NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

KAREN CRATER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF MARK E. CRATER	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOSEPH V. VERNACE, M.D., AND MAIN LINE ORTHOPAEDICS, PC KAREN CRATER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF MARK E. CRATER	:	No. 2113 EDA 2025
v.	:	
ROBERT J. BRAUNFELD, D.O., LESTER J. GROVERMAN, M.D., AND ROBERT J. BRAUNFELD, D.O. ASSOCIATES, JOSEPH V. VERNACE, M.D., KENNETH M. TOTO, PA, AND MAIN LINE ORTHOPAEDICS, P.C.	:	
APPEAL OF: ROBERT J. BRAUNFELD, D.O., LESTER J. GROVERMAN, M.D., AND ROBERT J. BRAUNFELD, D.O. ASSOCIATES	:	

Appeal from the Judgment Entered October 14, 2025
In the Court of Common Pleas of Delaware County
Civil Division at No(s): CV-2017-009905

KAREN CRATER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF MARK E. CRATER	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	

JOSEPH V. VERNACE, M.D. AND MAIN LINE ORTHOPAEDICS, P.C.	:	No. 2730 EDA 2025
APPEAL OF: ROBERT J. BRAUNFELD, D.O., LESTER J. GROVERMAN, M.D., AND ROBERT J. BRAUNFELD, D.O. ASSOCIATES	:	

Appeal from the Judgment Entered October 14, 2025
In the Court of Common Pleas of Delaware County
Civil Division at No(s): 2017-004570

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED NOVEMBER 17, 2026**

In this medical malpractice case, Robert J. Braunfeld, D.O., Lester J. Groverman, M.D., and Robert J. Braunfeld, D.O. Associates (collectively, "Appellants") appeal from the judgment entered, following a jury trial, in the amount of $6,168,878.33 in favor of Karen A. Crater, individually and as executrix of the estate of Mark E. Crater ("Appellee") and against Appellants.[1] Appellants argue: (1) the court erred by denying both their request for a nonsuit and subsequent request for a directed verdict because Appellee presented insufficient expert testimony to establish that Dr. Braunfeld's purported negligence was a factual cause of Mark E. Crater's ("Decedent") harm; and (2) the court abused its discretion in denying their motion for a mistrial after allegedly improper statements were made during direct

* Retired Senior Judge assigned to the Superior Court.

[1] Said judgment consists "of the jury trial verdict entered on May 19, 2025[,] and delay damages." Order, 10/14/25, at 1 n.2.

examination by Appellee's medical expert. After thoroughly reviewing the record, we affirm.

The trial court provided the following factual and procedural history of this matter:

> . . . [Appellee] filed a complaint on or about May 18, 2017[,] alleging that [Appellants as well as Joseph V. Vernace, M.D.,] Kenneth M. Toto, P.A., and Main Line Orthopaedics, P[.]C[.], were negligent.[2] Specifically, [Appellee] alleged that the defendants failed to properly evaluate and diagnose [Decedent] who died as the result of a pulmonary embolism following a doctor's visit on February 23, 2016. Sadly, the Decedent died later that afternoon.
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> A jury trial was held[,] which began on May 12, 2025, and concluded on May 19, 2025. [Appellee] presented evidence that the Decedent had injured his left Achilles [tendon] playing basketball on December 25, 2015. Because Christmas Day was on a Friday, he followed up with his primary care physician three days later, on Monday[,] December 28, 2015. The Decedent underwent surgery on January 8, 2016[,] and after wearing a cast for two weeks, he was then placed in a [controlled ankle motion ("CAM") walking] boot. About a month later, on February 12, 2016, the Decedent complained of shortness of breath. When it grew worse, the Decedent called his primary care physician. He saw Dr. Braunfeld on February 16, 2016. At the appointment, the Decedent complained of shortness of breath. [Doctor] Braunfeld performed a chest x-ray and advised the Decedent that his symptoms were likely caused by his use of crutches with a CAM walker. He did not consider a pulmonary embolism or order a D-dimer test[, a blood test that measures a protein fragment made when a blood clot dissolves]. On February 18, 2016, the Decedent attended a six week follow up appointment with his surgeon Dr. Vernace who advised him to undergo physical therapy two or three times a week. That same day[,] he began physical therapy. At a physical therapy appointment on February 23, 2016, the Decedent complained about his wound and reported that he was having significant hamstring pain. As a result, his physical

