November 2025

the Quarterly Dose

Your Health Care Litigation Prescription

MARSHALL DENNEHEY

INSIDE THIS ISSUE

SIDEBAR

News and Happenings

Robert Aldrich and **Melissa Dziak** (both of Scranton) co-presented "Navigating the Digital Shift: Balancing the Benefits and Legal Risks of Patient Portals" at the 2025 ASHRM annual conference. Along with Gina Kittek, System Director, Risk Management & Corporate Compliance at United Health Services, Rob and Missy discussed mitigation strategies for managing the risks associated with the use of patient portals and how the reliance on patient portals impacts medical malpractice laws.

Marshall Dennehey was a proud sponsor of the 2025 Upstate New York Educational Conference hosted by The Association for Healthcare Risk Management of New York. Held in late October in Binghamton, the conference brought together industry leaders for a full-day event focused on the latest issues in health care risk management. This program delivered actionable insights and evidence-based strategies for health care professionals, legal experts, policy makers and risk management teams. Melissa Dziak and Robert Aldrich (Scranton) represented our firm during the event.

Megan Nelson (Orlando) presented a webinar, "Incident Reporting from A Lawyer's Perspective," for the American College of Healthcare Executives. As an attorney and registered nurse, Megan offered insight into the importance of incident reporting from both a health care and legal point of view.

Gary Samms (Philadelphia and King of Prussia) provided the defense perspective in two recent television segments focused on medical malpractice issues. The segments were produced by KIRO - 7 TV, a CBS and Telemundo affiliate in Seattle, Washington. Click below to watch:

KIRO 7 Investigates lag time between complaints against doctors and discipline catching up.

Who's your doctor? Advice from advocates on researching before getting a procedure.

Investing in Excellence: Continued Growth of Our Health Care Team

We're proud to announce the continued expansion of our medical malpractice defense team. As litigation against health care providers grows more complex and high-stakes, we remain committed to delivering strategic representation. This growth reflects our ongoing investment in providing clients with the strongest possible defense in today's evolving health care landscape.

Jonathan Landua
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King of Prussia

Molly Callihan
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Pittsburgh

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Mount Laurel

ALL RISE

Recent Victories and Success Stories

Gary Samms (Philadelphia and King of Prussia) obtained a defense verdict on behalf of a Philadelphia hospital and two Emergency Department physicians after a six-day jury trial in a complex and extremely emotional case involving the death of 7-year-old child. Allegations of negligence surrounded the failure to admit and perform a urine drug screen on an 18-year-old who presented high on synthetic marijuana or K2. Gary argued that the doctors appropriately performed numerous exams, tested and monitored the patient until he achieved clinical sobriety. The patient was discharged, then 22 hours later smoked more K2 and within two hours strangled his 7-year-old sister to death. Paralegal Nancy Farnen (Philadelphia) was instrumental in the result.

In another matter, Gary obtained a dismissal in the middle of trial after cross-examining the plaintiff's witnesses in a case involving a former NFL player and opera singer who contended they had permanent injuries after knee surgery and the failure to diagnose a pseudoaneurysm. Plaintiff's counsel agreed to dismiss Gary and his client prior to the end of their case to prevent him from participating in the trial further and decided to limit their recovery to the other defendants due to Gary's successful cross-examination.

Gary also obtained a defense verdict after an 11-day trial on behalf of four physicians and a major teaching hospital in Philadelphia. The medical malpractice action involved the labor and delivery of a baby later alleged to have a hypoxic birth injury that caused developmental delays and permanent brain damage, among other issues. The plaintiffs' experts boarded $21 million in future medical costs to take care of the child and the demand in the pretrial was commensurate with those numbers.

In another matter, Gary obtained a non-suit in a wrongful death case in Delaware County. The court found upon motion that there was no link to causation after an extensive, nuanced argument.

With tremendous support from **Adam Fulginiti** and paralegal Nancy Farnen (both of Philadelphia), Gary also secured a unanimous defense verdict in Philadelphia on behalf of a prominent orthopedic surgeon accused of inappropriate touching of a patient. The plaintiff alleged that the physician inappropriately touched her during a preoperative examination for bilateral hip surgery. Through meticulous cross-examination and persuasive argument, the defense team achieved a complete victory.

