Circuit Court for Baltimore City
Case No. 24-C-13-005395

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2215

September Term, 2019

MICHELLE SPENCER,

v.

STEPHEN KAVIC, M.D., *et al.*

Fader, C.J.,
Shaw Geter,
Zarnoch,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw Geter, J.

Filed: July 12, 2021

This appeal arises from a medical malpractice trial in the Circuit Court for Baltimore City that resulted in a defense verdict. Appellant, Michelle Spencer, filed a lawsuit against Dr. Steven Kavic, Dr. Mehmet Uluer, University of Maryland Surgical Associates, P.A., University of Maryland Surgical Associates, LLC, University of Maryland Midtown Health, Inc., Maryland General Hospital and University of Maryland Medical System Corporation. She alleged negligence by her surgeon, Dr. Kavic, after she experienced complications from a laparoscopic ventral hernia repair surgery. This timely appeal followed, and appellant presents four questions for our review:

1. Whether the Circuit Court abused its discretion, causing prejudice to Appellant, when it admitted evidence and testimony at trial concerning the informed consent process, including the known risks of a laparoscopic hernia repair procedure, in a medical negligence action where no independent informed consent claim was pled or pursued?

2. Whether the Circuit Court abused its discretion, causing prejudice to Appellant, when it precluded expert testimony regarding reasonable postoperative treatment alternatives?

3. Whether the Circuit Court abused its discretion, causing prejudice to Appellant, when it permitted fact witnesses to offer expert testimony and otherwise testify concerning matters where they lacked first-hand knowledge?

4. Whether the Circuit Court abused its discretion, causing prejudice to Appellant, when it permitted cross-examination of an expert witness using guidelines when there was no proper foundation and the guidelines were not recognized as reliable and authoritative?

We shall affirm.

BACKGROUND

On September 20, 2017, appellant, Michelle Spencer underwent an outpatient laparoscopic hernia repair surgery at the University of Maryland Medical Center Midtown

Campus. The procedure was performed by appellee, Dr. Stephen Kavic, an attending physician and Dr. Mehmet Uluer, a surgical resident, assisted. Following the surgery, which consisted of a 90-minute adhesiolysis, Ms. Spencer was discharged with instructions and, among other things, a prescription for pain medication. The instructions provided information about the prescription, dietary guidance, activity limitations, hygienic procedures, a warning statement concerning her incisions and information about her dissolvable stitches. The instructions also noted she would have a follow-up appointment in two to three weeks and, in the days following her procedure, if she had any questions, she was to call the doctor's office.

On the evening of September 20, 2017, appellant contacted Dr. Kavic's office, stating that she had been experiencing abdominal pain. She was advised to fill her prescription, which she had not yet done, and to begin taking it. Ms. Spencer subsequently sent her son to fill the prescription. On September 25, 2017, Ms. Spencer returned to the hospital, complaining of pain, despite the medication. She explained that she had been experiencing nausea, vomiting, abdominal pain, and constipation. She was transferred to the emergency department and it was determined that the pain Ms. Spencer was experiencing was due to a colon perforation. There was a small hole along the wall of her colon which caused intra-abdominal fluid collections consistent with an abscess.

An emergency surgical procedure was performed to repair the perforation by Dr. Kavic and Dr. Eric Wise, a surgical resident. The procedure involved removal of the mesh causing the infection and Ms. Spencer was admitted into the hospital for monitoring. A post-operative note written by Dr. Wise diagnosed the condition as a "missed colotomy."

During her hospitalization, Dr. Kavic performed several additional procedures for further repair. Ms. Spencer underwent additional operations on October 1, 2017, and October 3, 2017, including a right colectomy, not performed by Dr. Kavic.

In September 2018, Ms. Spencer filed a medical malpractice claim against Dr. Kavic, *et al.* in the Circuit Court for Baltimore City, averring: firstly, Dr. Kavic's purported "missed colotomy" was a breach in the standard of care for failure to inspect; secondly, Ms. Spencer's post-operative discharge instructions from her September 20, 2017 surgery fell below the standard of care; and thirdly, that Dr. Kavic failed to perform the appropriate surgery, again, breaching the standard of care and as a result, Dr. Kavic caused additional injury to Ms. Spencer. She did not raise an independent informed consent claim.