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[2] The three other defendants were ultimately found not liable by the jury.

therapist called over to Dr. Vernace's office to request that someone come over and evaluate the wound. Kenneth Toto, P.A., from Dr. Verance's office came over to evaluate the Decedent's incision. According to the records, he did a quick check of the wound, changed the dressing[,] and discharged the patient. Tragically, the Decedent passed away that same afternoon at home.

In presenting [her] case, [Appellee] first offered Dr. Jay Stahl-Hertz, an expert in the field of forensic pathology and anatomic and clinical pathology. According to Dr. Stahl-Hertz, the cause of the Decedent's death was a pulmonary thromboembolism, which resulted from "a blood clot that formed in his left leg and traveled to his lungs." [Doctor] Stahl-Hertz stated that the shortness of breath that the Decedent complained of during his visit with Dr. Braunfeld on February 16, 2016[,] was directly related to his pulmonary embolism[] and ultimately his death. According to Dr. Stahl-Hertz, a patient presenting with shortness of breath can be a very strong indication that there may be a clot in the lungs.

[Doctor] Franco D'Alessio, an expert in internal medicine and pulmonary and critical care, also testified for the [Appellee]. [Doctor] D'Alessio maintained that Dr. Braunfeld was negligent and breached the standard of care. [Doctor] D'Alessio opined that 80% of patients with Achilles tendon repair will have a clot by day [fifty-one] postoperatively. According to the testimony at trial, the Decedent was [thirty-five] days post-op when he appeared before Dr. Braunfeld complaining of shortness of breath. [Doctor] D'Alessio testified that Dr. Braunfeld fell "way below" the standard of care by not considering pulmonary embolism in his differential diagnosis when the Decedent complained of shortness of breath and asserted that the history taken by Dr. Braunfeld was incomplete. [Doctor] D'Alessio opined that this failure in the standard of care by Dr. Braunfeld led to the death of the Decedent.

[Appellee] also offered Dr. Mitchell Gittelman, an expert in family practice and family medicine, who stated that "the first thing that should come to anybody's mind in this set of circumstances is a pulmonary embolism." [Doctor] Gittelman stated that if pulmonary embolism was suspected, the patient should have been sent to the emergency room as treatment can only be provided in the hospital. According to Dr. Gittelman, the failure to consider and evaluate pulmonary embolism by Dr. Braunfeld was the cause of Decedent's death.

[Appellee] also called Dr. Paul Nylas, an expert in [the field of] physician assistants, who recounted his review of the physical therapy that the Decedent underwent following his surgery. [Doctor] Nylas testified that in his experience, the standard of care on February 23, 2016[,] by Kenneth Toto required a proper history and physical exam instead of a 60-90 second assessment. He believed that [Toto deviated] from the standard of care in failing to perform a proper physical exam[, which also increased the Decedent's risk of death.

David L. Hopkins, an economist, provided testimony regarding the Decedent's economic losses by calculating factors such as his life expectancy, actual earnings, fringe benefits, and personal maintenance expenses. According to Mr. Hopkins, the Decedent's economic damages ranged between 1.8 and 2.8 million dollars.

[Doctor] Braunfeld testified at trial. [He] recounted that the Decedent first came to see him following his Achilles injury on December 28, 2015. The Decedent was on crutches when he arrived for his appointment. [Doctor] Braunfeld's initial impression was that the Decedent had ruptured his Achilles tendon, but since he could not discern whether it was a full or partial rupture, he ordered an MRI. The MRI revealed an Achilles tendon tear, and the Decedent was referred to Dr. Vernance, an orthopedic surgeon.

