

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LISA A. FREY, and)
TROY T. FREY, her husband) CIVIL ACTION NUMBER
)
Plaintiffs,) 06C-01-057 JOH
)
v.)
)
JOANNE GOSHOW-HARRIS, D.O.)
Individually and **ALL ABOUT WOMEN,**)
P.A., a Delaware corporation,)
)
Defendants.)

Submitted: August 21, 2009
Decided: September 16, 2009

MEMORANDUM OPINION

*Plaintiffs' motion to exclude references to statistical evidence: **GRANTED***

Plaintiffs' motion to exclude opinion of Dr. Michael Droller: Decision reserved until voir dire at trial

*Plaintiffs' motion to exclude opinion evidence of Dr. Anthony Milicia: **DENIED** subject to possible reconsideration at trial*

*Plaintiffs' motion to exclude references to a lawsuit/claim arising from prior auto accident: **GRANTED***

*Defendants' motion to bar reference to AMA ethical standard: **GRANTED***

Appearances:

Randall E. Robbins, Esquire, Wilmington, Delaware, attorney for the plaintiffs

Dennis D. Ferri, and Allyson M. Britton, Esquire, Wilmington, Delaware, attorney for the defendants

HERLIHY, Judge

Plaintiffs, Lisa and Troy Frey, brought this medical negligence claim against Jean Goshow-Harris, D.O. and All About Women, P.A. The complaint alleges, *inter alia*, that Dr. Goshow-Harris negligently placed a suture on Lisa Frey's ureter during a total vaginal hysterectomy, causing her to suffer injuries and additional medical expense as a result. Her husband, Troy Frey, brings a claim for loss of consortium.

At issue before the Court are six motions *in limine*, four by the Plaintiffs: (1) to exclude statistical evidence that a defense expert relied upon to establish Dr. Goshow-Harris' complied with her standard of care; (2) and (3) to limit the testimony of two defense experts, Drs. Michael Droller and Anthony Milicia; and, (4) to exclude reference to Lisa Frey's law suit involving a 1999 motor vehicle accident. Defendants have moved to; (1) bar certain claims of breach of the standard of care; and, (2) exclude reference to an AMA ethical standard.

After consideration, this Court finds that established precedent mandates excluding the statistical evidence. Furthermore, the Court finds that more testimony is required concerning Dr. Droller's area of expertise before it can determine plaintiffs' motion; however, based on the record presented, the testimony of Dr. Milicia is admissible under Delaware Rules of Evidence 703 and 705, subject to possible re-consideration at trial. Finally, the Court finds that evidence of a law suit involving the 1999 motor vehicle accident is not relevant and is excluded. This Court also finds that reference to an AMA ethical provision

is inadmissible and bars plaintiffs from presenting evidence of the challenged breaches of the standard of care.

Factual Background

Jean Goshow-Harris, D.O. (“Goshow-Harris”) is a gynecologist and, during the relevant time, was an agent of All About Women, P.A., a Delaware corporation. On October 20, 2003, she performed a total vaginal hysterectomy and salpingo-oophorectomy on plaintiff, Lisa Frey (“Frey”). Immediately following the surgery, Frey complained of severe pain, fever and minimal urine output. Two days later, Dr. Goshow-Harris informed Frey that she had unintentionally placed a suture in her ureter during surgery and additional surgery would be required to rectify the situation. Plaintiffs allege that Dr. Goshow-Harris and All About Women, P.A. were negligent by: failing to adequately evaluate Frey before performing the first surgery; performing a vaginal hysterectomy that was not appropriate under the circumstances; increasing the risk of injury to Frey’s urinary tract during the hysterectomy by failing to identify the anatomical relationship between the ureter, bladder and urinary tract; and finally, injuring Frey’s urinary tract during the surgery. Frey alleges that these breaches of care have caused her to require multiple surgeries and medical treatment resulting in medical expenses, lost wages, pain and suffering. Her husband claims defendants’ breached their duty of care to his wife which caused him to suffer loss of his wife’s consortium, and mental anguish.

Discussion

Statistical Evidence to Establish a Standard of Care

Plaintiffs first seek to exclude, any use of statistical evidence to indicate that Dr. Goshow-Harris complied with the standard of care as a surgeon. Plaintiffs argue that using statistical evidence runs contrary to the Supreme Court's decision in *Timblin v. Kent General Hospital, Inc.*¹ They argue the defendants' anticipated use of evidence that indicates that a surgeon's failure to detect the ureter injury during an operation is quite common, and therefore, included within the standard of care. In response, defendants contend that such statistical evidence is relevant and admissible in determining the standard of care and that plaintiffs are reading *Timblin* too broadly.

