UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1225

September Term, 2010

JAMES TZENG, ET AL.

v.

JOHN MICHAEL WOOD, SR., ET UX.

Eyler, Deborah S.,
Zarnoch,
Kehoe,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: October 6, 2011

In the Circuit Court for Prince George's County, John M. Wood, Sr., and his wife, Patricia Wood, the appellees, brought an action for medical malpractice against James Tzeng, M.D., and his employer, Surgical Associates, Chartered ("SAC"), the appellants.[1] The suit arose from a balloon angioplasty procedure Dr. Tzeng performed on Mr. Wood to correct a blockage in Mr. Wood's left subclavian artery. The action encompassed claims for traditional medical malpractice and for informed consent malpractice.

At the conclusion of a seven-day trial, the jury returned a verdict in favor of the Woods, finding against Dr. Tzeng on both the traditional malpractice and informed consent claims. The jury awarded Mr. Wood $13,600 for past medical expenses; $10,000 for future medical expenses; $492,000 for daily care needs and lost household services; $36,000 for future counseling and adaptive devices; and $750,000 in non-economic damages. The jury also awarded the Woods $150,000 for loss of consortium.

The court reduced the non-economic damages award to $542,000 and the loss of consortium damages award to $108,000, pursuant to Md. Code (2006 Repl. vol., 2011 Supp.), section 3-2A-09(b)(1)(i) of the Courts and Judicial Proceedings Article ("CJP") (capping total non-economic damages at $650,000). Dr. Tzeng unsuccessfully moved for judgment notwithstanding the verdict ("JNOV") and for a new trial.

On appeal, Dr. Tzeng presents three questions for review, which we have rephrased:

I. Did the trial court err in denying his motions for judgment and for JNOV on the ground that the Woods failed to establish the applicable standard of care in the "same or similar communities"?

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[1]For ease of discussion, we shall refer to the appellants collectively as "Dr. Tzeng."

II. Did the trial court err in denying his motions for judgment and for JNOV on the ground that the Woods' liability expert did not opine that he (Dr. Tzeng) breached the standard of care and did not state his opinions to a reasonable degree of medical probability?

III. Was there sufficient evidence to support the jury verdict on the loss of consortium claim?

For the reasons to follow, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On the morning of April 7, 2007, Mr. Wood awoke with chest pain and some tingling in his left arm. Later that day, he was transported by ambulance to the Southern Maryland Hospital Center ("SMHC") in Clinton. He underwent numerous tests that ruled out a myocardial infarction or other heart disease. A CT scan revealed a blockage in Mr. Wood's left subclavian artery, however.[2] Mr. Wood was admitted to SMHC.

Dr. Tzeng is a thoracic surgeon who also performs vascular surgery. On April 9, 2007, while Mr. Wood remained under observation at SMHC, Dr. Tzeng met briefly with the Woods. Dr. Tzeng informed Mr. Wood of the existence of the blockage and asked him to schedule an appointment to discuss options for treatment. Mr. Wood was discharged from SMHC later that same day. He returned to work the following day.

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[2]The term "subclavian" means "inferior to the clavicle." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1815 (31st ed. 2007). The left subclavian artery branches off the aorta and extends to just below the left clavicle. *Id.*

On April 16, 2007, the Woods met with Dr. Tzeng at his office. During the meeting, Dr. Tzeng proposed that Mr. Wood undergo an arteriogram,[3] to determine the extent of the blockage to the left subclavian artery, and, depending upon the size of the blockage, a balloon angioplasty to open the blocked artery. Dr. Tzeng explained that to access the artery to perform the angioplasty, he would use a method known as an axillary artery cutdown ("axilla cutdown"). At the conclusion of the meeting, Mr. Wood scheduled the procedure for April 26, 2007.