Appellants called several experts in their defense[,] including Dr. Christopher Haines and Dr. Gregory Kane. Both doctors testified that based upon their training and experience[,] they were of the opinion to a reasonable degree of medical certainty that Dr. Braunfeld's treatment of the Decedent met the standard of care, and they stated that a reasonable family physician in his position would not have suspected [deep vein thrombosis] or a pulmonary embolism. They maintained that Dr. Braunfeld was not negligent. [Doctor] Haines, an expert in the field of family medicine, opined that he would not have included a pulmonary embolism on the differential diagnosis and stated that the Decedent's symptoms were typical in recovery from surgery and using crutches and reinstituting use of the healing limb. [Doctor] Kane, a pulmonologist, stated that a review of the records showed that Dr. Braunfeld's standard of care was appropriate. According to Dr. Kane, the Decedent's symptoms that presented on February 16,

> 2016[,] were not caused by pulmonary embolism, but rather a blockage in the heart.
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> On May 19, 2025[,] a jury rendered a verdict in favor of [Appellee] and awarded a total award of $4,814,631.00. [Appellants] filed a motion for post-trial relief on May 29, 2025, in which they sought a judgment notwithstanding the verdict, a new trial, and remittitur[, which was ultimately denied on June 20, 2025, but docketed on July 8, 2025. The court also granted Appellee's motion for delay damages on the same corresponding dates.].

Trial Court Opinion, 10/3/25, at 1-5 (unnecessary capitalizations, footnotes, and record citations omitted).

Appellee filed a praecipe to enter judgment on the aggregate verdict, inclusive of both the jury's award and the court's award of delay damages, on July 17, 2025, in the amount of $6,168,878.33. However, judgment was only entered at the docket number ending in 9905. The following day, Appellants filed a singular notice of appeal. Nevertheless, because there were two docket numbers in this matter, this Court, on October 2, 2025, directed the trial court to enter judgment on the other docket number, the one ending in 4570. ***See*** Order, 10/2/25. The court issued an order on October 14, 2025, which entered judgment on the docket ending in 4570. Thereafter, pursuant to our direction in that same October 2 order, Appellants filed two notices of appeal, one from each docket. Each trial court docket number correspondingly received its own docket number in this Court. Ultimately, following Appellants' motion, this Court, on January 22, 2026, consolidated this appeal, designating 2113 EDA 2025 as the lead appeal. ***See*** Order, 1/22/26.

Appellants present two questions for our review:

1. Did the trial court commit reversible error in denying their request for a nonsuit and subsequent request for a directed verdict[3] on all of Appellee's claims, as she failed to present sufficient expert testimony to support her claims on the issue of whether Dr. Braunfeld's alleged negligence was a factual cause of the Decedent's harm?

2. Did the trial court abuse its discretion by denying their motion for a mistrial after Appellee's medical expert, Mitchell Gittelman, D.O., improperly stated on direct examination that he would need to explain to his medical malpractice insurance company why he did not diagnose a pulmonary embolism in a patient if he had failed to do so in a patient who presented with the same signs and symptoms as the Decedent did, particularly when this statement violated well-settled law in Pennsylvania that juries are not to be advised of, or consider, the fact that a party possesses insurance relevant to a claim?

See Appellants' Brief at 4.

Although, in their argument section, Appellants suggest that the court should have alternatively granted JNOV or a new trial given that Appellee failed to present sufficient expert testimony on the issue of causation, their brief contains no specificity as to where these contentions were raised (and therefore preserved), either during trial or, as it more aptly corresponds with JNOV and new trial, after the jury's verdict was rendered.[4] Moreover, there is no discussion into the relevant standards of review as to nonsuit or JNOV as

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[3] Appellants utilize the phrase "directed verdict" in their questions presented but then refer to "judgment notwithstanding the verdict" ("JNOV") in their argument section. However, these legal concepts are relevant at different phases, with the former applicable to trials and JNOV applicable to verdicts.