The defense retained Adam S. Holzberg, D.O. as an expert. During his deposition, he responded to a question concerning what percentage of ureteral injuries are discovered intra-operatively by stating, "A small amount. You know, 70 percent of ureteral injuries are detected postoperatively."² Plaintiffs object to using this testimony as a method of establishing Dr. Goshow-Harris's standard of care. Specifically, that because a majority of ureter injuries are not detected

¹ 640 A.2d 1021 (Del. 1994).

² Pls. Mot. *in Limine* at Ex. A, 68:16 (Jul. 28, 2009).

during surgery Dr. Goshow-Harris was not negligent in failing to detect it during Frey's operation.

In *Timblin*, the Supreme Court reversed the trial judge's refusal to grant a new trial where the issue was statistical evidence, holding it had little probative value and was highly prejudicial. Timblin entered Kent General suffering from a heart attack. During the course of his treatment, he suffered a seizure which caused him to become unconscious and he stopped breathing as he went into cardiac arrest. After one unsuccessful attempt to intubate Timblin, a nurse finally was able and he regained consciousness; however, as a result of the near twenty-five minutes he was oxygen-deprived, Timblin suffered brain damage. The Timblins filed suit, alleging that medical negligence allowed him to remain oxygen deprived and suffer brain damage. Kent General introduced an expert who testified that less than twenty percent of patients can be resuscitated once their hearts no longer have electrical activity and it was remarkable that the hospital was able to bring him back. The appeal centered on the admissibility of such statistical evidence.

The Court held that when evaluated under a D.R.E. 403, the probative value of the statistical evidence was substantially outweighed by its negative effects. It held that it is improper to use statistical evidence of death or brain damage frequency when patients undergo a specific treatment to show a doctor complied

with his standard of care.³ The Court ruled that just as it is improper to use an unusual outcome to create an inference that the proper standard was not exercised, it is also improper to infer that the patient received proper care because his treatment ended with the expected result. However, the Court did not set a blanket prohibition to statistical evidence stating, it “may be relevant in appropriate circumstances to rebut the nexus between the defendant’s conduct and the plaintiff’s injury by showing that the injury was likely to occur regardless of the defendant’s alleged negligence.”⁴ Rather, it recognized the likelihood of prejudice found in such statistical evidence, “Evidence of statistical probability creates a significant risk of jury confusion and unfair prejudice because such evidence may lead a jury to decide a case based on what happens normally instead of what happened in the case before it.”⁵

This motion is denied for the reasons stated in *Timblin*. The defense is trying to use the same tactic proscribed by the Supreme Court. By introducing statistics that seven out of ten ureter injuries are not diagnosed during the surgery the defense is implying that it was within Dr. Goshow-Harris’s standard of care to fail to recognize the injury. This approach runs explicitly contrary to the *Timblin* decision discussed above. Just as it was improper for Kent General to argue that it

³ *Id.*

⁴ *Id.*

⁵ *Id.*

was not negligent because most people suffer brain damage or die during a cardiac arrest, it was also improper to argue that because most gynecologists miss a ureter injury during surgery then Goshow-Harris's actions were not negligent.

The special nexus described in *Timblin* does not exist given the circumstances surrounding this complaint. Statistical evidence is permissible when it is used to “rebut the nexus between defendant’s conduct and the plaintiff’s injury by showing that the injury was likely to occur regardless of the defendant’s alleged negligence.”⁶ Such a nexus may exist if the plaintiffs had alleged a scenario in which Frey’s ureter was already damaged and the negligence resulted by a failure to recognize its compromised state. However, such a claim is not made. Plaintiffs allege that Goshow-Harris caused the injury. It would defy logic to hold that the standard of care for a surgeon allows her to overlook the very injury she caused. Under the circumstances alleged, this question has been answered by *Timblin* and the motion to exclude statistical evidence to establish a standard of care is granted.

Motion to Restrict the Testimony of Dr. Droller.