Adam, working closely with **Bobbi Lewis**, **Ryan Harvie** and paralegal Dorien Belle (all of Philadelphia) also obtained summary judgment on behalf of their nursing home client. The case involved allegations that the facility failed to prevent various conditions and injuries during the resident's admission, such as UTI/sepsis, acute kidney injury/metabolic encephalopathy, dehydration and failure to thrive/weight loss, and skin breakdown. The plaintiff alleged these developments resulted in numerous damages including, but not limited to, death. Our motion for summary judgment sought dismissal under the grounds that the facility held immunity pursuant to the Pennsylvania Tort Claims Act and included numerous supporting documents, ranging from public entity reimbursement agreements, personnel information, corporate bylaws and other materials.

Melissa Dziak and **Robert Aldrich** (both in Scranton) received a defense verdict after a two-day arbitration hearing in a traumatic brain injury case. With an initial $5.25 million demand, the plaintiff alleged overmedication led to cardiac arrest and a traumatic brain injury, resulting in permanent neurocognitive impairment. Through testimony from our providers and experts across internal medicine, pulmonology, toxicology and neuropsychology, Missy and Rob demonstrated that the care met the standard, did not cause the arrest and any deficits could have been pre-existing.

Kevin Hexstall (Philadelphia) and **Michael Mongiello** (Harrisburg) were successful on appeal of a child abuse determination levied against a home health nurse. The three-day hearing was litigated before the PA Department of Human Services. As a result of the court's order, the nurse's record of child abuse is being expunged. The matter arose out of the alleged attack of a child-patient by a family pit bull dog during home nursing care. It was asserted that the nurse failed to properly supervise and protect the child and failed to properly respond to the incident when it occurred. Kevin and Mike established a lack of definitive proof that the nurse negligently left the child unsupervised. They also called into question the circumstances surrounding the alleged attack, including whether the dog had a known history of aggression, which led to credibility issues on the part of the family member witnesses. Medical experts also testified on the appellant's behalf to address possible alternate explanations for the child's injuries. Ultimately, Kevin and Mike established that the prosecution failed to meet its burden of proof, highlighting multiple errors and inconsistencies relating to the investigation and the reporting processes. This is a significant outcome in a difficult jurisdiction with many problematic underlying facts (which led to the decision to not call the nurse to testify in her defense). Kevin and Mike's efforts in this regard were also instrumental in allowing for achievement of a very favorable resolution of the civil claim.

ALL RISE

Recent Victories and Success Stories

Michael also obtained partial summary judgment for an obstetrician in a medical professional liability action, significantly curtailing his client's exposure. The case arose out of the alleged negligent delivery of a baby, resulting in a shoulder dystocia, right brachial plexus injury and Erb's palsy. Michael argued that there was a lack of evidence that his client improperly applied traction during the delivery. The judge agreed and granted partial summary judgment on the plaintiff's gravamen claim of direct negligence. The court also granted summary judgment on claims for res ipsa loquitur and failure to obtain informed consent and also as to the plaintiff's claim for past medical expenses, due to a lack of proper evidence in support of these claims.

Jeffrey Bates and **Travis Talbot**, with the help of paralegal Jennifer Cicchetti (all in Philadelphia), received a defense verdict in a dental malpractice action before the Luzerne County Court of Common Pleas. The plaintiff had a history of issues with his third molars (wisdom teeth) beginning in 2012. In 2013 he was referred to have one of them extracted by a prior dentist. In October 2015, the plaintiff presented to our client for a broken tooth. During the exam, our client advised him that he needed to have all four of his third molars removed. He even suggested it needed to be done at the next visit. However, the plaintiff did not schedule any further appointments. On January 10, 2017, the plaintiff presented with an infected third molar on the lower right, and our client suggested extracting both third molars on the right, as all of his third molars were broken down and sources of infection. However, the plaintiff would only allow extraction of the lower tooth. Our client extracted the tooth, gave a prescription of amoxicillin and administered two loading doses to get the antibiotic to therapeutic levels more quickly. He also told the plaintiff to call if the swelling in his face did not improve or if it got worse. Over the next four days, as the plaintiff testified, his swelling got worse every day, but he did not call the doctor. Finally, on January 14, 2017, his swelling had progressed into his neck, and he called our client, who saw him and immediately sent him to the emergency department. He was admitted to the hospital for 40 days, was intubated, underwent 11 procedures, including multiple incision and drainage procedures, placement of a PEG tube and a tracheostomy. The plaintiff's experts agreed that a patient has responsibility for his own care, and failing to have his teeth extracted, or calling the doctor when the situation got worse, contributed to his injury. Although contributory negligence was on the verdict slip, the jury never got to the question as they found our client was not negligent.

