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In The
Supreme Court of Virginia

RECORD NOS. 003030, 003031

MIMI DIDATO,

Appellant,

v.

PAUL M. STREHLER, M.D.

and

**CHIPPENHAM PEDIATRIC & ADOLESCENT MEDICINE, P.C.,
a Virginia Corporation,**

Appellees.

GARY DIDATO,

Appellant,

v.

PAUL M. STREHLER, M.D.

and

**CHIPPENHAM PEDIATRIC & ADOLESCENT MEDICINE, P.C.,
a Virginia Corporation,**

Appellees.

JOINT APPENDIX

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VIRGINIA:

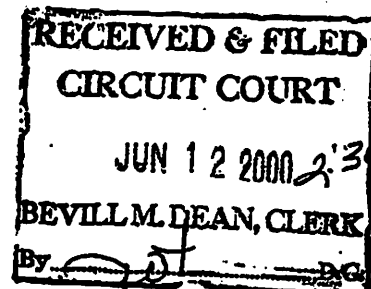
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
Manchester Division

MIMI DIDATO,

Plaintiff,

v

Case No.: ML-7201



PAUL M STREHLER, M.D. and
CHIPPENHAM PEDIATRIC & ADOLESCENT MEDICINE, P.C.,

Defendants.

AMENDED MOTION FOR JUDGMENT

The plaintiff, Mimi Didato, by counsel, for her Amended Motion for Judgment against the defendants Paul M. Strehler, M.D. (Dr. Strehler) and Chippenham Pediatric & Adolescent Medicine, P.C. (Chippenham Pediatric) sets forth the following:

1. At all times relevant to this action, Dr. Strehler has been a physician licensed to practice medicine in the Commonwealth of Virginia and engaged in the practice of medicine in the specialty of pediatrics.
2. At all times relevant to this action, Chippenham Pediatric has been a professional corporation registered to do business in the Commonwealth of Virginia and has been engaged in providing health care services relating to the practice of pediatrics.

3. At all times relevant to this action, Dr. Strehler has been an officer and employee of Chippenham Pediatric acting within the scope of his employment by Chippenham Pediatric.

4. Mrs. Didato is the spouse of Gary Didato, M.D.

5. Dr. and Mrs. Didato are the parents of three children: Mathew born January 21, 1993, Gabrielle born September 28, 1994 and Nicholas born May 12, 1998.

6. In 1993, Dr. and Mrs. Didato presented to Dr. Strehler and Chippenham Pediatric and requested that they provide their family including themselves and their infant son Mathew all health care a family should receive from a pediatrician and a professional corporation engaged in providing health care services relating to the practice of pediatrics.

7. Pursuant to the request of Dr. and Mrs. Didato, Dr. Strehler and Chippenham Pediatric agreed to provide the Didato family all health care members of a family should receive from a pediatrician and a professional corporation engaged in providing health care services relating to the practice of pediatrics.

8. The relationship between the Didato family and Dr. Strehler and Chippenham Pediatric created as a result of a result of the acceptance of the Didato family into the practice of Dr. Strehler and Chippenham Pediatric as described in paragraph 7 continued without interruption until 1997 when Dr. and Mrs. Didato moved from the Richmond, Virginia area to Connecticut.

9. Thalassemia and Sickle Cell Disease are inherited diseases of the blood known as hemoglobinopathies.

10. Thalassemia is a form of anemia (red blood cell deficiency). Hemoglobin is the oxygen-carrying component of the red blood cells. It is made of two different kinds of proteins, called alpha and beta globins. If the body doesn't produce both of these two proteins, the red blood cells do not form properly and do not carry sufficient oxygen. The result is anemia that begins in early childhood and persists throughout life. There are a number of varieties of thalassemia. If the body does not produce beta globins, the resultant disease is called beta thalassemia.

11. Sickle cell disease (also referred to as "sickle cell anemia") is caused by the presence of an abnormal type of hemoglobin called "sickle hemoglobin" in red blood cells. The presence of sickle hemoglobin causes red blood cells to change from their usual biconcave disc shape to a crescent or sickle shape. The abnormal hemoglobin makes the red blood cells unable to carry oxygen and the abnormal shape can also cause the red blood cells to clog small blood vessels forming clots and preventing some organs and tissue from receiving sufficient oxygen. When this occurs, red blood cells are damaged and destroyed producing anemia and the victim of sickle cell disease will experience episodes of severe pain and sustain damage to organs and tissue.

12. Some of the various clinical manifestations of sickle cell disease include painful swelling of the hands and feet caused by ischemic necrosis of the small bones, illnesses accompanied by fever, hypoxia and acidosis, infarction of bone marrow, splenic infarcts, splenic enlargement leading to circulatory collapse, pulmonary infarction, strokes, ischemic damage to heart, liver, kidneys and eyes and priapism (painful penile erections).

13. Victims of sickle cell disease are susceptible to meningitis, sepsis and other serious infections and a high risk for a lethal, rapid decrease in hemoglobin level (aplastic episode).

14. By midchildhood most victims of sickle disease are underweight and have an enlarged heart. Puberty is frequently delayed. Throughout life, the victim of sickle cell disease will suffer a barrage of medical crises and can expect to experience pain in varying levels of intensity on a daily basis.

15. The life expectancy of sickle cell disease victims is dramatically reduced as a consequence of the disease and its sequelae.

16. Both thalassemia and sickle cell disease are autosomal recessive disorders. This means these disorders only occur when both parents carry the gene for the disorder. If both parents are carriers of the abnormal gene responsible for producing the disorder, there is a 25 per cent possibility that a child of the parents will have the disorder. A person who carries the gene for thalassemia has the "thalassemia trait". A person who carries the gene for sickle cell disease has the "sickle cell trait".

17. If one parent is a carrier of the beta thalassemia trait and the other parent is a carrier of sickle cell trait, there is a 25 per cent possibility that a child of the parents will be born with a type of sickle cell disease known as sickle beta thalassemia.

18. One form of sickle beta thalassemia disease is called sickle beta O thalassemia. This is the most severe form of sickle beta thalassemia. It presents a clinical picture virtually indistinguishable from that of sickle cell anemia described in paragraphs 11 through 15 above.