[4] This portion of their brief does not mention nonsuit *at all*.

applied to the underlying facts of this case, the court's decisions on these matters, or Appellants' present suggestion that Appellee failed to meet her evidentiary burden. We endeavor to address the thrust of their claim nonetheless where we can discern a preserved issue for review. That issue, as best we can discern, challenges whether Appellee adequately demonstrated causation between Dr. Braunfeld's actions or inaction and Decedent's resulting harm.

The standard of review we employ when reviewing a trial court's ruling denying a motion for a nonsuit is as follows:

> A nonsuit is proper only if the jury, viewing the evidence and all reasonable inferences arising from it in the light most favorable to the plaintiff, could not reasonably conclude that the elements of the cause of action had been established. Furthermore, all conflicts in the evidence must be resolved in the plaintiff's favor. In reviewing the evidence presented we must keep in mind that a jury may not be permitted to reach a verdict based on mere conjecture or speculation. We will reverse only if the trial court abused its discretion or made an error of law.

Gillard v. Martin, 13 A.3d 482, 486–87 (Pa. Super. 2010) (citations and internal quotation marks omitted).

> An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused.

Geise v. N'wide Life & Annuity Co. of Amer., 939 A.2d 409, 417 (Pa. Super. 2007).

As to JNOV, we utilize the following standard of review:

> In reviewing a trial court's decision whether or not to grant judgment in favor of one of the parties, we must consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner. Our standard[s] of review when considering motions for a directed verdict and [JNOV] are identical. We will reverse a trial court's grant or denial of a [JNOV] only when we find an abuse of discretion or an error of law that controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court.
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> There are two bases upon which a [JNOV] can be entered; one, the movant is entitled to judgment as a matter of law and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the record and concludes that, even with all factual inferences decided adverse to the movant, the law nonetheless requires a verdict in his favor. Whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.

Reott v. Asia Trend, Inc., 7 A.3d 830, 835 (Pa. Super. 2010) (quoting ***Campisi v. Acme Markets, Inc.***, 915 A.2d 117, 119 (Pa. Super. 2006)).

> Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact. If any basis exists upon which the [court] could have properly made its award, then we must affirm the trial court's denial of the motion for JNOV. A JNOV should be entered only in a clear case.

Wilson v. Transp. Ins. Co., 889 A.2d 563, 569 (Pa. Super. 2005) (citation omitted; brackets in original).

To the extent that Appellants are suggesting that a new trial should have

been granted on their first issue,[5] we note that our standard of review regarding a trial court's denial of a motion for a new trial is limited as follows: "The power to grant a new trial lies inherently with the trial court and we will not reverse its decision absent a clear abuse of discretion or an error of law which controls the outcome of the case." ***Maya v. Johnson and Johnson & McNeil-PPC, Inc. (In re McNeill-PPC, Inc.)***, 97 A.3d 1203, 1224 (Pa. Super. 2014) (citation omitted). We employ a two-part analysis to assess the denial of a mistrial: first, we determine if an error occurred. If so, we ascertain "whether the error resulted in prejudice necessitating a new trial." ***Czimmer v. Janssen Pharmaceuticals, Inc.***, 122 A.3d 1043, 1051 (Pa. Super. 2015) (citation omitted); ***see also Knowles v. Levan***, 15 A.3d 504, 507 (Pa. Super. 2011) (citation omitted) (recognizing the consideration of all new trial claims "is grounded firmly in the harmless error doctrine which underlies every decision to grant or deny a new trial" and that a new trial is not warranted simply because an irregularity occurred or another trial judge would have ruled differently).

