

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 Defendants' Motion *in Limine* to Preclude Criticisms of Post-Surgical Care.
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 Preclude Criticisms of Post-Surgical Care. 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.

The claims DeBussy has presented to the Court are as follows: 1) Dr. Graybeal was negligent when he misidentified and transected her common bile duct and 2) Dr. Graybeal was negligent when he performed an end-to-end repair rather than a Roux-en-Y procedure. DeBussy has not made any allegations pertaining to her post-surgical care. However, DeBussy seeks to introduce evidence concerning the following post-surgical matters: 1) Dr. Graybeal’s failure to provide adequate discharge instructions; 2) Dr. Graybeal’s failure to set up subsequent care, including an additional cholangiogram; and 3) that Dr. Graybeal’s overall demeanor and handling of the situation after the surgery made DeBussy feel that he “did not care” about her situation.

Parties’ Contentions

Dr. Graybeal argues that the evidence concerning post-surgical care is irrelevant to DeBussy’s allegations and that presentation of such evidence will be unduly prejudicial to his

case. Since DeBussy has not made any claims relating to her care after surgery, Dr. Graybeal claims that any evidence regarding her post-surgical care is not pertinent to the case and should be excluded as irrelevant. Additionally, Dr. Graybeal fears that this evidence will paint him in a negative light, causing the jury to conclude that he must have been negligent. Therefore, he claims that the evidence in question is unduly prejudicial to his case.

DeBussy acknowledges that she makes no claims regarding Dr. Graybeal's post-surgical care. However, she feels that providing evidence about this issue will tell the full story of her situation. Without this background, DeBussy fears that the jury will not understand why she discontinued care with Dr. Graybeal and conclude that she harbors resentment toward him for the complications during her surgery. As a result, the jury may also surmise that she has improper motivations for bringing this lawsuit. Therefore, DeBussy argues that this evidence must be offered in order to paint a full and accurate picture of the events that transpired.

Discussion

It is clear that DeBussy has not claimed that her post-surgical care was in some way negligent or otherwise inadequate. Thus, testimony regarding her post-surgical care is irrelevant to the case at hand. Furthermore, even if DeBussy did assert a claim regarding her post-surgical care, she would be unable to recover because she has not presented expert testimony stating that the post-surgical care was negligent or the cause of her injury.¹

¹ 18 *Del C.* § 6853(e) (“No liability shall be based upon asserted negligence unless expert medical testimony is presented as to the alleged deviation from the applicable standard of care in the specific circumstances of the case and as to the causation of the alleged personal injury or death...”); *Rayfield v. Power*, 2003 WL 22873037, at *1 (Del. Dec. 2, 2003) (“...the casual connection between the defendant’s alleged negligent conduct and the plaintiff’s alleged injury must be proven by the direct testimony of a competent medical expert.”).

Moreover, the Court is persuaded that the introduction of this evidence would inject prejudicial evidence into the case which could lead the jury to interpret Dr. Graybeal's post-surgical care as a negative reflection on him as a doctor. Consequently, the jury might draw an unfair connection between Dr. Graybeal's post-surgical care and his alleged negligence during the surgery. The risk of prejudice to Dr. Graybeal if the evidence is allowed in appears to be greater than the risk of prejudice to DeBussy if the evidence is excluded. Therefore, any testimony regarding post-surgical care is precluded under D.R.E. 403.

For the foregoing reasons, the Defendant's Motion is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

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

Cc: Prothonotary
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