Plaintiffs’ second motion challenges defense expert Dr. Droller’s ability to testify that Frey’s pain tolerance could have been diminished due to a history of irritable bowel syndrome (“IBS”). Plaintiffs argue that because Dr. Droller is a

⁶ *Id.* at 1025.

urologist he is not qualified to opine regarding IBS. They contend that IBS is a diagnoses treated by a gastroenterologist, and therefore, a gastroenterologist is needed to testify about IBS's possible causative effect in this case. Therefore, plaintiffs argue, under D.R.E. 703 and 705, the evidence must be excluded. Further, they contend that his opinion about the effect of IBS on Frey is not offered within a reasonable medical probability.

In response, defendants assert, "Dr. Droller's opinions with regard to plaintiff's irritable bowel syndrome are admissible, or at the very least may be admissible and should not be ruled upon until the court hears all of the evidence with regard to plaintiff Lisa Frey's numerous medical conditions"⁷ Defendants further argue, "Because Lisa Frey's numerous medical conditions both before and after the surgery in question a ruling by the Court should not be made in a vacuum."⁸ Finally, defendants argue that "Our Supreme Court has stated several times that there are no 'magic words' that must be uttered by an expert to make opinion testimony admissible."⁹

Dr. Droller is a urologist. During his deposition he stated the following concerning irritable bowel syndrome and its possible affect on Frey's pain perception:

⁷ Defs. Resp. To Pls.'s Mot *in Limine* at 4 (Aug. 19, 2009).

⁸ *Id.*

⁹ *Id.*

We don't know what the significance of her irritable bowel syndrome was, it was commented upon but it places this patient in a situation where she has suffered from a condition, I know nothing else other than this was mentioned as a condition that she had, but she is vulnerable to the effects of that condition which can effect her mental status, it can effect [sic] her responsivity to any discomfort she may experience.¹⁰

When asked if there was any part of the Plaintiff's complaint attributable to IBS,

Dr. Droller responded:

A person who has irritable bowel syndrome may have a propensity to interpreting any discomfort that they're experiencing to a greater degree of bother than someone who is outside of that type of scenario. More than that I can't comment on, but it's providing a background as to what we may be dealing with currently.¹¹

The Plaintiffs challenge the causative link established by Dr. Droller regarding IBS and Frey's pain threshold.

Delaware Rule of Evidence 703 states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.¹²

Dr. Droller testified at his deposition that he relied on other depositions, medical records and summaries of statements of various experts regarding this case in

¹⁰ Dep. Tr. of Michael Droller, M.D. at 25-26 (Jun. 1, 2008).

¹¹ *Id.* at 27.

¹² D.R.E. 703.

forming his opinion. He is a board certified urologist and based his opinions on his practice and the records he reviewed. As far as Rule 703 is concerned, it does not appear that Dr. Droller relied on anything other than that which is reasonably relied upon by experts in his field. This Court has held numerous times that it is permissible for an expert to rely upon medical records when formulating his statement.¹³ Therefore, there are no grounds to exclude the evidence under Rule 703.

Turning to D.R.E. 705, it states, “An adverse party may object to the testimony of an expert on the ground that the expert does not have a sufficient basis for expressing an opinion.”¹⁴ Plaintiff argues that because Dr. Droller is a urologist he lacks the sufficient basis for opining on how IBS could have affected Frey’s sensitivity to pain following her hysterectomy and resulting complications.

After reviewing Dr. Droller’s testimony, this Court concludes that it cannot make a determination regarding Dr. Droller’s competency to offer this opinion. Absent from Dr. Droller’s testimony are indications of his knowledge of the symptomology and treatment of IBS, how frequent his patients present an issue regarding IBS, how often, if ever, he treats patients for IBS, and his basis for the

¹³ *Brandt v. Rokeby Realty Co.*, 2005 WL 165362, at *5 (Del. Super. May 9, 2005); *Gatewood v. Salga Products, Inc.* 1996 WL 944878, at *1 (Del. Super. Aug. 5, 1996); *Thomas v. Christiana Excavating Co.*, 1994 WL 750325, at *6 (Del. Super. Nov. 15, 1994).

¹⁴ D.R.E. 705(b).

assertion that those suffering from IBS have a greater sensitivity to pain. Pursuant to D.R.E. 705(b) the Court will allow plaintiffs to conduct a *voir dire* during trial prior to his testimony determine whether he has a sufficient basis for presenting an opinion relating to IBS's causative effect on Frey's condition. The Court will rule on the admissibility of Dr. Droller's challenged testimony at that time.

