for measles than the general population. The ACIP also recommended "catch-up" programs for employees already working at these sites when resources were available. This nurse's aide never received a second dose of measles vaccine. The family has sued the physician's practice. The case was pending in 1994. (IAC has no further information about this case.)
- ◆ **Case #4: Hib meningitis** — In 1991, a California infant developed Hib meningitis and the family has sued the private clinic for failure to immunize. The case occurred in early 1991, shortly after the new Hib vaccine became available (November 1990) and shortly after the ACIP approved Hib vaccine for infants at 2 months of age. The clinic had provided some doses of both DTP and polio vaccines to the infant. The mother asked for Hib vaccine for her infant in January 1991 but was told that it was only recommended for children 15 months and older. She returned in March of 1991 with her infant and was again told that the vaccine was not indicated. (The provider was not aware of the new recommendation.) In spring 1991, the infant developed Hib meningitis. The child remains developmentally delayed three years later. The case was pending in 1994. (IAC has no further information about this case.)
- ◆ **Case #5: Invasive Hib disease** — The information on this case is sketchy. At the time of this occurrence, the child was between ages 2 and 5 years and eligible to receive Hib vaccine. The case occurred between 1985 and 1990 at some point after Hib vaccine became

recommended for children at 15 months of age. The child required hospitalization and today has some residual effects of the disease. This West Coast family has sued their child's physician for failing to provide the vaccine. (IAC has no further information about this case.)

- ◆ **Cases #6 and #7: Hepatitis B** — Both of these cases occurred at a large teaching hospital affiliated with a medical school in a state where a law exists mandating prenatal hepatitis B screening. In this hospital, mothers were not routinely screened at delivery, but the neonatologist tested every infant for HBsAg as part of a panel of tests that was routinely done on cord blood. If this test was negative, no hepatitis B vaccination was given. If the test was positive, sometimes vaccine and HBIG were given and sometimes they were not ("too late — baby already infected"). Both of the infants at the centers of these lawsuits were born in 1991 when this policy was in effect.

In the first case, the mother had been tested during her pregnancy but the test results were not communicated to her or to the hospital. The infant's cord blood test was negative. In a subsequent pregnancy she was discovered to be HBsAg positive and was referred to the state's perinatal program. Her other children were tested as a part of this program and the one child was discovered to be chronically infected.

In the second case, the mother had not been tested during the pregnancy. The cord blood of this infant was positive for HBsAg, but the report was received after the discharge of the infant and the report was filed without action.

In both cases, the infants were not treated for perinatal exposure because the hospital was relying on cord blood testing to determine the need for hepatitis B prophylaxis. The hospital policy has since been changed and all mothers are screened on admission to labor and delivery. Lawsuits were pending in both cases in 1994. (IAC has no further information about these cases.)