Justin Johnson and **Nataliana Guida**, with assistance from paralegal Elina Sheldon (all in Roseland), secured a wrongful birth verdict well below the pre-trial settlement offer, which the plaintiffs rejected. Despite being brought into the case just seven months prior to the trial, Justin and Talia delivered compelling arguments that led to a total verdict that was less than the original offer made before the trial, with our client responsible for only 65%.

Megan Nelson (Orlando) was successful in having her Florida Rule 5.900 Petition for Expedited Judicial Intervention Concerning Medical Treatment Procedure granted. The alleged incapacitated person had been medically cleared for discharge to a skilled nursing facility. However, his brother, who had been appointed as the health care surrogate and power of attorney, had refused to consent to his brother's transfer to any skilled nursing facility. After numerous unsuccessful attempts by the hospital case management team to transfer the patient, Megan was retained to file a Florida Rule 5.900 Petition for Expedited Judicial Intervention Concerning Medical Treatment Procedures. After the emergency evidentiary hearing, the court granted the petition and ordered the brother to consent to the transfer of the patient to a skilled nursing facility.

Michael Roberts and **David Williamson** (both of Cincinnati) successfully secured a dismissal on behalf of our client, a leading provider of complex specialty pharmacy services, via a Motion to Dismiss. At oral argument, Michael successfully argued that the plaintiff's claim was a medical claim under R.C. 2305.113 and, thus, subject to the affidavit of merit requirement in Civil Rule 10(D)(2). In addition, he argued that the plaintiff's cause of action should be dismissed since she could not establish the adequacy of her complaint without a proper affidavit of merit. The court agreed and dismissed the plaintiff's Complaint in its entirety. ◆

***Matthew Keris,* shareholder in our Scranton office, understands the impact of AI on health care -- and litigation. Hear what he has to say about "When AI Meets Medicine" in this State Volunteer Mutual Insurance Company (SVMIC) podcast.**

Listen here.

An Overview of the Protections Afforded by the Peer Review Protection Act

By: Sandrine Gibbons, Esq.

As scientific and medical advancements have accelerated, so has the complexity of medical decision-making, exposing a need for standardization in the United States. In 1952, the Joint Commission created the mandatory clinical peer review process. Often referred to as "medical peer review," it is the process by which health care providers establish and maintain reliable standards of quality in patient care.

Clinical peer review entails periodic meetings of professional health care providers to evaluate the quality and efficiency of the services performed by other professional health care providers within the same hospital or health system. Today, countries with reputations for the most exceptional health care all mandate clinical peer review processes. In the United States, the clinical peer review process is so trusted to maintain and improve the quality of health care that every state has enacted a statute preventing certain information and documents discussed in peer review meetings from disclosure in litigation.

In 1974, the Pennsylvania legislature enacted the Peer Review Protection Act (PRPA) to provide an evidentiary privilege to protect the "proceedings and documents of a review committee," conducting peer review activities by professional health care providers, in conformity with its provisions. *Reginelli v. Boggs*, 181 A.3d 293, 296 (Pa. 2018). The PRPA's evidentiary privilege is set forth in Section 425.4:

> The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a professional health care provider arising out of the matters which are the subject of evaluation and review by such committee and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions or other actions of such committee or any members thereof.

Between 2018 and 2021, courts both narrowed and broadened the application of this privilege.

Narrowing: Only "Peer Review Committees" Can Assert the Privilege

In *Reginelli v. Boggs*, the Pennsylvania Supreme Court held the defendants were not entitled to this privilege primarily because the physician's employer was not a "professional health care provider" covered under the PRPA. UPMC Emergency Medicine, Inc. (ERMI) staffed the physician to Monongahela Valley Hospital (MVH) and was therefore the physician's employer. The court held ERMI was not a "professional health care provider" because it was not regulated and licensed to practice medicine. The PRPA defines the term "professional health care providers" as "individuals or organizations who are approved, licensed or otherwise regulated to practice or operate in the health care field under the laws

of the Commonwealth." Because the PRPA's language explicitly states the "individual or organization be 'approved, licensed or otherwise regulated to practice or operate in the health care field under the laws of the Commonwealth'" to benefit from the privilege—and the employer at issue was not—the court found the PRPA privilege did not apply.