Motion to Restrict the Testimony of Dr. Milicia

Plaintiffs' third motion *in limine* is similar to their second. They contend that because Dr. Milicia is not a urologist, but a OB/GYN, he cannot give expert testimony relating to an alleged anatomical variation affecting Frey's ureter. Plaintiffs rely on the same argument it advanced in their second motion. In response, defendants rely on their response in the second argument as well, and also argue that Plaintiffs' challenge goes to weight of the evidence and not its admissibility.

In his deposition, Dr. Milicia stated that it appeared that Frey had an intrinsic problem in her ureter, namely an anatomical variation. When he was asked to explain his basis in the opinion that there was some anatomical variation Dr. Milicia stated:

Well, first of all, she had a history of kidney stones in the past. Kidney stones are caused by multiple things, namely statis. So that certainly may suggest an anatomical problem with some type of flow in the ureter. I'm not aware of any urological chemical thing such as uric acid stone or anything like that to suggest the stone was

related to that. Certainly sounds like she had some type of urological problem.

I'm also relying on the fact that the patient never got better with the stint put in. She had residual hydronephrosis after the stint was placed. As a matter of fact, after multiple stints were placed she had multiple urological surgeries thereafter, but nothing seemed to fix her problem. And, as a matter of the fact, one of the surgical procedures, the ureteral pelvic junction surgery, is totally outside the field of the surgical. (sic)

So basically all those indicate something is going on in the urological system that is somewhat different than the normal patient. The patient still has pain.¹⁵

When the Court applies the standards set forth above, the proffered testimony is admitted. Dr. Milicia is a gynecological surgeon, and as such, he must be familiar with the anatomic relationship and size of the organs in the pelvic and abdominal regions. When he testified that it was likely that there existed an anatomic variation that differentiated Frey from a normal patient, it was based on his own personal experiences as a gynecological surgeon as well as his review of Frey's medical records and his consultation with frequently referenced text books and anatomical models.¹⁶ Because Dr. Milicia is an expert in the field of gynecological surgery, he is within his field of expertise and can opine that he believed Frey exhibited an anatomic variation on her ureter. There are no grounds to exclude his testimony under D.R.E. 703 or 705. However, this ruling does not preclude plaintiffs from pursuing this issue on *voir dire* at trial.

¹⁵ Dep. Tr. of Anthony Milicia, M.D. at 69-70 (Feb. 22, 2008).

¹⁶ See Dep. Tr. of Anthony Milicia, M.D. at 19-26 (Feb. 22, 2008).

Motion to Exclude Reference to a Law Suit Involving the 1999 Motor Vehicle Accident

Plaintiffs seek to exclude evidence of Frey's lawsuit/claim arising out of a January, 1999, motor vehicle accident. As a result of the accident, Ms. Frey filed a claim which was eventually settled by arbitration. Plaintiffs argue that the claim is not relevant, or in the alternative, barred under D.R.E. 403 because of the unduly prejudicial effect on the jury by believing she is litigious.

In response, defendants argue that that car accident is significant because her injuries were serious and she was continually treated by physicians from the time of the accident until present time. Defendants argue that there is no prejudicial effect by mentioning previous lawsuit and that excluding the evidence is prejudicial to the defense because the jury will conclude that the ureter injury is severe based on the fact that the Freys filed suit.

Relevancy is defined by D.R.E. 401:

'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.¹⁷

The facts of consequence to the determination of the action are whether Dr. Goshow-Harris breached her standard of care when performing the hysterectomy and what amount of damages the plaintiffs suffered as a result of that alleged

¹⁷ D.R.E. 401.

breach. It is unclear what, if any, injuries suffered in the 1999 auto accident relate to any of Frey's claims for injuries in this medical negligence. Any reference to a prior claim or lawsuit is inadmissible, but there could be competent evidence of the relationship of any injuries suffered then to any claimed now, such would be relevant.

Defense Motion to Bar Certain Standard of Care Claims

The defendants have moved to strike from the Pre-trial Stipulation three claims of alleged breaches of the standard of care, namely:

- Dr. Goshow-Harris was not familiar with Mrs. Frey's medical history and the indication for the surgery before the surgery.
- Mrs. Frey was not informed and did not know that Dr. Molly McBride participated in the surgery when the defendant told her Dr. Desperito, Dr. McBride's husband, would be her urologist.
- The defendant was not familiar with the post surgical pathology.¹⁸

The grounds for the defendants' motion are: 1) the alleged breaches are not relevant; 2) there is no causal link to Frey's injuries; and, 3) they are confusing and unduly prejudicial to the defendants. They also assert these claims are not divulged in the plaintiffs' expert disclosures.