We agree with Appellants' general statement of law that a *prima facie* medical malpractice case requires a plaintiff to prove duty, breach, causation,

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[5] Despite Appellants' specious request for a new trial at this point, ***see*** Appellants' Brief at 15, discussion as to our "new trial" standard of review is relevant to their second issue, which suggests that the jury heard improper information from Appellee's expert, so we maintain its existence at this juncture.

and damages. ***See*** Appellants' Brief at 15; ***see also Mitchell v. Shikora***, 209 A.3d 307, 314 (Pa. 2019) ("In order to establish a *prima facie* case of malpractice, the plaintiff must establish: (1) a duty owed by the physician to the patient; (2) a breach of that duty; (3) that the breach of duty was the proximate cause of the harm suffered by the patient; and (4) that the damages suffered were a direct result of that harm."). Moreover, Appellants are also correct insofar as they indicate that a plaintiff "must offer an expert witness who will testify to a reasonable degree of medical certainty, that the acts of the physician deviated from good and acceptable medical standards, and that such deviation was the proximate cause of the harm suffered." Appellants' Brief at 15-16 (citations and internal quotation marks omitted). Appellants further concede that Drs. D'Alessio and Gittelman collectively provided "sufficient testimony to support [Appellee's] claim that Dr. Braunfeld breached the standard of care[.]" ***Id.*** at 19. However, the thrust of their argument is that the doctors' testimony "clearly failed to satisfy [Appellee's] burden of proving that Dr. Braunfeld's alleged tortious conduct caused [the Decedent] any harm." ***Id.*** Specifically, in challenging Appellee's proof of causation, Appellants aver that the doctors failed to explain

> as to what, if anything, could have been done to save [the Decedent's] life if [a] pulmonary embolism had been part of Dr. Braunfeld's differential diagnosis, if Dr. Braunfeld had taken a more detailed history from [the Decedent], or if Dr. Braunfeld had worked-up the patient for coronary artery disease or given him better discharge instructions.

Id. at 20. The Appellants continue: "In fact, [Appellee's] experts did not give any explanation whatsoever as to what treatment the [Decedent] should have received if he had been diagnosed with a pulmonary embolism on February 16, 2016[.]" ***Id.*** Appellants argue, without authority, that causation "required the jury to receive and consider evidence concerning how Dr. Braunfeld's purported negligence deprived the [Decedent] of life-saving care." ***Id.***

Given the ambiguity in Appellants' position vis-à-vis the nonsuit, directed verdict, JNOV, and new trial standards, we find that the court, to the best of its ability, adequately disposed of their first issue:

> . . . Appellants were not entitled to JNOV in this case. Based upon the evidence presented at trial, and despite Appellants' arguments to the contrary, it was both reasonable and logical for the jury to conclude that Dr. Braunfeld was negligent. When viewing the light most favorable to the [verdict winner], Dr. D'Alessio testified at length that he believed Dr. Braunfeld breached the standard of care in his misdiagnosis when the Decedent complained of shortness of breath. Despite the fact that Appellants['] experts disagreed and concluded that Dr. Braunfeld was not negligent and did not contribute to the Decedent's death, the jury was free to disbelieve this testimony. It is evident from the verdict that the jury found that Dr. Braunfeld's conduct fell below the standard of care. The jury chose to believe the experts presented by the [Appellee] – which opined that the Decedent died of a pulmonary embolism during his visit to Dr. Braunfeld's office. The evidence presented at trial supports this verdict. . . .
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> . . . Appellants were not entitled to a new trial. [S]everal experts testified regarding Dr. Braunfeld's treatment of the Decedent on February 16, 2016. Dr. Stahl-Hertz testified at length that he believed that Dr. Braunfeld's deviation from the standard of care increased Decedent's risk of harm. [Doctor] Gittelman maintained that "the first thing that should come to anybody's mind in this set of circumstances is a pulmonary embolism." [Doctor] Haines

> and Dr. Kane refuted this theory. However, the jury was free to accept or reject the credibility of the experts.

Trial Court Opinion, 10/3/25, at 7-9 (record citations omitted).

