

Emotional distress from a miscarriage or stillbirth – N.Y.

By Lori Rosen Semlies



A recent New York Court of Appeals decision may mean an increasing number of malpractice cases against obstetricians, gynecologists and hospitals in relation to miscarriage or stillbirth. In *Broadnax v. Gonzalez* (2004), the court reasoned that a physician owes a duty of care not only to a mother, but also to her fetus. The mother may recover for emotional injuries, even when she has not suffered an independent physical injury. The court stated that the duty a physician owes to the mother is the same duty regardless of the outcome of the delivery: a normal healthy child, a child with defects, or a stillborn child.

Damages for emotional distress claims are difficult to assess. Damage awards may be the result of a jury's determination of the value of the pregnancy and "potential" baby to a woman.