On April 26, 2007, Mr. Wood was administered general anaesthesia. Then, using the axilla cutdown method, Dr. Tzeng accessed the left subclavian artery and performed the arteriogram, which revealed a complete occlusion of Mr. Wood's left subclavian artery. Dr. Tzeng determined that an angioplasty was indicated. He performed the balloon angioplasty, and placed a stent at the site of the blockage to keep the artery open.

Mr. Wood awoke after the procedure with severe pain in his left arm. He likened the pain to a "throbbing toothache that never lets up." He also had no use of his thumb and two adjacent fingers on his left hand. He was prescribed pain medication. The Woods scheduled an early follow-up appointment with Dr. Tzeng -- four days after the procedure instead of the routine two weeks. At that appointment, Dr. Tzeng prescribed additional pain medication

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[3]An arteriogram is a diagnostic procedure in which a tube is inserted into a blood vessel and dye is injected into the blood vessel via the tube. An X-ray of the blood vessel is then performed to determine the existence of and extent of any blockage. DORLAND'S at 145.

for Mr. Wood. According to Dr. Tzeng, he also raised the possibility that the axilla cutdown procedure had caused a nerve injury.

The pain and loss of sensation in Mr. Wood's left arm and hand persisted in the days and weeks that followed. At a third follow-up appointment, on May 16, 2007, Dr. Tzeng referred Mr. Wood to Ivica Ducic, M.D., a neurosurgeon at Georgetown University Hospital who specializes in treating peripheral nerve injuries.

On June 18, 2007, Dr. Ducic performed repair surgery on Mr. Wood's arm. The surgery revealed that Mr. Wood's medial antebrachial cutaneous nerve was severed,[4] and his median nerve was badly swollen and deadened.[5] The nerve injuries both were at the site of the prior axilla cutdown. Dr. Ducic was able to all but eliminate Mr. Wood's pain, but could not restore sensation to his fingers.

On April 30, 2008, Dr. Ducic performed a second repair surgery on Mr. Wood to attempt to restore sensation and muscle strength to the fingers of Mr. Wood's left hand by decompressing the median nerve. The surgery did not improve Mr. Wood's use of his hand, however.

On February 17, 2009, the Woods filed this action for medical malpractice. The case was tried to a jury over the course of seven days in April 2010. The Woods presented

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[4]The medial antebrachial cutaneous nerve is a general sensory nerve affecting the skin of the "front, medial, and posteromedial aspects of the forearm." DORLAND'S at 1274.

[5]The median nerve is a general sensory nerve affecting the elbow, wrist, the musculature of the fingers and forearm, and the skin of the palm and fingers. DORLAND'S at 1277.

testimony from three expert witnesses: 1) Dean Healy, M.D., a vascular surgeon who testified on the issue of liability; 2) Michael April, M.D., a specialist in rehabilitative medicine who testified on the issue of Mr. Wood's impairments and future needs resulting from his injury; and 3) Richard Lurito, Ph.D, an economist who testified about the future economic loss resulting from Mr. Wood's injury. In addition, the Woods testified on their own behalf, called two lay witnesses, and played a videotaped deposition of Dr. Ducic.[6]

Dr. Tzeng called two vascular surgeons as expert witnesses and also presented expert testimony from an economist and a rehabilitative counselor. Dr. Tzeng testified on his own behalf. At the close of all the evidence, defense counsel moved for judgment raising the same issues presented on appeal. The motion was denied.

As noted above, the jury returned a verdict in favor of Mr. Wood and the Woods on both the traditional malpractice claim and the informed consent claim. Post-judgment motions were denied.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I. & II.

Sufficiency of Liability Testimony

Dr. Tzeng's first two questions presented are interrelated, as they concern the propriety and adequacy of the testimony of Dr. Healy, the Woods' sole liability expert. In

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[6]Dr. Ducic testified only as a fact witness.

the first question, Dr. Tzeng contends the trial court erred in allowing Dr. Healy to offer any standard of care opinions, because he did not meet the qualifications to do so under CJP section 3-2A-02(c)(1). That statute provides that in a traditional medical malpractice action, the element of breach of the standard of care must be shown by proof that the care rendered was "not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."