Prior to trial, appellant filed a Motion *in Limine* "to preclude argument, evidence, and testimony of informed consent and that [Ms. Spencer's] injury was a risk of the procedure[.]" Similarly, appellee filed a Motion *in Limine* to Exclude Evidence Regarding Any Claim of Lack of Informed Consent. A hearing on the motions was held and at the conclusion of argument, the judge declined to rule, and stated "if this comes up, we'll approach and we'll hash it out, but it sounds like the defense doesn't intend to go in that direction."

A joint exhibit that contained Ms. Spencer's medical records was admitted into evidence in appellant's case in chief. The records included Ms. Spencer's signed consent form, as well as a pre-operative note authored by Dr. Kavic which detailed an in-office discussion he and Ms. Spencer had prior to the September 20, 2017 surgery about her medical history, experience with hernia repair surgery, and what the expectations and

possible complications of the surgery were. During direct examination, Ms. Spencer explained that when she saw Dr. Kavic in September of 2017, "[i]t wasn't my first laparoscopic surgery that's for sure. Kind of knew what to expect out of a laparoscopic surgery." Ms. Spencer stated the conversation was "kind of a blur," but she remembered Dr. Kavic "was very cavalier in his attitude[.]"

When Dr. Kavic was asked about pre-operative discussions with Ms. Spencer, he explained he normally discusses complications of surgery with patients and that he did so with Ms. Spencer during an office discussion in 2013. When Dr. Kavic was asked "what risks did you discuss with her?" Ms. Spencer objected and argued that the testimony "backdoors an assumption of the risk defense." Her objection was overruled by the court and Dr. Kavic then explained that he discussed the risks and complications of surgery with her. Dr Kavic also testified that he discussed with Ms. Spencer in 2017 her options and what the complications might be.

The five-day trial also included testimony from several additional witnesses, including Ms. Spencer's sons, Patrick and Eric Sheibley, who both testified as to their mother's physical disposition after the initial surgery. Ms. Spencer's expert witness, Stephen Ferzoco, M.D., ("Dr. Ferzoco") opined that Dr. Kavic's discharge instructions breached the standard of care by not stating that if Ms. Spencer were to experience fever, inability to tolerate regular diet, excessive uncontrolled pain, no bowel movement, nausea or vomiting, she should seek immediate medical attention. Dr. Ferzoco was also asked about alternative post-operative treatment that would comply with the standard of care, however, following an objection, the court did not allow testimony in that regard.

Dr. Mehmet Uluer, M.D., who assisted Dr. Kavic with the September 20, 2017 surgery, testified, over appellant's objection, that Dr. Wise "probably misspoke" when he recorded in his operative note a diagnosis of "missed colotomy." He stated, "I think describing how the colotomy was occurred – had occurred involves knowing the timeline of things and taking that in perspective. Just taking a look at something doesn't quite give you enough information." At the conclusion of all testimony, jury instructions and arguments of counsel, the case was submitted to the jury for their consideration. The jury returned a defense verdict finding Stephen Kavic, M.D. did not breach the standard of care with respect to his treatment of Michelle Spencer.

STANDARD OF REVIEW

"We generally review the trial court's evidentiary determinations for abuse of discretion." *Wallace & Gale Asbestos Settlement Tr. v. Busch*, 238 Md. App. 695, 710–11 (2018), *aff'd*, 464 Md. 474 (2019) (citing *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 620 (2011)). However, "a trial judge does not have discretion to admit irrelevant evidence." *Id.* "While the 'clearly erroneous' standard of review is applicable to the trial judge's factual finding that an item of evidence does or does not have 'probative value,' the '*de novo'* standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not 'of consequence to the determination of the action.'" *Id*. Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.*; *See also* Md. Rule 5-401.

DISCUSSION

1. Informed consent

Appellant first argues that the trial court abused its discretion because it allowed testimony regarding prior discussions between Ms. Spencer and Dr. Kavic in 2013 and 2017 about the risks associated with surgery. Appellant argues the testimony constituted informed consent evidence and suggested to the jury that Ms. Spencer was aware of and assumed the risk of her injuries.

Appellee responds that appellant injected the issue of informed consent into the case, and as a result, Dr. Kavic's testimony was admissible. Appellee contends appellant "opened the door" to "Dr. Kavic's addressing conversations he had with [Ms. Spencer] prior to the September 20[,] [2017] surgery[.]"

