

2005 WL 1309375 (N.Y.Sup.)  
For Dockets See [0047460/2002](#)

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Supreme Court, Second Judicial District, Kings County, New York

ERICA RUIZ V. FARZAD NABATIAN MD 'JOHN' MYERS, M.D., AND BETH ISRAEL MEDICAL CENTER

No. 47460/02

DATE OF VERDICT/SETTLEMENT: April 20, 2005

TOPIC: MEDICAL MALPRACTICE - UNNECESSARY PROCEDURE - MEDICAL MALPRACTICE -  
CHILDBIRTH FAILURE TO ORDER C-SECTION LED TO UTERINE ATONY, HYSTERECTOMY

SUMMARY:

AWARD: \$3,000,000

RESULT: Verdict-Plaintiff

The jury rendered a plaintiff's verdict. It found that Pitocin should have been discontinued at 5 p.m., that a C-section should have been performed at that time, and that Nabatian should have performed one of the hysterectomy alternatives that Ruiz's expert obstetrician had proposed.

Plaintiff's counsel reported that the jurors noted that Nabatian never ordered replacement blood and, as such, they determined that Ruiz's hemorrhage was not life-threatening. He also reported that the jurors noted that Nabatian never contended that Ruiz experienced complete atony and, as such, that they did not believe that Ruiz's uterus would not have tolerated the hysterectomy alternatives that Ruiz's expert obstetrician had proposed.

EXPERT WITNESSES:

Plaintiff: [Douglas Phillips](#), M.D.; OB-GYN -- See also Gynecology; Merrick, NY [Stephen Fayer](#), M.D.; Psychiatry; New York, NY

Defendant: [Natalie Roche](#), M.D.; OB-GYN -- See also Gynecology; Newark, NJ

ATTORNEYS:

Plaintiff: [Conrad Jordan](#); trial counsel to Peter D. Morris; New York, NY

Defendant: [Mark J. Aaronson](#); Aaronson, Rappaport, Feinstein and Deutsch, L.L.P.; New York, NY

JUDGE: [Laura Jacobson](#)

RANGE AMOUNT: \$2,000,000-4,999,999

STATE: New York

COUNTY: Kings County

INJURIES: Ruiz claimed that she experienced uterine atony that caused a postpartum hemorrhage. She underwent a hysterectomy.

SUMMARY:

Insurance Carrier: FOJP Service Corp. for Nabatian

FACTS:

On Aug. 19, 2001, plaintiff Erica Ruiz, 19, a secretary and expectant mother, was admitted to Beth Israel Medical Center, in New York. She was placed in the hospital's labor-and-delivery department. At approximately 11 am, Ruiz was administered an epidural injection and a low dose of Pitocin, a drug that increases the frequency and intensity of uterine contractions. During the ensuing seven hours, the Pitocin dosage was steadily increased.

Ruiz's cervix was examined at approximately 2:15 p.m., 3:45 p.m. and 5 p.m. During all three examinations, her dilation measured 8 centimeters. (Full dilation typically measures 10 centimeters.) Attending-physician Dr. Farzad Nabatian's notes confirmed that there was 'no change' in Ruiz's dilation.

At approximately 5 p.m., an examination revealed swelling of Ruiz's cervix and the fetus' head. At approximately 6 p.m., Nabatian determined that a Caesarean delivery was necessary. At 6:52 p.m., Nabatian delivered a healthy boy. However, Ruiz experienced uterine atony--incomplete contraction of the uterus. The condition causes approximately 80% to 90% of all postpartum hemorrhages. A few minutes after delivery of her child, Ruiz developed a postpartum hemorrhage.

Nabatian attempted to inspire contraction of Ruiz's uterus. He utilized several standard methods, including rapid Pitocin infusion, a uterine massage, and injections of Hemabate and Methergine--medications used to control postpartum hemorrhages. None were successful. At approximately 7:45 p.m., Nabatian performed a hysterectomy.

