



Shikora v. Mitchell (Pa. S.Ct.)

Topics Covered: Abusive Litigation Against Physicians

Issue

The issue in this case is whether, in a medical malpractice action for negligence in performing a hysterectomy, a trial judge had discretion to allow evidence that perforation of the bowel was a known risk and complication, although no claim had been asserted for failure to obtain informed consent.

AMA interest

The AMA opposes abusive litigation against physicians.

Case summary

Evan Shikora, DO, an obstetrical and gynecological surgeon, performed a laparoscopic hysterectomy on Lanette Mitchell. During the surgery, Dr. Shikora perforated Mitchell's bowel. Mitchell then sued Dr. Shikora for medical malpractice, based on negligence in performing the hysterectomy. No claim was made that Dr. Shikora had failed to advise Mitchell of the potential risks associated with the surgery or had otherwise failed to obtain her informed consent.

Prior to trial, Mitchell objected to evidence that the bowel perforation was a known risk of a laparoscopic hysterectomy. She claimed such evidence was irrelevant to whether Dr. Shikora met the proper standard of care but could mislead the jury into thinking that Mitchell's injury was simply an inherent risk for this type of surgery. The court, however, denied the objection and allowed the evidence of "known risk."

During the trial, the expert witnesses for both sides discussed the connection between the bowel cutting and the standard of care. When Dr. Shikora offered expert testimony that injury to the bowel is a commonplace risk of even a properly performed laparoscopic hysterectomy, Mitchell objected. The judge overruled this objection, and the jury found for Dr. Shikora.

Mitchell appealed to the Superior Court, an intermediate level appellate court in Pennsylvania. The Superior Court found that a claim for breach of the standard of care is distinct from a claim for failure to obtain informed consent. Thus, information about the known risks of a proposed surgery would be irrelevant to a finding about whether the standard of care had been met, and it could mislead or confuse the jury. The Superior Court reversed and remanded for a new trial.

Dr. Shikora appealed to the Pennsylvania Supreme Court.

Litigation Center involvement

The Litigation Center, along with the Pennsylvania Medical Society, filed an *amicus* brief in the Supreme Court. The brief argued that, under the facts of this case, evidence of the surgical risks was relevant to the standard of care and the jury had not been misled.

Pennsylvania Supreme Court brief