

# BONEZZI SWITZER POLITO & PERRY CO. LPA

BSPP congratulates Bret C. Perry on obtaining an Eighth District Court of Appeals decision affirming a unanimous jury verdict in favor of his client stemming from a recent medical malpractice action. In the underlying action, plaintiff claimed that the defendant negligently managed her airway during cervical spine surgery including hyperextending the spine and utilizing a laryngeal airway mask in a non-FDA approved manner. As a result of these negligent actions, plaintiff claimed that she suffered an injury to her spinal cord causing permanent injury including a left-sided paralysis in her upper and lower extremities. Follow-up in favor of defendant finding that the standard of care was met.

On appeal, plaintiff argued that the trial court erred in denying her motion for new trial. Specifically, plaintiff argued on appeal that the trial court committed reversible error in permitting an anatomic illustration to be presented to the jury for demonstrative purposes, in permitting the defense expert neurosurgeon to opine on issues related to the standard of care, and alleged inflammatory comments of defense counsel levied during opening statements and closing arguments. The Eighth District Court of Appeals, in a unanimous decision, affirmed the trial court's decision finding that the trial court correctly permitted the use of the anatomic illustration, that plaintiff opened the door to standard of care opinions offered by the defense neurosurgeon, and that the comments of defense counsel were appropriate and based on the evidence elicited at trial. Importantly, the Eighth District noted that plaintiff failed to mark the anatomic illustration as an exhibit for the purposes of appellate review, and that any opinions offered by the defense neurosurgeon were elicited by plaintiff on cross examination. Given that plaintiff opened the door to these alleged errors, the trial court's decision to deny the motion for new trial was appropriate.



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