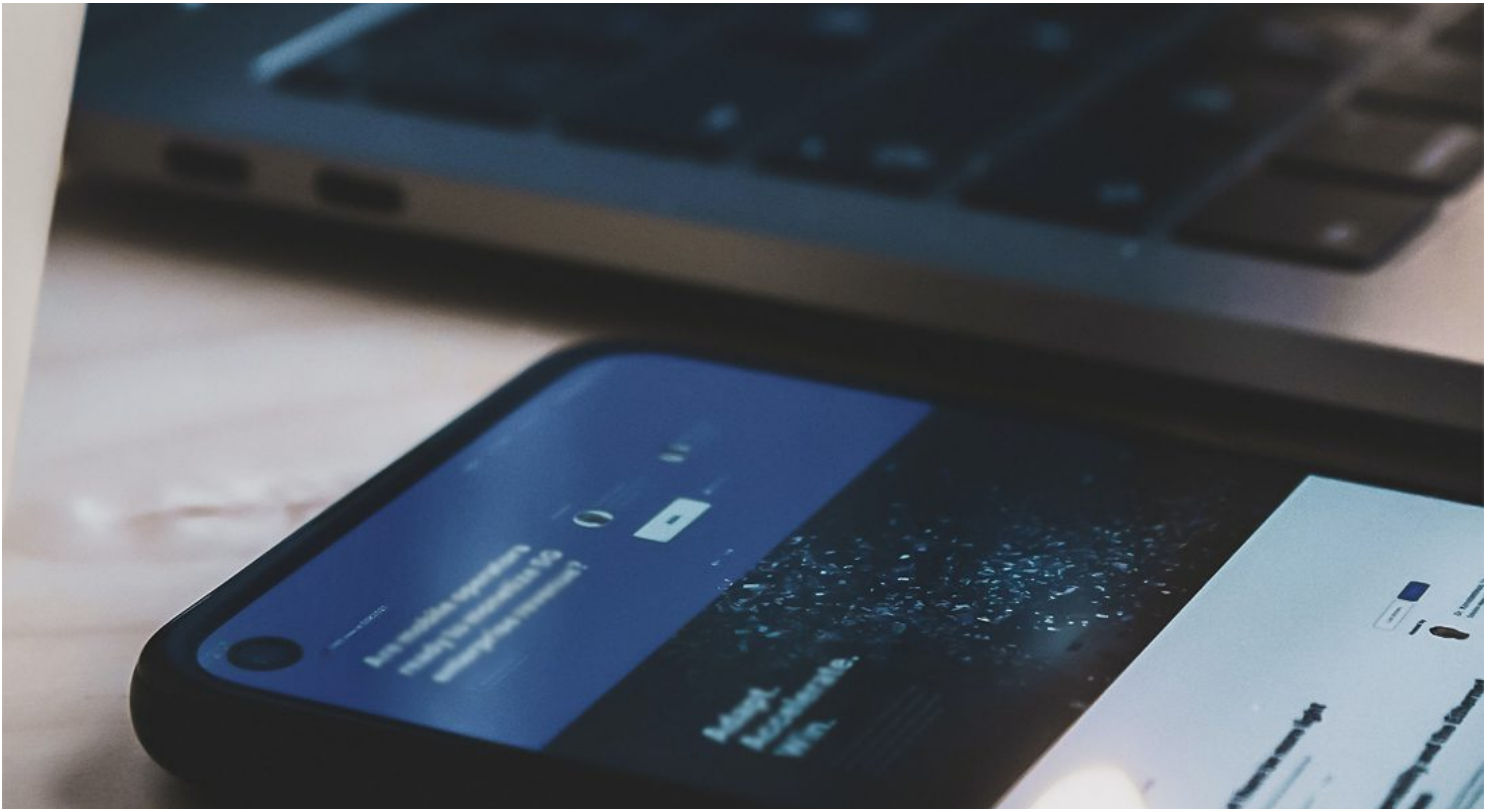


NEWS & INSIGHTS

Pennsylvania Supreme Court Issues Significant Opinion Regarding the Relevance of Risks and Complications in Negligence Actions

[INSIGHTSLEGAL UPDATE](#)

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Two years ago, the Pennsylvania Superior Court sent a shockwave through medical malpractice litigation when, in *Mitchell v. Shikora*, it determined that evidence of known risks and complications of the surgery at issue was inadmissible in a medical negligence case. The Pennsylvania Supreme Court recently corrected that error and

reinstated the jury verdict in favor of the defendant-physician. The anticipated Supreme Court opinion provided much needed guidance and clarity for cases involving surgical complications. In short, the Supreme Court reaffirmed that evidence regarding the known risks and complications of a surgery is generally relevant and admissible.

In 2015, the Pennsylvania Supreme Court, in *Brady v. Urbas*, held that evidence of a patient's informed consent is generally irrelevant (and inadmissible) unless the plaintiff is asserting a claim based on an alleged lack of consent. Since this holding, many plaintiffs strategically discontinued informed consent claims prior to trial in an effort to preclude this evidence. Furthermore, plaintiffs routinely argued, applying similar logic, evidence regarding the potential risks of surgery is irrelevant and should not be admissible.

The case of *Mitchell v. Shikora* involved a bowel injury during a laparoscopic hysterectomy. At trial, the defense sought to introduce evidence that a bowel injury is a known risk (in the absence of negligence) of performing a laparoscopic hysterectomy. Relying on *Brady v. Urbas*, the plaintiff filed a motion to preclude: (1) evidence of the patient's informed consent, and (2) evidence that the complication was a known surgical risk. The trial court granted the motion as to evidence of informed consent but allowed the defense to introduce evidence regarding the known risks and complications of the surgery. Ultimately, the jury found no negligence.

On appeal, the Superior Court vacated the defense verdict and remanded the case for a new trial. The Superior Court determined the trial court erred in allowing the defense to present evidence of the known risks and complications of a surgery. The Superior Court reasoned the risks and complications evidence was irrelevant, at least in the case before it, because it did not necessarily prove whether or not the surgeon's care was reasonable during the specific surgery at issue. Moreover, the Superior Court believed the evidence could mislead a jury to believe the plaintiff's injuries were simply a complication of surgery. The physician appealed to the Supreme Court.

The Pennsylvania Supreme Court reversed the Superior Court's decision finding its analysis flawed. The Supreme Court unanimously held that evidence of the known risks and complications of a surgery is generally relevant for the jury to understand the standard of care and whether the care at issue was appropriate. Significantly, the Supreme Court held this evidence is relevant regardless of whether the plaintiff asserts an informed consent claim.

The Supreme Court's opinion in *Mitchell v. Shikora* provides valuable guidance for any medical malpractice case, and particularly those involving known surgical complications.

Saxton & Stump attorneys are available to further discuss the impact of this recent opinion and how our [Healthcare Litigation Group](#) can provide counsel for medical malpractice cases.

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