Dr. Tzeng maintains that it was not established that Dr. Healy was familiar with the standards of practice in communities that are the same or similar to the community in which he (Dr. Tzeng) was practicing; therefore Dr. Healy should not have been permitted to give any standard of care opinions. Without Dr. Healy's testimony, Dr. Tzeng maintains, the evidence adduced by the Woods was legally insufficient to permit a jury finding of a breach in the standard of care.

Similarly, Dr. Tzeng's second question presented focuses upon what he contends were inadequacies in Dr. Healy's standard of care testimony. He asserts that Dr. Healy did not actually testify that he (Dr. Tzeng) breached the standard of care in his treatment of Mr. Wood. He further asserts that none of the opinions testified to by Dr. Healy were given to a reasonable degree of medical probability; indeed, Dr. Healy never stated (and never was asked) his level of confidence in his opinions.

For both of the first two questions presented, Dr. Tzeng asserts that the inadequacy or absence of evidence necessary to establish a *prima facie* case required the trial court to either grant his motion for judgment made at the end of all the evidence or his JNOV motion.

In a jury trial, the standard of review of a trial court's decision to deny a motion for judgment at the close of the evidence and to deny a motion for JNOV are the same. *See Hoffman v. Stamper*, 155 Md. App. 247, 289 (2004), *aff'd in part and rev'd in part*, 385 Md. 1 (2005). In the context of a motion for JNOV denial, we have explained the standard of review as follows:

> [JNOV] is proper "when the evidence, at the close of the case, taken in the light most favorable to the nonmoving party, does not legally support the nonmoving party's claim or defense." *Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 85, 920 A.2d 606 (2007). In reviewing a motion for JNOV, we "resolve all conflicts in the evidence in favor of the plaintiff and must assume the truth of all evidence and inferences as may naturally and legitimately be deduced therefrom which tend to support the plaintiff's right to recover." *Smith v. Bernfeld*, 226 Md. 400, 405, 174 A.2d 53 (1961). We are to uphold the court's denial of a JNOV "'[i]f there is any evidence, no matter how slight, legally sufficient to generate a jury question[.]'" *See CIGNA Prop. and Cas. Companies v. Zeitler*, 126 Md. App. 444, 488, 730 A.2d 248 (1999). "The denial of a motion for JNOV is in error, however, '[i]f the evidence . . . does not rise above speculation, hypothesis, and conjecture, and does not lead to the jury's conclusion with reasonable certainty[.]'" *See Nationwide Mut. Ins. Co. v. Anderson*, 160 Md. App. 348, 356, 864 A.2d 201 (2004), *cert. denied*, 386 Md. 181, 872 A.2d 46 (2005) (citation omitted). We may reverse the trial court's judgment, moreover, if its denial of the motion was "'legally flawed.'" *See id.*

Aronson & Co. v. Fetridge, 181 Md. App. 650, 665 (2008).

At trial, the Woods advanced two overarching theories of medical negligence: 1) traditional malpractice, *i.e.*, a breach of the standard of care that proximately caused the

injuries; and 2) failure to obtain informed consent. "Breach of informed consent and [traditional] medical malpractice claims both sound in negligence, but are separate, disparate theories of liability." *McQuitty v. Spangler*, 410 Md. 1, 18 (2009). Subsumed within the Woods' traditional medical malpractice claim were two major theories of breach: 1) that an axilla cutdown was not an accepted method to use to access a subclavian artery blockage for treatment; and 2) that Dr. Tzeng improperly performed the axilla cutdown. In their informed consent claim, the Woods posited that Dr. Tzeng failed to make four material disclosures in obtaining Mr. Wood's consent to the axilla cutdown. (We shall discuss this in more detail, *infra*.)

