[J-101A&B-2013] IN THE SUPREME COURT OF PENNSYLVANIA **WESTERN DISTRICT**

STEVEN P. PASSARELLO, ADMINISTRATOR OF THE ESTATE OF ANTHONY J. PASSARELLO. DECEASED, AND STEVEN P. PASSARELLO AND NICOLE M. PASSARELLO, HUSBAND AND WIFE

No. 15 WAP 2012

Appeal from the Order of the Superior Court entered September 9, 2011 at No. 1399 WDA 2010, vacating the

Judgment of the Court of Common Pleas of Blair County entered

September 7, 2010 at No. 2003 GN

3088, and remanding.

V.

ROWENA T. GRUMBINE, M.D. AND BLAIR MEDICAL ASSOCIATES, INC.

APPEAL OF: BLAIR MEDICAL ASSOCIATES, INC.

STEVEN P. PASSARELLO, ADMINISTRATOR OF THE ESTATE OF ANTHONY J. PASSARELLO, DECEASED, AND STEVEN P. PASSARELLO AND NICOLE M. PASSARELLO, HUSBAND AND WIFE

No. 16 WAP 2012

Appeal from the Order of the Superior Court entered September 9, 2011 at No. 1399 WDA 2010, vacating the Judgment of the Court of Common Pleas of Blair County entered September 7, 2010 at No. 2003 GN

3088, and remanding

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ROWENA T. GRUMBINE, M.D. AND BLAIR MEDICAL ASSOCIATES, INC.

APPEAL OF: ROWENA T. GRUMBINE,

M.D.

ARGUED: November 28, 2012

RESUBMITTED: December 27, 2013

CONCURRING AND DISSENTING OPINION

DECIDED: FEBRUARY 7, 2014

I join Part I of the majority opinion, concur in the result as to Part II, generally support the majority's rationale in Parts III(A) through (D), and dissent relative to Parts III(E), IV, and V.

Briefly, I am aligned with the majority's decision to reconsider the appropriateness of distinguishing between an error in judgment and medical negligence, since the relevant concepts can be explained to lay jurors in a more straightforward fashion and the notion of a non-negligent error in judgment has the potential to confuse. On this point, my difference with the majority is centrally one of degree, in terms of the potential impact of injection of a brief reference to errors in judgment into an otherwise appropriate jury charge. Nevertheless, based on the possibility of some uncertainty or confusion, I join the majority in establishing a bright-line rule proscribing the errors-injudgment instruction in medical malpractice cases, albeit I would do so only prospectively, prohibiting the trial courts from using the phraseology in jury instructions in medical malpractice cases.

In terms of the result, I respectfully dissent based on the noted difference in degree and my position that the <u>per se</u> rule should be prospective.