

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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December 2, 2016

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RE: *Cheryl DeBussy v. Glenn E. Graybeal, M.D., Glenn E. Graybeal, M.D., P.A.*,
C.A. No. S14C-03-034 RFS

Submitted: November 28, 2016

Decided: December 2, 2016

Upon Plaintiff's Motion *in Limine* as to Cumulative Expert Testimony.
Denied.

Dear Counsel:

Before the Court is the Motion *in Limine* of Plaintiff Cheryl DeBussy ("DuBussy" or "Plaintiff") as to Cumulative Expert Testimony. This Motion is **DENIED**.

Facts

This is a medical malpractice case in which Cheryl DeBussy ("DeBussy" or "Plaintiff") alleges that she received negligent care when Dr. Graybeal performed a laparoscopic

cholecystectomy (gallbladder removal) on her. On April 18, 2012, during the surgery, Dr. Graybeal transected her common bile duct and then attempted to repair the damage by performing a primary end-to-end repair. Allegedly, the proper procedure to repair a transected common bile duct is a Roux-en-Y hepaticojejunostomy, but this procedure was not performed. As a result, DeBussy has suffered multiple complications from the common bile duct injury. Further, she alleged improper repair including a temporary bile drain, multiple stent procedures, and an increased risk of additional future complications.

At trial, DeBussy will present one expert witness, Dr. I. Michael Leitman (“Dr. Leitman”), who will testify on the issues of standard of care and medical causation. Dr. Graybeal has designated two witnesses to rebut Dr. Leitman’s testimony, Dr. David C. Books (“Dr. Brooks”) and Dr. Louis F. D’Amelio (“Dr. D’Amelio”).

Parties’ Contentions

In the instant motion, DeBussy claims that the background and expertise of the doctors as well as the opinions they offer are essentially identical. She requests that either Dr. Brooks or Dr. D’Amelio be excluded from testifying. DeBussy argues that “the testimony of multiple experts in the same field with the same opinions offer limited probative value which is outweighed by the danger of misleading the jury and constitutes the needless presentation of cumulative evidence.”¹ She also states that such cumulative evidence will be unfairly prejudicial to her case.

¹ Pl.’s Mot. as to Cumulative Expert Test., 4.

Conversely, Dr. Graybeal claims that the experts “have unique experiences, educations, and backgrounds informing their opinions and testimony”² as well as different research interests. Further, the doctors have highlighted different bases for their belief that Dr. Graybeal acted within the standard of care at all times and listed different risks associated with performing a Roux-en-Y Hepaticojejunostomy. As a result of these differences, Dr. Graybeal argues that both experts should be allowed to testify because 1) their varying perspectives will be helpful to the jury and 2) overlapping testimony is not automatically rendered so cumulative as to be inadmissible.

Discussion

Delaware Rule of Evidence 403 states, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.”³ When considering Rule 403, courts have been cautioned against excluding cumulative evidence too freely and informed that overlapping evidence is not automatically inadmissible. The Court’s analysis in *Galmore v. St. Francis Hospital* is instructive: “Although the testimony of each of these experts may be somewhat overlapping or cumulative, this does not necessarily render the testimony of any given one of these experts inadmissible. Further, this Court should limit a party’s presentation of evidence on the ground that it is cumulative ‘only sparingly.’”⁴ With this in mind, the Court finds that the potential for overlapping testimony is not an adequate justification for excluding one of the experts.

² Def.’s Resp. to Pl.’s Mot. as to Cumulative Expert Test., 2.

³ Del. R. Evid. 403.

⁴ *Galmore v. St. Francis Hospital*, 2011 WL 2083888, at *2 (Del. Super. Ct. Apr. 27, 2011)(internal citations omitted).

Additionally, in *Galmore*, the Court was presented with numerous complex medical issues, which bolstered the Court's decision to allow multiple expert witnesses.⁵ The Court faces a similar situation here. The medical experts in this case will need to testify on issues including the laparoscopic cholecystectomy, the injury to the common bile duct, and the allegation of inappropriate repair of the common bile duct injury. This complexity lends additional support to the idea that both doctor's testimony will be helpful and necessary.

Further, it has been held that an experts "unique educational background" can afford him or her with "a different perspective that is potentially helpful to the court."⁶ Here, the doctors' individual experiences and specialties will inform their analysis in ways that will be helpful to the jury. Also, the Court in *Washington v. Greenfield* indicated that it was permissible for two experts in the same field to testify because they practiced different subspecialties.⁷ In the instant case, Dr. Brooks specializes in minimally invasive surgery whereas Dr. D'Amelio specializes on trauma surgery, which has also led each doctor to pursue different avenues of research. More importantly, the experts have highlighted different reasons to conclude that Dr. Graybeal complied with the standard of care as well as listing different risks associated with the Roux-en-Y procedure. The experts' differences in focus and opinion will aid the jury and, therefore, should not be excluded.

Moreover, the introduction of two defense medical experts will not be unfairly prejudicial to the Plaintiff. Even if both doctors largely duplicate one another's testimony, duplication does not equal prejudice. The jury will be instructed not to give more weight to one side's evidence simply because that side has presented a greater number of experts or witnesses. Therefore,

⁵ *Id.*

⁶ *Banks v. United States*, 93 Fed. Cl. 41, 51 (U.S. Fed. Claims Ct. 2010)

⁷ *Washington v. Greenfield*, 1986 WL 15758, at *1 (D.D.C. Oct. 15, 1086).

DeBussy will not be unfairly prejudiced by the fact that Dr. Graybeal will present two expert witnesses compared to her one witness.

For the foregoing reasons, the Plaintiff's Motion is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes
Richard F. Stokes, Judge

Cc: Prothonotary
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