Furthermore, the court found each of the defendants could only be construed as mere "review organizations" that engaged only in a process of reviewing professional qualifications (*i.e.*, credentialing). Therefore, they were not "review committees" under the PRPA. The PRPA defines a "review organization" as "any committee engaging in peer review… ." Although the language of Section 425.4 suggests it pertains to *review organizations*, the substantive text sets forth confidentiality mandates and testimonial privileges relating to the work and records of *review committees*. Since the PRPA privilege does not explicitly extend to any review organization that merely conducts credentialing review, the defendants did not qualify for the privilege. Here, the court determined that MVH's physician merely reviewed the credentials of hospital staff and did not engage in review of the quality and efficiency of the services staff performed.

Narrowing: Credentialing Files are Not Protected

In *Estate of Krappa v. Lyons*, the Pennsylvania Superior Court interpreted the PRPA and *Reginelli* to mean a credentialing file will not be entitled to the PRPA's evidentiary privilege if it (1) consists entirely of credentialing materials, and (2) was maintained by the hospital's "credentialing committee." In *Krappa*, a patient's estate brought suit alleging a delay in diagnosis after the patient had died of cancer. During discovery, the estate sought unredacted copies of the medical center's files concerning two physicians who treated the patient. As discussed in *Reginelli*, the Superior Court determined credentialing files generated and maintained by a hospital's credentialing committee are not protected under the PRPA because a credentialing committee does not qualify as a "review committee" engaging in peer review.

Narrowing: Event Reports, Root-Cause Analyses are Not Protected

In *Ungurian v. Beyzman*, the Pennsylvania Superior Court articulated that the PRPA privilege does not encompass event reports and root-cause analyses where there is no indication those documents were generated "exclusively for a PRPA 'review committee.'" This was a case where the patient's mother brought a medical malpractice action against physicians, hospital staff, clinics, corporations, and the hospital itself alleging their collective negligence caused the total and permanent incapacity of her child who had undergone a cystoscopy at the hospital. The mother-plaintiff sought to compel various documents, including event reports and root cause analysis, and the defendants appealed arguing protections pursuant to the federal Patient Safety and Quality Improvement Act of 2005 and PRPA. Consistent with the Superior Court's reasoning in Lyons, the court reasoned that, because neither event reports nor root-cause analyses were generated in the course of peer review and merely constituted business records of the hospital, these documents were not entitled to the privilege.

Broadening: Privilege Extends to Peer Review as a Function, not just a "Peer Review Committee"

In *Leadbitter v. Keystone Anesthesia Consultants, Ltd.*, the Pennsylvania Supreme Court expanded the potential applicability of the PRPA's evidentiary privilege in contrast to its opinion in *Reginelli* where, consistent with the plain language of § 425.3-425.4, the court found the title or name of the body conducting the review was determinative of whether the privilege would apply. Here, however, the *Leadbitter* court articulated that it is instead the actual function or "activity" of a review organization/committee

which determines whether the privilege applies. In this case, a physician applied to be appointed to the medical staff of St. Clair Hospital and for orthopedic surgery clinical privileges. After performing surgery on a patient, the patient suffered a series of strokes and filed a medical malpractice suit against the hospital, seeking that they produce documents relating to the physician's credentials, as they claimed the physician lacked expertise.

The hospital denied the requests, arguing the PRPA privilege applied because the work of their credentials committee was multifaceted and included peer review. Specifically, the hospital argued that this work included *both* privileging and credentialing and that, because privileging is covered by the PRPA as a peer review activity, the hospital was entitled to statutory protection. It pointed out—and the *Leadbitter* court acknowledged—that *Reginelli's* reasoning was limited to credentialing review for purposes of appointment to a hospital's medical staff. The *Leadbitter* court agreed that privileging is distinct from credentialing as it involves giving the physician permission to treat patients at the hospital, and not merely to exercise political rights in relation to staff and committee meetings. As such, it agreed with the proposition that a credentials committee is entitled to the PRPA's protections to the extent it performs a peer-review function—in this case, privileging. In short, because of *Leadbitter*, the PRPA's evidentiary privilege extends to those who engage in "peer review activities" as the actual function of the committee—not the title—determines whether the privilege applies.