Because the jury returned a verdict in favor of Mr. Wood and the Woods together on both the traditional medical malpractice claim and the informed consent claim, we only would find error in the trial court's denial of the motions for judgment and for JNOV if the evidence adduced at trial was legally insufficient to support the verdict on *both* claims. The argument Dr. Tzeng advances concerning Dr. Healy's qualification to testify as a standard of care expert, under CJP section 3-2A-02(c)(1), pertains only to the traditional medical malpractice claim. The same is true for Dr. Tzeng's argument that Dr. Healy did not actually opine that Dr. Tzeng committed a breach of the standard of care. And, for the reasons we shall explain, Dr. Healy's failure to state his opinions to a reasonable degree of medical probability did not mean that the Woods failed to make out a *prima facie* informed consent claim.

Viewing all the evidence at trial in the light most favorable to the Woods, as our standard of review requires, we conclude that there was sufficient evidence to generate a jury question on the informed consent claim. For that reason, we need not address the merits of Dr. Tzeng's first two questions presented.

In *Sard v. Hardy*, 281 Md. 432 (1977), the Court of Appeals first recognized a medical malpractice claim for failure of a physician to obtain informed consent. "The gravamen of an informed consent claim . . . is a healthcare provider's duty to communicate information to enable a patient to make an intelligent and informed choice, after full and frank disclosure of material risk information and the benefit of data regarding a proposed course of medical treatment." *McQuitty, supra*, 410 Md. at 22. "Unlike the traditional action of [medical] negligence, a claim for lack of informed consent focuses not on the level of skill exercised in the performance of the procedure itself but on the adequacy of the explanation given by the physician in obtaining the patient's consent." *Dingle v. Belin*, 358 Md. 354, 369-70 (2000). There is no "bright-line test for determining the scope of disclosure required." *Goldberg v. Boone*, 396 Md. 94, 123 (2006). Rather, the "test for determining whether a potential peril must be divulged is its materiality to the patient's decision." *Sard, supra*, 281 Md. at 443-44 (quoting *Cobbs v. Grant*, 502 P.2d 1, 11 (1972)). Information is material if it is of the type that a "physician knows or ought to know would be significant to a reasonable person in the patient's position in deciding whether or not to submit to a particular medical treatment or procedure." *Id.* at 444.

Thus, to prove an informed consent claim, a plaintiff must show: 1) the defendant failed to disclose a material risk of the procedure the plaintiff consented to; and 2) there exists "a causal connection between the lack of informed consent and the plaintiff's damages." *Goldberg, supra*, 396 Md. at 123. To prove the first informed consent element, expert testimony is not required to show conformity with a standard of care. Expert testimony is required, however, "'to establish the nature of the risks inherent in a particular treatment, the probabilities of therapeutic success, the frequency of the occurrence of particular risks, the nature of available alternatives to treatment and whether or not disclosure would be detrimental to a patient.'" *Mahler v. Johns Hopkins Hosp.*, 170 Md. App. 293, 319 (2005) (quoting *Sard, supra*, 281 Md. at 448).[7] When satisfactory proof has been adduced to show that an undisclosed risk was an actual risk of the subject procedure or treatment, the question whether the undisclosed risk was material -- *i.e.*, whether the risk was such that a reasonable patient would consider it significant in deciding whether to undergo a particular procedure -- is a question of fact for the fact-finder. *Id.*

Ordinarily, the second prong of an informed consent claim, which pertains to causation, requires no expert testimony. It is governed by an objective standard:

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[7]Just as in a traditional medical malpractice case, expert witness testimony need not be presented to prove a fact that is within the ordinary knowledge of laypeople. *Schultz v. Bank of Am., N.A.*, 413 Md. 15, 28-29 (2010). Thus, in the context of an informed consent claim, when a risk of a procedure is one that ordinary laypeople would know about, it would not be necessary to adduce expert testimony to prove it.