Ruiz commenced a medical malpractice suit against Nabatian, Beth Israel Medical Center and a second doctor, who was identified as 'John' Myers. She alleged that Nabatian unnecessarily performed a hysterectomy, that he failed to perform a timely C-section and that his Pitocin administration was excessive. She contended that Beth Israel Medical Center was liable for Nabatian's actions. She discontinued her claim against Myers, and the matter proceeded to a trial against the remaining defendants.

Ruiz claimed that her hemorrhage was caused by uterine atony and that the latter condition was caused by her prolonged labor and Nabatian's excessive administration of Pitocin. She contended that Pitocin may overstimulate the uterus and that an overly stimulated uterus may develop atony.

Ruiz's expert obstetrician reviewed Ruiz's 7:45 p.m. vital signs and opined that they were normal. He also opined that her hemorrhage was modest, given that Nabatian had not ordered replacement blood. As such, he contended that the hysterectomy could have been delayed.

The expert opined that uterine-artery ligation would have temporarily halted 90% of the hemorrhage. He further opined that Nabatian could have utilized a new procedure known as a 'B-Lynch Suture,' in which the uterus is closed via sutures. The expert contended that both procedures are highly effective, that both could have been safely performed during the available time, and that either would have preserved Ruiz's fertility. Given, Ruiz's condition and the

surgical options available, the expert concluded that the hysterectomy constituted a departure from the accepted standard of care.

The expert also noted that labor arrest is generally declared after two hours of stalled dilation. He noted that Ruiz's dilation did not progress during the three hours prior to 5 p.m. He contended that Nabatian should have measured Ruiz's contraction strength and that such tests are performed via use of an intrauterine pressure catheter. He also noted that a swollen cervix and a fetus' swollen head can impede labor and prevent natural delivery. Given Ruiz's labor arrest, her swollen cervix, the fetus' swollen head and the absence of precise contraction-strength measurements, the expert concluded that Pitocin should have been discontinued at 5 p.m. and that an immediate C-section should have been performed. He noted that Nabatian failed to perform either action, and he contended that the failures constituted further departures from the accepted standard of care.

At the conclusion of her case, Ruiz discontinued her claim against Beth Israel Medical Center.

Nabatian contended that Ruiz was administered low doses of Pitocin and that there were no indications of fetal or maternal distress. As such, he argued that he properly allowed continuation of Ruiz's labor. He also contended that the Pitocin and Ruiz's labor duration were not the cause of her uterine atony. He added that uterine atony often has no known cause.

Nabatian's expert obstetrician considered the hysterectomy alternatives proposed by Ruiz's expert and concluded that a hysterectomy was the most effective course of action, given the circumstances. She opined that Ruiz experienced complete atony and, as such, that the hysterectomy alternatives would not have been effective. She opined that Ruiz's condition was life-threatening and that Nabatian acted appropriately and exercised his best judgment.

Ruiz contended that she and her son's father split approximately three months after her son's birth. She claimed that she experienced depression that was caused by the split and her hysterectomy. She was evaluated by two therapists, but she contended that the therapy was not effective. The therapists recommended psychotherapy and anti-depressant medication, but Ruiz ignored the recommendations.

Ruiz contended that her depression worsened in late 2004 and that she subsequently developed dangerous thoughts. She began using Paxil, an anti-depressant, and she reported that the drug produced some improvement of her condition.

Ruiz's expert psychiatrist concluded that Ruiz experiences moderate clinical depression and that that the condition stems from her inability to bear further children. Ruiz added that her infertility has diminished her interest in friendships, social activities and intimate relationships. She also contended that she experiences fatigue, sleep disorders and occasional anxiety attacks. Nevertheless, she continues to work, and she maintains close relationships with her son and her family.

Ruiz sought recovery of damages for her past and future emotional pain and suffering.

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PUBLISHED IN: VerdictSearch New York Reporter, Vol., Issue

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