

# Pennsylvania physicians could face more medical negligence cases

JUN 18, 2018

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**Editor's note:** *In a decision issued June 18, 2019, the Supreme Court of Pennsylvania ruled the known risks and complications of a surgical procedure can be presented as evidence at medical malpractice trials. The court's majority agreed with an amicus brief the Litigation Center of the American Medical Association and State Medical Societies filed in the case arguing that the evidence was relevant to the jury deciding whether the standard of care was met and that not allowing physicians to present the information would inappropriately make doctors strictly liable for patient harm.*

*Pennsylvania's highest court ruling says that "without the admission of testimony of known risks or complications, where appropriate, a jury may be deprived of information that a certain injury can occur absent negligence, and, thus, would be encouraged to infer that a physician is a guarantor of a particular outcome." Justices say they are "confident" that trial judges will be evidentiary gate-keepers to ensure "juries understand the proper role of such evidence at trial."*

*The ruling reverses the appellate court ruling that would have granted the plaintiff a new trial without evidence of the risks and complications being presented to the jury.*

Pennsylvania doctors could be held liable for harm even in cases where the patient suffered a known complication if the state's Supreme Court doesn't overturn a lower court ruling. In a case before the Pennsylvania Supreme Court, *Mitchell v. Shikora*, justices will determine whether trial judges can suppress expert witness testimony on the known complications of a medical procedure.

If the state's high court allows trial judges to bar that testimony, the state's legal landscape would change and become even less favorable to physicians who already face unlimited noneconomic damages and other legal hurdles, the Litigation Center of the American Medical Association and State

Medical Societies, the Pennsylvania Medical Society and other state physician organizations said in an amicus brief filed with the Pennsylvania Supreme Court.

“The upshot will be that any patient can sue a surgeon or physician for any complication or unavoidable risk and a patient will be able to recover against a physician in the absence of negligence where the complication that occurred could not have been avoided even with the utmost care,” the brief states.

The case stems from a laparoscopic hysterectomy where the patient’s bowel was perforated. The patient, Lanette Mitchell, sued obstetrician-gynecologist Evan Shikora, DO, for medical malpractice and claimed he was negligent during the surgery. Mitchell did not claim the physician failed to explain the potential risks of the surgery. She also did not claim that Dr. Shikora failed to obtain her informed consent.

The trial court allowed expert witnesses from both sides to discuss the connection between the bowel perforation and the standard of care. When the expert for Dr. Shikora told the jury that the injury was a commonplace risk even if the surgery was performed properly, Mitchell’s attorney objected, saying it was irrelevant to whether Dr. Shikora met the standard of care and could mislead the jury. The trial judge overruled the objection and allowed the testimony. The jury found in favor of Dr. Shikora.

Mitchell appealed and the Pennsylvania Superior Court ruled that the case needed to be retried without the known risks being presented to the jury. Now Dr. Shikora is appealing to the Pennsylvania Supreme Court to overturn the appellate ruling.

The Litigation Center brief argues that the appellate ruling should be overturned because the facts show that evidence of the surgical risks were relevant to the standard of care and that the jury had not been misled in this case. The brief maintains that a ruling that upholds the appellate ruling would be a “radical” move that “is out of step with both common sense and the law.”

“Everyday physicians in this Commonwealth are required to perform surgeries that involve inherent risk of non-negligent complications in emergent (or other less-than-ideal) circumstances where the likelihood of complications is real,” the brief says. “Holding physicians strictly liable simply because a patient has suffered a complication or experienced an adverse result because of a complication—even where the physician prudently performed the procedure and could not control the outcome—will make physicians less likely to perform these procedures.”

The *amici* also note it would have economic consequences for Pennsylvania because, in part, physicians would need to buy more malpractice insurance, a cost that will ultimately be passed on to the public. Also, they say, the court would see an influx of cases that are filed for injuries resulting from medical complications that don’t involve wrongful or negligent conduct. The Litigation Center and others told the court that “Pennsylvania can hardly afford such expansion of medical malpractice liability” and asked that it not “allow the hard-fought strides that the legislature has made to reduce

malpractice premiums to evaporate.”