

01-1327-CD
STANLEY G. KAIZER et ux -vs- ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

STANLEY G. KAIZER and
SANDRA L. KAIZER, husband and wife,
842 Treasure Lake, DuBois, PA 15801,
Plaintiffs

vs.

ROBERT CHERRY,
145 Hospital Avenue, DuBois, PA 15801,
Defendant

No. 01-1327-CD

Type of Pleading: Praecept for Writ
of Summons

Filed on behalf of: Stanley G. Kaizer
and Sandra L. Kaizer

Counsel of Record for this party:

SAMUEL COHEN, ESQUIRE
Attorney at Law
Supreme Court No. 27544

Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103
(215) 636-0400

1
FILED

AUG 16 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

STANLEY G. KAIZER and :
SANDRA L. KAIZER, husband and wife, :
842 Treasure Lake, DuBois, PA 15801, :
Plaintiffs :
:
vs. : No.
:
ROBERT CHERRY, :
145 Hospital Avenue, DuBois, PA 15801, :
Defendant :
:

PRAECIPE FOR WRIT OF SUMMONS

TO: Prothonotary

Please prepare and issue a Writ of Summons against Robert Cherry, the above named Defendant. A jury trial is demanded.



Samuel Cohen, Esquire
Attorney for Plaintiffs
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103
(215) 636-0400

Date: August 16, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

STANLEY G. KAIZER and :
SANDRA L. KAIZER, husband and wife, :
842 Treasure Lake, DuBois, PA 15801, :
Plaintiffs :
vs. : No. 01-1327-CD
ROBERT CHERRY, :
145 Hospital Avenue, DuBois, PA 15801, :
Defendant :
Type of Pleading: Writ of Summons
Filed on behalf of: Stanley G. Kaizer
and Sandra L. Kaizer
Counsel of Record for this party:
SAMUEL COHEN, ESQUIRE
Attorney at Law
Supreme Court No. 27544
Katz, Cohen & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103
(215) 636-0400

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

STANLEY G. KAIZER and :
SANDRA L. KAIZER, husband and wife, :
842 Treasure Lake, DuBois, PA 15801, :
Plaintiffs :
:
vs. : No.
:
ROBERT CHERRY, : JURY TRIAL DEMANDED
145 Hospital Avenue, DuBois, PA 15801, :
Defendant :
:

WRIT OF SUMMONS

TO: ROBERT CHERRY
145 Hospital Avenue
DuBois, PA 15801

You are hereby notified that Plaintiffs, Stanley G. Kaiser and Sandra L. Kaiser, have
commenced an action against you.

Date: _____

Prothonotary

Seal of Court:

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11390

KAIZER, STANLEY G. & SANDRA L.

01-1327-CD

VS.

CHERRY, ROBERT

WRIT OF SUMMONS

SHERIFF RETURNS

NOW AUGUST 20, 2001 AT 10:32 AM DST SERVED THE WITHIN WRIT OF SUMMONS
ON ROBERT CHERRY, DEFENDANT AT EMPLOYMENT, 145 HOSPITAL AVE.,
DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MICHELLE
SMITH, PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF SUMMONS
AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: SNYDER

Return Costs

| Cost | Description |
|-------|------------------------------|
| 30.69 | SHFF. HAWKINS PAID BY: ATTY. |
| 10.00 | SURCHARGE PAID BY: ATTY. |

Sworn to Before Me This

23rd Day Of August 2001

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

FILED
01/10/436H
AUG 23 2001
X William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,) Type of Pleading: PRAECIPE FOR ENTRY
OF APPEARANCE
Defendant,) Filed on behalf of Defendant
Robert Cherry
Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926
Counsel of Record for
Adverse Party:
SAMUEL COHEN, III

Dated: 8/31/01

FILED
SEP 04 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAZIER and)
SANDRA L. KAZIER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

PRAECLPPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, ROBERT CHERRY, in the above matter.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: JW
JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 8/31/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAZIER and)
SANDRA L. KAZIER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praeclipe for Appearance on behalf of Defendant, Robert Cherry,, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 31st day of August, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Dated: 8/31/01

FILED

SEP 04 2001

William A. Shaw
Preliminary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

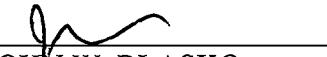
STANLEY G. KAZIER and)
SANDRA L. KAZIER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

PRAECIPE FOR RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Please issue a Rule on Plaintiffs to file their Complaint within twenty (20) days from service thereof or suffer a judgment of non pros against them.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant,
ROBERT CHERRY
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 8/31/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CAVIL DIVISION

ROBERT CHERRY
Defending Party
22.
JURY TRIAL DEMANDED
NO. 01-1353 CD
Plaintiffs
SWEDEAF KAISER, managing partner
SWEDAF KAISER & KASIER, managing partner
STVETEY & KAISER and
Wife

CERTIFICATE OF SERVICE

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAZIER and)
SANDRA L. KAZIER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

RULE

TO: STANLEY G. KAZIER and SANDRA L. KAZIER, Plaintiff
c/o Samuel Cohen, Esquire
Katz, Cohen, & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter
within twenty (20) days from service hereof, or a judgment of non pros may be entered against
you.

PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Dated: 4/6/01

FILED

SEP 07 2001

311:18Inde

William A. Shaw

Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Cherry's Interrogatories and Request for Production (Set One), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11th day of September, 2001, to Samuel Cohen, Esquire, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY

FILED

SEP 12 2001

mjl:mdncc

William A. Shaw

Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Cherry's Request for Production (Set Two), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11th day of September, 2001, to Samuel Cohen, Esquire, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY

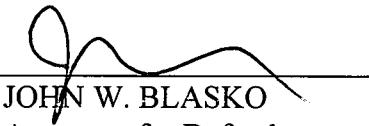
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Cherry's Expert Interrogatories, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11th day of September, 2001, to Samuel Cohen, Esquire, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY

THIS IS NOT AN ARBITRATION MATTER.
JURY TRIAL DEMANDED
AN ASSESSMENT OF DAMAGES HEARING
WILL BE NECESSARY.
RULE 238 DELAY DAMAGES REQUIRED

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

| | | |
|-------------------------------------|---|-----------------------|
| STANLEY G. KAIZER and | : | COURT OF COMMON PLEAS |
| SANDRA L. KAIZER, h/w | : | CLEARFIELD COUNTY |
| 842 Treasure Lake, DuBois, PA 15801 | : | |
| vs. | : | |
| ROBERT CHERRY, 145 Hospital Avenue | : | NO.: 01-1327-CD |
| DuBois, PA 15801 | : | |

CIVIL ACTION COMPLAINT

COME NOW, Plaintiffs Stanley G. Kaizer and Sandra L. Kaizer, h/w, by their Counsel, Katz, Cohen & Price, P.C., and desiring to recover compensation for the injuries, losses and damages sustained by them as the result of the conduct of Defendant aver in support thereof the following:

1. Plaintiffs Stanley G. Kaizer and Sandra L. Kaizer, are adult individuals who are husband and wife and who are citizens and residents of the Commonwealth of Pennsylvania residing therein at 842 Treasure Lake, DuBois, Clearfield County.

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SEP 14 2001

**William A. Shaw
Prothonotary**

2. Defendant Robert Cherry is an adult individual who is citizen and resident of the Commonwealth of Pennsylvania having a place of business at 145 Hospital Avenue, DuBois, Clearfield County.

3. At all times material hereto, Defendant acted individually, and by and through authorized agent, servants, workman and/or employee each of whom was acting within the course and scope of his/her agency and/or employment with said Defendant.

4. At all times material hereto, Defendant was a physician licensed to practice medicine in the Commonwealth of Pennsylvania and held himself out to the public at large and, particularly to Plaintiffs herein, as a skilled and competent physician and surgeon specializing in the field of urology and urologic surgery.

5. Prior to September 7, 1999 Defendant, for a compensation which Plaintiffs agreed to pay, agreed to perform surgery upon Plaintiff Stanley G. Kaizer, hereinafter referred to as "the patient".

6. On or about September 7, 1999, "the patient" was admitted to DuBois Regional Medical Center for the purpose of Defendant performing a transurethral prostatectomy.

7. At the time of the surgery, "the patient" was fifty-one (51) years of age.

COUNT I
PLAINTIFF STANLEY G. KAIZER vs. DEFENDANT

8. Plaintiff Stanley G. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 7, inclusive, as fully as if the same were set forth at length.

9. Prior to the surgery, "the patient" was never informed of the possibility that the surgery could result in his suffering from retrograde ejaculation.

10. Retrograde ejaculation is a known risk of transurethral prostatectomy.

11. Retrograde ejaculation is a known complication of transurethral prostatectomy.

12. Defendant, as well as his agents, servants and employees, did not explain the material risks and alternatives associated with the transurethral prostatectomy including, but not limited to, the seriousness of the procedure, its risks and complications including, but not limited to, retrograde ejaculation, and alternative treatments.

13. The transurethral prostatectomy involved undisclosed risk and harm which occurred therefrom which a reasonable patient would have considered in determining whether to undergo or reject the procedure, the manner in which the procedure was done, the type of procedure, and the after care.

14. Defendant's conduct constitutes battery.

15. By failing to inform "the patient" of the possibility of retrograde ejaculation, Defendant failed to provide "the patient" with a full and complete informed consent setting forth all of the known risk and complications of the surgical procedure which a reasonable person would consider material to his decision whether or not to undergo the surgical procedure.

16. Defendant committed a battery upon the person of "the patient" by failing to provide "the patient" with a full, complete informed consent setting forth all of the risks and complications that a person in the position of "the patient" would wish to know prior to agreeing to undergo such a surgical procedure.

17. As a result of the conduct of Defendant, Plaintiff has suffered various injuries including, but not limited to, retrograde ejaculation, inability to have an orgasm, together with severe shock to his nerves and nervous system, an aggravation and activation of pre-existing dormant conditions and he was otherwise injured, some or all of which injuries are or maybe serious and permanent in nature.

18. As a further result of the aforementioned conduct of Defendant, Plaintiff Stanley G. Kaizer, has been obliged and will in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her injuries to her financial damage and loss.

19. As a further result of the conduct of Defendant, Plaintiff has sustained great physical pain, mental suffering and humiliation and will continue to endure said pain, suffering mental anguish and humiliation for an indefinite time in the future.

20. As a further result of the conduct of Defendant, Plaintiff has suffered a loss of the enjoyment of his usual duties, life's pleasures and activities, all to his great detriment and loss and will continue to do so for an indefinite time in the future.

21. As a further result of the conduct of Defendant, Plaintiff has been unable to follow his usual occupation and will be unable to follow same for an indefinite time in the future, has lost the emoluments which would have come to him through his employment and has suffered an impairment of his earning capacity and power, all of which losses are or may be serious and permanent in nature.

22. As a further result of the aforesaid occurrence, Plaintiff has or may hereinafter incur various other damages and incur other expenses or losses and may continue to incur same for an indefinite time in the future.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant for a sum in excess of Twenty Thousand Dollars (\$20,000.00).

COUNT II - NEGLIGENCE
PLAINTIFF STANLEY G. KAIZER vs. DEFENDANT

23. Plaintiff Stanley G. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 22, inclusive, as fully as if the same were set forth at length.

24. "The patient's" injuries, losses and damages were also caused as the result of the negligence and carelessness of Defendant in some or all of the following respects:

- a. In failing to provide a full and complete informed consent;
- b. In failing to inform "the patient" of the possibility of retrograde ejaculation as a risk of the surgical procedure;
- c. In failing to inform "the patient" of the possibility that "the patient" would not be able to achieve an orgasm following the surgical procedure;
- d. In providing an incomplete informed consent;
- e. In providing an inadequate informed consent;

f. In failing to inform "the patient" of alternative treatment to the surgical procedure;

g. In failing to fully and completely attempt to use drug therapy to treat "the patient's" medical difficulties;

h. In failing to attempt to use nonsurgical means to treat "the patient's" condition;

i. In failing to attempt drug treatment for a sufficient length of time to give it an opportunity to be effective;

j. In failing to attempt to use available known effective drug therapies to treat "the patient's" condition.

25. As a result of the conduct of Defendant, Plaintiff has suffered various injuries including, but not limited to, retrograde ejaculation, inability to have an orgasm, together with severe shock to his nerves and nervous system, an aggravation and activation of pre-existing dormant conditions and he was otherwise injured, some or all of which injuries are or maybe serious and permanent in nature.

26. As a further result of the aforementioned conduct of Defendant, Plaintiff Stanley G. Kaizer, has been obliged and will in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her injuries to her financial damage and loss.

27. As a further result of the conduct of Defendant, Plaintiff has sustained great physical pain, mental suffering and humiliation and will continue to endure said pain, suffering mental anguish and humiliation for an indefinite time in the future.

28. As a further result of the conduct of Defendant, Plaintiff has suffered a loss of the enjoyment of his usual duties, life's pleasures and activities, all to his great detriment and loss and will continue to do so for an indefinite time in the future.

29. As a further result of the conduct of Defendant, Plaintiff has been unable to follow his usual occupation and will be unable to follow same for an indefinite time in the future, has lost the emoluments which would have come to him through his employment and has suffered an impairment of his earning capacity and power, all of which losses are or may be serious and permanent in nature.

30. As a further result of the aforesaid occurrence, Plaintiff has or may hereinafter incur various other damages and incur other expenses or losses and may continue to incur same for an indefinite time in the future.

WHEREFORE, Plaintiff prays this Honorable Court enter judgment in their favor and against Defendants for a sum in excess of twenty thousand dollars (\$20,000.00).

