



## And The Defense Wins

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### Gary Lovell and Lee Weatherly



DRI members [Gary Lovell](#) and [Lee Weatherly](#), partners with **Carlock, Copeland & Stair** in Charleston, South Carolina, teamed with a colleague recently to obtain a verdict for a physician, a nationally renowned specialist in the field of robotic surgery. The physician was named in a multi-party lawsuit over complications following a robotic prostatectomy in 2007. He was serving as the surgical proctor for the two primary surgeons, who were completing their eighth robotically assisted prostatectomy. Undetected by the primary surgeons, a portion of the patient's prostate gland remained inside the patient's body after the surgery. The primary surgeon subsequently chose to irradiate the patient, which resulted in radiation-induced urinary strictures and resultant bladder diversion.

The physician contended that, as a proctor, he did not have a physician/patient relationship in his role. Defense counsel presented evidence that the client never met the patient prior to surgery, was not given hospital privileges to participate in the surgery or a temporary medical license in South Carolina. The physician also contended that the error in leaving prostate tissue behind was one that could not be detected visually by anyone observing the surgery outside the controls of the robot. The plaintiff sought \$4,500,000 in damages at trial. All other defendants settled or were dismissed prior to trial.

After a one-week trial, the Florence County, South Carolina, jury exonerated the physician by a special verdict form, finding that no physician/patient relationship existed between the proctor and the patient. This defense victory will help ensure that proctors and other teachers in the medical field can continue to come to South Carolina and share specialty knowledge and new medical technology and techniques without fear of implication in the alleged malpractice of other providers.

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