> whether a reasonable person in the patient's position would have withheld consent to the surgery or therapy had all material risks been disclosed. . . . If . . . disclosure of all material risks would have caused a reasonable person in the position of the patient to refuse the surgery or therapy, a causal connection is shown.

Sard, supra, 281 Md. at 450.[8]

Returning to the instant case, as already discussed, Mr. Wood was transported to SMHC with chest pain and tingling in his left arm. A CT scan revealed a blockage in his left subclavian artery. That artery has its origin at the aorta and its terminus just beneath the clavicle of the left shoulder. It is the major artery supplying blood flow to the left arm and hand. After it passes beneath the clavicle, it becomes the left axillary artery. Lower on the left arm, it becomes the left brachial artery.

The central dispute at trial and the focus of much of Dr. Healy's testimony was the approach Dr. Tzeng used -- the axilla cutdown method -- to access the blockage in the left subclavian artery in order to perform the angioplasty. It was undisputed that there are two other methods that can be used to gain access. Those two methods are percutaneous, *i.e.*, they are performed by means of a needle puncture of the skin. The two accepted locations for such a puncture are the femoral artery, located in the groin, and the brachial artery, located in the pit of the elbow.[9] By contrast, the axilla cutdown method, which Dr. Tzeng

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[8]Expert testimony would be necessary on the issue of causation to show that the injury the plaintiff suffered in fact was caused by the surgery or treatment, however. *See Lipscomb v. Memorial Hosp.*, 733 F.2d 332, 338 (4th Cir. 1984) (applying Md. law).

[9]Dr. Healy also referenced the possibility of a "small incision" at the elbow to access (continued...)

used, is an "open" approach that involves making an incision in the armpit. After the incision is made, the surrounding tissue is dissected to reveal the axillary artery. In all three approaches, after the chosen artery (femoral, brachial, or axillary) is accessed, a wire is inserted and guided through the vasculature to the left subclavian artery and the location of the blockage. A tiny balloon then is inflated at the site of the blockage to flatten the plaque buildup, which is what caused the blockage. In some cases, such as this, a stent is inserted to hold the artery open.

At trial, the Woods asserted that Dr. Tzeng failed to make four material disclosures about the axilla cutdown method of gaining access to the left subclavian artery blockage: 1) that that method carries a risk of nerve damage that would cause loss of use of the arm and hand; 2) that that method is not the preferred method and carries an increased risk of nerve damage over the other methods; 3) that Dr. Tzeng lacked experience performing the procedure; and 4) that the angioplasty could be put off indefinitely. We conclude that there was sufficient evidence adduced at trial as to the first non-disclosure to make the informed consent claim a jury issue. Accordingly, we need not address the remaining non-disclosures.[10]

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[9](...continued)
the brachial artery.

[10]We do note, however, that the final alleged non-disclosure – "that the surgery could be put off indefinitely" – would not properly form the basis for an informed consent claim. The plaintiffs argued that Mr. Wood was asymptomatic and, accordingly, an angioplasty to correct the blockage was not indicated for him. Dr. Healy testified to this effect. If Dr. (continued...)

The critical meeting between the Woods and Dr. Tzeng took place on April 16, 2007.[11] Mr. Wood testified that, at that meeting, Dr. Tzeng 1) advised him that he needed to have an angioplasty performed to correct the blockage in his left subclavian artery; and 2) proposed the axilla cutdown method to access the blockage in that artery. Mrs. Wood asked Dr. Tzeng why he was not going to use an access method that would enter through the groin (the femoral artery) to perform the angioplasty. Dr. Tzeng replied that gaining access through the arm was "a shorter route."

The Woods both testified that Dr. Tzeng did not say anything about any possible risk of nerve injury from the axilla cutdown method, much less that the location and nature of such nerve damage could impair Mr. Wood's use of his left arm and/or hand. Although Dr. Tzeng testified that he advised the Woods that "[d]uring dissection there is potential [for] surrounding tissue injury, including nerves," he acknowledged that he did not disclose the nature of any potential nerve damage or advise Mr. Wood that a nerve injury could negatively affect the use of his left arm and/or hand.