COUNT III - LOSS OF CONSORTIUM
PLAINTIFF SANDRA L. KAIZER VS. DEFENDANT

31. Plaintiff Sandra L. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 30, inclusive, as fully as if the same were set forth at length.

32. As a result of the conduct of Defendant, Plaintiff Sandra L. Kaizer, has been deprived of the aid, society care and consortium of her husband, Stanley G. Kaizer, much to her great detriment and loss.

33. As a further result of the conduct of Defendant, Plaintiff Sandra L. Kaizer, has or may hereinafter incur various other expenses or losses for her husband and may continue to incur same for an indefinite time in the future.

WHEREFORE, Plaintiff prays this Honorable Court enter judgement in their favor and against Defendants for a sum in excess of twenty thousand dollars (\$20,000.00).

KATZ, COHEN & PRICE, P.C.



SAMUEL COHEN

Dated: 9/12/81

VERIFICATION

I, Stanley Kaizer, verify that I am a Plaintiff in this matter and that the averments of fact set forth in the foregoing Civil Action Complaint are true and correct to the best of my personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



STANLEY KAIZER

Dated: 9-7-01

CERTIFICATION OF SERVICE

I, Samuel Cohen, certify that a true and correct copy of the within Civil Action Complaint was forwarded via regular mail through the United States Postal Service on September 12, 2001 to:

CERTIFIED MAIL

John W. Blasko, Esquire
McQuaide, Blasko, Schwartz
Fleming & Faulkner
811 University Drive
State College, PA 16801

KATZ, COHEN & PRICE, P.C.



By: SAMUEL COHEN

Dated: 9/12/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant,) Type of Pleading:
) PRELIMINARY OBJECTIONS TO
) PLAINTIFFS' COMPLAINT
) Filed on behalf of Defendant
) Robert Cherry
)
) Counsel of Record for this
) Party: JOHN W. BLASKO
) Court I.D. No. 06787
)
) RICHARD K. LAWS
) Court I.D. No. 82369
)
) McQUAIDE, BLASKO, SCHWARTZ,
) FLEMING & FAULKNER, INC.
)
) 811 University Drive
) State College, PA 16801
) (814) 238-4926
)
) Counsel of Record for
) Adverse Party:
) SAMUEL COHEN, III

Dated: 9/84/01

FILED

SEP 25 2001
m/145/no cc
William A. Shaw
Prothonotary
GJ

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

**DEFENDANT CHERRY'S PRELIMINARY OBJECTIONS
TO PLAINTIFFS' COMPLAINT**

AND NOW comes the Defendant, ROBERT CHERRY, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Preliminary Objections to Plaintiffs' Complaint, as follows:

1. The instant medical malpractice action was commenced on August 16, 2001 by the filing of a Writ of Summons by Plaintiffs, Stanley and Sandra Kaizer, in the Court of Common Pleas of Clearfield County. Following the service of an Executed Rule, Plaintiffs filed their Complaint on September 12, 2001.

2. Generally, the Complaint co-mingles allegations of negligence and informed consent as to Dr. Cherry with respect to care rendered to Plaintiff-husband on or around September 7, 1999.

3. Defendant, Dr. Cherry, files Preliminary Objections to Plaintiffs' Complaint on the following grounds: (1) Demurrer / Motion to Strike for improperly pleading claims of breach of informed consent as negligence at Paragraphs 24(a)-(h); and, (2) Motion to Strike - Motion for

a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a).

I. Demurrer / Motion to Strike for Improperly Pleading Claims of Breach of Informed Consent as Negligence at Paragraphs 24(a)-(h)

4. Paragraphs 1 through 3 are incorporated herein by reference and made a part hereof.

5. Although Count II of Plaintiffs' Complaint is captioned in "negligence," Plaintiffs have improperly asserted the following claims of "breach of informed consent" within Paragraph 24(a)-(h):

"24. The patient's injuries, losses and damages were also caused as the result of the negligence and carelessness of Defendant in some or all of the following respects:

- a. In failing to provide a full and complete informed consent;
- b. In failing to inform "the patient" of the possibility of retrograde ejaculation as a risk of the surgical procedure;
- c. In failing to inform "the patient" of the possibility that "the patient" would not be able to achieve an orgasm following the surgical procedure;
- d. In providing an incomplete informed consent;
- e. In providing an inadequate informed consent;
- f. In failing to inform "the patient" of alternative treatment to the surgical procedure;
- g. In failing to fully and completely attempt to use drug therapy to treat "the patient's" medical difficulties;
- h. In failing to attempt to use nonsurgical means to treat "the patient's" condition."

(emphasis supplied.)

6. A claim sounding in breach of informed consent is separate and distinct from a claim sounding in negligence.

7. Under Pennsylvania law, the determination of whether a defendant has breached the doctrine of informed consent is not based upon theories of negligence as asserted by Plaintiffs, but rather rests upon a battery theory.

8. Accordingly, Plaintiffs have failed to state a claim upon which relief may be granted for Plaintiffs' allegations of breach of informed consent pled at Paragraphs 24(a)-(h), and, thus, said Paragraphs and Subparagraphs should be stricken from Plaintiffs' Complaint, with prejudice.

9. Furthermore, pursuant to Pa.R.C.P. 1020(a), "each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief."

10. Insofar as Paragraphs 24 of Plaintiffs' Complaint asserts allegations sounding in both negligence and breach of informed consent, Plaintiffs have failed to conform with Pa.R.C.P. 1020(a).

WHEREFORE, Defendant, Dr. Cherry, respectfully requests this Honorable Court to sustain his Preliminary Objection as to Paragraph 24(a)-(h), and strike said Paragraph and Subparagraphs from Plaintiffs' Complaint, with prejudice. In the alternative, Defendant requests that this Court require Plaintiffs to replead Paragraph 24(a)-(h) and/or Counts I and II of the Complaint so as to comply with Pa.R.C.P. 1020(a).

II. Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a)

11. Paragraphs 1 through 10 are incorporated herein by reference and made a part hereof.

12. Pennsylvania Rule of Civil Procedure 1019(a) requires that the material facts on which a cause of action or defense is based be stated in concise and summary form.

13. Where a pleading fails to conform to this rule, Rule 1028(a)(3) provides that a party may file preliminary objections on the basis of insufficient specificity.

14. Defendant, Dr. Cherry, raises the within Preliminary Objection on the basis that various allegations set forth within Plaintiffs' Complaint are vague, overly broad, insufficiently specific.

15. Specifically, those Paragraphs and Subparagraphs which are being objected to are as follows:

“3. At all times material hereto, Defendant acted individually, and by and through authorized agent, servants, workman and/or employee each of whom was acting within the course and scope of his/her agency and/or employment with said Defendant.

....

12. Defendant, as well as his agents, servants and employees, did not explain the material risks and alternatives associated with the transurethral prostatectomy including, but not limited to, the seriousness of the procedure, its risks and complications including, but not limited to, retrograde ejaculation, and alternative treatments.

....

22. As a further result of the aforesaid occurrence, Plaintiff has or may hereinafter incur various other damages and incur other expenses or losses and may continue to incur same for an indefinite time in the future.

....

24(i). In failing to attempt drug treatment for a sufficient length of time to give it an opportunity to be effective.

....

24(j). In failing to attempt to use available known effective drug therapies to treat “the patient’s” condition.

....

30. As a further result of the aforesaid occurrence, Plaintiff has or may hereinafter incur various other damages and incur other expenses or losses and may continue to incur same for an indefinite time in the future.”

(See Plaintiffs' Complaint, at Paragraphs 3, 12, 22, 24(i), 24(j) and 30)(emphasis added)).

16. The above-quoted Paragraphs and Subparagraph of Plaintiffs' Complaint contain prejudicially vague allegations of negligence, which are improper, imprecise, and devoid of factual support. As such, they are in complete derogation of the well settled fact pleading rules of this Commonwealth and must be stricken from the Plaintiffs' Complaint, thereby permitting Defendant Dr. Cherry to prepare a full and complete defense to the claims currently being raised against him.

17. At Paragraphs 3 and 12, the Plaintiffs, in a prejudicially confusing and improper manner, seek to hold Dr. Cherry liable for the acts and/or omissions of various unnamed “agents, servants, workmen, and/or employees,” but fail to identify who these various providers are/were and/or fail to indicate how or in what ways Dr. Cherry had any right to control said unnamed individuals.

18. Such pleading is in direct violation of Appellate Court case law, which requires those asserting an agency relationship to allege, as a minimum, facts which:

- “1. identify the agent by name or appropriate description; and
- 2. set forth the agent's authority and how the tortious acts of the agent either fall within the scope of that authority or if authorized were ratified by the principal.”

See Alumni Association v. Sullivan v. Kappa Chapter of Sigma Chi Fraternity, 369 Pa. Super. 596, 535 A.2d 1095 (1987); Willinger v. Mercy Catholic Medical Center, 241 Pa.Super. 456, 362 A.2d 280 (1976); Daro v. Keystone 5, 10, 25 One Dollar Stores, Inc., 50 Dauph. Co. 134 (1949).

19. Without Plaintiffs specifically identifying the identities of the numerous unnamed persons and/or providers referenced within Paragraphs 3 and 12 of Plaintiffs' Complaint, Dr. Cherry is without notice of the specific allegations being brought against him and of the individual persons and/or providers involved in the care that is being criticized.

20. Similarly, the prejudicial averments of Paragraphs 3 and 12 leave Dr. Cherry with no way of knowing whether the alleged acts and/or omissions of unnamed persons and/or providers were and/or could have in any way been ratified by Dr. Cherry, or if such unnamed persons and/or providers were even subject to any right of control by Dr. Cherry at the time of the alleged acts and/or omissions complained of within the Complaint.

21. At Paragraphs 22 and 30, the Plaintiffs, following a detailed listing of damages, aver that, "as a further result of the aforesaid occurrence, Plaintiff has or may hereinafter incur various other damages and incur other expenses or losses and may continue to incur same for an indefinite time in the future." Such non-limiting and readily expandable language is exactly the sort that runs afoul of the well settled pleading rules and Appellate Court precedent of this Commonwealth. Indeed, such open-ended pleading can only serve to establish the basis for Plaintiffs to amend their Complaint and/or expand their theories of liability and/or damages following the expiration of the statute of limitation, to Dr. Cherry's substantial prejudice.

22. Finally, at Paragraphs 24(i) and (j), Plaintiffs allege that Dr. Cherry was negligent "in failing to attempt drug treatment for a sufficient length of time to give it an opportunity to be effective" and "in failing to attempt to use available known effective drug therapies to treat 'the patient's' condition." Such vague pleading provides Dr. Cherry with no indication as to the "drug treatment" and/or "drug therapies" that he allegedly should have, but failed, to conduct

and/or prescribe in the Plaintiff's case and/or fails to indicate the time length and/or indicators that Dr. Cherry should have followed or observed when failing to attempt such treatment.

23. In all, the objected-to averments referenced above, fail to comply with Pennsylvania Rule of Civil Procedure No. 1019(a), as well as, the principals enunciated in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), and other cases.

24. If the objected-to averments are not stricken, or properly re-pled, Dr. Cherry will be forced to defend against any conceivable theory of liability and/or damages at trial.

25. Because the challenged averments fail to sufficiently apprise the Defendant of the tortious conduct which the Plaintiffs assert, the Defendant is unable to appropriately respond or adequately prepare a defense to such allegations.

26. Furthermore, the foregoing factual deficiencies of the challenged allegations are prejudicial to the Defendant inasmuch as his inability to prepare a defense to these allegations may result in waiver of various defenses and objections pursuant to Pa. R.C.P. 1032.

WHEREFORE, Defendant, Dr. Cherry, respectfully requests that this Motion to Strike / Motion for a More Specific Pleading be granted and that this Honorable Court enter an Order striking the following allegations, or in the alternative, ordering Plaintiffs to file a more specific pleading with respect thereto: Paragraphs 3, 12, 22, 24(i), 24(j) and 30.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K LAWS
Attorneys for Defendant
Robert Cherry, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 9/13/10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAZIER and)
SANDRA L. KAZIER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT CHERRY'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 34 day of Sept, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

THIS IS NOT AN ARBITRATION MATTER.
JURY TRIAL DEMANDED
AN ASSESSMENT OF DAMAGES HEARING
WILL BE NECESSARY.
RULE 238 DELAY DAMAGES REQUIRED

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

| | | |
|-----------------------|---|-----------------------|
| STANLEY G. KAIZER and | : | COURT OF COMMON PLEAS |
| SANDRA L. KAIZER, h/w | : | CLEARFIELD COUNTY |
| | : | |
| vs. | : | |
| | : | |
| ROBERT CHERRY | : | NO.: 01-1327-CD |

AMENDED CIVIL ACTION COMPLAINT

COME NOW, Plaintiffs Stanley G. Kaizer and Sandra L. Kaizer, h/w, by their Counsel, Katz, Cohen & Price, P.C., and desiring to recover compensation for the injuries, losses and damages sustained by them as the result of the conduct of Defendant aver in support thereof the following:

1. Plaintiffs Stanley G. Kaizer and Sandra L. Kaizer, are adult individuals who are husband and wife and who are citizens and residents of the Commonwealth of Pennsylvania residing therein at 842 Treasure Lake, DuBois, Clearfield County.

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William A. Shaw
Prothonotary

2. Defendant Robert Cherry is an adult individual who is citizen and resident of the Commonwealth of Pennsylvania having a place of business at 145 Hospital Avenue, DuBois, Clearfield County.