Narrowing: Private Physician Practice Groups Cannot Assert the Privilege

In 2021, the Eastern District considered whether a report authored by a radiologist who reviewed care provided at a hospital was protected under PRPA. In *Lasheena Sipp Lipscob v. Einstein Physicians Pennypack Pediatrics*, the plaintiff sued both a hospital and a private radiology practice that provided radiology services to the hospital, arguing the defendants failed to diagnose testicular torsion resulting in the loss of a testicle. A report generated by a radiologist employed by the practice was identified in discovery which reviewed the quality of care rendered to the plaintiff's minor-patient. The defendants argued this report was protected under the PRPA because it was created for a "peer review purpose." The court disagreed, reasoning first that the radiology group (i.e., a private medical practice) was not a "professional healthcare provider" within the meaning of the PRPA and therefore not eligible for the evidentiary privilege. The Pennsylvania Superior Court ruled consistent with this conclusion in 2021 in the non-precedential decision of *Bousamra v. Excela Health*.

Second, while the hospital defendant was clearly a "professional health care provider" under the PRPA, it too could not assert the evidentiary privilege over this report because the authoring radiologist did not generate the report as part of any hospital "committee" as contemplated under the Act. In other words, because the report was not generated for or provided to any hospital "committee" performing a "peer review function," the PRPA privilege was not extended.

Key Takeaways

In enacting the Peer Review Protection Act, the Pennsylvania legislature recognized that candid and rigorous clinical peer review is essential to upholding the quality of patient care. Accordingly, the evolving body of case law interpreting the PRPA's evidentiary privilege carries substantial implications for health care providers and institutions, particularly in the context of medical malpractice litigation. To preserve the confidentiality afforded by the PRPA, documents assessing the quality of care should be created by or for a hospital committee engaged in peer review functions, such as privileging. As with any legal privilege, the integrity of protection depends on strict adherence to confidentiality—such materials must not be disclosed to unauthorized parties, whether internal or external to the institution. ◆

Marshall Dennehey Trial Lawyers and Appellate Chair Talk Nuclear Verdicts in A.M. Best's Insurance Law Podcast

Three attorneys from Marshall Dennehey—veteran medical malpractice shareholder **Gary Samms, John "Jack" Delany, III**, Chair of Marshall Dennehey's Catastrophic Claims Litigation Practice Group, and **John J. Hare**, chair of the firm's Appellate Advocacy and Post-Trial Practice Group—were featured presenters in a recent episode of A.M. Best's Insurance Law Podcast. In "Combatting Nuclear Verdicts in Plaintiff-Friendly Jurisdictions," the trio of attorneys explored strategies for preventing and mitigating nuclear verdicts, particularly in high-exposure litigation.

Gary emphasized the importance of early case preparation. "If I'm waiting to get to the courtroom before I start thinking about [nuclear verdicts], then we're in trouble, quite frankly," Samms said. He stressed the need for thorough investigation and expert engagement from the outset: "We want to make sure that we know the medicine, we can communicate the medicine, we have retained experts that can explain it." Samms also highlighted the role of jury perception: "A bad outcome does not equal negligence in and of itself."

The full podcast episode is available here. ◆

Isn't That *Wunderly*? How the Supreme Court's Interpretation of the Mental Health Procedures Act Positively Impacts Treatment Providers

By: Ryan L. Harvie, Esq.

On October 23, 2025, the Pennsylvania Supreme Court, in a 4–3 decision, reconfirmed the established reach of the immunity afforded by the Mental Health Procedures Act (MHPA), once again noting that "medical treatment that is coincident to mental health treatment" falls within the ambit of its protections. *Wunderly v. St. Luke's Hospital of Bethlehem*, --- A.3d ---, 2025 WL 2988503 (Pa. Oct. 23, 2025).

Wunderly stems from a situation involving a patient who was involuntarily admitted to a St. Luke's Hospital facility for dementia and aggression and who had stage I decubitus ulcers upon admission. While treating the whole person, the hospital demonstrated that the treatment of the patient's ulcers was "coincident" to the main course of treatment, which was with respect to his mental health. Indeed, the Court recognized that "he was involuntarily admitted to St. Luke's under Section 302 for dementia-related aggression and remained in its care under Section 303." *Wunderly*, 2025 WL 2988503. While being treated, his wound issues worsened, and he was eventually transferred to another facility where he died ten days later. His estate filed suit against St. Luke's Hospital and its affiliates, asserting that the providers were negligent in the decedent's care and treatment.

