

## Pennsylvania Supreme Court Holds that Evidence of Risks and Complications is Admissible in Medical Malpractice Cases

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Yesterday, in the decision of [\*Mitchell v. Shikora\*](#), the Pennsylvania Supreme Court held that evidence of risks and complications of a medical procedure is admissible, overturning a decision by the Superior Court. Two years ago, the Superior Court held that a new trial was warranted following a defense verdict in a case involving a bowel injury during a laparoscopic hysterectomy. The plaintiff argued that the injury was due to the surgeon's failure to appropriately identify the patient's anatomy prior to making an incision, but defendants' expert opined that the bowel injury is a common complication and does not indicate one way or the other whether negligence has occurred. Seizing on that testimony, the plaintiff argued on appeal that discussion of the risks and complications in a laparoscopic hysterectomy were immaterial to the issue of whether the surgeon breached the standard of care in performing the surgery, with which the Superior Court agreed. The Superior Court held that informed consent evidence is not admissible in a medical negligence case that does not involve an informed consent claim.

In a decision by Justice Todd, joined by three other justices (with a fourth concurring justice), the Supreme Court explained that "[w]hile evidence that a specific injury is a known risk or complication does not definitively establish or disprove negligence, it is axiomatic that complications may arise even in the absence of negligence." The Court also relied on its prior decision, *Brady v. Urbas*, and specifically wherein the Court described how "evidence of the risks and complications of a surgical procedure, in the form of either testimony or a list of such risks as they appear on an informed-consent sheet' could be relevant in establishing the standard of care." The Court explained that the previous holding by the Superior Court was contrary to this aspect of the *Brady* case. The Court concluded 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." This is "inconsistent with the principle that certain injuries happen even in the absence of negligent conduct."

This decision is a significant victory for the defense bar, enabling medical-provider-defendants to explain to juries that sometimes, even during medical procedures, things do not go according to plan. Risks and complications are simply an unavoidable aspect of medical procedures and are not a result of anyone's fault.

If you have any questions about this decision, please [contact me](#) or any member of Barley Snyder's [Health Law industry groups](#).

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