

**THE MONTH IN PENNSYLVANIA WORKERS' COMPENSATION:  
JANUARY 2016 AT A GLANCE  
BY MITCHELL I GOLDING, ESQ.  
KENNEDY, CAMPBELL, LIPSKI & DOCHNEY  
(W) 215-861-6709**

**SUBROGATION**

- Section 508 of the Medicare Care Availability and Reduction of Error (MCARE) Act does not preclude an employer's right to subrogation against future awards of future expenses and wage loss in medical malpractice actions after trial where the claimant received a recovery as the result of medical malpractice.

Section 508 MCARE only precludes the right to subrogation of the medical malpractice proceeds with regard to payments for past medical expenses and past lost earnings paid up to the time of trial in which Claimant sought benefits for the malpractice.

Therefore the employer was entitled to subrogate against the Claimant's third party medical malpractice recovery with respect to the award for her future medical expenses and wage loss.

The employer was entitled to the subrogation right on the bases of the praecipe dated November 2012 to settle and discontinue the consolidated medical malpractice actions, and the settlement and distribution sheet prepared by Claimant's counsel in the malpractice action, showing that all monies awarded were with regard to future medical expenses and lost wages, with none of the funds being set aside for the payment of past medical bills or past lost wages.

*Protz v. WCAB (Derry Area School District), No. 402 C.D. 2015 (Decision by Judge Pellegrini, January 6, 2016) 1/16*