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[10](...continued)
Tzeng advocated and performed an unnecessary procedure, that would be a breach of the standard of care, not a breach of the duty of informed consent. *See Univ. of Med. Med. Sys. Corp. v. Waldt*, 411 Md. 207, 236 (12009) (proffer of expert testimony that a procedure was contraindicated for a patient could be relevant to a negligence claim, but would not be relevant to an informed consent claim).

[11]As noted, Dr. Tzeng met briefly with the Woods while Mr. Wood still was in the hospital, but only to say that there was a blockage and that Mr. Wood should schedule a follow-up appointment.

Gary Ruben, M.D., a vascular surgeon, testified for the defense. On direct examination, Dr. Ruben was asked, "in the axilla approach, why in your opinion, to a reasonable degree of medical probability or certainty, was that a reasonable approach for Mr. Wood?" Dr. Ruben responded with an extensive discussion of the advantages and disadvantages of the various approaches to treating a subclavian arterial blockage. With respect to the axilla cutdown method, he stated:

> [I]t's a cut-down. Well, that has disadvantages.
>
> You're making an incision in a patient, albeit a small one. There are nerves that you are going to be near, and you're going to be -- because you've got to spread the tissues to get into this, you could put nerves and other blood vessels at risk. And so, you can get nerve injury in these procedures, in rare cases. You do make an incision in the patient.

Defense counsel then asked Dr. Ruben whether it was his opinion "to a reasonable degree of medical probability, as to whatever approach is utilized, there is potential nerve damage involved with any approach?" Dr. Ruben responded, "Absolutely." He elaborated:

> [W]henever we, as vascular surgeons . . . approach these with needles or with scalpels, there are going to be nerves that are at risk for these procedures.
>
> And unfortunately, there will be patients who get complications from that, whether it's done open or percutaneously.

Dr. Ruben further opined that, "whenever you have to do these procedures, whether it's blindly with it going through the skin with a needle, or opening it up with an incision, there

are complications that can occur; bleeding, damage to nerves, thrombosis, clotting in veins, clotting arteries."[12]

In his testimony, Dr. Ruben also explained that the median nerve lies in close proximity to the axillary artery at the location where Dr. Tzeng made the incision for the axilla cutdown. Dr. Ducic's video deposition testimony, which as noted was played at trial, established that a 2 centimeter portion of Mr. Wood's median nerve was swollen and deadened at the prior incision site for the axilla cutdown and that this injury was largely the source of Mr. Wood's pain and loss of movement in his left arm and hand. It was Dr. Ruben's opinion that, during the axilla cutdown surgery, the tissue surrounding Mr. Wood's median nerve was placed under retraction, in turn stretching and putting pressure on the median nerve, causing the injuries that Mr. Wood sustained.

Taken together, the testimony of the Woods, Dr. Ruben, and Dr. Ducic made out a *prima facie* case of failure to obtain informed consent. The Woods' testimony about what was said and not said during the April 16, 2007 meeting (much of which was corroborated by Dr. Tzeng) was sufficient to allow reasonable jurors to find, under the first element of an informed consent claim, that Dr. Tzeng failed to inform Mr. Wood that there was a risk of nerve injury to his hand or arm (or both) from using the axilla cutdown method to access the left subclavian artery blockage. Because the existence of such a risk is not within the

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[12]On cross-examination, Dr. Ruben also acknowledged that it was his personal practice to advise patients undergoing balloon angioplasty that "the possibilities [] include loss of limb and damage to nerves, and so on and so forth."