At the trial level, the Northampton County Court of Common Pleas granted judgment on the pleadings for the hospital and dismissed the plaintiff's claims based on immunity under the MHPA enjoyed by "those individuals and institutions that provide treatment to mentally ill patients." 50 P.S. § 7114. The decision was affirmed by the Superior Court, and the Pennsylvania Supreme Court granted review to consider the scope of additional care provided by St. Luke's Hospital during the decedent's admission and whether it constituted "treatment" under the MHPA.

In determining that the additional care (i.e., treatment for pressure-related skin-breakdown and wounds) constitutes "treatment" under the MHPA, the Court explained that the Act is not limited to care that is directly related to a patient's mental status. Rather, "the legislature intended a broader meaning of treatment that includes medical care 'coincident to mental health care' as well as 'care and other services that supplement treatment' in order to promote the recovery of the patient from mental illness." *Wunderly*, 2025 WL 2988503

(citing *Allen v. Montgomery Hospital*, 696 A.2d 1175, 1179 (Pa. 1997). The Court noted the General Assembly's policy-based decision to apply the MHPA to "treatment" in various areas aimed at whole-person health, "such as diet, heat, light, sanitary facilities, clothing, recreation, education and medical care as are necessary to maintain decent, safe and healthful living conditions." *Id*. Toward that end, the MHPA grants immunity to ensure the "willingness of doctors [and] hospitals to provide needed medical care to a mentally ill patient." *Id*.

However, in reaching its decision that the MHPA immunity applies to "medical treatment coincident to mental health treatment," the Court noted that there is no bright-line rule when "coincident" begins or ends. "While it is difficult to enounce specific parameters given the fact-specific nature of these cases, there will be circumstances where medical treatment is so tenuously connected to the mental health treatment that the [i]mmunity [p]rovision does not apply. The definitions of 'treatment' and 'adequate treatment' are broad but not without limitation." *Id*. Stated differently, medical treatment rendered by health care providers to mental health patients may be within the scope of the MHPA if it is something that could be anticipated or expected to occur given the patient's status.

Despite the lack of a bright-line rule, the effect of the *Wunderly* decision is certainly significant. Health care providers who are in the front lines of the Commonwealth's current mental health crisis now likely have a stronger defense to professional liability claims premised on care involving medical treatment interwoven with care for a patient's mental health issues. To ensure the availability of the immunity protections afforded by the MHPA, it is a best practice to document and record in detail how the treatment of any physical ailment is related to or connected with a patient's mental health care. By doing so, a health care provider will be best positioned in defending against any future claim. ◆

LEGAL ROUNDUP

Case Law Updates

Ohio

By: Gabriella M. Wittbrod, Esq.

Another Ohio District Court Rules that the Non-Economic Damages Cap on Catastrophic Medical Injuries Is Unconstitutional as Applied

Lyon v. Riverside Methodist Hospital, (10th Dist.), 2025-Ohio-2991

Following the 8th District Court of Appeals' ruling in *Paganini v. Cataract Eye Center of Cleveland* earlier this year, the 10th District has likewise ruled that the non-economic damages cap under R.C. 2323.43(A)(3) is unconstitutional as applied.

Susana Lyon filed a medical negligence complaint against Riverside Methodist Hospital, among other defendants, for failure to diagnose a thiamine deficiency, which she alleged resulted in her developing Wernicke-Korsakoff syndrome and a severe neurological injury. On April 20, 2023, a Franklin County jury awarded Lyon damages of $25,172,525.32. The breakdown of damages is as follows:

Economic Damages:

Past Medical Care/Expenses:
$744,157.32

Future Medical Expenses:
$4,428,369.00

Non-Economic Damages:

Past Non-Economic Damages:
$5,000,000.00

Future Non-Economic Damages:
$15,000,000.00

After the trial verdict, the defendants filed a motion to enforce the non-economic damages cap of $500,000 under R.C. 2323.43(A)(3), which Lyons challenged, both facially and as applied, under due process and equal protection grounds. The trial court denied the defendants' motion and held that the damages cap is unconstitutional.

In assessing whether the trial court erred in declaring that the medical claim damages cap is unconstitutional, the 10th District considered the constitutionality of the statute both facially and as applied under both due process and equal protection grounds. Under the rational basis test, the 10th District held that the statute bears a real and substantial relation to the public interest concerns. Thus, the analysis of the statute hinges on whether the cap is unreasonable or arbitrary.

Importantly, the 10th District held that under both due process and equal protection grounds, the damages cap is not facially unreasonable or arbitrary.

