

MR. JUSTICE SAYLOR

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-in-judgment 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 per se rule should be prospective.