19. The beta thalassemia trait is found primarily in persons of Mediterranean, African or Southeast Asian origin.

20. Dr. Didato is of Sicilian descent and is therefore a person of Mediterranean origin.

21. The sickle cell trait is found primarily in persons of African, Caribbean, Latin American, Southeast Asian, Middle Eastern or Mediterranean origin.

22. Mrs. Didato's mother is Dominican and her father is of Spanish and Portuguese descent and Mrs. Didato is therefore a person of Caribbean, Latin American and Mediterranean origin.

23. By the 1970's, technology to screen infants for sickle cell trait and disease and thalassemia trait and disease was available.

24. By 1979, a number of pediatricians were advocating screening of newborns for sickle cell trait and disease and thalassemia trait and disease to help accomplish two objectives: provision of optimum medical care of patients with the disease and the prevention of the disease through genetic counseling.

25. Purposes of genetic counseling include making persons such as the parents of newborn who tested positive for sickle cell or thalassemia trait aware of the risk of parenting a child with thalassemia or sickle cell disease, the availability of further genetic testing for the parents and the various alternatives for disease prevention. The information made available to parents through genetic counseling and followup activities recommended by genetic counseling would include the 25 per cent risk of future offspring with sickle cell disease if both parents were carriers of sickle cell

trait or one parent was a carrier of sickle cell trait and the other a carrier of thalassemia trait. In such parents, the options made known to the parents through genetic counseling and its followup activities would include preventing the birth of a child with sickle cell disease by termination of any unplanned pregnancy when prenatal diagnosis revealed the fetus was positive for sickle cell disease or thalassemia or avoiding all pregnancies by birth control.

26. In 1987, a consensus was reached by representatives of the concerned medical specialties including pediatricians that:

- Good medical practice dictated that screening for sickle cell disease and thalassemia should be provided to all newborns as a result of ordinary care and that state law should require provision of such services.
- If the screening demonstrated that the newborn did not suffer from the disease and therefore required no specialized medical care but was a carrier, information about the newborn's carrier state should be furnished to the parents of the newborn.
- The information provided to the parents should explain that although the newborn's carrier state is not a disease, there may be implications for other family members, and, depending on results of family studies, future children may be at risk for a clinically significant hemoglobinopathy.
- A referral source for family testing and genetic counseling should be clearly identified for the parents.

27. Prior to 1994, Virginia and most other states had initiated a newborn screening program for hemoglobinopathies.

28. In 1994, Va. Code § 32.1-65 provided that each infant born in the Commonwealth would be subject to a screening test for sickle cell diseases unless the infant's parent or guardian objected on religious grounds.

29. Prior to September 28, 1994, pediatricians in Virginia and elsewhere in the United States had determined that the pediatrician who is caring for a newborn and is aware that the newborn carries the sickle cell trait is in the best position to alert the parents of the newborn of their child's carrier state and communicate to the parents the information described in paragraph 26 and identify the referrals described in paragraph 26 and that pediatricians should undertake to so alert parents and communicate such information to the parents and identify such referrals.

30. In 1994, the standard of care for pediatricians practicing in Virginia and elsewhere in the United States required pediatricians who were notified that the results of the screening indicated that it was probable a newborn under their care carried the sickle cell trait to alert the parents of the newborn of this test result and to communicate to the parents the information described in paragraph 26 and identify the referrals described in paragraph 26.

31. Prior to the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric became aware that Dr. Didato carried the thalassemia trait as a consequence of Dr. Strehler and Chippenham Pediatric learning that Mathew carried the thalassemia trait and ensuing discussions with Dr. and Mrs. Didato.

32. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric agreed to become the pediatrician and pediatric practice

entity responsible for providing Gabrielle and her family including Dr. and Mrs. Didato all health care Gabrielle and her family should receive from a pediatrician and a professional corporation engaged in providing health care services relating to the practice of pediatrics.

33. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew that blood would be drawn for Gabrielle and screened for the presence of hemoglobinopathies.

34. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew that the results of the newborn screening of Gabrielle for the presence of hemoglobinopathies would be reported to Dr. Strehler and Chippenham Pediatric.

35. At the time of the birth of Gabrielle on September 28, 1994, Dr. and Mrs. Didato entrusted Dr. Strehler and Chippenham Pediatric to communicate to Dr. and Mrs. Didato any information and facts of clinical significance concerning the results of the newborn screening of Gabrielle to Gabrielle and other members of the Didato family including Dr. and Mrs. Didato.

36. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew that Dr. and Mrs. Didato entrusted Dr. Strehler and Chippenham Pediatric to communicate to Dr. and Mrs. Didato any information and facts of clinical significance concerning the results of the newborn screening of Gabrielle of clinical significance to Gabrielle and other members of the Didato family including Dr. and Mrs. Didato.

37. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew or should have known all of the facts alleged in paragraphs 9 through 30.

38. In October of 1994, Dr. Strehler and Chippenham Pediatric were notified in writing that Gabrielle that the newborn screening results of Gabrielle indicated "HEMOGLOBIN PATTERN = PROBABLE FAS".

39. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that "FAS" meant Fetal Adult Sickle Hemoglobin.

40. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and dx knew that the newborn screening of the blood of Gabrielle indicated that Gabrielle was a carrier of the sickle cell trait.

41. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that Dr Didato was a carrier of thalassemia trait.

42. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that it was very possible that Dr. and Mrs. Didato would conceive together other children in the future.

43. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that

any child born to Dr. and Mrs. Didato in the future had a 25 per cent risk of suffering from sickle cell beta thalassemia.

44. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that if Dr. Strehler and Chippenham Pediatric did not inform Dr. and Mrs. Didato about the results of the newborn screening of Gabrielle and that Gabrielle was a carrier of sickle cell trait, it was highly probable that Dr. and Mrs. Didato would not know that any child born to Dr. and Mrs. Didato in the future had a 25 per cent risk of suffering from sickle cell beta thalassemia.

45. After the birth of Gabrielle, Mrs. Didato, acting on her behalf and on behalf of Gabrielle and Dr. Didato, asked an employee of Chippenham Pediatric about the results of the newborn screening of Gabrielle and was informed by an employee acting in the scope of the employee's employment by Chippenham Pediatric and authorized to speak on behalf of Chippenham Pediatric that since Mrs. Didato had not been informed about any abnormality by Dr. Strehler or Chippenham Pediatric, it meant the newborn screening was normal.