Yet, persuaded by the 8th District's ruling in *Paganini*, the 10th District held that, as applied to Lyon, the non-economic damages cap is clearly and convincingly unreasonable and arbitrary. If the cap were to be applied, Lyon's award would be reduced by 57.4%, which the 10th District reasoned is unreasonable and arbitrary. The court also found it troubling that the statute does not adjust for inflation and calculated that the $500,000 cap that was enacted by the Ohio Legislature in

2003 would equate to only $286,475.79 as of April 2025. Thus, under due process grounds, the 10th District found that the cap is unconstitutional as applied to *Lyon*.

Under equal protection grounds, the 10th District similarly held that, as applied to Lyon, the non-economic damages cap is unconstitutional. The court reasoned that, under Ohio law, there is no cap for non-economic damages for catastrophic injuries that are non-medical, but there is a cap for medical claims. The 10th District held:

> [I]t is unreasonable and arbitrary that Lyon should be treated differently in this instance than an individual that suffered catastrophic injuries in a nonmedical malpractice context. If Lyon was injured by the appellants in an automobile injury, instead of in the medical negligence setting, she would have been entitled to the full award of noneconomic damages.

As of May 27, 2025, *Paganini v. Cataract Eye Center of Cleveland* is pending in the Ohio Supreme Court (2025-0386). Riverside Methodist Hospital has not yet appealed the 10th District's ruling. ◆

LEGAL ROUNDUP

Case Law Updates

Pennsylvania

By: Tyler R. Price, Esq.

Pennsylvania Superior Court Enforces Venue Selection Clause in Surgical Consent Form

Somerlot v. Jung, 2025 Pa. Super. 166 (July 30, 2025)

The Superior Court of Pennsylvania affirmed the order of the Philadelphia County Court of Common Pleas, sustaining preliminary objections of the defendant-physician and defendant-facility as to venue, and transferred the case to the Bucks County Court of Common Pleas based upon the venue selection clause in the surgical consent form.

This opinion emphasizes a party's right to contract for a proper venue prior to initiating litigation. Notably, to form a contract, there must be an offer, acceptance and consideration. The Superior Court held that the plaintiff was free to reject the contract entirely or propose a counter offer, reject the venue clause, prior to consenting to surgery, but she failed to do so.

Because the plaintiff was afforded a meaningful choice when she signed the consent-to operate contract, the contract was valid, and the venue-selection provision was enforced. Venue was appropriately transferred to the Bucks County Court of Common Pleas. ◆

A Jury Does Not Need to Make an Express Finding of Liability as to Each Defendant to Establish a Hospital's Vicarious Liability for a Child's Brain Injury

Hagans v. Hospital of the University of Pennsylvania, 2025 Pa. Super. 142 (July 10, 2025)

The Superior Court affirmed the order of the Philadelphia County Court of Common Pleas denying the defendant's motions for judgment notwithstanding the verdict, new trial and remitter. The court also entered judgment in favor of the plaintiff and against the defendant.

On appeal, the defendant argued that the verdict must be vacated because the plaintiff failed to asked the jury to determine the liability of any agent or employee as a necessary predicate to a finding of vicarious liability. The Superior Court was not persuaded.

According to the Superior Court, the trial court had found that, through expert testimony and other evidence presented at trial, the plaintiff sufficiently established the defendant's agents acted negligently. Also, the jury did not need to make an express finding as to each individual defendant. The plaintiff was required to establish the liability of the defendant's employees to determine if the defendant was vicariously liable, which the plaintiff did. Thus, the defendant's liability was based on the actions of its employees. ◆

To help understand the evolving landscape of medical malpractice, we spoke with the claims management team at Curi, a leader in health care risk and insurance solutions. They offer valuable insights into the complex factors driving today's malpractice claims, the trends shaping the industry, and the challenges insurers and health care providers must navigate to protect both patients and practitioners.

TRENDS AND PATTERNS

What recent trends are you seeing in the volume and severity of medical malpractice claims?

For our Northeast-focused team, the majority of new cases are venued in Philadelphia. Plaintiffs' counsel seem to go out of their way to find some way to connect to Philadelphia County in order to take advantage of the venue. We have a case now where a co-defendant resident was named and their involvement with the patient was minimal. It seems apparent she was only named because she is a resident of Philadelphia County. There is no other affiliation with regard to where the care took place or the parties. We are also seeing some less severe and less meritorious claims being filed in Philadelphia County, likely because it is a challenging venue for defendants.