During the direct examination of Ms. Spencer, the following exchange occurred:

[APPELLANT'S COUNSEL:]	Ms. Spencer, what, if anything, do you recall about any conversations with Dr. Kavic prior to this surgery on September 20, the—prior to the surgery on September —
[MS. SPENCER:]	Prior to —
[APPELLANT'S COUNSEL:]	— 20th —
[MS. SPENCER:]	Okay.
[APPELLANT'S COUNSEL:]	2017, what, if anything, do you recall about any conversation you may have had with Dr. Kavic about what to expect with the surgery?
[MS. SPENCER:]	So[,] when I—from what I remember, and it's kind of a blur,

but I do remember a little bit. Thinking about how—as he was speaking to me about the surgery, it seemed really commonplace to him, like, you know, it was no big deal. He was very cavalier in his attitude towards it, that it would be fine, even despite, you know, my prior surgeries. That it would be—it would be good.

During Dr. Kavic's direct examination, he was asked about his discussions with Ms. Spencer in 2013 regarding hernia repair:

[APPELLEE'S COUNSEL:]	Did you at that time when you offered that surgery have discussions with [Ms. Spencer] about things that could go wrong in the surgery?
[DR. KAVIC:]	Yes. Anytime I have a discussion with operation I discuss the risks, the benefits and the alternatives.
[APPELLEE'S COUNSEL:]	All right. And what risks did you discuss with [Ms. Spencer]?
[APPELLANT'S COUNSEL:]	Objection, Your Honor. May we approach?
THE COURT:	Yes.

(counsel approached the bench and the following ensured:)

THE COURT:	What's the basis of this objection?
[APPELLANT'S COUNSEL:]	So[,] we're not getting into that informed consent assumption of the risk and getting into what Ms. Spencer knew or did not know about the risks of the procedure. This was subject of a motion *in*

limine and it was Plaintiff's position that the general understanding it claims is if it's bowel perforation with no complication was fine. The experts can testify to that. But to what Ms. Spencer knew or to what Dr. Kavic told Ms. Spencer is highly prejudicial and in my opinion back-doors an assumption of the risk defense.

THE COURT: I disagree with you about back[dooring] the assumption of the risk defense. In fact, in opening statement you made it clear that it is your position that Dr. Kavic breached the standard of care by not informing Ms. Spencer of the risk associated with this surgery postoperatively. In other words, —

[APPELLANT'S COUNSEL:] That's different. There's two— that's different because there's the risk going into the procedure, electing to move forward. So[,] there's the risk of the procedure, the benefits of the procedure and the alternatives and those need to be explained in an informed consent process. The discharge is something totally different.

* * *

[APPELLANT'S COUNSEL:] Sure. And again, we're now talking about a procedure back in 2013 and the potential risks that were explained to Ms. Spencer prior to that procedure. This has no relevance whatsoever to the negligence at issue in this case in September of 2017. We're getting

into that whole informed consent topic.

THE COURT: I disagree. It's denied and we'll move forward. [. . . .]

Following the bench conference, Dr. Kavic was asked specific questions about the various risks he discussed and potential complications. He confirmed that he had such discussions with Ms. Spencer, both in 2013 and 2017.

Maryland's informed consent doctrine is well established:

> Simply stated[,] the doctrine of informed consent imposes on a physician, before he subjects his patient to medical treatment, the duty to explain the procedure to the patient and to warn him of any material risks or dangers inherent in or collateral to the therapy, so as to enable the patient to make an intelligent and informed choice about whether or not to undergo such treatment. This duty to disclose is said to require a physician to reveal to his patient the nature of the ailment, the nature of the proposed treatment, the probability of success of the contemplated therapy and its alternatives, and the risk of unfortunate consequences associated with such treatment.

Martinez ex rel. Fielding, 212 Md. App. 634, 680 (2013) (internal citations omitted).

In an informed consent action, the plaintiff must allege that the doctor failed to inform him or her of the risks associated with the doctor's medical care. *See Zeller v. Greater Baltimore Med. Ctr.*, 67 Md. App. 75, 81–82 (1986). The rendering of medical services absent informed consent, *if pled properly*, constitutes a separate and new count of negligence." *Id*. (emphasis added). "Breach of informed consent and medical malpractice claims both sound in negligence, but are separate, disparate theories of liability." *McQuitty v. Spangler*, 410 Md. 1, 18 (2009).

