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One Less Hurdle for Victims of Medical Negligence

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In its recent en banc decision in *Pringle v. Rapaport*, the Pennsylvania Superior Court held that the “error in judgment” charge should not be given as an instruction in a medical negligence action. This ruling by the 7-1 panel clarifies a confused area of Pennsylvania medical negligence law and will likely enhance the plaintiff’s chances of success with the jury in such cases.

Jurors are often asked to sit and hear complicated legal problems involving a wide range of issues. Some of the most sophisticated topics presented to jurors can be found in the field of medical negligence actions. In these cases, it is not unusual for jurors to be presented with complex topics ranging from the genetic mutation of red blood cells to clinical advances in cancer treatment. This presents a unique challenge for the attorneys involved in such cases. Counsel, as well as the trial court, are obligated to simplify complicated medical issues and communicate them in a manner a layperson can understand. This task is aided by expert testimony, exhibits and jury instructions.

In the introduction to the 2003 edition of the Proposed Standard Jury Instructions, the drafters stated that the instructions “... have been prepared to help judges communicate more effectively with juries.” Despite this intent, instructions given to the jury sometimes fail to achieve this laudable goal. Jury instructions can, at times, inject

confusion into an already complicated situation. Chief among these problematic charges is the “error in judgment” charge — a favorite among the defense bar, precisely for its benefit to the defense.

The “error in judgment” charge typically provides that doctors are not responsible for “mere errors in judgment” unless the resulting error constitutes, or was the result of, negligence. This charge originally evolved out of a long line of cases that exempted doctors from liability in light of reasonable medical judgments. The Superior Court recognized that the charge injects a level of speculation and confusion into a case that is, quite frankly, misleading to a jury, making it nearly impossible for a plaintiff to prevail. This jury instruction has been the subject of numerous appeals to the Pennsylvania Superior Court, which have resulted in inconsistent opinions, sometimes from the same three-judge panel. However, the confusion came to an end when the en banc Superior Court issued its decision in *Pringle*.

PRINGLE V. RAPAPORT

Pringle involved a medical malpractice action brought by parents Dennis and Christine Pringle on behalf of their son, Austin, against defendant Dr. Adolfo Rapaport. During Austin’s delivery, Rapaport used three birth maneuvers after a shoulder dystocia (one of the baby’s shoulders is trapped under the mother’s pelvis and prevents the delivery) was encountered. Plaintiffs claimed that excessive traction was used during the delivery by Rapaport, resulting in right arm

paralysis and damage to Austin’s C-5, C-6, C-7, C-8 and T-1 nerves, as noted in the opinion.

During the trial, both parties agreed that Rapaport used the appropriate maneuvers and that excessive traction was applied. The dispute centered on plaintiffs’ contention that this excessive traction was a result of negligence. The defense conceded that shoulder dystocia was a rare event and that injury to, and severity of the nerves involved, was very unusual. The defendant argued that Austin’s injuries were merely an “error in medical judgment” by Rapaport and did not represent negligence by him.

Rapaport requested that the trial court charge the jury on “error in judgment.” Over plaintiff’s objection, the court gave the charge, instructing the jury: “Folks, if a physician has used his best judgment and he has exercised reasonable care and he has the requisite knowledge or ability, even though complications resulted, then the physician is not responsible, or not negligent. The rule requiring a physician to use his best judgment does not make a physician liable for a mere error in judgment provided he does what he thinks best after careful examination”

Physicians who exercise the skill, knowledge and care customarily exercised in their profession are not liable for a mere mistake of judgment. Under the law, physicians are permitted a broad range of judgment in their professional duties, and they are not liable for errors of judgment unless it is proven that an error of judgment was the result of negligence.

The trial court’s charge failed to note

that any judgment by the defendant must be within the standard of care. The charge, as read, injected a subjective element into the analysis of the defendant physician's actions in the case. The minor-plaintiff in this case was very seriously injured, and the defendant admitted that his conduct caused the injury. The jury nonetheless returned a verdict in favor of Rapaport, not surprising in light of the "mere error in judgment" instruction. Given this fact, and in the face of conflicting precedential opinion, the Superior Court granted an en banc review.

Initially, the Superior Court noted that "the purpose of charging the jury is to clarify issues which the jurors must determine." In a medical malpractice case, the central issue is whether the defendant violated the standard of care and whether that violation caused or increased plaintiff's harm. The central inquiry in determining the appropriateness of the charge, therefore, turns on whether the "error in judgment" charge clarifies that issue for the jury. The majority opinion held: "First, the 'error in judgment' charge wrongly suggests to the jury that a physician is not culpable for one type of negligence, namely the negligent exercise of his or her judgment ... an 'error of judgment' instruction only confuses, and does not clarify, the determinative issue regarding deviation from the standard of care. Second, the 'error of judgment' charge wrongly injects a subjective element into the jury's deliberations ... the 'error of judgment' charge improperly refocuses the jury's attention on the physician's state of mind at the time of treatment, even though the physician's mental state is irrelevant in determining whether he or she deviated from the standard of care."

This unequivocal statement by the Superior Court mandated a new trial for the plaintiffs.

A STEP FORWARD

The Superior Court's well-reasoned decision marks a significant clarification of Pennsylvania law. The Superior Court should be commended for its straightforward acknowledgment of the conflict between its decisions. The court saw the conflict, in one case between decisions handed down by the same three-judge panel just three weeks apart, and took the definitive step of deciding the case en banc. More importantly, however, this decision reminds attorneys of the import of the charging conference and the goal of instructing the jury.

The charging conference, and subsequently the charge given to the jury, provides attorneys with the last opportunity to focus the case and direct the jury's deliberations. Failure to take advantage of this opportunity does a disservice to both your client and the jury, and fails to optimize your outcome. Attorneys must recognize this and object vigorously to those charges that are either legally incorrect or inappropriate to the factual circumstances of the instant case. As the court noted, "... appellate opinions are written with no view that they will be turned into instructions; care must be exercised in using the language of these opinions in instructions to the jury."

It is incumbent upon lawyers of both sides to ensure that the charges, which the opposing party is offering, further the goals of jury instruction and do not unnecessarily obscure the issues. A well-argued objection will not only turn the judge in your favor but will also create a record for an appeal before a Superior Court that appears willing to examine the appropriateness of jury charges.

The Superior Court's decision in *Pringle* provides some much needed guidance to trial courts and some much needed relief

to the plaintiff's bar that often found this instruction to be an insurmountable hurdle. Although this decision seems like a boon to plaintiffs, the broader implications are helpful to both plaintiffs and defendants who can look to a Superior Court ready to address its own inconsistencies and provide greater clarity to juries. •

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