46. Dr. and Mrs. Didato reasonably relied upon the representation of Chippenham Pediatric that the newborn screening results of Gabrielle were normal.

47. Dr. Strehler and Chippenham Pediatric knew that Dr. and Mrs. Didato would rely upon the representation of Chippenham Pediatric that the newborn screening results of Gabrielle were normal.

48. In 1997, Dr. and Mrs. Didato conceived Nicholas.

49. Nicholas was born on May 12, 1998 and subsequent to his birth, Nicholas was diagnosed as suffering from sickle cell beta O thalassemia.

50. After the birth of Nicholas, Dr. and Mrs. Didato learned for the first time that Gabrielle was a carrier of sickle cell trait.

51. Knowing Gabrielle was a carrier of sickle cell trait would have enabled Dr. and Mrs. Didato to know that Mrs. Didato carried the sickle cell trait and that any child born to Dr. and Mrs. Didato in the future had a 25 per cent risk of suffering from sickle cell beta thalassemia.

52. If Dr. Strehler and Chippenham Pediatric had informed Dr. and Mrs. Didato that Gabrielle was a carrier of sickle cell trait, Dr. and Mrs. Didato would not have conceived together any additional children so as to avoid the risk of conceiving a child with sickle cell beta thalassemia.

53. Under the facts alleged herein, Dr. Strehler and Chippenham Pediatric had a physician patient relationship with Dr. and Mrs. Didato with respect to all matters concerning Gabrielle's newborn screening results and communicating to Dr. and Mrs. Didato the information described in paragraph 26 and identifying the referrals described in paragraph 26.

54. Under the facts alleged herein, Dr. Strehler and Chippenham Pediatric had a special relationship with Dr. and Mrs. Didato with respect to all matters concerning the Gabrielle's newborn screening results and communicating to Dr. and

Mrs. Didato the information described in paragraph 26 and identifying the referrals described in paragraph 26.

55. After being notified of the results of Gabrielle's newborn screening, Dr. Strehler and Chippenham Pediatric owed Dr. and Mrs. Didato the duty to exercise reasonable care and to comply with the standard of care set forth in Va. Code § 8.01-581.20 by alerting Dr. and Mrs. Didato that the results of the screening indicated that it was probable that Gabrielle carried the sickle cell trait and to communicate to Dr. and Mrs. Didato the information described in paragraph 26 and identify the referrals described in paragraph 26.

56. Dr. Strehler and Chippenham Pediatric failed to exercise reasonable care and breached the standard of care set forth in Va. Code § 8.01-581.20 and were negligent by failing to alert Dr. and Mrs. Didato that the results of the screening indicated that it was probable that Gabrielle carried the sickle cell trait and communicating to Dr. and Mrs. Didato the information described in paragraph 26 and identifying the referrals described in paragraph 26.

57. As a proximate and direct result of the breach of duties and negligence of Dr. Strehler and Chippenham Pediatric, Dr. and Mrs. Didato conceived Nicholas and Nicholas was born afflicted with sickle beta O thalassemia.

58. As a proximate and direct result of the breach of duties and negligence of Dr. Strehler and Chippenham Pediatric, Mimi Didato has suffered and will continue suffer emotional distress and mental anguish.

59 As a proximate and direct result of the breach of duties and negligence of Dr. Strehler and Chippenham Pediatric, Mimi Didato has incurred and will incur in the future expenses for the care and treatment of Nicholas associated with the sickle beta O thalassemia which afflicts Nicholas and its complications.

WHEREFORE, the plaintiff Mimi Didato, by counsel, demands judgment in the amount of ONE MILLION DOLLARS (\$1,000,000.00) against the defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., jointly and severally and individually, plus interest thereon from May 12, 1998 and her costs.

Plaintiff demands trial by jury.

MIMI DIDATO

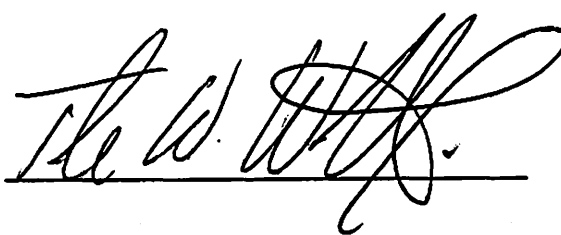
By: 

Counsel

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Phone: (804) 288-1661
Fax: (804) 282-1766
Counsel for the Plaintiff

CERTIFICATE

I hereby certify that on the 9 day of June, 2000, I mailed a true copy of the foregoing Amended Motion for Judgment to John Franklin, III, Esquire of Taylor & Walker, P.C., Post Office Box 3490, Norfolk, Virginia 23514-3490, counsel for the defendants.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

GARY DIDATO,

Plaintiff,

v

Case No.: LF-1287

PAUL M STREHLER, M.D. and
CHIPPENHAM PEDIATRIC & ADOLESCENT MEDICINE, P.C.,

Defendants.

AMENDED MOTION FOR JUDGMENT

The plaintiff, Gary Didato, M.D., by counsel, for his Amended Motion for Judgment against the defendants Paul M. Strehler, M.D. (Dr. Strehler) and Chippenham Pediatric & Adolescent Medicine, P.C. (Chippenham Pediatric) sets forth the following:

1. At all times relevant to this action, Dr. Strehler has been a physician licensed to practice medicine in the Commonwealth of Virginia and engaged in the practice of medicine in the specialty of pediatrics.

2. At all times relevant to this action, Chippenham Pediatric has been a professional corporation registered to do business in the Commonwealth of Virginia and has been engaged in providing health care services relating to the practice of pediatrics.

3. At all times relevant to this action, Dr. Strehler has been an officer and employee of Chippenham Pediatric acting within the scope of his employment by Chippenham Pediatric.

4. Mrs. Didato is the spouse of Gary Didato, M.D.

5. Dr. and Mrs. Didato are the parents of three children: Mathew born January 21, 1993, Gabrielle born September 28, 1994 and Nicholas born May 12, 1998.

6. In 1993, Dr. and Mrs. Didato presented to Dr. Strehler and Chippenham Pediatric and requested that they provide their family including themselves and their infant son Mathew all health care a family should receive from a pediatrician and a professional corporation engaged in providing health care services relating to the practice of pediatrics.

