IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JOHN MUSIKA AND LINDA MUSIKA, H/W, Petitioners v. ABINGTON - JEFFERSON HEALTH, ABINGTON HEALTH, ABINGTON HEALTH PHYSICIANS, ABINGTON MEMORIAL HOSPITAL, JENNIFER V. FABRIZZIO, JONAS J. GOPEZ, HANS Y. KIM, LANSDALE HOSPITAL, NEUROLOGICAL ASSOCIATES OF ABINGTON, STEPHEN PRIPSTEIN, RADIOLOGY GROUP OF ABINGTON PC AND WILLOW GROVE OPEN MRI, INC., Respondents	:	No. 427 MAL 2026 Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 25th day of November, 2026, the Petition for Allowance of Appeal is **GRANTED**. The issues, as stated by petitioner, are:

(1) Whether the en banc Superior Court's 5 to 4 Majority's holding conflicts with this Court's holdings in *Jones, Zieber, Gradel*, and *Tincher*, and departs from controlling precedent that a trial court's omission of the § 323- derived increased risk of harm jury instruction as to defendant surgeon is a "fundamental error" that cannot be deemed "harmless error," as to a plaintiff at risk for recurrence of his cancer as a result of defendant surgeon's negligence, where entitlement to the charge had been established through expert testimony on the risk of recurrence, or, even if not deemed "fundamental error," whether the omission should have been deemed prejudicial error in light of the above, and the juxtaposition of the trial court's having given the charge as to the defendant radiologist?

(2) Whether the Superior Court erred in failing to conclude that the trial court's ruling was manifestly unreasonable or clearly erroneous, as per *Polett,* where the trial court determined that a subsequent treating surgeon's testimony was inadmissible for want of "standard of care" verbiage, where his testimony went to the manner in which he performed the subsequent surgery and efforts to avoid leaving behind cancer cells that could lead to recurrence, which testimony was consistent with standard of care testimony offered by Plaintiffs' expert surgeon?