Here, there was no lack of informed consent claim, however, evidence potentially relevant to an informed consent action was admitted by appellant. In such instances, this

court must examine the context within which the evidence was admitted. We observe that first, a "Consent to Surgery/Diagnostic Procedures or Treatment" form, signed and dated by Ms. Spencer and Dr. Kavic on September 20, 2017, was a document within the joint exhibit admitted by appellant, in her case in chief. The form attests that "the benefits of the procedure and the risks of unfortunate consequences involved in the procedure" were explained to Ms. Spencer by Dr. Kavic. The exhibit also included appellant's informed consent form, which was not referred to by either party, but was in evidence. Second, during Ms. Spencer's direct examination, she explained that she could not recall details of a conversation with Dr. Kavic about "what to expect with the surgery." She testified that she remembered, ". . . it seemed really commonplace to him, like, you know, it was no big deal. He was very cavalier in his attitude towards it, that it would be fine, even despite, you know, my prior surgeries. . . ." When appellee, during his testimony attempted to explain that he had, in fact, provided her with detailed information, appellant objected and following a bench conference, the court allowed the testimony.

To be sure, the "opening the door" doctrine "expands the rule of relevancy." *State v. Heath*, 464 Md. 445, 459 (2019). It "authorizes admitting evidence which otherwise would have been irrelevant in order to respond to (1) admissible evidence which generates an issue, or (2) inadmissible evidence admitted by the court over objection." *Heath*, 464 Md. at 459. "'[O]pening the door' is simply a way of saying: 'My opponent has injected an issue into the case, and I ought to be able to introduce evidence on that issue.'" *Id*. (citing *Clark v. State*, 332 Md. 77, 84-85 (1993)).

The doctrine, however, is not without limitations. *See Heath*, 464 Md. at 456–57. The doctrine is not permitted to "[inject] collateral issues into a case or [introduce] extrinsic evidence on collateral issues." *Heath*, 464 Md. at 459; *See also Hardison v. State*, 118 Md. App. 225, 239 (1997) (finding collateral issues are issues "immaterial" to the case). The doctrine is also limited by Maryland Rule 5-403, which excludes evidence if its probative value "is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. Finally, such evidence faces a proportionality test to determine if the responsive evidence is proportionate to the statements or evidence which initially "opened the door." *See Heath*, 464 Md. at 461.

In *Little v. Schneider*, 434 Md. 150 (2013), a medical malpractice action brought against a physician, the trial judge ruled that the defense attorney went too far in praising the doctor's credentials and that he "placed at issue the question of [the doctor's] excellence in the field of vascular surgery and 'opened the door' to rebuttal inquiry on re-direct examination." *Id.* at 163. Opposing counsel was then allowed to question the doctor's lack of board certification. *See id*. at 163-65. The Court of Appeals, in holding that the trial judge did not abuse his discretion, stated that "in this instance, [plaintiff] used the lack of board certification *only to the extent necessary to counter the potentially unfair prejudice created by defense counsel* had the overblown accreditation of [the doctor] gone

unaddressed." *Id*. at 165. The Court also noted the brevity of the rebuttal evidence allowed was appropriate.[1] *See id.* at 166.

As we see it, here, the court did not abuse its discretion. The joint exhibit was admitted into evidence without objection from either party, there was no request that it be admitted for limited purposes and it included Ms. Spencer's medical records. During Ms. Spencer's direct testimony, she described conversations she had with Dr. Kavic about what to expect. As a result, she "opened the door" to questions being posed to appellee regarding what he recalled about those discussions. In our view, the court did not abuse its discretion in allowing him to refute appellant's assertions that he was "cavalier" and to provide detail about his discussions with her regarding the risks associated with surgery. The testimony was limited in scope, it was probative and was not unfairly prejudicial.