7. Pursuant to the request of Dr. and Mrs. Didato, Dr. Strehler and Chippenham Pediatric agreed to provide the Didato family all health care members of a family should receive from a pediatrician and a professional corporation engaged in providing health care services relating to the practice of pediatrics.

8. The relationship between the Didato family and Dr. Strehler and Chippenham Pediatric created as a result of the acceptance of the Didato family into the practice of Dr. Strehler and Chippenham Pediatric as described in paragraph 7 continued without interruption until 1997 when Dr. and Mrs. Didato moved from the Richmond, Virginia area to Connecticut.

9. Thalassemia and Sickle Cell Disease are inherited diseases of the blood known as hemoglobinopathies.

10. Thalassemia is a form of anemia (red blood cell deficiency). Hemoglobin is the oxygen-carrying component of the red blood cells. It is made of two different kinds of proteins, called alpha and beta globins. If the body doesn't produce both of these two proteins, the red blood cells do not form properly and do not carry sufficient oxygen. The result is anemia that begins in early childhood and persists throughout life. There are a number of varieties of thalassemia. If the body does not produce beta globins, the resultant disease is called beta thalassemia.

11. Sickle cell disease (also referred to as "sickle cell anemia") is caused by the presence of an abnormal type of hemoglobin called "sickle hemoglobin" in red blood cells. The presence of sickle hemoglobin causes red blood cells to change from their usual biconcave disc shape to a crescent or sickle shape. The abnormal hemoglobin makes the red blood cells unable to carry oxygen and the abnormal shape can also cause the red blood cells to clog small blood vessels forming clots and preventing some organs and tissue from receiving sufficient oxygen. When this occurs, red blood cells are damaged and destroyed producing anemia and the victim of sickle cell disease will experience episodes of severe pain and sustain damage to organs and tissue.

12. Some of the various clinical manifestations of sickle cell disease include painful swelling of the hands and feet caused by ischemic necrosis of the small bones, illnesses accompanied by fever, hypoxia and acidosis, infarction of bone marrow, splenic infarcts, splenic enlargement leading to circulatory collapse, pulmonary infarction, strokes, ischemic damage to heart, liver, kidneys and eyes and priapism (painful penile erections).

13. Victims of sickle cell disease are susceptible to meningitis, sepsis and other serious infections and a high risk for a lethal, rapid decrease in hemoglobin level (aplastic episode).

14. By midchildhood most victims of sickle disease are underweight and have an enlarged heart. Puberty is frequently delayed. Throughout life, the victim of sickle cell disease will suffer a barrage of medical crises and can expect to experience pain in varying levels of intensity on a daily basis.

15. The life expectancy of sickle cell disease victims is dramatically reduced as a consequence of the disease and its sequelae.

16. Both thalassemia and sickle cell disease are autosomal recessive disorders. This means these disorders only occur when both parents carry the gene for the disorder. If both parents are carriers of the abnormal gene responsible for producing the disorder, there is a 25 per cent possibility that a child of the parents will have the disorder. A person who carries the gene for thalassemia has the "thalassemia trait". A person who carries the gene for sickle cell disease has the "sickle cell trait".

17. If one parent is a carrier of the beta thalassemia trait and the other parent is a carrier of sickle cell trait, there is a 25 per cent possibility that a child of the parents will be born with a type of sickle cell disease known as sickle beta thalassemia.

18. One form of sickle beta thalassemia disease is called sickle beta O thalassemia. This is the most severe form of sickle beta thalassemia. It presents a clinical picture virtually indistinguishable from that of sickle cell anemia described in paragraphs 11 through 15 above.

19. The beta thalassemia trait is found primarily in persons of Mediterranean, African or Southeast Asian origin.

20. Dr. Didato is of Sicilian descent and is therefore a person of Mediterranean origin.

21. The sickle cell trait is found primarily in persons of African, Caribbean, Latin American, Southeast Asian, Middle Eastern or Mediterranean origin.

22. Mrs. Didato's mother is Dominican and her father is of Spanish and Portuguese descent and Mrs. Didato is therefore a person of Caribbean, Latin American and Mediterranean origin.

23. By the 1970's, technology to screen infants for sickle cell trait and disease and thalassemia trait and disease was available.

24. By 1979, a number of pediatricians were advocating screening of newborns for sickle cell trait and disease and thalassemia trait and disease to help accomplish two objectives: provision of optimum medical care of patients with the disease and the prevention of the disease through genetic counseling.

25. Purposes of genetic counseling include making persons such as the parents of newborn who tested positive for sickle cell or thalassemia trait aware of the risk of parenting a child with thalassemia or sickle cell disease, the availability of further genetic testing for the parents and the various alternatives for disease prevention. The information made available to parents through genetic counseling and followup activities recommended by genetic counseling would include the 25 per cent risk of future offspring with sickle cell disease if both parents were carriers of sickle cell

trait or one parent was a carrier of sickle cell trait and the other a carrier of thalassemia trait. In such parents, the options made known to the parents through genetic counseling and its followup activities would include preventing the birth of a child with sickle cell disease by termination of any unplanned pregnancy when prenatal diagnosis revealed the fetus was positive for sickle cell disease or thalassemia or avoiding all pregnancies by birth control.

26. In 1987, a consensus was reached by representatives of the concerned medical specialties including pediatricians that:

- Good medical practice dictated that screening for sickle cell disease and thalassemia should be provided to all newborns as a result of ordinary care and that state law should require provision of such services.
- If the screening demonstrated that the newborn did not suffer from the disease and therefore required no specialized medical care but was a carrier, information about the newborn's carrier state should be furnished to the parents of the newborn.
- The information provided to the parents should explain that although the newborn's carrier state is not a disease, there may be implications for other family members, and, depending on results of family studies, future children may be at risk for a clinically significant hemoglobinopathy.
- A referral source for family testing and genetic counseling should be clearly identified for the parents.

27. Prior to 1994, Virginia and most other states had initiated a newborn screening program for hemoglobinopathies.

28. In 1994, Va. Code § 32.1-65 provided that each infant born in the Commonwealth would be subject to a screening test for sickle cell diseases unless the infant's parent or guardian objected on religious grounds.

