

Federal Government Must Pay \$41.6M for Negligent Forceps Delivery

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A **Pennsylvania** judge recently entered a [\\$41.6 million](#) verdict against the federal government after an obstetrician employed by a federally-funded health clinic negligently used forceps to deliver a baby. The baby suffered severe permanent brain damage as a result.

The lawsuit claimed that the obstetrician applied excessive force and traction and misapplied the forceps on the baby's skull while performing a mid-forceps delivery, causing catastrophic neurological injury to the baby. One expert testified at trial that mid-level forceps deliveries are indicated only in severe, life-threatening emergencies. Another noted that the use of forceps caused multiple skull fractures, bleeding in the brain and destruction to the cerebellum and brain stem.

Under the Federal Tort Claims Act (FTCA), the sovereign immunity that generally attaches to prevent lawsuits against the United States government is waived for medical malpractice lawsuits. Medical malpractice claims against the government arising from negligence in government-funded hospitals generally follow the medical malpractice rules of the state where the injury occurred but the FTCA may affect such a claim. The majority of medical malpractice lawsuits against the federal government occur when an employee of a federally-funded hospital negligently injures a patient while providing medical care. Some physicians working at federal hospitals are considered employees of the federal government while others are independent contractors, who are not subject to the requirements of the FTCA. As to damages, any state law damages caps on medical malpractice cases also apply to a claim under the FTCA. Punitive damages against the federal government are not allowed.

Importantly, claims brought under the FTCA have different notice requirements and a different statute of limitations. Before suing the federal government in court, a plaintiff is required to send a notice of claim with a description of his or her case to the federal agency involved. A plaintiff has two years from the time he or she discovers the injury — or had reasonable opportunity to discover the injury — to give such notice to the agency. The agency has six months to respond. The plaintiff then has six months to sue the agency in court. Adhering to the different procedural requirements of the FTCA is crucial. Failing to do so could result in the dismissal of the complaint.

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