In New Jersey, we are seeing an increase in the severity of claims being pursued. This may be due to the rising expenses in putting together a medical malpractice case, particularly the cost of retaining experts, which has greatly increased over the past several years.

Have you observed any changes in the types of providers or specialties most affected by claims?

We have not observed significant changes in providers or specialty types most affected by claims. In our experience, the providers who have traditionally been at higher risk for claims remain so today.

Are there specific provider types or geographic regions showing disproportionate increases in claims?

We have not noticed any significant trends as far as provider types. As far as geographic regions (besides Philadelphia), we have seen an increase in cases being filed in New Jersey in the middle of the state. This may be due to an increase

in population in those counties along with a migration of people in urban areas due to rising property costs.

LEGAL AND REGULATORY LANDSCAPE

How are current legal trends—such as nuclear verdicts or social inflation—affecting your claims exposure?

The current legal environment is negatively impacting claims exposure. The word "negotiation" seems to have lost its meaning as demands routinely start well above available coverage limits, and plaintiffs seem to show limited flexibility. Even reasonable counteroffers are sometimes met with only minimal movement, making it difficult to reach balanced resolutions.

As far as social inflation is concerned, a new tactic from the plaintiffs' side is to really focus on the non-economic damages to appeal to the jury. If true economic damages are presented, it is more of a secondary focus. This is particularly challenging for the defense as the jury pools begin to draw more heavily on the younger generations who tend to generally award higher non-economic damages.

How are changes in tort reform or state-specific regulations affecting your claims handling strategies?

Unfortunately, we aren't seeing any tort reform in the Northeastern states that our team handles. However, Curi has partnered with state medical associations and legal and lobbying experts in recent months to help advance tort reform bills in some other states where we have clients.

Are you adjusting your litigation strategies in light of higher jury awards or more aggressive plaintiff attorneys?

We are moving more cases to high/low binding arbitrations when there is an opportunity to do so.

CLAIMS HANDLING FUTURE OUTLOOK

What emerging risks or developments (e.g., telemedicine, AI in diagnostics) do you think will significantly impact medical malpractice in the next three to five years?

AI will have a significant impact on medical malpractice cases as more health care providers and health systems begin to use it for diagnostic purposes and notetaking. Medical providers will need to use AI as a tool and not become complacent about allowing it to be the final word. In our own use of AI for note taking or summarizing information, we have seen things interpreted incorrectly or misstated. The human element remains critical in the process.

What keeps you up at night when thinking about the future of medical malpractice claims?

We have found ourselves asking lately, "What monetary amount will shock the conscience of the court?"

We have observed a significant plaintiff-leaning shift in certain jurisdictions. Judges also appear to be taking a more active role in cases, often engaging with defendants and their insurance carriers directly. While these judges may intend to facilitate resolution, it often places undue pressure on defendants to consent to settlements—even in cases that we believe should be defended and tried.

As there continue to be fewer independent physician practices, we have also been experiencing an issue with the larger health systems not waiving conflicts for defense counsel even when the hospital or system are not named in the suit for which a waiver is being sought. We experienced this in Pennsylvania and New Jersey. We recently had a case where we had to go to five different defense firms before we found someone who could handle the case for our insured physician.

Finally, we are seeing fewer global settlements. Plaintiffs' counsel have become very savvy at peeling off defendants with individual settlements and threatening the remaining parties with the potential for bad faith claims.

Responses shared by Curi

Curi is a full-service advisory firm comprised of three distinct businesses: Curi Insurance, Curi Advisory, and Curi Capital. The claims team is grounded by a deep commitment to defending good medicine, partnering closely with firms like Marshall Dennehey and investing substantially in the defense of its cases. Visit Curi's website. ◆

Marshall Dennehey is Honored to Accept the External Law Firm Partner of the Year Award from Liberty Mutual Insurance

The award is bestowed upon law firms Liberty Mutual considers to have consistently delivered pragmatic legal solutions in defending and advancing the interests of their customers, policy holders and the company itself. According to Liberty Mutual, "Marshall Dennehey distinguished itself from its peers by focusing on quality and service, achieving exceptional outcomes in a cost-effective and innovative manner, and fostering inclusion."

The Quarterly Dose – **November 2025**, has been prepared for our readers by Marshall Dennehey. It is solely intended to provide information on recent legal developments and is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

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