29. Prior to September 28, 1994, pediatricians in Virginia and elsewhere in the United States had determined that the pediatrician who is caring for a newborn and is aware that the newborn carries the sickle cell trait is in the best position to alert the parents of the newborn of their child's carrier state and communicate to the parents the information described in paragraph 26 and identify the referrals described in paragraph 26 and that pediatricians should undertake to so alert parents and communicate such information to the parents and identify such referrals.

30. In 1994, the standard of care for pediatricians practicing in Virginia and elsewhere in the United States required pediatricians who were notified that the results of the screening indicated that it was probable a newborn under their care carried the sickle cell trait to alert the parents of the newborn of this test result and to communicate to the parents the information described in paragraph 26 and identify the referrals described in paragraph 26.

31. Prior to the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric became aware that Dr. Didato carried the thalassemia trait as a consequence of Dr. Strehler and Chippenham Pediatric learning that Mathew carried the thalassemia trait and ensuing discussions with Dr. and Mrs. Didato.

32. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric agreed to become the pediatrician and pediatric practice

entity responsible for providing Gabrielle and her family including Dr. and Mrs. Didato all health care Gabrielle and her family should receive from a pediatrician and a professional corporation engaged in providing health care services relating to the practice of pediatrics.

33. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew that blood would be drawn for Gabrielle and screened for the presence of hemoglobinopathies.

34. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew that the results of the newborn screening of Gabrielle for the presence of hemoglobinopathies would be reported to Dr. Strehler and Chippenham Pediatric.

35. At the time of the birth of Gabrielle on September 28, 1994, Dr. and Mrs. Didato entrusted Dr. Strehler and Chippenham Pediatric to communicate to Dr. and Mrs. Didato any information and facts of clinical significance concerning the results of the newborn screening of Gabrielle to Gabrielle and other members of the Didato family including Dr. and Mrs. Didato.

36. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew that Dr. and Mrs. Didato entrusted Dr. Strehler and Chippenham Pediatric to communicate to Dr. and Mrs. Didato any information and facts of clinical significance concerning the results of the newborn screening of Gabrielle of clinical significance to Gabrielle and other members of the Didato family including Dr. and Mrs. Didato.

37. At the time of the birth of Gabrielle on September 28, 1994, Dr. Strehler and Chippenham Pediatric knew or should have known all of the facts alleged in paragraphs 9 through 30.

38. In October of 1994, Dr. Strehler and Chippenham Pediatric were notified in writing that Gabrielle that the newborn screening results of Gabrielle indicated "HEMOGLOBIN PATTERN = PROBABLE FAS".

39. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that "FAS" meant Fetal Adult Sickle Hemoglobin.

40. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and dx knew that the newborn screening of the blood of Gabrielle indicated that Gabrielle was a carrier of the sickle cell trait.

41. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that Dr Didato was a carrier of thalassemia trait.

42. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that it was very possible that Dr. and Mrs. Didato would conceive together other children in the future.

43. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that

any child born to Dr. and Mrs. Didato in the future had a 25 per cent risk of suffering from sickle cell beta thalassemia.

44. At the time Dr. Strehler and Chippenham Pediatric were notified of the results as alleged in paragraph 38, Dr. Strehler and Chippenham Pediatric knew that if Dr. Strehler and Chippenham Pediatric did not inform Dr. and Mrs. Didato about the results of the newborn screening of Gabrielle and that Gabrielle was a carrier of sickle cell trait, it was highly probable that Dr. and Mrs. Didato would not know that any child born to Dr. and Mrs. Didato in the future had a 25 per cent risk of suffering from sickle cell beta thalassemia.

45. After the birth of Gabrielle, Mrs. Didato, acting on her behalf and on behalf of Gabrielle and Dr. Didato, asked an employee of Chippenham Pediatric about the results of the newborn screening of Gabrielle and was informed by an employee acting in the scope of the employee's employment by Chippenham Pediatric and authorized to speak on behalf of Chippenham Pediatric that since Mrs. Didato had not been informed about any abnormality by Dr. Strehler or Chippenham Pediatric, it meant the newborn screening was normal.

46. Dr. and Mrs. Didato reasonably relied upon the representation of Chippenham Pediatric that the newborn screening results of Gabrielle were normal.

47. Dr. Strehler and Chippenham Pediatric knew that Dr. and Mrs. Didato would rely upon the representation of Chippenham Pediatric that the newborn screening results of Gabrielle were normal.

48. In 1997, Dr. and Mrs. Didato conceived Nicholas.

49. Nicholas was born on May 12, 1998 and subsequent to his birth, Nicholas was diagnosed as suffering from sickle cell beta O thalassemia.

50. After the birth of Nicholas, Dr. and Mrs. Didato learned for the first time that Gabrielle was a carrier of sickle cell trait.

51. Knowing Gabrielle was a carrier of sickle cell trait would have enabled Dr. and Mrs. Didato to know that Mrs. Didato carried the sickle cell trait and that any child born to Dr. and Mrs. Didato in the future had a 25 per cent risk of suffering from sickle cell beta thalassemia.

52. If Dr. Strehler and Chippenham Pediatric had informed Dr. and Mrs. Didato that Gabrielle was a carrier of sickle cell trait, Dr. and Mrs. Didato would not have conceived together any additional children so as to avoid the risk of conceiving a child with sickle cell beta thalassemia.

53. Under the facts alleged herein, Dr. Strehler and Chippenham Pediatric had a physician patient relationship with Dr. and Mrs. Didato with respect to all matters concerning Gabrielle's newborn screening results and communicating to Dr. and Mrs. Didato the information described in paragraph 26 and identifying the referrals described in paragraph 26.

54. Under the facts alleged herein, Dr. Strehler and Chippenham Pediatric had a special relationship with Dr. and Mrs. Didato with respect to all matters concerning the Gabrielle's newborn screening results and communicating to Dr. and

Mrs. Didato the information described in paragraph 26 and identifying the referrals described in paragraph 26.

55. After being notified of the results of Gabrielle's newborn screening, Dr. Strehler and Chippenham Pediatric owed Dr. and Mrs. Didato the duty to exercise reasonable care and to comply with the standard of care set forth in Va. Code § 8.01-581.20 by alerting Dr. and Mrs. Didato that the results of the screening indicated that it was probable that Gabrielle carried the sickle cell trait and to communicate to Dr. and Mrs. Didato the information described in paragraph 26 and identify the referrals described in paragraph 26.