2. Preclusion of Expert Testimony

Appellant, next, contends the trial court abused its discretion by precluding Dr. Ferzoco's testimony regarding an available alternative postoperative treatment. Dr Ferzoco's testimony centered around the insufficiency of the discharge instructions as a breach in the standard of care. Appellant sought to have Dr. Ferzoco testify that Dr. Kavic had an option to admit Ms. Spencer to the hospital for 23-hour observation after the surgery, but he chose not to. Appellant contends such testimony was "relevant to duty,

[1] The Court also mentions "[plaintiff's counsel] returned to [the doctor's] lack of board certification in closing argument. This time, he used it to call into question [the doctor's] general credibility, implying that he had lied to the jury," and that if defense counsel would have objected, and the trial court sustained, the Court of Appeals may have agreed that counsel had gone too far. *Little*, 434 Md. 150, 166 (2013).

particularly with regard to the foreseeability of postoperative surgical complications and the requisite and responsive standard of care . . . .” According to appellant, Dr. Ferzoco was opining on the foreseeability of the injuries and should not have been precluded from doing so. During direct examination, appellant asked:

> Okay. So given the 90-minute lysis of adhesions and the increased risk of bowel injury associated with that, if Dr. Kavic had decided not to provide Ms. Spencer with the appropriate discharge instructions that we just sort of have gone through, *what other options did he have at his disposal*?

Appellee contends the testimony was not relevant because the option to admit Ms. Spencer for 23-hour observation is not “required by the standard of care.” Moreover, appellee contends, “the testimony by Dr. Ferzoco about the ‘other option’ did not make it more or less probable that Dr. Kavic breached the standard of care in any aspect.” Further, Dr. Ferzoco testified at his deposition that the standard of care did not require admission to the hospital.

At the bench conference on this issue, the judge stated that he was “concerned that the jury will misuse this information to suggest that Dr. Kavic erred by not admitting . . . I think we are suggesting potentially to the jury that there was another error that wasn’t an error . . . and [appellant is] introducing evidence that is not relevant to the claimed allegations of negligence . . . .” The judge precluded the testimony, stating “it’s prejudicial value quite frankly outweighs its probative value . . . .”

We agree. The testimony about an alternative post-operative procedure was not relevant to the issue of whether Dr. Kavic breached the standard of care during the surgery or in the discharge instructions provided to appellant. Assuming *arguendo*, the testimony

was relevant, Md. Rule 5-403 provides that relevant evidence is inadmissible if it is misleading, confusing or unfairly prejudicial. Thus, even if, Dr. Kavic should have had a heightened appreciation for the risk, his failure to admit Ms. Spencer was not related to appellant's claim, which did not include a breach of the standard of care relating to a post-operative procedure. Such testimony would have been confusing and misleading, and, as the judge stated, "it's prejudicial value quite frankly outweighs its probative value . . . ." The court did not abuse its discretion.

3. Admission of Fact Witness Testimony

Appellant's third contention is that the trial court abused its discretion in allowing Dr. Kavic, and Dr. Uluer, both fact witnesses, to offer expert testimony. Appellant asserts their testimony was improper and prejudicial, it was not "rationally based on first-hand knowledge," and was "within the province of expert testimony."

At trial, Dr. Uluer, who assisted Dr. Kavic in the September 17 surgery, was asked about a postoperative note authored by Dr. Wise, following Ms. Spencer's second surgery:

[APPELLEE'S COUNSEL:]	Do you agree with him that you and Dr. Kavic missed a colotomy?
[DR. ULUER:]	I don't. I think my colleague, Dr. Weiss [sic], probably misspoke when he wrote that and should have just noted that there was a colotomy that was seen and trying to diagnose how and when it was there, was something that needed more thought.

Dr. Kavic, in his direct examination testified as follows:

[APPELLEE'S COUNSEL:]	Do you have an opinion to a reasonable degree of medical probability as to what change occurred that presents the difference in the two photographs?
[DR. KAVIC:]	[Ms. Spencer] had inflammation and contamination leading to these changes.

Appellant argues "Dr. Uluer was not physically present with Dr. Wise during [a]ppellant's September 25, 2017 emergency repair surgery, and thus should not have been permitted to testify as to whether Dr. Wise correctly identified and documented a 'missed colotomy' in his postoperative note[.]" Rule 5-701 provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

In *Little*, the Court of Appeals held that there was no abuse of discretion by the trial court in precluding the testimony of a physician fact witness who attempted to discuss medical documents he had no personal knowledge of. 434 Md at 170. The doctor tried to testify about CT scans he did not use in his treatment of the patient. *Id*. at 167. The Court in noting that the doctor was a fact witness, stated "It is well established that fact witnesses must have personal knowledge of the matters to which they testify." *Id.* at 169.[2] The Court concluded the trial court did not abuse its discretion in precluding the testimony. *Id*. at 170.

