

A Summary of Recent Pennsylvania Appellate Court Decisions & Other Items of Interest By Daniel J. Siegel, Esquire

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REPORTING DECISIONS THROUGH JULY 31, 2016

PENNSYLVANIA APPELLATE COURT DECISIONS

I. Civil Procedure

A. *Post-Trial Motions - Requirement to Order Notes of Testimony*

- [*Williams v. Penn Center for Rehabilitation*, 2016 PA Super 142 \(July 5, 2016\)](#)

➤ **Holding:** A trial court does not abuse its discretion by dismissing Post-Trial Motion when the moving party fails to comply with Phila. R.C.P. *227(d)(2), which requires the party to request *and* pay for the notes of testimony.

B. *Summary Judgment*

- [*Nationwide Mutual Fire Insurance Co. v. Modern Gas*, 2016 PA Super 146 \(July 8, 2016\)](#)

➤ **Holding:** A trial court abuses its discretion by granting summary judgment by evaluating the evidence and usurping the role of the jury.

All decisions are “[hyperlinked](#)” to the slip opinion. All you have to do is “[click](#)” or “[ctrl + click](#)” on the title of the case, and if connected to the Internet, your browser will open decision for you to read in its entirety. Try it!

II. Substantive Law

A. *Sovereign Immunity - Highways and Adjacent Areas*

- [*Manning v. Cmwlt., Dept. of Transportation*, 2151 C.D. 2015 \(Pa.Cmwlt., July 27, 2016\)](#)

➤ **Holding:** The real estate/highway exception to sovereign immunity under Sovereign Immunity Act, 42 Pa.C.S.A. § 8522(a) does not apply to areas not intended for vehicular traffic, *i.e.*, PennDOT does not have a duty to maintain a “clear zone” surrounding the paved portion of the highway that is not intended for vehicular travel.

B. *Legal Malpractice*

- [*Kilmer v. Sposito*, 2016 PA Super 141 \(Pa.Super., July 1, 2016\)](#)

➤ **Holding:** Although claims for legal malpractice are generally barred if the claim challenges an attorney's professional judgment with respect to the amount of money to be accepted in a settlement, they are not *per se* barred when a claim is based upon the attorney's failure to advise a client correctly on the law pertaining to the matter.

C. *Older Adults Protective Services Act*

□ [McLaughlin v. Garden Spot Village, 2016 PA Super 161 \(July 22, 2016\)](#)

- **Holding:** Section 302(d) of the Older Adults Protective Services Act, 35 P.S. § 10225.101, *et seq.*, immunizes persons from criminal or civil liability who become witnesses in a judicial proceeding based on their testimony, but does not **preclude** their testimony in other matters.

D. *Wills - Statutory Two-Witness Rule*

□ [In Re: Estate of Isabel Wilner, 136 MAP 2014 \(Pa., July 19, 2016\)](#)

- **Holding:** A copy of a lost will may be proven by clear and convincing evidence when the original will is lost. The two-witness rule for proving a will applies to the **execution** of the will, not the contents. Justice Todd filed a [concurring opinion](#).

III. Workers' Compensation

A. *Fee Reviews - Repricing Reimbursements for Trauma Care*

□ [Allegheny General Hospital v. Bureau of Workers' Compensation \(State Workers' Ins. Fund\), 1945 C.D. 2015 \(Pa.Cmwlt., July 6, 2016\)](#)

- **Holding:** A trauma center is entitled to reimbursement at the provider's usual and customary charge, not the actual charge, when a patient presents with immediately life-threatening or urgent injuries. The determination of "usual and customary charges" should be based upon a comparison with other trauma care providers within the **geographic area** of the Provider.

B. *Attorney's Fees - Timeliness of Request*

□ [Byfield v. WCAB \(Phila. Housing Authority\), 2002 C.D. 2015 \(Pa.Cmwlt., July 26, 2016\)](#)

- **Holding:** A claimant must request unreasonable contest attorney's fees under Section 440 of the Workers' Compensation Act while a petition is pending, and may not seek them by filing a subsequent review petition.

IV. Allocatur Granted

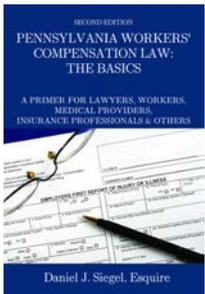
The Pennsylvania Supreme Court has granted allowance of appeal on the following matter for the issues stated:

□ [Riginelli v. Boggs, 40 WAL 2016, \(Pa., July 7, 2016\)](#)

- Whether the Superior Court erred by holding an outside medical provider's peer review proceedings regarding its employees who staff a hospital's Emergency Department under a contract with that hospital are not entitled to protection from disclosure under the Pennsylvania Peer Review Protection Act?
- Whether the sharing of peer review records by a third-party medical provider that operates a hospital's Emergency Department with the administration of that hospital constitutes a waiver of peer review protection as to those records?
- Whether a hospital that contracts with a third-party medical provider to operate the hospital's Emergency Department may claim protection under the Peer Review Protection Act for records of peer review proceedings conducted by the medical provider regarding its employees who staff the hospital's Emergency Department?

The Only Desk Reference with the Entire Workers' Compensation Act and the Most Current Regulations

The Pennsylvania Workers' Compensation Book (*Second Edition*) By Daniel J. Siegel, Esquire



The only resource of its kind, *Pennsylvania Workers' Compensation Law: The Basics: A Primer for Lawyers, Workers, Medical Professionals & Others*, is an up-to-date and easy-to-understand guide to Pennsylvania workers' compensation law, practice and procedure. Designed as a desk reference for attorneys, paralegals, injured workers, employers, claims adjusters, self-insured employers and vocational rehabilitation workers, the book includes:

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