56. Dr. Strehler and Chippenham Pediatric failed to exercise reasonable care and breached the standard of care set forth in Va. Code § 8.01-581.20 and were negligent by failing to alert Dr. and Mrs. Didato that the results of the screening indicated that it was probable that Gabrielle carried the sickle cell trait and communicating to Dr. and Mrs. Didato the information described in paragraph 26 and identifying the referrals described in paragraph 26.

57. As a proximate and direct result of the breach of duties and negligence of Dr. Strehler and Chippenham Pediatric, Dr. and Mrs. Didato conceived Nicholas and Nicholas was born afflicted with sickle beta O thalassemia.

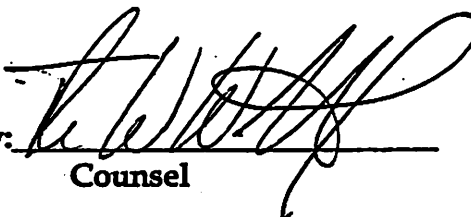
58. As a proximate and direct result of the breach of duties and negligence of Dr. Strehler and Chippenham Pediatric, Dr. Didato has suffered and will continue suffer emotional distress and mental anguish.

59 As a proximate and direct result of the breach of duties and negligence of Dr. Strehler and Chippenham Pediatric, Dr. Didato has incurred and will incur in the future expenses for the care and treatment of Nicholas associated with the sickle beta O thalassemia which afflicts Nicholas and its complications.

WHEREFORE, the plaintiff Gary Didato, M.D., by counsel, demands judgment in the amount of ONE MILLION DOLLARS (\$1,000,000.00) against the defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., jointly and severally and individually, plus interest thereon from May 12, 1998 and her costs.

Plaintiff demands trial by jury.

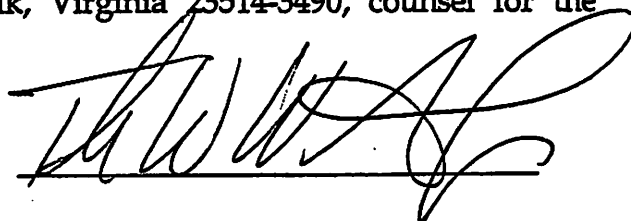
GARY DIDATO

By: 
Counsel

Thomas W. Williamson, Jr., VSB # 15699
WILLIAMSON & LAVECCHIA, L.C.
6800 Paragon Place, Suite 233
Richmond, Virginia 23230
Phone: (804) 288-1661
Fax: (804) 282-1766
Counsel for the Plaintiff

CERTIFICATE

I hereby certify that on the 9 day of June, 2000, I mailed a true copy of the foregoing Amended Motion for Judgment to John Franklin, III, Esquire of Taylor & Walker, P.C., Post Office Box 3490, Norfolk, Virginia 23514-3490, counsel for the defendants.



**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING**

MIMI DIDATO,

Plaintiff,

v.

AT LAW NO.: CL00L1254-1

**PAUL M. STREHLER, M.D.
and CHIPPENHAM PEDIATRIC
& ADOLESCENT MEDICINE, P.C.,**

Defendants.

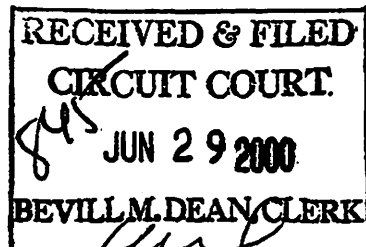
DEMURRER

The defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., demur to plaintiff's Amended Motion for Judgment on the grounds that it fails to state a cause of action against these defendants and fails to state facts upon which the relief demanded can be granted and specifically on the grounds as hereinafter set forth:

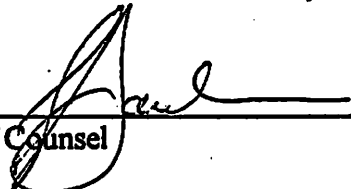
1. That under the facts alleged neither the plaintiff, nor her husband, nor her unborn child, Nicholas, were patients of the defendants, and accordingly, the defendants owed no duty to either the plaintiff or her unborn child, Nicholas, for the matters alleged in the Amended Motion for Judgment. As a matter of law, in the absence of any duty owed to the plaintiff, plaintiff's Amended Motion for Judgment states no cause of action as to these defendants.

WHEREFORE, the defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., move the Court for an order sustaining their Demurrer and dismissing this action as to them.

**AYLOR & WALKER, P.C.
NORFOLK, VIRGINIA
23514**



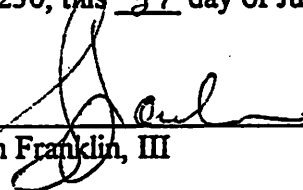
PAUL M. STREHLER, M.D. and
CHIPPENHAM PEDIATRIC &
ADOLESCENT MEDICINE, P.C.

By  _____
Of Counsel

John Franklin, III, Esquire
TAYLOR & WALKER, P.C.
Post Office Box 3490
Norfolk, Virginia 23514-3490
(757) 625-7300
(757) 625-1504 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing Demurrer was mailed first-class, postage prepaid to Thomas W. Williamson, Jr., Esquire, Williamson & Lavecchia, 6800 Paragon Place, Suite 233, Richmond, Virginia 23230, this 27 day of June, 2000.

 _____
John Franklin, III

TAYLOR & WALKER, P.C.
NORFOLK, VIRGINIA
23514

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING**

GARY DIDATO,

Plaintiff,

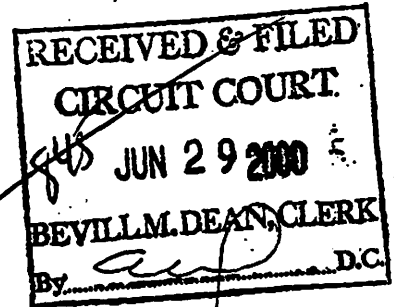
v.

AT LAW NO.: LF-1287-1

**PAUL M. STREHLER, M.D.
and CHIPPENHAM PEDIATRIC
& ADOLESCENT MEDICINE, P.C.,
a Virginia corporation,**

Defendants.