3. At all times material hereto, Defendant acted individually, and by and through authorized agent, servants, workman and/or employee each of whom was acting within the course and scope of his/her agency and/or employment with said Defendant.

4. At all times material hereto, Defendant was a physician licensed to practice medicine in the Commonwealth of Pennsylvania and held himself out to the public at large and particularly to Plaintiffs herein, as a skilled and competent physician and surgeon specializing in the field of urology and urologic surgery.

5. Prior to September 7, 1999 Defendant, for a compensation which Plaintiffs agreed to pay, agreed to perform surgery upon Plaintiff Stanley G. Kaizer, hereinafter referred to as "the patient".

6. On or about September 7, 1999, "the patient" was admitted to DuBois Regional Medical Center for the purpose of Defendant performing a transurethral prostatectomy.

7. At the time of the surgery, "the patient" was fifty-one (51) years of age.

COUNT I
PLAINTIFF STANLEY G. KAIZER vs. DEFENDANT

8. Plaintiff Stanley G. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 7, inclusive, as fully as if the same were set forth at length.

9. Prior to the surgery, "the patient" was never informed of the possibility that the surgery could result in his suffering from retrograde ejaculation.

10. Retrograde ejaculation is a known risk of transurethral prostatectomy.

11. Retrograde ejaculation is a known complication of transurethral prostatectomy.

12. Defendant did not explain the material risks and alternatives associated with the transurethral prostatectomy including, but not limited to, the seriousness of the procedure, its risks and complications including, but not limited to, retrograde ejaculation, and alternative treatments.

13. The transurethral prostatectomy involved undisclosed risk and harm which occurred therefrom which a reasonable patient would have considered in determining whether to undergo or reject the procedure, the manner in which the procedure was done, the type of procedure, and the after care.

14. Defendant's conduct constitutes battery.

15. By failing to inform "the patient" of the possibility of retrograde ejaculation, Defendant failed to provide "the patient" with a full and complete informed consent setting forth all of the known risk and complications of the surgical procedure which a reasonable person would consider material to his decision whether or not to undergo the surgical procedure.

16. Defendant committed a battery upon the person of "the patient" by failing to provide "the patient" with a full, complete informed consent setting forth all of the risks and complications that a person in the position of "the patient" would wish to know prior to agreeing to undergo such a surgical procedure.

17. As a result of the conduct of Defendant, Plaintiff has suffered various injuries including, but not limited to, retrograde ejaculation, inability to have an orgasm, together with severe shock to his nerves and nervous system, an aggravation and activation of pre-existing dormant conditions and he was otherwise injured, some or all of which injuries are or maybe serious and permanent in nature.

18. As a further result of the aforementioned conduct of Defendant, Plaintiff Stanley G. Kaizer has been obliged and will in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her injuries to her financial damage and loss.

19. As a further result of the conduct of Defendant, Plaintiff has sustained great physical pain, mental suffering and humiliation and will continue to endure said pain, suffering mental anguish and humiliation for an indefinite time in the future.

20. As a further result of the conduct of Defendant, Plaintiff has suffered a loss of the enjoyment of his usual duties, life's pleasures and activities, all to his great detriment and loss and will continue to do so for an indefinite time in the future.

21. As a further result of the conduct of Defendant, Plaintiff has been unable to follow his usual occupation and will be unable to follow same for an indefinite time in the future, has lost the emoluments which would have come to him through his employment and has suffered an impairment of his earning capacity and power, all of which losses are or may be serious and permanent in nature.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant for a sum in excess of Twenty Thousand Dollars (\$20,000.00).

COUNT II - NEGLIGENCE
PLAINTIFF STANLEY G. KAIZER vs. DEFENDANT

22. Plaintiff Stanley G. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 21, inclusive, as fully as if the same were set forth at length.

23. "The patient's" injuries, losses and damages were also caused as the result of the negligence and carelessness of Defendant in some or all of the following respects:

- a. In failing to inform "the patient" of alternative treatment to the surgical procedure;
- b. In failing to fully and completely attempt to use drug therapy to treat "the patient's" medical difficulties;
- c. In failing to attempt to use nonsurgical means to treat "the patient's" condition;
- d. In failing to attempt drug treatment for a sufficient length of time to give it an opportunity to be effective;
- e. In failing to attempt to use available known effective drug therapies to treat "the patient's" condition.

24. As a result of the conduct of Defendant, Plaintiff has suffered various injuries and disabilities including, but not limited to, retrograde ejaculation, inability to have an orgasm, together with a severe shock to his nerves and nervous system, an aggravation and activation of pre-existing dormant conditions and he was otherwise injured, some or all of which injuries are or maybe serious and permanent in nature.

25. As a further result of the aforementioned conduct of Defendant, Plaintiff Stanley G. Kaizer, has been obliged and will in the future be obliged to expend various sums of money for medicine and medical attention in and about endeavoring to treat and cure her injuries to her financial damage and loss.

26. As a further result of the conduct of Defendant, Plaintiff has sustained great physical pain, mental suffering and humiliation and will continue to endure said pain, suffering mental anguish and humiliation for an indefinite time in the future.

27. As a further result of the conduct of Defendant, Plaintiff has suffered a loss of the enjoyment of his usual duties, life's pleasures and activities, all to his great detriment and loss and will continue to do so for an indefinite time in the future.

28. As a further result of the conduct of Defendant, Plaintiff has been unable to follow his usual occupation and will be unable to follow same for an indefinite time in the future, has lost the emoluments which would have come to him through his employment and has suffered an impairment of his earning capacity and power, all of which losses are or may be serious and permanent in nature.

WHEREFORE, Plaintiff prays this Honorable Court enter judgment in their favor and against Defendants for a sum in excess of twenty thousand dollars (\$20,000.00).

**COUNT III - LOSS OF CONSORTIUM
PLAINTIFF SANDRA L. KAIZER VS. DEFENDANT**

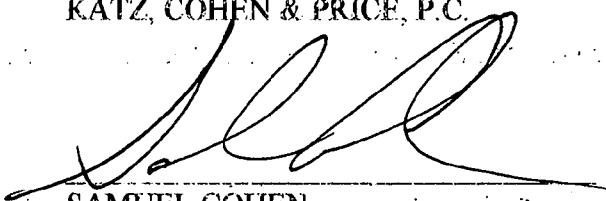
29. Plaintiff Sandra L. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 28, inclusive, as fully as if the same were set forth at length.

30. As a result of the conduct of Defendant, Plaintiff Sandra L. Kaizer, has been deprived of the aid, society care and consortium of her husband, Stanley G. Kaizer, much to her great detriment and loss.

31. As a further result of the conduct of Defendant, Plaintiff Sandra L. Kaizer, has or may hereinafter incur various other expenses or losses for her husband and may continue to incur same for an indefinite time in the future.

WHEREFORE, Plaintiff prays this Honorable Court enter judgement in their favor and against Defendants for a sum in excess of twenty thousand dollars (\$20,000.00).

KATZ, COHEN & PRICE, P.C.

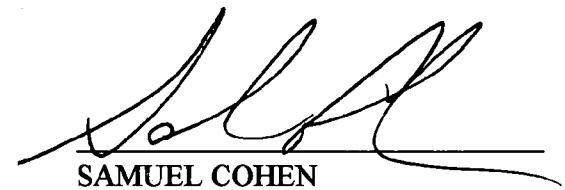


SAMUEL COHEN

Dated: 10/2/81

VERIFICATION

I, SAMUEL COHEN, verify that I am the attorney for Plaintiff's, Stanley G. Kaizer and Sandra Kaizer named herein, and that the averments of fact set forth in the foregoing Amended Civil Action Complaint are true and correct to the best of my knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. section 4904, relating to unsworn falsification to authorities.



SAMUEL COHEN

Dated: 10/2/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant,) Type of Pleading:
) PRELIMINARY OBJECTIONS TO
) PLAINTIFFS' AMENDED COMPLAINT
)
) Filed on behalf of Defendant
) Robert Cherry
)
)
) Counsel of Record for this
) Party: JOHN W. BLASKO
) Court I.D. No. 06787
)
) RICHARD K. LAWS
) Court I.D. No. 82369
)
) McQUAIDE, BLASKO, SCHWARTZ,
) FLEMING & FAULKNER, INC.
)
) 811 University Drive
) State College, PA 16801
) (814) 238-4926
)
)
) Counsel of Record for
) Adverse Party:
) SAMUEL COHEN, III

Dated: 10/9/01

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William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEFENDANT CHERRY'S PRELIMINARY OBJECTIONS
TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW comes the Defendant, ROBERT CHERRY, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Preliminary Objections to Plaintiffs' Amended Complaint, as follows:

1. The instant medical malpractice action was commenced on August 16, 2001 by the filing of a Writ of Summons by Plaintiffs, Stanley and Sandra Kaizer, in the Court of Common Pleas of Clearfield County. Following the service of an Executed Rule, Plaintiffs filed their original Complaint on September 12, 2001.

2. Generally, the original Complaint co-mingled allegations of negligence and informed consent as to Dr. Cherry with respect to care rendered to Plaintiff-husband on or around September 7, 1999.

3. In response to Plaintiffs' original Complaint, the Defendant filed Preliminary Objections consisting of: (1) Demurrer / Motion to Strike for improperly pleading claims of breach of informed consent as negligence; and, (2) Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a).

4. On October 2, 2001, the Plaintiffs filed an Amended Complaint, which attempted to cure some, but not all, of the Defendant's Preliminary Objections.

5. Accordingly, the Defendant is required to file, yet another, set of Preliminary Objections on the following grounds: (1) Demurrer / Motion to Strike for improperly pleading claims of breach of informed consent as negligence at Paragraphs 23 (a)-(c); and, (2) Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a).

I. Demurrer / Motion to Strike for Improperly Pleading Claims of Breach of Informed Consent as Negligence at Paragraphs 23 (a)-(c)

6. Paragraphs 1 through 5 are incorporated herein by reference and made a part hereof.

7. Although Count II of Plaintiffs' Amended Complaint remains captioned in "Negligence," Plaintiffs continue to improperly assert the following claims of "breach of informed consent" within Paragraph 23(a)-(c):

- "23. The patient's injuries, losses and damages were also caused as the result of the negligence and carelessness of Defendant in some or all of the following respects:
 - a. In failing to inform "the patient" of alternative treatment to the surgical procedure;
 - b. In failing to fully and completely attempt to use drug therapy to treat "the patient's" medical difficulties;
 - c. In failing to attempt to use nonsurgical means to treat "the patient's" condition."

(emphasis supplied.)

8. A claim sounding in breach of informed consent is separate and distinct from a claim sounding in negligence.

9. Under Pennsylvania law, the determination of whether a defendant has breached the doctrine of informed consent is not based upon theories of negligence as asserted by Plaintiffs, but rather rests upon a battery theory.

10. Accordingly, Plaintiffs have failed to state a claim upon which relief may be granted for Plaintiffs' allegations of breach of informed consent at Paragraphs 23(a)-(c), and, thus, said Paragraphs should be stricken from Plaintiffs' Amended Complaint, with prejudice.

WHEREFORE, Defendant, Dr. Cherry, respectfully requests this Honorable Court to sustain his Preliminary Objection as to Paragraph 23(a)-(c), and strike said Paragraphs from Plaintiffs' Amended Complaint, with prejudice.

II. Motion to Strike - Motion for a More Specific Pleading for Failing to Plead the Requisite Factual Specificity in Violation of Pa.R.C.P. 1019(a)

11. Paragraphs 1 through 10 are incorporated herein by reference and made a part hereof.

12. Pennsylvania Rule of Civil Procedure 1019(a) requires that the material facts on which a cause of action or defense is based be stated in concise and summary form.

13. Where a pleading fails to conform to this rule, Rule 1028(a)(3) provides that a party may file preliminary objections on the basis of insufficient specificity.

14. Defendant raises the within Preliminary Objection on the basis that several allegations set forth within Plaintiffs' Amended Complaint remain vague, overly broad, insufficiently specific.

15. Specifically, those Paragraphs which are being objected to are as follows:

"3. At all times material hereto, Defendant acted individually, **and by and through authorized agent, servants, workman and/or employee** each of whom was acting within the **course and scope of his/her agency and/or employment with said Defendant**.

23(d). In failing to attempt drug treatment for a sufficient length of time to give it an opportunity to be effective.

....

23(e). In failing to attempt to use available known effective drug therapies to treat "the patient's" condition."

(See Plaintiffs' Amended Complaint, at Paragraphs 3, 23(d), 23(e)(emphasis added)).

17. At Paragraphs 3, the Plaintiffs, in a prejudicially confusing and improper manner, continue in efforts to hold Dr. Cherry liable for the acts and/or omissions of various unnamed "agents, servants, workmen, and/or employees," but fail to identify who these various providers are/were and/or fail to indicate how or in what ways Dr. Cherry had any right to control said unnamed individuals.

18. Such pleading is in direct violation of Appellate Court case law, which requires those asserting an agency relationship to allege, as a minimum, facts which:

1. identify the agent by name or appropriate description; and
2. set forth the agent's authority and how the tortious acts of the agent either fall within the scope of that authority or if authorized were ratified by the principal."

See Alumni Association v. Sullivan v. Kappa Chapter of Sigma Chi Fraternity, 369 Pa. Super. 596, 535 A.2d 1095 (1987); Willinger v. Mercy Catholic Medical Center, 241 Pa.Super. 456, 362 A.2d 280 (1976); Daro v. Keystone 5, 10, 25 One Dollar Stores, Inc., 50 Dauph. Co. 134 (1949).