In essence, Appellants' argument fails to recognize that Appellee satisfied all elements of her cause of action, and the jury was free to believe or disbelieve the evidence that it received. ***See, e.g.***, ***Lageman v. Zepp***, 266 A.3d 572, 587 n.69 (Pa. 2021) (noting that diametrically opposed testimony alone does not require non-suit and explaining jury is free to believe all, part, or none of evidence and to determine credibility of witnesses).

Accordingly, although Appellants presented experts to the contrary, Appellee, through her own expert testimony, sufficiently demonstrated the challenged element of causation. ***See, e.g.***, N.T. Jury Trial, 5/13/25, 92-93, 171 (Doctor D'Alessio testifying that, to a reasonable degree of medical certainty, the failure of Dr. Braunfeld to fail to consider pulmonary embolism increased the risk of danger to the Decedent and ultimately caused his death; Doctor Gittelman testifying: "It is my medical opinion to a reasonable degree of medical certainty that [Dr. Braunfeld's] failure to consider pulmonary embolism and evaluate for pulmonary embolism was the cause of [the Decedent's] death.").[6] Consequently, Appellants are due no relief on this issue.

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[6] To the extent Appellants suggest that, to establish causation, Appellee's experts were required to opine on the viability of possible treatment regimens
(Footnote Continued Next Page)

In their second claim, Appellants assert that the court abused its discretion in denying their motion for a mistrial, which was predicated on Dr. Gittelman's allegedly improper reference, during direct examination, to his own medical malpractice insurance. The complained-of portion of Dr. Gittelman's testimony is as follows: "[b]ecause every three years when my medical malpractice attorneys meet with me and our groups so I can get a reduction in my malpractice insurance, [they] tell me that I have to be aware of pulmonary embolism." N.T. Jury Trial, 5/13/25, at 160.

Appellants concede that, instead of making a contemporaneous objection, they waited until Dr. Gittelman completed his testimony on direct before requesting a sidebar conference and moving for a mistrial. ***See*** Appellants' Brief at 22. At that juncture, they argued that "Dr. Gittelman's reference to insurance had prejudiced [them] by suggesting that [they] were covered by malpractice insurance for any damages awarded to [Appellee]." ***Id.*** at 23. While the court offered a curative instruction regarding insurance, which Appellants declined, it denied their motion for a mistrial.

Appellants first contend that, notwithstanding their lack of contemporaneous objection, their issue was properly preserved for appellate

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should the Decedent had been given the correct medical advice in the original instance, i.e., the Decedent being correctly diagnosed with a pulmonary embolism, Appellants have presented no authority to establish that such testimony is necessary, and we are unable to find any authority requiring the same.

review. Appellants suggest that their "decision to wait until [the conclusion of Dr. Gittelman's testimony, which was only a few minutes after the objectionable comments were made,] was certainly reasonable as [Appellants] did not want to draw added attention to the witness's prejudicial statement." ***Id.*** at 24.

Second, as to the substantive component of their claim, Appellants aver that they suffered prejudice because "Dr. Gittelman's testimony clearly implied that all physicians in Dr. Braunfeld's specialty possess medical malpractice insurance and that the failure to diagnose a pulmonary embolism in a patient can impact that coverage." ***Id.*** at 26. Appellants continue: "[t]he unmistakable inference from [Dr. Gittelman's] comment was that Dr. Braunfeld's failure to diagnose [the Decedent's] pulmonary embolism would be covered by Dr. Braunfeld's insurance." ***Id.*** Appellants assert that, by implication, Dr. Gittelman's statement "suggested to the jury that Dr. Braunfeld would not suffer any financial harm from a damages award to [Appellee]." ***Id.***

The trial court disposed of Appellants' issue as follows:

> This court initially submits that Appellant[s] waived this issue by failing to lodge a timely objection. However, assuming *arguendo*, that Appellant[s] preserved this issue, this [court further] submits that there is no evidence that Appellant[s were] prejudiced by Dr. Gittelman's rambling comment. This court offered a curative instruction which Appellant[s] declined. Accordingly, this court submits that the circumstances did not warrant a mistrial.

