

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

SUSSEX COUNTY COURTHOUSE  
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GEORGETOWN, DE 19947  
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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 Defendants' Motion *in Limine* to Admit Evidence of a Known Complication.  
Granted.

Dear Counsel:

Before the Court is the Motion *in Limine* of Defendants Glenn E. Graybeal, M.D. and Glenn E. Graybeal M.D., P.A. (collectively Dr. Graybeal) to Admit Evidence of a Known Complication.

This Motion is **GRANTED**.

**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 and alleged improper repair including a temporary bile drain, multiple stent procedures, and an increased risk of additional future complications.

### **Parties' Contentions**

In the instant motion, Dr. Graybeal wants to introduce evidence, through his medical experts, that injury to the common bile duct can occur irrespective of negligence and is a known complication of a laparoscopic cholecystectomy. For expert testimony to be admissible, it must be based upon sufficient factual information and be derived from a reliable methodology applied reliably. Dr. Graybeal argues that his experts are qualified to offer this opinion.

Conversely, DeBussy argues that this evidence should be barred under Delaware Rule of Evidence 402 and 403 as irrelevant, unduly prejudicial, and likely to cause confusion.

### **Discussion**

Dr. Graybeal will be able to present evidence on the known complication of a common bile duct injury when performing this surgery because his medical experts are qualified to testify on this issue. Furthermore, the evidence will not be prohibited by Delaware Rules of Evidence 402 or 403. Here, the medical experts meet all of the requirements laid out in Delaware Rule of Evidence 702, which include: “1) the testimony is based upon sufficient facts or data, 2) the testimony is the

product of reliable principles and methods, and 3) the witness has applied the principles and methods reliably to the facts of the case.”<sup>1</sup>

The Court is not persuaded by DeBussy’s assertion that this evidence is precluded by Delaware Rule of Evidence 402 due to irrelevance. She argues that the fact that the injury can happen without negligence in other cases is unrelated to whether negligence occurred in this case. However, the Court does not agree. Whether or not this known complication comes into play turns on whether the procedure was performed in accord to the standard of care. There appear to be differences between the operative note and Dr. Graybeal’s deposition and expert testimony. The parties are well able to present focused arguments to the jury. The probative value of this evidence is not outweighed by the risk of confusion to the jury or undue prejudice to DeBussy’s case. The jury will find it helpful to understand that a common bile duct injury is a known complication of a laparoscopic cholecystectomy, while also understanding that the injury could have occurred through negligence. Neither side may present statistical evidence supporting or disputing the assertion that a common bile duct injury is a known complication of a laparoscopic cholecystectomy.<sup>2</sup>

For the foregoing reasons, the Defendant’s Motion **GRANTED**.

**IT IS SO ORDERED.**

Very truly yours,

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

Cc: Prothonotary  
Kelley M. Huff, Esq.  
Francis J. Murphy, Esq.  
Joshua H. Meyeroff, Esq.  
Richard Galperin, Esq.

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<sup>1</sup> Del. R. Evid. 702.

<sup>2</sup> *Timblin v. Kent General Hospital*, 640 A.2d 1021, 1024 (Del. 1994).