ordinary knowledge of laypeople, expert testimony was required to establish that the risk indeed existed. Dr. Ruben's testimony, expressed to a reasonable degree of medical probability, was legally sufficient to prove that the axilla cutdown method carried with it a risk of damage to the median nerve. His testimony that retraction of the tissue surrounding Mr. Wood's median nerve, which stretched and put pressure on that nerve, caused the injuries was legally sufficient to prove, together with Dr. Ducic's testimony, that a risk of the axilla cutdown approach was damage to the median nerve that would negatively affect Mr. Wood's ability to use his left arm and/or hand. Given that, viewing the facts most favorably to the Woods, Dr. Tzeng did not give Mr. Wood any information at all about the existence, nature, or consequence of the risk of damage to the median nerve from the axilla cutdown procedure, Mr. Wood was not required to adduce evidence comparing the risk that materialized in his case to the risks attendant to the other two access approaches.

On the second element of the informed consent claim, the Woods clearly presented legally sufficient evidence to satisfy the element of causation. The risk of nerve damage was of the type that a reasonable person would consider relevant to the decision whether to undergo the axilla cutdown procedure. In addition, expert opinion testimony by Dr. Ruben, combined with the factual testimony by Dr. Ducic, showed that the undisclosed risk of damage to the median nerve actually materialized.

The evidence at trial was such that reasonable jurors could find 1) that Dr. Tzeng failed to disclose to Mr. Wood that any nerve damage, including damage to the median nerve,

affecting the use of his left hand and arm, was a risk of the axilla cutdown procedure; 2) that such nerve damage in fact was a risk of the surgery; 3) that that risk was of the type that a reasonable person would consider important to the decision whether to undergo the axilla cutdown procedure; 4) that there was a causal connection between the lack of the disclosure and Mr. Wood's decision to consent to the procedure; and 5) that the procedure caused his injuries.

For these reasons, we perceive no error in the denial of Dr. Tzeng's motions for judgment or for JNOV. Even if there were merit in the arguments Dr. Tzeng advances in support of his first and second questions presented, the trial court did not err in allowing the informed consent claim to go to the jury; and the verdict in favor of the Woods was based not only on the traditional malpractice claim but also on the informed consent claim.

III.

Loss of Consortium Damages

Finally, Dr. Tzeng contends the "case is devoid of evidence to support [loss of consortium] damages." This is so because neither of the Woods testified to any damage to the marital relationship. As this Court explained in *MacCubbin v. Wallace*, 42 Md. App. 325, 327 (1979), "[l]oss of consortium, as used in Maryland, means the loss of society, affection, assistance and conjugal fellowship" and "'includes' the loss or impairment of sexual relations." (Citing *Deems v. Western Maryland Ry.*, 247 Md. 95, 100 (1967).)

At trial, both Mr. and Mrs. Wood testified that Mr. Wood's injury had resulted in his becoming dependent upon Mrs. Wood for basic tasks of daily living. For instance, Mrs. Wood needs to help Mr. Wood get dressed and undressed every day. Mrs. Wood testified that Mr. Wood had been a very independent man prior to the surgery and that he "has a hard time with accepting, you know, me helping him."

The Woods also presented testimony from Dr. April, who, as we noted above, is an expert in physical medicine and rehabilitation. On direct examination, Dr. April testified that he had conducted an assessment of Mr. Wood, which included a lengthy interview with the Woods concerning how Mr. Wood's physical limitations resulting from his nerve injury affected his daily life. Based on that interview, Dr. April testified that, prior to Mr. Wood's injury, the Woods had a "very healthy sex life" but that, since the injury, it is "rare that they have sex." He attributed this change to both the physical and psychological impacts of Mr. Wood's injury. He recommended marriage counseling to address some of these issues.

Dr. Tzeng complains, with no citation to any legal authority, that Dr. April's testimony was speculative. Dr. April testified that the Woods communicated this information to him during his assessment. The questions that elicited Dr. April's testimony were not objected to. We disagree that Dr. April's testimony was speculative. The evidence presented by the Woods was legally sufficient to make their loss of consortium claim a jury question.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.