Plaintiffs respond that their experts have identified several areas where there are no medical records, particularly a CT scan, as Dr. Goshow-Harris has testified. They point to other records' discrepancies and their expert's testimony that it is important for medical records to be accurate and complete. Plaintiffs'

¹⁸ Defs. Mot. *in limine* at 2 (Aug. 10, 2009).

standard of care expert has opined that Dr. Goshow-Harris should have checked the post-operative records, particularly to learn where a break may have occurred. Plaintiffs contend that this was never done.

The defendants attached the expert disclosure report provided to by plaintiffs in February 2007. The various allegations of a breach of standard of care are sprinkled throughout the six pages of that disclosure. The Court is satisfied that the plaintiffs have disclosed to the defendants where their expert will say the three contended items were a breach of the standard of care.

But that cannot end the discussion. It is not enough that there is a breach. A breach must be the cause or a cause of the injury.¹⁹ The plaintiffs have not either argued or shown that any of these three claims are causally related to any injury suffered by Frey. The defendants' motion to strike these three claims of a breach of the standard of care is granted.

Motion to Preclude Reference to the American Medical Association's Code of Ethics

The defendants have moved to exclude from evidence any reference to the American Medical Association's Code of Ethics. Plaintiffs seek to introduce them as evidence to determine a physician's standard of care.²⁰

¹⁹ 18 Del. C. § 6853; *see also*, *Burgos v. Hicoek*, 695 A.2d 1141, 1145 (Del. 1997).

²⁰ For purposes of this Motion, the Court is using the Plaintiffs' version of the events as they argue them. This is not meant to imply the Court's acceptance of any factual arguments underlying this controversy. The Court takes no position regarding any argument of factual issues in this case.

During the hysterectomy in question, Dr. Goshow-Harris encountered “intense” bleeding so much that she “distinctly remembers calling her partner Dr. McBride, who was elsewhere in the hospital like I need help here, this resident is not helping me.”²¹ As a further result, Dr. Goshow-Harris believed that Frey’s ureter was at a substantially increased risk of being injured.²² In response to Dr. Goshow-Harris’s request for help, Dr. McBride arrived in the operating room at 3:27 p.m.²³ Also, according to records, Dr. Goshow-Harris left the operating room very shortly after Dr. McBride entered it.²⁴ Dr. McBride completed Frey’s surgery at 4:08 p.m.; forty-one minutes after Dr. Goshow-Harris left the operating room.²⁵ Plaintiffs claim that it was a breach for Dr. Goshow-Harris to leave the operating room and that instead of leaving when she did, she should have been checking to see if she had injured a ureter. Plaintiffs also contend that Dr. Goshow-Harris should have disclosed to the plaintiffs that she left the operating room. Instead, they contend, they first learned of this during pre-trial discovery. Defendants respond that Goshow-Harris’s actions were acceptable under the standard of care.²⁶

²¹ Pls. Resp. to Defs. Mot. *in Limine*, at Ex. A 80:8-12 (Aug. 21, 2009).

²² *Id.* at Ex A, 86:3-8.

²³ *See id.* at Ex. B (Anesthesia Record).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1-2.

The particular AMA ethical standard which plaintiffs seek to use is E-8.16 “Substitution of Surgeon without Patient’s Knowledge or Consent” which reads in pertinent part:

A surgeon who allows a substitute to operate on his or her patient without the patient’s knowledge and consent is deceitful. The patient is entitled to choose his or her own physician and should be permitted to acquiesce to or refuse the substitution. The surgeon’s obligation to the patient requires the surgeon to perform the surgical operation: (1) within the scope of authority granted by the consent to the operation; (2) in accordance with the terms of the contractual relationship; (3) with complete disclosure of facts relevant to the need and the performance of the operation; and (4) utilizing best skill. It should be noted that it is the operating surgeon to whom the patient grants consent to perform the operation. The patient is entitled to the services of the particular surgeon with whom he or she contracts. The operation surgeon, in accepting the patient, is obligated to utilize his or her personal talents in the performance of the operation to the extent required by the agreement creating the physician-patient relationship. The surgeon cannot properly delegate to another the duties which he or she is required to perform personally.²⁷