Trial Court Opinion, 10/3/25, at 10.

> It is well settled that in reviewing an order to grant a new trial our standard of review is limited to determining whether the trial court abused its discretion or committed an error of law. The general rule in Pennsylvania is that evidence of insurance is irrelevant and prejudicial and justifies the grant of a mistrial. ***See*** Pa.R.E. 411 ("Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully."). However, the mere mention of the word insurance does not necessitate a new trial unless the aggrieved party can demonstrate prejudice.

Allied Elec. Supply Co. v. Roberts, 797 A.2d 362, 364 (Pa. Super. 2002) (most citations omitted). When reviewing the trial court's determination, we consider the circumstances under which the statement regarding insurance was made and the precautions taken by the court to prevent the statement's prejudicial effect. ***See Clark v. Hoerner***, 525 A.2d 377, 381 (Pa. Super. 1987). Furthermore, the "trial judge is in the best position to observe the atmosphere in which a trial is being conducted and to determine whether a statement in the heat of trial by counsel or a witness has had a prejudicial effect on the jury." ***Id.***

Nevertheless, "[i]t is axiomatic that, in order to preserve an issue for review, litigants must make timely and specific objections during trial and raise the issue in post-trial motions." ***Harman ex. rel. Harman v. Borah***, 756 A.2d 1116, 1124 (Pa. 2000). The "decision to grant or deny an untimely objection lies within the discretion of the trial court[.]" ***Allied Elec. Supply Co.***, 797 A.2d at 364 (citation omitted).

Our Court has found waiver when a party failed to contemporaneously object to a witness's "reference to insurance *when it was uttered*." ***Id.*** at 365

(emphasis added). Instead, counsel, who did not "want to draw further attention to the testimony," "waited until after [that witness] had completed his testimony on direct, cross, redirect and recross." ***Id.*** Although, here as opposed to ***Allied Elec. Supply Co.***, less time had elapsed between the allegedly improper insurance reference and the corresponding challenge thereto, this Court has clearly found the notion of waiting to object, so as not to draw attention to the matter, to be unavailing. Furthermore, our Supreme Court has reached the same conclusion. ***See Harman***, 756 A.2d at 1126 ("While we can accept counsel's concern about further alerting the jury, we find no justification for counsel's inertia."). Therefore, because Appellants have failed to furnish any exception to the general necessity of a party to raise a contemporaneous objection in order to preserve a claim for appellate review, this issue has been waived.

Even if we did not find waiver, Appellants have failed to demonstrate the requisite prejudice necessary to warrant a mistrial. Appellants argue, without citation to authority, that Dr. Gittelman's passing reference *to his own insurance* can be extrapolated to instill, in the jury, a belief that Dr. Braunfeld had his own insurance provider, which, by contract, was bound to "foot the bill[,]" Appellants' Brief at 27, of any potential damages award in this medical malpractice case. Although, consistent with prior decisions of this Court, we caution against essentially all references to insurance, the mere mentioning of it does not, *ipso facto*, result in the award of a new trial. ***See Allied Elec.***

Supply Co., ***supra*****.** Here, the singular insurance reference made by Dr. Gittelman, implicitly highlighting his own insurance premiums without any discussion into, *inter alia*, coverage amounts, requirements, or anything pertaining to Dr. Braunfeld, is far too attenuated from Appellants' suggestion that, therefore, the jury would believe Dr. Braunfeld's actions to be wholly covered by insurance. Without any nexus between Dr. Gittelman's words and Dr. Braunfeld's potential insurance coverage, coupled with the fact that the court offered the Appellants a curative instruction that was declined, there is simply no indicia of prejudice warranting the grant of a new trial.

As neither of Appellants' two issues merit relief, we affirm the $6,168,878.33 judgment entered in favor of Appellee and against Appellants.

Judgment affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/17/2026