DEMURRER



The defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent

Medicine, P.C., demur to plaintiff's Amended Motion for Judgment on the grounds that it fails to state a cause of action against these defendants and fails to state facts upon which the relief demanded can be granted and specifically on the grounds as hereinafter set forth:

1. That under the facts alleged neither the plaintiff, nor his wife, nor his unborn child, Nicholas, were patients of the defendants, and accordingly, the defendants owed no duty to either the plaintiff or his unborn child, Nicholas, for the matters alleged in the Amended Motion for Judgment. As a matter of law, in the absence of any duty owed to the plaintiff, plaintiff's Amended Motion for Judgment states no cause of action as to these defendants.

WHEREFORE, the defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., move the Court for an order sustaining their Demurrer and dismissing this action as to them.

PAUL M. STREHLER, M.D. and
CHIPPENHAM PEDIATRIC &
ADOLESCENT MEDICINE, P.C.

By 
Of Counsel

John Franklin, III, Esquire
TAYLOR & WALKER, P.C.
Post Office Box 3490
Norfolk, Virginia 23514-3490
(757) 625-7300
(757) 625-1504 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing Demurrer was mailed first-class, postage prepaid to Thomas W. Williamson, Jr., Esquire, Williamson & Lavecchia, 6800 Paragon Place, Suite 233, Richmond, Virginia 23230, this 21 day of June, 2000.


John Franklin III

TAYLOR & WALKER, P.C.
NORFOLK, VIRGINIA
23514

Circuit Court
OF THE
City of Richmond

MELVIN R. HUGHES, JR.
JUDGE

September 19, 2000

JOHN MARSHALL COURTS BUILDING
400 NORTH 9TH STREET
RICHMOND, VIRGINIA 23219

Thomas W. Williamson, Jr., Esq.
Williamson & Lavecchia
6800 Paragon Place
Suite 233
Richmond, VA 23230

John Franklin, III, Esq.
Taylor & Walker, P.C.
P. O. Box 3490
Norfolk, VA 23514-3490

Re: Case No. LL-1254-1
Mimi Didato v.
Paul M. Strehler, M.D. and
Chippenham Pediatric & Adolescent Medicine P.C.

Case No. LF-1287-1
Gary Didato v.
Paul M. Strehler, M.D. and
Chippenham Pediatric & Adolescent Medicine P.C.

Dear Counsel:

This medical malpractice case is before the court on the defendant doctor's demurrer to each plaintiff's motion for judgment. In these two suits, the parents of a child who was the patient of the defendant allege negligent infliction of emotional distress. They allege that the defendant failed to advise them of the results of tests on one of their children who was under the care of the defendant, a pediatrician. The test, they allege, revealed their child was born with sickle cell trait. This meant that one of them carried the trait and according to one of the motions for judgment "any further offspring might well suffer from the debilitating disease known as sickle cell syndrome or sickle cell beta." They further allege that, unaware, another child was born to them and that this child was born with sickle cell beta, a lifelong disease, resulting in emotional distress and increased medical and other expenses for the child's care and maintenance.

Considering the facts pled as true for the purpose of determining defendant's demurrer, the court finds the pleadings

Thomas W. Williamson, Jr., Esq.
John Franklin, III, Esq.
Page 2
September 19, 2000

deficient as a matter of law and sustains the demurrers. *Grossman v. Saunders*, 237 Va. 113, 119 (1989). Plaintiffs seek relief on three grounds: (1) negligence, (2) special relationship and (3) assumption of duty.

Because plaintiff do not allege that they were ever patients of the defendant there is not any duty arising out of a doctor-patient relationship.¹ Va. Code § 8.01-581.1 defines "health care" and "patient" as follows:

"Health Care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provided for, to or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

"Patient" means any natural person who receives or should have received health care from a licensed health care provider except those persons who are given health care in an emergency situation which exempts the health care provider from liability for his emergency service in accordance with Section § 8.01-225.

The motions for judgment are devoid of any statement that plaintiffs were ever patients of the defendant for the purpose of providing health care to them. Thus, no duty of care arises under the Medical Malpractice Act (§ 8.01-581.1, et seq of the Code of Virginia, as amended).

In *Naccash v. Burger*, 227 Va. 406 (1982), a case similar to plaintiffs' claims here plaintiffs were the patients for the purpose of test results administered to them to detect tay-sachs disease. In *Gray v. INOVA Health Care Services*, 257 Va. 597 (1999), the court ruled that a parent is ineligible to receive compensation for negligent infliction of emotional distress for negligence in the administration of a test on her child. Accordingly, with these distinctions, plaintiffs have alleged no duty incumbent on the defendant as to them.

¹To the extent that one of the motions for judgment alleges there was a doctor-patient relationship, this allegation, though made, does not withstand scrutiny as establishing the relationship for the reasons discussed.

Thomas W. Williamson, Jr., Esq.
John Franklin, III, Esq.
Page 3
September 19, 2000

There is also no duty as far as any special relationship that plaintiffs allege because the facts alleged do not constitute such a relationship in law. The court and the Legislature has not defined a special relationship borne out of a treatment of a patient except where there may be a duty to warn or protect a third party of an impending or threat of immediate harm See e.g. *Delk v. Columbia/HCA Health Corp.* 259 Va. 125 (2000).

Lastly, the plaintiffs' attempt to allege that the defendant assumed a duty to them by advising them of the results of the test is without merit. Here, plaintiffs allege that defendant after advising of the test results, failed to indicate the probability of other offspring being afflicted with sickle cell disease. Statutes in Virginia regarding reporting disease create no duty to notify third parties and expressly denies a right of action for any failure to notify. See Va. Code § 32.1-36.

Accordingly, the demurrers to the plaintiffs' motions for judgment are sustained. Plaintiff shall have ten days from September 21, 2000 to file any amended motion or judgment and defendant shall have seven days for receipt to file responsive pleadings.

Very truly yours,

Melvin R. Hughes, Jr.

jsn

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING**

MIMI DIDATO,

Plaintiff,

v.

AT LAW NO.: CL00L1254-1

**PAUL M. STREHLER, M.D.
and CHIPPENHAM PEDIATRIC
& ADOLESCENT MEDICINE, P.C.,
a Virginia corporation,**

Defendants.

ORDER

This matter came on upon the Demurrer filed herein by the defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., and was argued by counsel.