19. Without Plaintiffs specifically identifying the identities of the numerous unnamed persons and/or providers referenced within Paragraph 3 of Plaintiffs' Amended Complaint, Dr. Cherry is without notice of the specific allegations being brought against him and of the individual persons and/or providers involved in the care that is being criticized.

20. Similarly, the prejudicial averments of Paragraph 3 leave Dr. Cherry with no way of knowing whether the alleged acts and/or omissions of unnamed persons and/or providers were and/or could have in any way been ratified by Dr. Cherry, or if such unnamed persons and/or providers were even subject to any right of control by Dr. Cherry at the time of the alleged acts and/or omissions complained of within the Complaint.

21. Finally, at Paragraphs 23 (d) and (e), Plaintiffs allege that Dr. Cherry was negligent “in failing to attempt drug treatment for a sufficient length of time to give it an opportunity to be effective” and “in failing to attempt to use available known effective drug therapies to treat ‘the patient’s’ condition.” Such vague pleading provides Dr. Cherry with no indication as to the “drug treatment” and/or “drug therapies” that he allegedly should have, but failed, to conduct and/or prescribe in the Plaintiff’s case and/or fails to indicate the time length and/or indicators that Dr. Cherry should have followed or observed when failing to attempt such treatment.

22. In all, the objected-to averments referenced above, continue and/or fail to comply with Pennsylvania Rule of Civil Procedure No. 1019(a), as well as, the principals enunciated in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983), and other cases.

23. Because the challenged averments fail to sufficiently apprise the Defendant of the tortious conduct which the Plaintiffs assert, the Defendant is unable to appropriately respond or adequately prepare a defense to such allegations.

24. Furthermore, the foregoing factual deficiencies of the challenged allegations are prejudicial to the Defendant inasmuch as his inability to prepare a defense to these allegations may result in waiver of various defenses and objections pursuant to Pa. R.C.P. 1032.

WHEREFORE, Defendant, Dr. Cherry, respectfully requests that this Motion to Strike / Motion for a More Specific Pleading be granted and that this Honorable Court enter an Order striking the following allegations, or in the alternative, ordering Plaintiffs to file a more specific pleading with respect thereto: Paragraphs 3, 23(d), 23(e).

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K LAWS
Attorneys for Defendant
Robert Cherry, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 10/9/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT CHERRY'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 9/18 day of October, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,) Type of Pleading: BRIEF IN SUPPORT OF
Defendant,) PRELIMINARY OBJECTIONS TO
) PLAINTIFFS' AMENDED COMPLAINT
) Filed on behalf of Defendant
) Robert Cherry
)
)
)
) Counsel of Record for this
) Party: JOHN W. BLASKO
) Court I.D. No. 06787
)
) RICHARD K. LAWS
) Court I.D. No. 82369
)
) McQUAIDE, BLASKO, SCHWARTZ,
) FLEMING & FAULKNER, INC.
)
) 811 University Drive
) State College, PA 16801
) (814) 238-4926
)
)
) Counsel of Record for
) Adverse Party:
) SAMUEL COHEN, III

Dated: 10/9/01

RECEIVED
OCT 10 2001
COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and :
SANDRA L. KAIZER, husband :
and wife :
:
vs. : No. 01-1327-CD
:
ROBERT CHERRY :
:

O R D E R

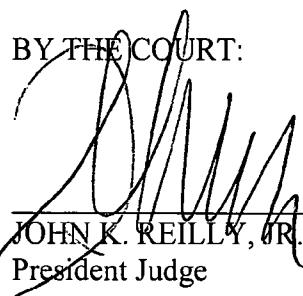
NOW, this 26th day of October, 2001, upon consideration of
recusal of both Judges sitting in the 46th Judicial District, it is the ORDER of this
Court that the Court Administrator of Clearfield County refer the above-captioned
civil matter to Administrative Regional Unit II for assignment of a specially presiding
judicial authority.

FILED

OCT 26 2001

William A. Shaw
Prothonotary

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and SANDRA)
L. KAIZER, husband and wife,)
Plaintiffs)
) NO. 01 - 1327 CD
v.)
) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant)

FILED
OCT 3 0 2001

William A. Shaw
~~COMPLAINT~~¹

ORDER RE: PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Now that defense counsel has convinced Plaintiffs that this matter will be defended regardless of the expense or use of judicial resources, we believe the time has come for Defendant to file an Answer.

With respect to Defendant's concern that an informed consent claim is based on "battery" rather than "negligence," we fail to understand the necessity for the filing of a Second Amended Complaint. We are confident Defendant understands the nature of Plaintiffs' claim and that we will be able to adequately instruct the jury. With respect to the contention that Connor v. Allegheny General Hospital requires the pleading of every fact or allegation arising from the imagination of Plaintiffs' counsel, we reject such theory; Defendant will be protected. With respect to the contention that Plaintiffs failed to identify the agents, servants, workman, and/or employees involved in this matter, the failure of Plaintiffs to identify those individuals leads us to conclude they do not exist.

J. MICHAEL WILLIAMSON

JUDGE

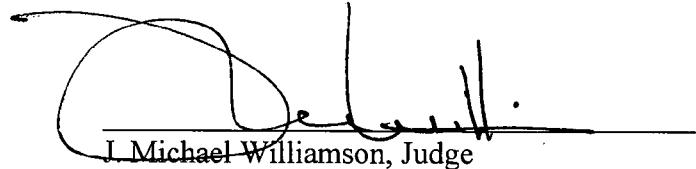
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745

¹This matter has been referred to us through the Administrative Unit.

NOW, this 26th day of October, 2001, IT IS HEREBY ORDERED as follows:

1. Defendant's Preliminary Objections to Plaintiffs' Amended Complaint are DISMISSED.
2. Defendant shall file an Answer within thirty (30) days.

BY THE COURT:



J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

xc: Samuel Cohen, Esquire
John W. Blasko, Esquire
Court Administrator

J. MICHAEL WILLIAMSON
JUDGE
COURT OF COMMON PLEAS
25TH JUDICIAL DISTRICT
OF PENNSYLVANIA
COURT HOUSE
LOCK HAVEN, PA 17745



JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

October 29, 2001

William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**Re: Kaizer v. Cherry
No. 01 - 1327 CD**

Dear Mr. Shaw:

Please file the enclosed Order in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carol E. Miller".
Carol E. Miller
Secretary to Judge Williamson

Enclosure

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

STANLEY G. KAIZER and
SANDRA L. KAIZER, h/w

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

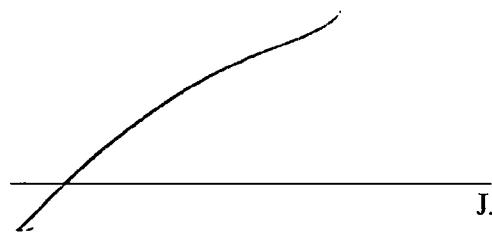
vs.

ROBERT CHERRY

NO.: 01-1327-CD

ORDER

AND NOW, to wit, this day of , 2001, upon consideration of the Preliminary Objections filed on behalf of Defendant Cherry and Plaintiffs' response thereto, it is hereby ORDERED and DECREED that said Preliminary Objections are overruled and Defendant shall file an answer to the Complaint within twenty (20) days or suffer Judgment by Default upon Praecipe only and without further Order from this Court.



KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

| | | |
|------------------------------|--------------|------------------------------|
| STANLEY G. KAIZER and | : | COURT OF COMMON PLEAS |
| SANDRA L. KAIZER, h/w | : | CLEARFIELD COUNTY |
| vs. | : | : |
| ROBERT CHERRY | : | NO.: 01-1327-CD |

**PLAINTIFF'S RESPONSE TO DEFENDANT CHERRY'S PRELIMINARY
OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT**

COME NOW, Plaintiffs Stanley G. Kaizer and Sandra L. Kaizer, husband and wife, by their counsel, Katz, Cohen & Price, P.C. and desiring to oppose the Preliminary Objections filed on behalf of Defendant Cherry avers in support thereof the following:

1. Admitted.
2. Denied. The averments contained in this paragraph are based upon a writing which speaks for itself and strict proof thereof is demanded if deemed relevant at trial.
3. Denied. The averments contained in this paragraph are based upon a writing which speak for itself and strict proof thereof is demanded if deemed relevant at trial.
4. Denied. It is admitted that on October 2, 2001 Plaintiffs filed an Amended Complaint. The Amended Complaint which cured those Preliminary Objections of Defendant which were, in the opinion of counsel for Plaintiffs well founded.

FILED

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**William A. Shaw
Prothonotary**

5. Denied. The averments contained in this paragraph are based upon a writing which speaks for itself and strict proof thereof is demanded if deemed relevant at trial.

I. RESPONSE TO DEMURRER/MOTION TO STRIKE FOR IMPROPERLY PLEADING CLAIMS OF BREACH OF INFORMED CONSENT AS NEGLIGENCE AT PARAGRAPHS 23 (a)-(c)

6. Plaintiff Stanley G. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 5, inclusive, as fully as if same were set forth at length.

7. Denied. The averments contained in this paragraph are based upon a writing which speaks for itself and strict proof thereof is demanded if deemed relevant at trial.

8-10. Denied. The averments contained in this paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiffs prays this Honorable Court overrule the Preliminary Objection of Defendant to paragraph 23(a)-(c) of the Amended Complaint and compel Defendant to file an answer within twenty (20) days or suffer judgment by default upon Praecipe only without further Order of the Court.

II. PLAINTIFFS RESPONSE TO MOTION TO STRIKE - MOTION FOR A MORE SPECIFIC PLEADING FOR FAILING TO PLEAD THE REQUISITE FACTUAL SPECIFICITY IN VIOLATION OF Pa.R.C.P. 1019(a)

11. Plaintiff Stanley G. Kaizer, incorporates herein by reference each and every averment contained in paragraphs 1 through 10, inclusive, as fully as if same were set forth at length.

12-13. Denied. The averments contained in these paragraphs constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

14-17. Denied. The averments contained in these paragraphs are based upon a writing which speaks for itself and strict proof of Defendants' averments is demanded if deemed relevant at trial.

18-21. Denied. The averments contained in these paragraphs are based upon a writing which speaks for itself and strict proof of Defendants' averments is demanded if deemed relevant at trial. To the extent the averments contained in these paragraph constitute conclusions of law, no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

22. Denied. The averments contained in this paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

23. Denied. It is denied that the challenged averments failed to sufficiently apprise the Defendant of the tortious conduct which the Plaintiffs assert. To the contrary, challenged averments sufficiently apprized Defendant of the tortious conduct which the Plaintiffs assert. Strict proof of Defendants' averments is demanded if deemed relevant at trial. To the extent the averments contained in this paragraph were based upon a writing, said writing speaks for itself and strict proof of Defendants' averments is demanded if deemed relevant at trial. To the extent the averments contained in this paragraph constitute conclusions of law, no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

24. Denied. The averments contained in this paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiffs prays this Honorable Court overrule the Preliminary Objections of the Motion to Strike and Compel Defendant to file an answer within twenty (20) days or suffer judgment by default.

KATZ, COHEN & PRICE, P.C.



A handwritten signature in black ink, appearing to read "Samuel Cohen". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the main stroke.

Dated: 10/29/01

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

STANLEY G. KAIZER and : COURT OF COMMON PLEAS
SANDRA L. KAIZER, h/w : CLEARFIELD COUNTY
vs. :
ROBERT CHERRY : NO.: 01-1327-CD

MEMORANDUM OF LAW IN OPPOSITION TO PRELIMINARY OBJECTIONS TO
PLAINTIFFS' AMENDED COMPLAINT

COME NOW, Plaintiffs Stanley G. Kaizer and Sandra L. Kaizer, by their counsel, Katz, Cohen & Price, P.C., and filed the within Brief in Opposition to Defendant's Cherry Brief in Support of Preliminary Objections to Plaintiff's Complaint.

I. COUNTER STATEMENT OF FACTS

On October 2, 2001, Plaintiffs filed an Amended Complaint in the captioned matter. Defendant filed Preliminary Objections in two regards. These Preliminary Objections will be discussed seriatim.

II. LEGAL ARGUMENT

A. WHERE A PHYSICIAN FAILS TO USE DUE AND PROPER CARE WITH REGARD TO THE PERFORMANCE OF NON-SURGICAL TREATMENT, DOES AN ACTION AGAINST SAID PHYSICIAN SOUND IN NEGLIGENCE?

RECEIVED

NOV 07 2001

**COURT ADMINISTRATORS
OFFICE**

Defendants filed Preliminary Objections to paragraph 23 (a)-(c) of Plaintiffs' Amended Complaint. The gravamen of Defendant's is that informed consent is separate and distinct from a claim sounding in negligence. In Gray vs. Grunnagle, 423 Pa. 144.223 A.2d 663 (1966), the Supreme Court held that a patient's consent is prerequisite to a surgical operation and an operation without the patient's consent is a battery. In the first count of the Complaint, Plaintiff's have pleaded an action against Defendant Cherry sounding in battery based upon Defendant's failure to provide a informed consent. The second count of the Plaintiffs' Amended Complaint sounds in negligence because it does not deal with the surgical procedure itself but, rather, Defendant Cherry's deviation from the standard of care in respects not having to do with surgery. By failing to provide information to Plaintiff Stanley Kaizer with regard to alternatives to surgical treatment, by failing to fully and completely attempt to use drug therapy and by failing to attempt to use non-surgical means to treat Mr. Kaizer condition, Defendant deviated from the standard of care for reasons having nothing to do with the surgical procedure itself. Under such circumstances, the appropriate claim would be common law negligence which is precisely content of Count II. Defendant attempts to put the rabbit in the hat by arguing that informed consent represents a battery. The only time that a informed consent represents a battery is in the context of a surgical procedure. Defendant Cherry's deviation from the standard of care as set forth in Count II do not deal with surgery and, therefore, are appropriately plead in common law negligence.