[2] Citing *Walker v. State*, 373 Md. 360, 388 n. 8 (2003) ("[T]he threshold standards for calling any fact witness are merely that the witness have personal knowledge of the matter attested to and that the matter be relevant to the case at hand.").

Here, the testimonies of Dr. Uluer and Dr. Kavic were based on their first-hand knowledge. They performed the surgery and thus were able to testify about what they observed, how they conducted the surgery and whether they believed that they missed the colotomy. As a result, the trial court did not abuse its discretion in allowing their testimony.

4. Cross-examination of Expert Witness

Appellant's final contention is that the court abused its discretion in allowing the cross-examination of Dr. Ferzoco concerning the Guidelines for Laparoscopic Ventral Hernia Repair, a publication by The Society of American Gastrointestinal Endoscopic Surgeons. In appellant's view, the proper foundation was not laid as Dr. Ferzoco did not expressly recognize the guidelines "as reliable and authoritative." Appellant relies on *Fleming v. Prince George's County*, 277 Md. 655 (1976) for support. Appellee contends "*Fleming* merely stands for the proposition that it is within the sound discretion of the trial judge whether to permit cross-examination of a witness with medical literature." Appellee argues appellant "waived her ability to challenge cross-examination of her expert with the SAGES Guidelines because she did not object to the substantive questioning and did not obtain a continuing objection following her initial objection."

The Court of Appeals, in *Fleming v. Prince George's County*, stated:

> Virtually all courts do, to some extent, permit the use of learned materials in the cross-examination of an expert witness. Most courts would permit this use where the expert has relied upon the specific material in forming the opinion to which he testified on direct; some of these courts would extend the rule to situations in which the witness admits to having relied upon some general authorities although not that particular material sought to be used to impeach him. Other courts would require only that the witness himself acknowledge that the material sought to be used to impeach him is a recognized authority in his field; if he does so, the material may be used

> although the witness himself may not have relied upon it. Finally, some courts would permit this use without regard to the witness' having relied upon or acknowledged the authority of the source if the cross-examiner establishes the general authority of the material by any proof or by judicial notice. . . .

277 Md. 655, 682–83(1976) (citation and quotation marks omitted). The Court added: "[w]here a physician did not base his opinion on medical works, cross-examination as to whether he agreed with a medical author was improper unless he had first testified that he had read such author and regarded him as sufficiently authoritative." *Id*. at 683. (citation and internal quotation marks omitted). In *Fleming*, a physician, on cross-examination, refused to acknowledge a Physician's Desk Reference as authoritative. *Id.* at 681. The Court found no abuse of the trial judges "broad discretion . . . in ruling on the admissibility of evidence when he refuses . . . to permit cross-examination of a physician by using treatises which the physician refuses to acknowledge as authoritative in the field." *Id.* at 683.

In *Pepper v. Johns Hopkins Hosp.*, 111 Md. App. 49, 78-80 (1996), a medical malpractice case, appellants argued that the trial judge erred by allowing Dr. Clark to render opinions on life expectancy based on findings in the Baltimore-Washington Infant Study which Dr. Clark opined "I think that it is reliable, but I certainly wouldn't consider it authoritative." This Court held that the trial court did not err in allowing the opinion of expert witness.

During the cross-examination of Dr. Ferzoco, appellee attempted to ask him questions about the SAGES guidelines:

[APPELLEE'S COUNSEL:]	So you—is—are the guidelines for laparoscopic ventral hernia repair that were put together by the Society of American Gastrointestinal and Endoscopic Surgeons, are those a respected authoritative—
[APPELLANT'S COUNSEL:]	Objection, Your Honor.
THE COURT:	Overruled.
[APPELLEE'S COUNSEL:]	Are those respected—is that—are those guidelines respected?
[DR. FERZOCO:]	They're respected.
[APPELLEE'S COUNSEL:]	And are you familiar with them?
[DR. FERZOCO:]	Yes, I read them.