Upon mature consideration of the briefs filed herein by both parties and the argument of counsel and for the reasons set forth in this Court's letter opinion of September 19, 2000, it is

ORDERED that the Demurrer filed herein by the defendants, Paul M. Strehler, M.D. and Chippenham Pediatric & Adolescent Medicine, P.C., be and it hereby is sustained with leave to the plaintiff to file an Amended Motion for Judgment within ten (10) days of September 21, 2000. Upon the advice of counsel for the plaintiff that plaintiff does not intend to file an Amended Motion for Judgment as permitted by this Court, it is further

ORDERED that this action be and it hereby is dismissed for the reasons set forth in this Court's letter opinion of September 19, 2000, to which rulings of the Court, plaintiff, by

counsel excepts and objects for the reasons set forth in the briefs filed in opposition to the Demurrer and the argument of counsel before this Court on August 17, 2000. Lastly, it is

ORDERED that the clerk of this court shall provide certified copies of this Order to all counsel of record.

ENTER: 10/4/00

JUDGE

I ask for this:

p.d.

Seen and objected to:

p.q.

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING**

GARY DIDATO,

Plaintiff,

v.

AT LAW NO.: LF-1287-1

**PAUL M. STREHLER, M.D.
and CHIPPENHAM PEDIATRIC
& ADOLESCENT MEDICINE, P.C.,
a Virginia corporation,**

Defendants.

ORDER

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ORDERED that this action be and it hereby is dismissed for the reasons set forth in this Court's letter opinion of September 19, 2000, to which rulings of the Court, plaintiff, by

counsel excepts and objects for the reasons set forth in the briefs filed in opposition to the Demurrer and the argument of counsel before this Court on August 17, 2000. Lastly, it is

ORDERED that the clerk of this court shall provide certified copies of this Order to all counsel of record.

ENTER:

10/18/00


JUDGE

I ask for this:


p.d.

Seen and objected to:


p.q.

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Tuesday the 17th day of April, 2001.*

Mimi Didato,

Appellant,

against Record No. 003030
 Circuit Court No. LL-1254

Paul M. Strehler, M.D., et al.,

Appellees.

From the Circuit Court of the City of Richmond

Upon the petition of Mimi Didato an appeal is awarded her from a judgment rendered by the Circuit Court of the City of Richmond on the 4th day of October, 2000; upon the appellant, or some one for her, filing an appeal bond with sufficient security or an irrevocable letter of credit in the clerk's office of the trial court in the penalty of \$500, within 15 days from the date of the Certificate of Appeal, with condition as the law directs.

On further consideration whereof, this case is consolidated for oral argument with the case of Gary Didato v. Paul M. Strehler, M.D., et al., Record No. 003031, and a single appendix shall be filed for both cases.

Reference is made to the said petition for the names of all the appellees involved in this appeal.

A Copy,

Teste:

Clerk

CERTIFICATE OF APPEAL

Pursuant to Rule 5:23, I, David B. Beach, Clerk of the Supreme Court of Virginia, do hereby certify that on April 17, 2001 an appeal was awarded as described in the order to which this certificate is appended. A copy of this certificate and a copy of the order to which it is appended were this day mailed to the lower court indicated in the order and to all counsel of record.

Given under my hand this 17th day of April, 2001.

Clerk

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Tuesday the 17th day of April, 2001.*

Gary Didato,

Appellant,

against

Record No. 003031

Circuit Court No. LF-1287/00-4811

Paul M. Strehler, M.D., et al.,

Appellees.

From the Circuit Court of the City of Richmond

Upon the petition of Gary Didato an appeal is awarded him from a judgment rendered by the Circuit Court of the City of Richmond on the 18th day of October, 2000; upon the appellant, or some one for him, filing an appeal bond with sufficient security or an irrevocable letter of credit in the clerk's office of the trial court in the penalty of \$500, within 15 days from the date of the Certificate of Appeal, with condition as the law directs.

On further consideration whereof, this case is consolidated for oral argument with the case of Mimi Didato v. Paul M. Strehler, M.D., et al., Record No. 003030, and a single appendix shall be filed for both cases.

Reference is made to the said petition for the names of all the appellees involved in this appeal.

A Copy,

Teste:

Clerk

CERTIFICATE OF APPEAL

Pursuant to Rule 5:23, I, David B. Beach, Clerk of the Supreme Court of Virginia, do hereby certify that on April 17, 2001 an appeal was awarded as described in the order to which this certificate is appended. A copy of this certificate and a copy of the order to which it is appended were this day mailed to the lower court indicated in the order and to all counsel of record.

Given under my hand this 17th day of April, 2001.

Clerk

**Assignments of Error
(Mimi Didato)**

- 1. The court erred in sustaining the Demurrer.**
- 2. The court erred in holding that the Motion for Judgment does not allege facts supporting the existence of a physician patient relationship between Dr. and Mrs. Didato and the defendants.**
- 3. The court erred in holding that the facts alleged in the Motion for Judgment do not constitute a special relationship between Dr. and Mrs. Didato and the defendants.**
- 4. The court erred in holding the Motion for Judgment does not properly allege that the defendants assumed a duty to inform Dr. and Mrs. Didato of the test results indicating their daughter was a carrier of the sickle cell trait.**
- 5. The court erred in holding Va. Code §32.1-36 and other Virginia statutes deny a right of action against the defendants for failing to inform Dr. and Mrs. Didato of the test results indicating their daughter was a carrier of the sickle cell trait.**

**Assignments of Error
(Gary Didato)**

- 1. The court erred in sustaining the Demurrer.**
- 2. The court erred in holding that the Motion for Judgment does not allege facts supporting the existence of a physician patient relationship between Dr. and Mrs. Didato and the defendants.**
- 3. The court erred in holding that the facts alleged in the Motion for Judgment do not constitute a special relationship between Dr. and Mrs. Didato and the defendants.**
- 4. The court erred in holding the Motion for Judgment does not properly allege that the defendants assumed a duty to inform Dr. and Mrs. Didato of the test results indicating their daughter was a carrier of the sickle cell trait.**
- 5. The court erred in holding Va. Code § 32.1-36 and other Virginia statutes deny a right of action against the defendants for failing to inform Dr. and Mrs. Didato of the test results indicating their daughter was a carrier of the sickle cell trait.**