B. A PLAINTIFF DOES NOT HAVE TO NAME THE AGENTS, SERVANTS, WORKMAN AND/OR EMPLOYEES OF DEFENDANT IN ORDER TO SATISFY THE PENNSYLVANIA RULES OF CIVIL PROCEDURE WITH REGARD TO SPECIFICITY OF PLEADING, NOR DO THEY HAVE TO IDENTIFY IN THE COMPLAINT THE TYPES

OF DRUG TREATMENT OR THE LENGTH OF TIME THAT A DRUG TREATMENT MUST BE ATTEMPTED IN ORDER TO COMPLY WITH THE RULES

Defendant takes the position in his brief that the Plaintiff has failed to comply with the Pennsylvania Rules of Civil Procedure with regard to specificity of pleading by failing to name Defendant Cherry's agent, servant, workmen and/or employees, failing to identify the various drug therapies that can be used to treat Stanley Kaizer's medical condition and for how long drug treatment is needed to determine whether it is effective. All this information is more in the scope of knowledge of Defendant than Plaintiff. Defendant knows the identities of his agents, servants, workmen and/or employees as of the relevant dates set forth in the Complaint.

Similarly, as a Urologist and Urologist Surgeon, he is far better qualified to know what drug therapies were available to Mr. Kaizer and for how long those treatments would have to be used in order to determine whether they would be effective. The information sought is essentially evidentiary in nature.

In Philadelphia County Intermediate Unit Number 26 the Pennsylvania Department of Education, 60 Pa. Cmwlth 546 (1981), a similar situation was presented. The Court in overruling the Preliminary Objections held:

The respondents have further asked for a more specific pleading in case No. 2356, claiming that certain allegations by the petitioners are so ambiguous that they fail to give notice to the respondents as to how to plead. Pa. R.C.P. No. 1071 (b). Yet, a pleading must be sufficiently specific to enable the respondent to prepare a defense. Commonwealth v. City of Jeannette, 9 Pa. Commw. 306, 305 A.2d 774 (1973). And, in the present case, the respondents would require the petitioners to aver *inter alia* what specific resources are available to fund special education, when and what funds were allocated to the petitioners, who made such allocations, what allegedly inequitable distributions were made and which intermediate units received those distributions. After examining these objections and the respondents' other

requests for more specificity, we must conclude that the information for more specificity, we must conclude that the information which they seek either is of an evidentiary nature or is of such a character that the respondents' knowledge of the facts is equal, if not superior, to that of the petitioners and we therefore do not believe that a more specific pleading is necessary. *Id.* at 552.

The Pennsylvania Rules of Civil Procedure do not require a party to provide information that is either evidentiary or of such a character that the Defendant's knowledge of the facts is equal if not superior, to that of the Plaintiffs. Clearly, with regard to the Preliminary Objections for a more specific pleading, Defendant's knowledge is far superior as a physician and urologist than the Plaintiffs who are lay people with regard to both available treatment as well as the identities of his agents, servants, workmen and/or employees.

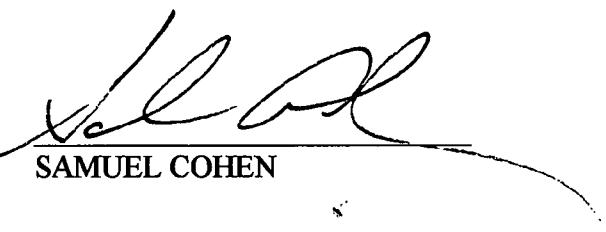
III. CONCLUSION

Where a physician fails to use due and proper care with regard to the performance of non-surgical treatment, an action against said physician sounds in negligence.

A plaintiff does not have to name the agents, servants, workman and/or employees of defendant in order to satisfy the Pennsylvania Rules of Civil Procedure with regard to specificity of pleading, nor do they have to identify in the complaint the types of drug treatment or the length of time that a drug treatment must be attempted in order to comply with the rules

Respectfully submitted,

KATZ, COHEN & PRICE, P.C.


SAMUEL COHEN

Dated: 10/29/01

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

STANLEY G. KAIZER and
SANDRA L. KAIZER, h/w

COURT OF COMMON PLEAS
CLEARFIELD COUNTY

vs.

ROBERT CHERRY

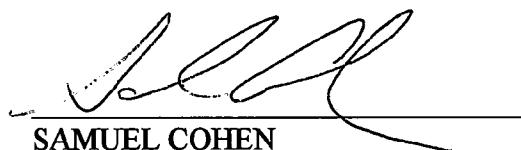
NO.: 01-1327-CD

CERTIFICATION OF SERVICE

I, Samuel Cohen, certify that a true and correct copy of the within Plaintiff's Response to Preliminary Objections of Defendant, Robert Cherry, was forwarded via regular mail through the United States Postal Service on October 29, 2001:

John W. Blasko, Esquire
McQuaide, Blasko, Schwartz,
Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

KATZ, COHEN & PRICE, P.C.



SAMUEL COHEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant,) Type of Pleading:
) ANSWER WITH NEW MATTER TO
) PLAINTIFFS' AMENDED COMPLAINT
)
) Filed on behalf of Defendant
) Robert Cherry
)
)
) Counsel of Record for this
) Party: JOHN W. BLASKO
) Court I.D. No. 06787
)
) RICHARD K. LAWS
) Court I.D. No. 82369
)
) McQUAIDE, BLASKO, SCHWARTZ,
) FLEMING & FAULKNER, INC.
)
) 811 University Drive
) State College, PA 16801
) (814) 238-4926
)
)
) Counsel of Record for
) Adverse Party:
) SAMUEL COHEN, III

Dated: 11/30/01

FILED

DEC 03 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

NOTICE TO PLEAD

TO: Stanley G. Kaizer and Sandra L. Kaizer, Plaintiffs
c/o Samuel Cohen, Esquire
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

YOU ARE HEREBY notified to plead to the within Answer with New Matter within twenty (20) days from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
RICHARD K. LAWS
Attorney for Defendant,
Robert Cherry, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 11/30/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

DR. CHERRY'S ANSWER WITH NEW MATTER
TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW comes the Defendant, ROBERT CHERRY, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Answer with New Matter to Plaintiffs' Amended Complaint, as follows:

1. Dr. Cherry is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 1, and, therefore, they are denied.
2. Admitted.
3. The averments of Paragraph 3 set forth statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, it is advised that Dr. Cherry is without sufficient knowledge or information to form a belief as to truth of averments concerning unnamed "agents, servants, workmen and/or employees" and thus said averments must therefore be denied.
4. The averments of Paragraph 4 set forth statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, it is admitted that, at all times relevant to Plaintiffs' Amended Complaint, Dr.

Cherry was a physician licensed to practice medicine in the Commonwealth of Pennsylvania. It is further admitted that Dr. Cherry was and remains a skilled and competent physician and surgeon specializing in the field of urology and urologic surgery.

5-7. The averments of Paragraphs 5 through 7 set forth statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, it is admitted only that, on September 7, 1999, Plaintiff's relevant medical records document Plaintiff presenting to Dubois Regional Medical Center where he underwent a "TURP" performed by Dr. Cherry. It is further admitted that Plaintiff's medical records indicate that he was 51 years of age at the time of the September 7, 1999 procedure. Dr. Cherry hereby incorporates Plaintiff's medical records for the time period leading up to, including, and following Plaintiff's September 7, 1999 procedure. Said medical records more fully and completely set forth Dr. Cherry's involvement with the care of Plaintiff, as well as the patient's symptoms, findings, diagnoses and procedures performed. To the extent that the averments of Paragraphs 5 through 7 differ from that set forth herein and/or that reflected within the relevant medical records, said averments are denied as stated and/or denied per Pa.R.C.P. 1029(e).

COUNT I
PLAINTIFF STANLEY G. KAIZER vs. DEFENDANT

8. Dr. Cherry hereby incorporates Paragraphs 1 through 7 of this Answer and New Matter as if the same were set forth at length herein.

9-16. The averments of Paragraphs 9 through 16 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 9 through 16 are denied per

Pa.R.C.P. 1029(e). It is specifically denied that Dr. Cherry failed to obtain a proper and legally complete informed consent from Plaintiff prior to the September 7, 1999 procedure at issue. To the contrary, Plaintiff's full and complete informed consent was obtained prior to the September 7, 1999 procedure as evidence by, inter alia, the medical records, specifically including a September 3, 1997 History and Physical Examination form which is/are incorporated herein by reference.

17-21. The averments of Paragraphs 17 through 21 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 17 through 21 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 17 through 21, it is not as the result of any improper acts and/or omissions on the part of Dr. Cherry. To the contrary, all care and treatment provided to Plaintiff by Dr. Cherry was at all times within the standard of care and in no way a breach of the doctrine of informed consent.

WHEREFORE, Dr. Cherry respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, award his cost of this suit, plus such other relief as is deemed just and equitable.

COUNT II - NEGLIGENCE
PLAINTIFF STANLEY G. KAIZER vs. DEFENDANT

22. Dr. Cherry hereby incorporates Paragraphs 1 through 21 of this Answer and New Matter as if the same were set forth at length herein.

23. The averments of Paragraph 23 (including subparagraphs (a) through (e)) contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is

necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 23 (including subparagraphs (a) through (e)) are denied per Pa.R.C.P. 1029(e).

24-28. The averments of Paragraphs 24 through 28 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 24 through 28 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 24 through 28, it is not as the result of any tortious conduct on the part of Dr. Cherry. To the contrary, at all times Dr. Cherry exercised reasonable and proper medical skill, care and judgment under the circumstances then and there existing.

WHEREFORE, Dr. Cherry respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, award his cost of this suit, plus such other relief as is deemed just and equitable.

COUNT III - LOSS OF CONSORTIUM
PLAINTIFF SANDRA L. KAIZER vs. DEFENDANT

29. Dr. Cherry hereby incorporates Paragraphs 1 through 28 of this Answer and New Matter as if the same were set forth at length herein.

30-31. The averments of Paragraphs 30 and 31 contain statements as to Plaintiffs' legal position and/or conclusions of law to which no response is necessary. To the extent that a response is deemed necessary, the averments of Paragraphs 30 and 31 are denied per Pa.R.C.P. 1029(e). To the extent that any such injuries, damages and/or losses were and/or will be sustained as alleged within Paragraphs 30 and 31, it is not as the result of any improper acts and/or omissions on the part of Dr. Cherry. To the contrary, all care and treatment provided to

Plaintiff by Dr. Cherry was at all times within the standard of care and in no way a breach of the doctrine of informed consent.

WHEREFORE, Dr. Cherry respectfully requests that this Honorable Court enter judgment in his favor and against Plaintiffs, award his cost of this suit, plus such other relief as is deemed just and equitable.

NEW MATTER

32. Dr. Cherry hereby incorporates Paragraphs 1 through 31 of this Answer and New Matter as if the same were set forth at length herein.

33. Dr. Cherry raises all affirmative defenses of the Health Care Services Malpractice Act, 40 PS §1301.101 et. seq. As stated by Section 606 of the Health Care Services Malpractice Act, "[i]n the absence of a special contract in writing, a health care provider is neither a warrantor nor a guarantor of a cure."

34. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are time-barred due to the expiration of the applicable statute of limitations.

35. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are barred pursuant to the affirmative defense of release.

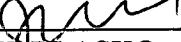
36. Prior to performing surgery on the Plaintiff on September 7, 1999, Dr. Cherry discussed the risks of the procedure with the Plaintiff, which included bleeding, infection, stricture formation, incontinence and retrograde ejaculation.

37. Prior to undergoing surgery on September 7, 1999, the Plaintiff was aware of the risks of his procedure, which included bleeding, infection, stricture formation, incontinence and retrograde ejaculation, and accepted the procedure as described.

38. For the purposes of preserving same, and subject to further discovery, all or some of Plaintiffs' claims are barred pursuant to the affirmative defense of consent.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K LAWS
Attorneys for Defendant
ROBERT CHERRY, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 11/30/01

Kaizer v. Cherry

VERIFICATION

JOHN W. BLASKO, being the attorney of record for the Defendant, Robert Cherry, verifies that he is authorized to make this verification on behalf of the Defendant in the within action; and that the statements made in the foregoing Answer with New Matter to the Plaintiffs' Amended Complaint are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. §4904, related to unsworn falsification to authority. Defendant reserves the right to file a substantive verification and/or amend this Answer.