* * *

Following a discussion at the bench, at which appellant argued that a proper foundation had not been made, the court ruled that appellee would be allowed to ask additional questions regarding whether the guidelines were authoritative. Appellee then asked:

[APPELLEE'S COUNSEL:]	So, Doctor, the guidelines, the SAGES' guidelines, those are recognized and authoritative in the field; correct?
[DR. FERZOCO:]	I wouldn't say they're authoritative. They're guidelines.
[APPELLEE'S COUNSEL:]	And so, they're something that are used regularly and consulted by people who do the type of surgery you do; correct?

[DR. FERZOCO:]	Sure. Looked at as guidelines and some ways or techniques in which to do a procedure.
[APPELLEE'S COUNSEL:]	And they don't—they don't establish standard of care, but they're guidelines for surgeons and they're generally accepted in the field; correct?
[DR. FERZOCO:]	Certainly they are guidelines with respective technique and they certainly don't dictate what standard of care should be.
[APPELLEE'S COUNSEL:]	Right.
[APPELLEE'S COUNSEL:]	May I show the doctor the guidelines, Your Honor?
THE COURT:	You may.
[APPELLANT'S COUNSEL:]	I object.
THE COURT:	Overruled.
DR. FERZOCO:	Thank you.
[APPELLEE'S COUNSEL:]	If you could, I'm sure you're aware of these. If we look at, I believe it's guideline —
THE COURT:	Okay. So this is marked as Defense Exhibit 4?
[APPELLEE'S COUNSEL:]	I'm just using it for cross examination.
THE COURT:	Well, I understand, but it still has to be marked.
[APPELLEE'S COUNSEL:]	For identification, yes, sir.

THE COURT:	For ID purposes. And you called this by an acronym. What would that be?
[APPELLEE'S COUNSEL:]	Yeah. It is the SAGES.
THE COURT:	How do you spell that?
[APPELLEE'S COUNSEL:]	S-A-G-E-S.
THE COURT:	Guidelines.
APPELLEE'S COUNSEL:]	It's all capital. Guidelines For Laparoscopic Ventral Hernia Repair.
THE COURT:	Thank you.
[APPELLEE'S COUNSEL:]	All right. So let's look at guideline 15, which I think you already—are you open to that page yet?
[DR. FERZOCO:]	Nope. I'm there.
[APPELLEE'S COUNSEL:]	Okay. So the guidelines from the SAGES' group say that the surgeon should inspect the bowel after adhesions are taken down as the adhesiolysis progresses. So what's adhesiolysis?
[DR. FERZOCO:]	Cutting of adhesions.
[APPELLEE'S COUNSEL:]	Okay. So the first part of this says, 'The surgeon should inspect the bowel after adhesions are taken down as the adhesiolysis progresses'; correct?
[DR. FERZOCO:]	Yes.
[APPELLEE'S COUNSEL:]	Then it says, 'And/or at the conclusion of the entire

	adhesiolysis to rule out any inadvertent enterotomies'; correct?
[DR. FERZOCO:]	That's what it says, yes.
[APPELLEE'S COUNSEL:]	And so, the guidelines say you can—it's acceptable to look while you're going, to just do it at the end or look while you're going and do it at the end; correct?
[DR. FERZOCO:]	Well, again, from a guidelines standpoint it does state that.

On this record, we note appellant lodged an objection after appellee requested to show the doctor the guidelines. However, appellee, thereafter, lodged no further objections to the questions posed to Dr. Ferzoco, nor did she request a continuing objection. As a result, she waived any objection to the testimony. *See* Md. Rule 2-517.

Assuming *arguendo* that the issue was properly preserved, we hold the court did not abuse its discretion in allowing the questions and testimony. In our view, the trial judge was uniquely positioned to determine whether the testimony was admissible for cross-examination purposes. *See Wrobleski v. de Lara*, 353 Md. 509, 525 (1999) ("As we have indicated, two basic principles are fixed as part of Maryland law and the law generally: the scope of cross-examination of expert witnesses is largely within the control and discretion of the trial judge . . . [.]"). Further, the Guidelines were used by appellee as examples of what is considered reasonable and Dr. Ferzoco acknowledged that he was familiar with them, they were respected and used regularly by surgeons. He stated, they were "looked at as guidelines and some ways or techniques in which to do a procedure."

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.