Defendants’ objection to any reference to this AMA standard is several-fold. First, they argue the AMA is a private organization and its provisions are not legally binding on its members. Plaintiffs respond by noting that Dr. Goshow-Harris is a member of the AMA. The defense further contends this case is about legal duties, not ethical obligations. Further, they assert Mrs. Frey signed a consent form stating in relevant part,

I understand that the procedure(s) will be performed at Christiana Care by and under supervision of my doctor or practitioner. My doctor or practitioner may use the service of other doctors or

²⁷ Defs. Mot. *in Limine* at Ex. A. (Aug. 10, 2009).

practitioners, or members of the resident staff as he or she deems necessary or advisable.²⁸

It is important to observe at this point what the case is not. There are no claims challenging the consent Frey signed. There is no issue of informed consent or lack of it. The issue is that plaintiffs want to inform the jury of the AMA ethical standard as a “guide” to help it determine that Dr. Goshow-Harris violated a standard of care in leaving Frey on the operating table before the hysterectomy procedure was completed.

Plaintiffs cite one Delaware case in support of their proffer, *Total Care Physicians, A.A. v. O’Hara*.²⁹ That case is inappropriate. First, it was not a medical negligence case. Second, it was a case involving a doctor leaving one practice to join another and what he should or should not have done when communicating to patients of the practice he was leaving. There were some AMA ethical rules which this Court “consulted” as part of its bench ruling, but its holding that the departing physician improperly used patient lists to solicit his new business was premised on Delaware statutes and case law.

Plaintiffs also cite *Perna v. Pirozzi*³⁰ as support for their proposed use of the AMA ethical provision. In that case the patient gave consent for surgery to a specified physician. A different surgeon performed the surgery and the doctor

²⁸ *Id.* at Ex. C.

²⁹ 2002 WL 31667901 (Del. Super. Oct. 29, 2002).

³⁰ 457 A.2d 431 (N.J. 1983).

named in the consent was never present. While there was an opportunity to tell the patient of the switch in doctors, she was never informed. *Perna* is distinguishable from the situation here. The consent in *Perna* was not as broad as the one Frey signed, nor were the circumstances the same as there was no competing emergency. The New Jersey Supreme Court cited an AMA ethical provision, but the opinion does not say the jury was told of it.³¹ There are not many decisions in other jurisdictions on the issue of the admissibility of AMA ethical rules in a medical negligence trial. Of the few that there are, there is a split.³²

This Court is concerned in the context of this case that a reference to the AMA ethical provision will create a substantial risk of confusion.³³ As noted, this is not a case involving the extent of Frey's consent. There is no claim she consented to only to Dr. Goshow-Harris performing the hysterectomy. There is no claim of a breach of any fiduciary duty owed by Dr. Goshow-Harris to Frey. Nor based on the record, is it clear that her departure from the operating room caused any injury to Frey. The record presented to the Court is that Dr. Goshow-Harris placed a suture in Frey's ureter before she left to care for another patient. In addition, in that context, the jury may be left in a position to speculate about

³¹ *Id.* at 440.

³² See Daniel E. Feld, Annotation, *Admissibility in Evidence, on Issue of Negligence, of Codes or Standards of Safety Issued or Sponsored by Governmental Body or by Voluntary Association*. 58 A.L.R. 3d 148 (West 2009).

³³ See D.R.E. 403.

whether Dr. Goshow-Harris truly had an emergency situation prompting her to turn over the balance of the surgery to Dr. McBride, who is not a defendant in this case.

The inadmissibility of the AMA ethical provision plaintiffs proffer is premised on all of these reasons. The factual and legal context of this case mean the AMA provision is either not relevant or, if relevant, that relevancy is substantially outweighed by the danger of unfair prejudice or confusion. The defendants' motion to preclude any reference to it is granted.

Conclusion

For the reasons stated herein, the Court rules as follows on the various motions:

1. Plaintiffs' motion to exclude references to statistical evidence: GRANTED.
2. Plaintiffs' motion to exclude opinion of Dr. Michael Droller: Decision reserved until *voir dire* at trial
3. Plaintiffs' motion to exclude opinion evidence of Dr. Anthony Milicia: DENIED subject to possible reconsideration at trial.
4. Plaintiffs' motion to exclude references to a lawsuit/claim arising from prior auto accident: GRANTED
5. Defendants' motion to bar several claims of breach of the standard of care: GRANTED
6. Defendants' motion to bar reference to AMA ethical standard: GRANTED.

J.