JOHN W. BLASKO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer with New Matter to Plaintiffs' Amended Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 30th day of November, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that the original Answers and Objections to Plaintiffs' Interrogatories on behalf of Defendant, Robert Cherry, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11 day of December, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: ✓ ✓
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

FILED

DEC 12 2001

m 11.321 n/c
William A. Shaw
Prothonotary
[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that the original Answers and Objections to Plaintiffs' Expert Interrogatories on behalf of Defendant, Robert Cherry, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11 day of December, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

FILED

DEC 12 2001
M 11.321 NOCC
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that the original Answers and Objections to Plaintiffs' Request for Production of Documents on behalf of Defendant, Robert Cherry, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11 day of December, 2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

FILED

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William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,) Type of Pleading:
Defendant,) PRAECIPE TO SUBSTITUTE
) VERIFICATION
) Filed on behalf of Defendant
) Robert Cherry
)
) Counsel of Record for this
) Party: JOHN W. BLASKO
) Court I.D. No. 06787
)
) RICHARD K. LAWS
) Court I.D. No. 82369
)
) McQUAIDE, BLASKO, SCHWARTZ,
) FLEMING & FAULKNER, INC.
)
) 811 University Drive
) State College, PA 16801
) (814) 238-4926
)
) Counsel of Record for
) Adverse Party:
) SAMUEL COHEN, III

Dated: 12/10/01

FILED

DEC 11 2001
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William A. Shaw
Prothonotary
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

PRAEICE FOR SUBSTITUTION OF VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute the attached verification for the verification originally filed with
Defendant Robert Cherry, M.D.'s Answer with New Matter to Plaintiffs' Amended Complaint.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

BY 
JOHN W. BLASKO
RICHARD K. LAWS
Counsel for Defendant
Robert Cherry, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Kaizer v. Cherry

VERIFICATION

The undersigned verifies that as a Defendant, he is authorized to make this verification in the within action; and that the statements made in the foregoing ANSWER WITH NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT, are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.


ROBERT CHERRY, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PRAECIPE FOR SUBSTITUTION
OF VERIFICATION, in the above-referenced matter was mailed by regular mail, first class, at
the Post Office, State College, Pennsylvania, postage prepaid, this 10th day of December,
2001, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010,
Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET, SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

STANLEY G. KAIZER and : COURT OF COMMON PLEAS
SANDRA L. KAIZER, h/w : CLEARFIELD COUNTY
vs. :
ROBERT CHERRY : NO.: 01-1327-CD

PLAINTIFF'S REPLY TO NEW MATTER OF DEFENDANT CHERRY

32. Plaintiff incorporates herein by reference each and every averment contained in paragraph 1 through 31, inclusive, of his Complaint, as fully as if same were set forth at length.

33. Denied. The averment contained in this paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

34. Denied. The averments contained in this paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

35. Denied. No release has been entered into by either Plaintiff with regard to this matter. Strict proof of Defendant's averments is demanded if deemed relevant at trial. To the extent the averment contained in this paragraph constitute conclusions of law for which no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

FILED

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William A. Shaw
Prothonotary

36. Denied. It is denied that Dr. Cherry prior to performing surgery on September 7, 1999 discussed the risks of the procedure in its entirety with Plaintiff and particularly with regard to stricture formation, incontinence and retrograde ejaculation. Strict proof of Defendant's averments is demanded if deemed relevant at trial.

37. Denied. It is denied that Plaintiff was aware of the risk of retrograde ejaculation prior to undergoing surgery on September 7, 1999. Strict proof of Defendant's averments is demanded if deemed relevant at trial.

38. Denied. It is denied that Plaintiff consented to the procedure. To the contrary, Plaintiff was incapable of giving an informed consent because Defendant failed to provide the information to give such a consent. Strict proof of Defendant's averments is demanded if deemed relevant at trial. To the extent the averments contained in this paragraph constitute conclusions of law, no response is required under and pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff prays this Honorable Court deny the New Matter of Defendant and enter judgment in their favor and against Defendant.

KATZ, COHEN & PRICE, P.C.

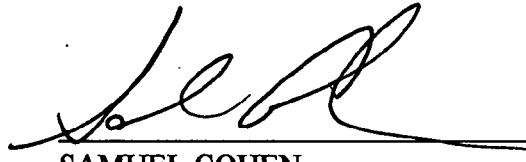


SAMUEL COHEN

Dated: 12/17/01

VERIFICATION

I, SAMUEL COHEN, verify that I am the attorney for Plaintiffs, Stanley Kaizer and Sandra Kaizer named herein, and that the averments of fact set forth in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. section 4904, relating to unsworn falsification to authorities.



SAMUEL COHEN

Dated: 12/17/01

FILED

DEC 20 2001

M 11/31/00cc

William A. Shaw
Prothonotary



KATZ, COHEN & PRICE, P.C.
By: SAMUEL COHEN
ATTORNEY I.D. NO.: 27544
117 SOUTH 17th STREET
SUITE 2010
PHILADELPHIA, PA 19103
(215) 636-0400

ATTORNEY FOR PLAINTIFF

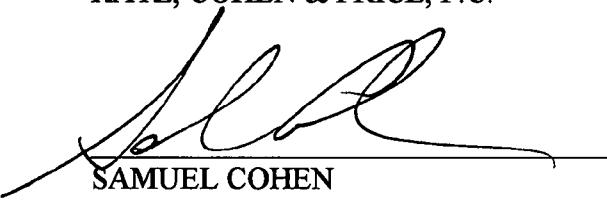
STANLEY G. KAIZER and : COURT OF COMMON PLEAS
SANDRA L. KAIZER, h/w/ :
vs. : CLEARFIELD COUNTY
ROBERT CHERRY : NO.: 01-1327-CD

PRAECLPICE TO SUBSTITUTE VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute Samuel Cohen's Verification with that of Stanley G. Kaizer which was attached to Plaintiff's Reply to New Matter of Defendant Cherry which was filed with the Court on December 20, 2001.

KATZ, COHEN & PRICE, P.C.



SAMUEL COHEN

Dated: 12/28/01

FILED

DEC 31 2001

11/18/01 NOCC
William A. Shaw
Prothonotary *gk*

VERIFICATION

I, Stanley Kaizer, verify that I am the Plaintiff in this matter and that the averments of fact set forth in the foregoing Reply to New Matter are true and correct to the best of my personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



STANLEY G. KAIZER

Dated: 12-14-01

01-1327-CO

CERTIFICATION OF SERVICE

I, Samuel Cohen, certify that a true and correct copy of the within Plaintiff's Answers to Interrogatories of Defendant together with Plaintiff's Answers to Expert Interrogatories and Plaintiffs' response to Defendant Cherry Request for Production (set two) was forwarded via Certified Mail through the United States Postal Service on March 11, 2002 to:

CERTIFIED MAIL

John W. Blasko, Esquire
McQuaide, Blasko, Schwartz
Fleming & Faulkner
811 University Drive
State College, PA 16801

KATZ, COHEN & PRICE, P.C.

By: SAMUEL COHEN

Dated: 3/11/02

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William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

STANLEY G. KAIZER and) No.: 01-1327 CD
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) Type of Case: Civil Action
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,) Type of Pleading:
Defendant,) MOTION TO COMPEL
Filed on behalf of Defendant
Robert Cherry
Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No. 06787
RICHARD K. LAWS
Court I.D. No. 82369
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926
Counsel of Record for
Adverse Party:
SAMUEL COHEN, III

Dated: 3/7/02

FILED

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m/108/noc
William A. Shaw
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

DEFENDANT CHERRY'S MOTION TO COMPEL

AND NOW comes the Defendant, ROBERT CHERRY, M.D., by and through his attorneys, McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC., and files the within Motion to Compel, as follows:

1. The instant medical malpractice action was commenced on August 16, 2001 by the filing of a Writ of Summons. Following the service of an Executed Rule, Plaintiffs filed their Complaint on September 12, 2001.
2. Plaintiffs' Complaint contains allegations of negligence and informed consent as to Dr. Cherry as to care rendered to Plaintiff-husband on or around September 7, 1999.
3. On September 11, 2001, Dr. Cherry served Plaintiffs with: Interrogatories and Requests for Production of Documents (Set One); Requests for Production (Set Two); and, Expert Interrogatories. (See Defendant's September 11, 2001 Requests, at Exhibit "A").
4. Defendant's Interrogatories seek basic information ranging from background information regarding the educational and professional history of Plaintiff; information regarding the extent and nature of damages that Plaintiff seeks to recover in this matter; and, information regarding specific details of the incident described in Plaintiffs' Complaint. (See Exhibit "A").

5. Defendant's Requests for Production seek documents ranging from photographs relative to the subject matter of this litigation; diagrams, sketches, plans, etc. relative to the subject matter of this litigation; all statements in Plaintiffs' possession; all expert reports intended to be utilized in this matter; discoverable investigative documents prepared by Plaintiffs or those acting on their behalf; and, medical records and damages statements. (Id.).

6. Finally, Defendant's Expert Interrogatories seek information ranging from background information regarding medical and non-medical expert witnesses that Plaintiffs seek to utilize at the trial of this matter; the subject matter to which they are expected to testify; and, the basis and substance of opinions to be rendered. (Id.).

7. As of November 11, 2001, Plaintiffs had failed to provide responses to any of the foregoing discovery requests, which placed Plaintiffs in direct violation of both Pennsylvania Rules of Civil Procedure 4006(a)(2) and Pennsylvania Rules of Civil Procedure 4009.12(a).

8. On February 1, 2002, Defense counsel wrote to Plaintiffs' counsel and inquired as to the status of Defendant's outstanding discovery requests. Defense counsel requested that answers, without objections, be served as soon as possible. (See Exhibit "B").

9. To date, Plaintiffs have not responded to Defense counsel's inquiries regarding answers to outstanding discovery and have failed to provide full and complete responses to Dr. Cherry's discovery requests (See Exhibit "A").

10. Dr. Cherry is unduly prejudiced in the preparation of his defense to Plaintiffs' claims, in that he has not been provided with the requested information which would assist him in accurately assessing the case, conducting the necessary investigations and inquiries, and preparing a defense to this action.

11. Pursuant to Pennsylvania Rule of Civil Procedure 4019(a)(1), the Court may make an appropriate order if “(i) a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule 4005” or “(viii) a party or person otherwise fails to make discovery or to obey an order of court respecting discovery.”

12. When acting under Pa. R.C.P. 4019(a), the court may make “an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing in evidence designated documents, things or testimony**, or from introducing testimony of physical or mental condition.” Pa. R.C.P. 4019(c)(2).

13. Accordingly, Dr. Cherry respectfully requests that this Honorable Court issue an Order requiring Plaintiffs to provide complete answers and/or responses, without objections, to Defendant’s outstanding discovery requests (attached as Exhibit “A”), within twenty (20) days, or be precluded from introducing into evidence at trial any witness, information, or document sought by these Interrogatories and Requests for Production of Documents, and be subject to any other such sanctions which this Court deems appropriate, including dismissal of the action.

WHEREFORE, Dr. Cherry respectfully requests this Honorable Court to grant his Motion to Compel Plaintiffs to provide Answers and/or Responses, without objections, to Defendant’s outstanding discovery requests (attached as Exhibit “A”), within twenty (20) days, or be precluded from introducing into evidence at trial any witness, information, or document sought by these discovery requests, and be subject to any other such sanctions which this Court deems appropriate, including dismissal of the action.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 3/7/02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

DEFENDANT CHERRY'S INTERROGATORIES FOR ANSWER BY PLAINTIFFS
and REQUEST FOR PRODUCTION (SET ONE)

TO: STANLEY G. KAIZER and
SANDRA L. KAIZER
C/O Samuel Cohen, Esquire
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

Please take notice that you are hereby required pursuant to the Pennsylvania Rules of Civil Procedure, to serve upon the undersigned, within thirty (30) days from service hereof, your answers to the Interrogatories provided by Defendant, in writing and under oath.

These shall be deemed to be continuing Interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your answers, you shall promptly furnish said information to the undersigned by supplemental answers.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
John W. Blasko, Esquire

DEFINITIONS

A. "You" and/or "your" means Plaintiffs, their agents and employees and others acting on their behalf with regard to asserting the cause of action to be set forth in Plaintiffs' Complaint in the above-captioned case.

B. "Document" shall mean any writing (whether handwritten, typed, printed or otherwise made), drawing, graph, chart, photograph, phonograph record, or electronic or mechanical matter (including microfilm of any kind or nature, tape or recording), or other data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and shall include, without limiting the generality of the foregoing, all records, correspondence, telegrams, teletypes, agreements, studies, reports, drafts, memoranda, and computer print outs.

C. As used herein "identify", when used in reference to an individual, means his full name and present or last known residence and business address, his present or last known position or title and business affiliation, and his position at the time in question.

D. "Health care provider" means a person, corporation, facility, institution or other entity licensed or approved by the Commonwealth to provide health care or professional medical related services, including but not limited to a medical doctor, a doctor of osteopathy, a doctor of podiatry; chiropractor, nurses, hospital; nursing home; health maintenance organization; or an officer, employee or agent of any of them acting in the course and scope of his employment.

Where the Interrogatories request that documents be identified, an identification of it should include at least the following: author, addressee, type of document, date, subject matter, and the name and address of the person or party presently having custody of the document and any known copies of it.

INSTRUCTIONS FOR ANSWERING INTERROGATORIES

A. In accordance with Pa. R.C.P. Rule 4005, the original copy of these written Interrogatories has been served upon you to be answered by the party served of, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. In accordance with Pa. R.C.P. Rule 4006, written answers shall be inserted in the spaces provided in the Interrogatories. If there is sufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

C. Please serve these answers to Interrogatories in accordance with the Rules of Civil Procedure.

2. Please provide the following employment and income information:

- (a) Your employer, job description, rate of pay and average weekly wages, **currently**;
- (b) Your employer, job description, rate of pay and average weekly wages **at the time of the alleged incident**;
- (c) Your employer, job description, rate of pay and average weekly wages for each job for **ten years preceding the alleged incident**; and
- (d) Your gross income for each of the past five (5) years.

ANSWER:

3. State with particularity the nature of your claims against the Defendant Cherry as well as all facts which support the Plaintiffs' theory of negligence or malpractice. In particular, specify all facts which support those allegations set forth in Plaintiffs' Complaint.

