

PA Supreme Court Recently Ruled Risks and Complications of Surgery may be Admissible at Trial on the Issue of Standard of Care

The Pennsylvania Supreme Court reinstated a defense verdict in a medical malpractice case, ruling last month that evidence of specific risks and complications of surgery may be admissible at trial on the issue of whether or not the treating physician was negligent.

In *Mitchell v. Evan Shikora, D.O., et al.*, a physician went to trial in a medical malpractice case after his patient suffered injuries following a laparoscopic hysterectomy. At trial, the defendant physician was allowed to present evidence of the risks and complications associated with such a procedure, and the jury returned a defense verdict. The plaintiff appealed to the PA Superior Court that reversed and remanded the verdict, ruling that such evidence was inadmissible as the plaintiff had not pled lack of informed consent. On June 18, 2019, the PA Supreme Court reversed the Superior Court's order and reinstated the defense verdict, ruling that such evidence may be admissible on the issue of standard of care, even when a claim of lack of informed consent has not been pled.

This significant decision by the Supreme Court held that evidence of the risks and complications involved with a procedure that is the subject of a malpractice suit "may clarify the applicable standard of care, and may be essential to provide, in this area, a complete picture of that standard, as well as whether such standard was breached." *Id.* at p. 16. The Court continued that such evidence "may assist the jury in determining whether the harm suffered was more or less likely to be the result of negligence." *Id.* The majority opinion states that evidence of risks and complications can be presented by various methods, including testimony and by a showing of the risks that appear on informed-consent sheets.

Comment: Surgery is, in and of itself, open to possible risks and complications. The more involved and intricate the procedure is, the higher the risks and complications. It is important that physicians discuss the risks and complications associated with any procedure with their patients, and most importantly, that they document those risks and complications in writing and give it to the patient. With this ruling, evidence of patient informed risks and complications, even when a lawsuit does not plead lack of informed consent, can be used to assist in physician defense of malpractice suits on the issue of standard of care. Doctors need to put themselves in the best position possible by ensuring that all risks and complications are outlined, known to the patient, and most importantly, are in writing.

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