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## Record \$16.5M goes to family in Tripler suit

- Special Report: [Tripler Army Medical Center](#)

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After Shalay Peterson was notified yesterday that her family was awarded a record \$16.5 million for severe brain damage caused to her son by The Tripler Medical Center, she and her husband sat down at their San Antonio home and didn't say a word.

Then they hugged each other and told their boy, Izzy, he won.

"It didn't change anything," Peterson said about the verdict in a telephone interview. "It didn't change what happened. And it didn't change Izzy's condition."

But at the same time, Peterson said she and her husband, Dwight Peterson, an Army staff sergeant, were pleased with the end of the litigation, which added stress to a family already coping with the care needed by 21-month-old Izzy. "It still hasn't hit us yet. It's really overwhelming and bittersweet."

U.S. District Judge David Ezra yesterday returned the \$16.5 million verdict against the federal government and the 229-bed military hospital. The award also was the highest in Hawai'i for a personal injury case involving a single person, according to the Petersons' attorney, Rick Fried.

The Petersons' malpractice lawsuit contended that immediately after their son was born, a doctor gave him carbon dioxide instead of oxygen to help him breathe for about 40 minutes, causing the severe brain damage that will require 24-hour nursing care for Izzy for the rest of his life.

The lawyer said the error was "mind-boggling," the result of a "systems failure."

"Everybody says it's unbelievable he survived," Fried said.

Fried said Izzy breathes through a ventilator and must be fed through a tube.

Assistant U.S. Attorney Harry Yee, who represented Tripler, could not be reached for comment yesterday.

Maj. Gen. Carla Hawley-Bowland of the Army issued a news release saying Tripler "accepts responsibility for this tragic incident and respects the decision made by the Honorable David Ezra.

"Our command and well-trained staff are committed to doing whatever it takes to ensure an incident similar to this never happens again, such as improvements in medical gas safety — how they are labeled and handled and staff education."

Fried said he hopes the government doesn't appeal because the verdict is in the range of "what is fair."



Islam Yasim Ibn Siddiq "Izzy" Peterson was born Jan. 14, 2005, at Tripler Army Medical Center. The baby received carbon dioxide instead of oxygen for 42 minutes after his birth before staff noticed what happened. He is shown here in his bed at Tripler in June 2005.

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Shalay Peterson negotiates Izzy's tubes before sitting in a rocking chair. Izzy is connected to breathing and feeding tubes, and his room is filled with the constant hum of machines.

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## LIFE EXPECTANCY

The federal government earlier admitted liability for Izzy's injuries. That left only the amount of the award to be decided by Ezra in the non-jury trial.

The trial hinged on Izzy's life expectancy. Fried said he contended it would be 40 years, and the government set it at 20 years. Ezra's verdict was based on a life expectancy of 27 years.

About \$12.2 million of the \$16,497,263 verdict is for Izzy's expenses the rest of his life. The rest is for Izzy's loss of future income, his past and future mental anguish, and emotional suffering and pain.

One remaining issue is whether upon Izzy's death, the remainder of the \$12.2 million would revert back to the federal government or given to the parents, Fried said. Ezra will decide on that issue later.

According to Fried, the gas tanks involved in the case are clearly labeled, but Shalay Peterson gave birth in a room that had the carbon dioxide tank and not the oxygen tank. He said they don't know why Maj. Danielle Bird, the treating physician, gave Izzy the wrong gas because she was never questioned under oath about her actions once the government admitted liability.

Bird could not be reached for comment yesterday.

## IS HE AWARE?

During the trial, the government's position was that Izzy is not even aware of his existence, but the Petersons' experts contended he is aware that he is alive and feels pain, Fried said. His parents believe he recognizes them and responds to them, he said.

Fried said one result of the case is that military hospitals are now trying to have gas delivered from outlets in the wall instead of tanks.

He said his attorney fees will be 25 percent of the verdict, a percentage set by federal law.

Shalay Peterson, a former medical assistant to a Kahala pediatrician, indicated she doesn't harbor any bitterness toward Tripler. She said the facility treated her husband well for a broken shoulder he suffered in Afghanistan.

"It would be unfair for me to punish the hospital for one person," she said.

"I try not to focus on what happened," she said. "I try to focus on what we can do to make things better."

The mother said Izzy is doing better than expected, wears glasses and may get off the ventilator in a year or so. He holds his head up by himself and turns to hear voices, she said.

"He's very ticklish," she said.

He's doing now what others said he would never be able to do, she said.

"God is showing us he has the last word."

She said their other two sons, Ian, 16, and Saion, 10, and their daughter, Siani, 13, were very supportive. They cried when told about the verdict, she said.

## IZZY'S RESPONSE

The mother said when they told Izzy, he had that certain look on his face.

"He kinda gestured toward us: 'OK, pick me up,' " the mother chuckled. "I don't think he cared."

Tripler spokeswoman Mindy Anderson said she would have to investigate whether Bird, the doctor who gave the newborn the carbon dioxide, was still at the facility and delivering babies.

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Izzy was conceived by in-vitro fertilization to the Petersons after two failed in-vitro attempts.

The previous largest malpractice judgment against Tripler came in 1997 when a family of a baby who suffered brain damage because of negligent care was awarded \$11.3 million. With interest, the government eventually paid about \$12.5 million.

*The Associated Press contributed to this report.*

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