ANSWER:

6. Regarding any injuries which you allege were caused by the alleged incident, state the following:

- (a) A precise and full description of all injuries which you claim to have sustained as a result of the incident;
- (b) The identity of all health care providers who have examined, attended or treated you concerning the injuries referenced in response to paragraph (a);
- (c) As to each person identified in the preceding subparagraph, the nature of the treatment provided and the dates on which you visited each listed health care provider;
- (d) Whether any of the health care providers identified in response to subparagraph (c) were consulted on advice or referral of your attorney, and if so, which health care provider(s).

ANSWER:

7. Do you contemplate the necessity of further examination and/or treatment in the future due to the alleged malpractice by the Defendant Cherry? If so, please set forth a full description of examination and/or treatment which will be necessary, as well as any physician(s) who has advised of the need for such treatment.

ANSWER:

8. List and itemize all related expenses, charges, invoices and/or statements (including medications and medical appliances) which Plaintiffs contend are recoverable from any Defendant in this action as an element of compensatory damages and identify the health care provider, service rendered, date and/or dates of service and amounts billed.

ANSWER:

9. For each of those bills enumerated in response to Interrogatory No. 8:

- (a) List and itemize the amounts paid by third-party payers, including, but not limited to, Plaintiffs' medical insurance (including Medicare or Medicaid) or health insurance carrier(s) to the medical providers listed in response to Interrogatory No. 8;
- (b) List and itemize the amounts paid by Plaintiffs directly to any of the medical providers listed in response to Interrogatory No. 8;
- (c) List and itemize the bills, invoices, charges and/or statements concerning which you have evidence that the provider thereof did not accept the insurance payment in full satisfaction thereof;
- (d) List the medical expenses that were written off or forgiven or otherwise not owed by reason of a contract between the health care provider and your medical insurer as a compromise of a bill between the medical care provider and you or for any other reason.

ANSWER:

10. Were you confined to home or other place of convalescence as a result of the incident? If so, specify:

- (a) The beginning and end dates for each period of confinement;
- (b) The place where each confinement took place;
- (c) The identity of each physician, nurse, or other person who provided care during each period of confinement;
- (d) An itemization of any costs associated with each period of confinement.

ANSWER:

11. Are you seeking damages for past lost wages? If so, specify:

- (a) Each date on which you were absent from work due to the alleged incident;
- (b) The total number of days or hours which you allegedly lost;
- (c) Whether your absence from work was pursuant to a physician's directive, and if so the name of the physician and the date you were cleared to return to work;
- (d) The gross and net amount of lost wages sought;
- (e) Whether you have been paid by your employer or have received income from any other source during your absence; and
- (f) If your response to the preceding subinterrogatory is affirmative, the identity of the person paying it, the reason why it was paid, and the amount paid.

ANSWER:

12. Are you seeking damages for loss of future earning capacity? If so, state:

- (a) Whether you are claiming partial or full disability;
- (b) The anticipated duration of disability;
- (c) The precise nature of the claimed disability and medical reason(s) why you claim entitlement to damages for loss of future earning capacity;
- (d) The identity and address of all health care professionals who have expressed an opinion as to the subject matter addressed at subinterrogatories (a), (b), and (c); and
- (e) The amount claimed as damages and the method of computing this amount.

ANSWER:

13. Are you seeking damages for emotional or psychological injuries and/or for pain and suffering? If so, specify:

- (a) The nature of the emotional or psychological injuries claimed, including a description of any physical manifestations;
- (b) The anticipated duration of the emotional or psychological injuries;
- (c) The identity and address of all health care professionals who have treated you for said injuries and/or expressed an opinion as to the subject matter addressed at subinterrogatories (a) and (b);
- (d) All treatment received for said problems, including counseling, therapy and/or medications; and,
- (e) The dates of such examination, consultation and/or therapy.

ANSWER:

14. State whether or not any of the alleged injuries resulted in any scars, abrasions, contusions or lacerations of your body. If so, describe and specify the parts of your body so affected.

ANSWER:

15. To the extent not set forth above, specify and itemize all expenditures which you attribute to the incident in question, including household help, nursing, or other services.

ANSWER:

16. Other than those set forth above, identify each and every health care provider who rendered to you any care, treatment or performed any examination upon you whatsoever **since the date of incident to present date** and/or with whom you have a scheduled future appointment, whether or not you claim that the treatment is directly related to the incident.

ANSWER:

17. Either **prior or subsequent** to the treatment, surgery, or examination referred to in the Complaint, did you suffer any injury, illness or disease in those portions of the body claimed to have been affected by the treatment, surgery, or examination referred to in the Complaint? If so, please state:

- (a) A description of any such injury, illness or disease which you suffered;
- (b) The cause of any such injury, illness or disease, and if by an accident, the date, time and mechanism of injury; and
- (c) The identity of any health care providers and/or health care institutions which provided treatment or examination because of such injury, illness or disease.

ANSWER:

18. To the extent not already specified above, state the name, specialty, and address of any health care provider who provided any medical treatment or examination whatsoever to you at any time, along with the date and description of the type of service rendered and the reason for same.

ANSWER:

19. If you took or ingested any drug, narcotic, sedative, tranquilizer, or any other form of medication in the six month period prior to the incident in question, specify:

- (a) The name, whether brand name or generic, of each such drug or medication;
- (b) The date and time of taking each such drug or medication, or in the alternative, the daily dosage;
- (c) Whether such drug or medication was prescribed by a physician, and if so, the physician's name and business address; and
- (d) The pharmacy or other place where each such drug or medication was obtained.

20. State whether you have ever been a party to any other litigation or legal proceeding, including but not limited to personal injury actions, social security disability, or unemployment and workers' compensation proceedings, and if so, please state the following:

- (a) The nature of the case or proceeding;
- (b) The date, court, tribunal, and place where the case or proceeding was filed or commenced;
- (c) The identity of all plaintiffs, defendants, other parties, and their attorneys;
- (d) The present status of each litigation or proceeding; and
- (e) If concluded, the result of each case or proceeding.

ANSWER:

21. Have you ever filed an application for insurance on your life, or for health and accident insurance? If so, give the date of such application, the name of the company to which you applied, the name and address of the insurance agent through whom you made such application, and whether you were approved for coverage. If you were rejected, state the reason for rejection.

ANSWER:

22. If you have ever pleaded guilty, pleaded no contest, or been convicted of any crime other than traffic violations, please state the nature of the offense, the date, the county in which you were tried, and the sentences given you.

ANSWER:

23. Identify each person who possesses knowledge relevant to the facts alleged in the Complaint, stating for each, their name, address, and a summary of the subject matter of which each has knowledge.

ANSWER:

24. Identify each person whom you intend to call as a non-expert witness at the trial of this case, stating for each, their name, address, and a summary of the subject matter of their anticipated testimony.

ANSWER:

25. Was there any investigation into facts relevant to the events alleged in the complaint conducted by or on behalf of Plaintiffs, or by any other person, whether or not done on behalf of Plaintiffs? If so, please state:

- (a) The identity and employer of each person who conducted any such investigation;
- (b) The dates of any such investigations; and
- (c) Whether any reports, records, notes, tests, photographs, audio or video recordings, or documents of any type were generated as a result of any such investigation and if so, a description of same.

ANSWER:

26. Were any statements (as defined by Pa.R.C.P. 4003.4) given or produced by any person(s) having knowledge concerning the alleged incident and/or the instant action, including Plaintiffs herein? If so, please state:

- (a) The identity and employer of each person who has given or produced such a statement;
- (b) The identity and employer of the person by whom each statement was taken;
- (c) The date upon which any such statement was given or produced;
- (d) The method by which the statement was provided, recorded or preserved; and
- (e) The identity of all persons presently having custody of the notes, recordings, transcripts, etc. relative to any such statements.

ANSWER:

29. Identify each and every documentary and demonstrative exhibit, picture, object, model, movie, tape or other document which you intend to introduce at trial as exhibits and/or refer to during the testimony of any witness at the trial of this case and for each, identify the witness(es) whom you intend to question concerning said exhibit.

ANSWER:

30. Identify all persons who assisted in the preparation of answers to these Interrogatories.

ANSWER:

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

BY


JOHN W. BLASKO

811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant Cherry

Dated: 9/11/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Cherry's Interrogatories and Request for Production (Set One), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11th day of September, 2001, to Samuel Cohen, Esquire, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

DEFENDANT CHERRY'S EXPERT INTERROGATORIES
FOR ANSWER BY PLAINTIFFS

TO: STANLEY G. KAIZER and
SANDRA L. KAIZER
C/O Samuel Cohen, Esquire
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

Please take notice that you are hereby required pursuant to the Pennsylvania Rules of Civil Procedure, to serve upon the undersigned, within thirty (30) days from service hereof, your answers to the Interrogatories in writing and under oath.

These shall be deemed to be continuing interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your answers, you shall promptly furnish said information to the undersigned by supplemental answers.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____

John W. Blasko, Esquire

Definitions:

A. "Document" shall mean any writing (whether handwritten, typed, printed or otherwise made), drawing, graph, chart, photograph, phonograph record, or electronic or mechanical matter (including microfilm of any kind or nature, tape or recording), or other data compilations from which information can be obtained (translated, if necessary, into reasonably usable form), and shall include, without limiting the generality of the foregoing, all records, correspondence, telegrams, teletypes, agreements, studies, reports, drafts, memoranda, and computer print outs.

B. "Health care provider" means a person, corporation, facility, institution or other entity who provided health care or professional services as a physician, including a medical doctor and a doctor of osteopathy and a doctor of podiatry; psychiatrist or psychologist; chiropractor; therapist; hospital; nursing home; health maintenance organization; or an officer, employee or agent of any of them acting in the course and scope of his employment

C. "Incident" or "alleged incident" means actions or omissions upon which this action is purportedly based.

D. As used herein "identify", when used in reference to an individual, means his full name and present or last known residence and business address, his present or last known position or title and business affiliation, and his position at the time in question.

E. "Injury" means any bodily or mental harm or damage, including that as a result of a disease process.

F. "Person" means a natural person, firm, partnership, association, corporation, legal representative, and/or trustee.

G. "You" and/or "your" means Plaintiffs, their agents and employees and others acting on her behalf with regard to asserting the cause of action set forth in Plaintiffs' Complaint in the above-captioned case.

Instructions for Answering Interrogatories:

A. In accordance with Pa.R.C.P. Rule 4005, the original of these written Interrogatories have been served upon you to be answered by the party served of, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.

B. When the Interrogatories request that documents be identified, an identification of it should include at least the following: author, addressee, type of document, date, subject matter, and the name and address of the person or party presently having custody of the document and any known copies of it.

C. In accordance with Pa.R.C.P. Rule 4006, written answers shall be inserted in the spaces provided in the Interrogatories. If there is sufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.

D. In accordance with Pa.R.C.P. Rule 4006(b), a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained.

E. Please file and serve answers to these Interrogatories in accordance with Pa.R.C.P. Rule 4006(a)(2).

INTERROGATORIES

1. Please provide the name, business address and home address for each **medical expert** witness whom you intend to call at the trial of this case.

ANSWER:

2. For each **medical expert** witness identified in response to the above Interrogatory, please specify the following information relative to qualifications:

(You may attach a copy of each expert's curriculum vitae and list of publications in lieu of answering this Interrogatory)

- (a) Colleges and medical or technical schools attended, dates of attendance, dates of graduation and degrees attained;
- (b) The medical schools or hospitals where the witness pursued any internship or residency and the dates of such study;
- (c) The specialties in which the witness has received certification by any board of medical specialty or professional organization, the date of such certification, and the identity of the board issuing such certification;
- (d) All professional societies, academies, associations or other organized professional groups of which this expert is a member;
- (e) All states in which the witness has ever been licensed and the states in which the witness is currently licensed;
- (f) All hospitals where such witness has ever been granted staff privileges and the dates of such staff appointments, and for each such hospital, whether such hospital ever revoked or suspended such staff privileges;
- (g) If the witness is not self-employed, state each address where the witness is employed; and
- (h) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication.

ANSWER:

3. Please provide the name, business address and home address for each **non-medical expert** witness whom you intend to call at the trial of this case.

ANSWER:

4. For each **non-medical expert** witness identified in response to the above Interrogatory, please specify the following information relative to qualifications:

(You may attach a copy of each expert's curriculum vitae and list of publications in lieu of answering this Interrogatory)

- (a) Colleges and/or technical schools attended, dates of attendance, dates of graduation and degrees attained;
- (b) The specialties in which the witness has received certification by any board or professional organization, the date of such certification, and the identity of the board issuing such certification;
- (c) All professional societies, academies, associations or other organized professional groups of which this expert is a member;
- (d) All states in which the witness has ever been licensed and the states in which the witness is currently licensed;
- (e) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication; and
- (f) If the witness is not self-employed, state each address where the witness is employed.

ANSWER:

5. For each expert witness identified above (medical and non-medical), state the subject matter on which the expert is expected to testify.

ANSWER:

6. For each expert witness identified above (medical and non-medical), state the substance of each and every opinion which the expert is expected to render, and provide a summary of the grounds for each such opinion.

ANSWER:

7. List by title, author, and official citation, all treatises, articles, textbooks or any literature whatsoever, which the expert(s) identified above relied upon in formulating his or her opinions relative to this case or which the expert(s) intends to present, utilize or refer to during his or her trial testimony.

ANSWER:

8. For each expert witness identified above, state the number of times the expert has previously been retained for the purpose of either reviewing cases or for testifying in cases for Plaintiffs' counsel or by members of the law firm to which Plaintiffs' counsel belongs.

ANSWER:

9. For each expert witness identified above, state whether any such expert witness has had any past or present business or personal relationship with the Plaintiffs, Plaintiffs' counsel, or by of the law firm to which Plaintiffs' counsel belongs. If so, specify the persons involved and the nature of any such relationship.

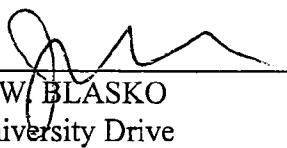
ANSWER:

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: 9/11/01

BY


JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant Cherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Cherry's Expert Interrogatories, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11th day of September, 2001, to Samuel Cohen, Esquire, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

DEFENDANT CHERRY'S REQUEST FOR PRODUCTION (SET TWO)

TO: STANLEY G. KAIZER and
SANDRA L. KAIZER
C/O Samuel Cohen, Esquire
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

AND NOW, comes the Defendant, Robert Cherry, M. D., by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and requests that Plaintiffs produce the documents and tangible things described below pursuant to Rule 4009 of the Pennsylvania Rules of Civil Procedure for inspection and/or photocopying by Defendant, his attorneys and agents. The documents and tangible things shall be produced at the offices of McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., 811 University Drive, State College, Pennsylvania 16801, thirty (30) days from service of this Request, or at such other time and place that the parties may mutually agree. In responding to this request, you (as hereinafter defined) shall utilize the definitions and follow the instructions hereinafter set forth, each of which shall be deemed to be a material part of each request.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
John W. Blasko, Esquire

INSTRUCTIONS

1. With respect to each of the following requests, you shall identify and/or produce all documents which are known to you or which can be located or discovered by you through diligent effort on the part of you, your employees, representatives, attorneys or accountants, including but not limited to, all documents which are in the business or personal files of your employees, in the possession of your representatives, attorneys or accountants, or accessible to you, your employees, or your representatives, attorneys or accountants.

2. The following requests shall be deemed to be continuing so as to require further and supplemental production of documents by you in accordance with Rule 4007.4 of the Pennsylvania Rules of Civil Procedure.

3. If any documents requested herein or fairly comprised within the scope of the following requests have been lost or destroyed, you shall provide in lieu of a true and correct copy thereof a list of each document so lost or destroyed together with the following information: (1) the date of origin; (2) a brief description of such document; (3) the author of such document; (4) the date upon which the document was lost or destroyed; and (5) a brief statement of the manner in which the document was lost or destroyed.

4. In the event you refuse to produce any document requested on grounds of any claimed privilege from discovery, state each ground for such claimed privilege, describe the document withheld by date, author, recipients (including all persons who were shown or received a copy), and give a general description of the subject matter of the document.

5. In the event that more than one copy of a document exists, the original shall be produced, as well as every copy on which appears any notation or marking of any sort not appearing on the original.

6. For any documents which are stored or maintained in files in the normal course of business, such documents shall be produced in such files, or in such a manner as to preserve and indicate the file from which such documents were taken.

DEFINITIONS

1. "You" and "your" shall mean Plaintiffs as well as their agents, attorneys, employees, accountants, consultants, independent contractors, and any other individual or entity associated or affiliated with her or purporting to act on her behalf with respect to the matter in question.

2. "Document" shall mean all written or printed matter of any kind in your possession, custody or control, which is either known to you or can be located or discovered by diligent effort, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, notes, speeches, press releases, diaries, calendars, agenda, statistics, letters, telegrams, minutes, contracts, purchase orders, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intraoffice communications, offers, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, work papers, records of telephone calls or other communications or conversations, and all drafts, alterations, modifications, changes or amendments of any of the foregoing, graphic or aural records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, recordings and motion pictures) and electric or mechanical records of representations of any kind (including without limitation, tapes, cassettes, discs, and recordings).

3. "Relating to" shall include pertaining to, recording, evidencing, containing, setting forth, reflecting, showing, disclosing, describing, explaining, summarizing, concerning or referring to, whether directly or indirectly.

4. The conjunctions "and" and "or" shall be interpreted to mean "and/or", and shall not be interpreted to exclude any information otherwise within the scope of any request.

5. "Person" shall mean any individual, firm, partnership, corporation, association, business or governmental entity or subdivision, agency, department, and any "person" acting by or through, directly or indirectly, any other "person" as well as any "person" by whom such "person" was controlled with respect to the matter in question.

DOCUMENTS TO BE PRODUCED

1. Copies of any and all medical records in connection with any care and treatment you may have received from any physician, hospital or medical facility for the ten (10) years preceding the said procedure at issue in this action, and all medical records for care received since said procedure.
2. Any and all photographs and/or videotapes and/or audiotapes in the possession, custody or control of the Plaintiffs, counsel for Plaintiffs, or any other person or entity acting on behalf of the Plaintiffs, including any insurers for the Plaintiffs, showing, representing or purporting to show any person, place, or thing which in any way related to the events which are the subject matter of this litigation.
3. All statements, signed statements, transcripts of recorded statements or interviews, recorded statements if not transcribed or any statement of recorded statements if not transcribed verbatim taken of any parties, persons, or witnesses as part of an investigation of the happening or cause of the incident in question, conducted by, or in the possession of Plaintiffs, Plaintiffs' attorney, insurers, or anyone else acting on behalf of Plaintiffs.
4. Copies of any notes, memos, diaries, memorializations, statements, transcripts of recorded statements or interviews relating to, referring to, or in any way describing the allegations and events with respect to the subject matter upon which Plaintiffs bases this action, authored by Plaintiffs, or anyone acting on their behalf and/or any person involved and/or related in any way to the incidences which are the subject matter of this lawsuit.

5. All documents prepared by Plaintiffs or by any insurers, representatives, agents or anyone acting on behalf of Plaintiffs, except their attorneys, during an investigation of any aspect of the incident in question or prepared in anticipation of litigation or trial of this matter. Such documents shall include any documents made or prepared up through the present time, with the exclusion of the mental impressions, conclusions, or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

(NOTE: As referred to herein, "documents" includes written, printed, typed, recorded, or graphic matter, however produced or reproduced, including correspondence, telegrams, other written communications, data processing storage units, tapes, contracts, agreements, notes, memoranda, analyses, projections, indices, work papers, studies, reports, surveys, diaries, calendars, films, photographs, diagrams, drawings, minutes of meetings or any other writing (including copies of the foregoing, regardless of whether the parties to whom this request is addressed is now in the possession, custody or control of the original) now in the possession, custody or control of Plaintiffs, their former or present counsel, agents, employees, officers, insurers, or any other person acting on Plaintiffs' behalf.)

6. Copies of any and all demonstrative or other physical evidence which you intend to rely upon, introduce, or in any way utilize at trial.
7. A listing of all monetary expenses for which you seek recovery in this lawsuit, including but not limited to, documents establishing claimed medical expenses, pharmacy expenses and incidental expenses pertaining to the injuries which Plaintiff allegedly suffered in the incident in question.
8. Copies of federal, state and municipal income tax returns and supporting documentation for Plaintiffs for the five (5) year period preceding the incident, and all tax returns since that time and to the present. If tax returns are not available for a given year, please provide copies of W2 statements or any other documentary information which will verify the extent of the wages and earnings.
9. Copies of any and all writings of whatsoever nature relating and/or reflecting the lost past or future income of the Plaintiff .

10. Copies of any and all documents which support, establish, or relate in any manner whatsoever to any of the claims/allegations set forth by Plaintiffs regarding this incident, or which will be relied upon by Plaintiffs in the prosecution of this action.
11. All expert opinions, expert reports, expert summaries, or other writings of experts in the possession, custody or control of Plaintiffs, or their attorneys or insurers, which relate to the subject matter of this litigation and the incident in question.
12. Copies of any and all documents relating in any manner to any oral or written report, notice, communication or correspondence made by Plaintiffs to any entity, or to any person regarding this incident.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: 9/11/01

BY 

JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant Cherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
)
Plaintiffs,) NO. 01-1327 CD
)
vs.) JURY TRIAL DEMANDED
)
ROBERT CHERRY,)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Cherry's Request for Production (Set Two), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 11th day of September, 2001, to Samuel Cohen, Esquire, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
ROBERT CHERRY





MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
600 Centerview Drive • M.C. A560 • Suite 5103, Hershey, Pennsylvania 17033-2903

814-238-4926 FAX 814-234-5620
717-531-1199 FAX 717-531-1193
www.mcquaideblasko.com

Reply to State College

DIRECT: [814] 235-2235

February 1, 2002

Samuel Cohen, Esquire
Katz, Cohen, & Price, P.C.
117 South 17th Street, Suite 2010
Philadelphia, PA 19103

RE: Kazier v. Cherry
No. 01-1327 CD

Dear Mr. Cohen:

In reviewing the file, it appears that we served you with discovery on September 11, 2001. Your responses are now long overdue. Would you kindly supply answers, without objections, to our discovery requests as soon as possible.

Very truly yours,

MCQUAIDE, BLASKO

BY


RICHARD K. LAWS

RKL/nls

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

John W. Blasko Thomas E. Schwartz Grant H. Fleming R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright
Paul J. Tomczuk Janine C. Gismondi Maureen A. Gallagher John A. Snyder April C. Simpson Allen P. Neely Charles Eppolito, III Katherine V. Oliver Katherine M. Allen
Wayne L. Mowery, Jr. Pamela A. Ruest Michelle S. Katz Ashley Himes Kranich Chena L. Glenn-Hart Richard K. Laws John H. Taylor Michael J. Mohr Livinia N. Jones

John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of **DEFENDANT CHERRY'S MOTION TO
COMPEL**, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 7 day of March, 2002, to Samuel Cohen, Katz, Cohen, & Price, P.C. 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
RICHARD K. LAWS
Attorneys for Defendant
ROBERT CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and SANDRA)
L. KAIZER, husband and wife,)
Plaintiffs)
v.) NO. 01 - 0327 CD
ROBERT CHERRY,) JURY TRIAL
Defendant) DEMANDED

SCHEDULING ORDER

NOW, this 14th day of March, 2002, following a conference with counsel, IT IS
HEREBY ORDERED as follows:

1. The deposition of Defendant shall be taken prior to April 12, 2002, at 5:00 p.m.
2. Plaintiffs' expert report shall be submitted to defense counsel within forty-five (45) days of the completion of Defendant's deposition.
3. Any defense expert report shall be submitted to counsel for Plaintiff within forty-forty (45) days of the receipt of Plaintiff's expert report.
4. This case will be tried before a jury of twelve. It is anticipated that this case will take two (2) days; the Court Administrator of Clearfield County shall schedule this matter for trial in August or September of 2002.

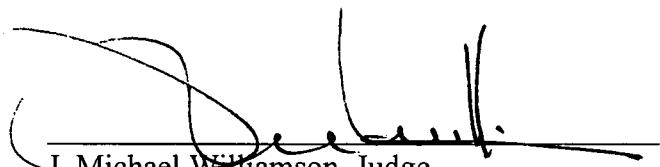
BY THE COURT:

FILED

MAR 19 2002

m/1:29/ncc

William A. Shaw
Prothonotary



J. Michael Williamson, Judge
Specially Presiding
25th Judicial District of Pennsylvania

xc: Samuel Cohen, Esquire
Richard K. Laws, Esquire
Court Administrator



JUDGES CHAMBERS
TWENTY-FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA
LOCK HAVEN, PENNSYLVANIA 17745

J. MICHAEL WILLIAMSON
JUDGE

570-893-4014
FAX 570-893-4126

March 18, 2002

William Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: **Kaizer v. Cherry**
No. 01-0327 CD

Dear Mr. Shaw:

Please file the enclosed Order in the above referenced matter. All copies have been distributed.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carol E. Miller".

Carol E. Miller
Secretary to Judge Williamson

Enclosure

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

STANLEY G. KAIZER and)
SANDRA L. KAIZER, husband and)
wife,)
Plaintiffs,) NO. 01-1327 CD
vs.) JURY TRIAL DEMANDED
ROBERT CHERRY,)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that Defendant's **Notice of Taking Oral Depositions of Stanley G. Kaizer and Sandra L. Kaizer** in the above-referenced matter was mailed by first class, postage prepaid, at the Post Office, State College, Pennsylvania, this 20 day of March, 2002, to Samuel Cohen, Esquire, Katz, Cohen & Price, P. C., 117 South 17th Street, Suite 2010, Philadelphia, PA 19103.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko/CO
John W. Blasko, Esquire
Attorneys for Defendant

FILED

MAR 21 2002

1207100C

William A. Shaw
Prothonotary

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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

STANLEY G. KAIZER and
SANDRA L. KAIZER, h/w

vs.

ROBERT CHERRY

NO.: 01-1327-CD

PRAECIPE TO DISCONTINUE WITH PREJUDICE

TO THE PROTHONOTARY:

Please mark the above captioned case discontinued and terminated, with prejudice.

Respectfully submitted,

KATZ, COHEN & PRICE, P.C.



SAMUEL COHEN
Attorney for Plaintiff
117 South 17th Street, Suite 2010
Philadelphia, PA 19103
(215) 636-0400

Dated: 4/11/02

FILED

APR 15 2002

William A. Shaw
Prothonotary

FILED

cc
19:33:01
APR 15 2002
Disc. to Atty.
Copy to CIA
KM

William A. Shaw
Prothonotary

COPY

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

**Stanley G. Kaizer and
Sandra L. Kaizer, h/w**

Vs. **No. 2001-01327-CD**
Robert Cherry

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 15, 2002, marked:

Discontinued and Terminated with Prejudice

Record costs in the sum of \$120.69 have been paid in full by Samuel Cohen, Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of April A.D. 2002.

William A. Shaw, Prothonotary