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IRENE QUINN, as ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES QUINN AND IRENE QUINN, in her own right,	:	**COURT OF COMMON PLEAS PHILADELPHIA COUNTY**
	:	**OCTOBER TERM, 2002**
	:	**NO. 001524**
Plaintiff,	:	
v.	:	
ABIOMED, INC., TENET HEALTHCARE CORP., DREXEL UNIVERSITY/MCP HAHNEMANN UNIVERSITY, HAHNEMANN UNIVERSITY HOSPITAL and DAVID CASARETT, M.D.	:	
Defendants.	:	

MEMORANDUM OF LAW IN OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFENDANT DAVID CASSARETT, M.D.

Plaintiff Irene Quinn (" Mrs. Quinn"), by and through her counsel, Sherman, Silverstein, Kohl, Rose and Podolsky, respectfully submits this memorandum of law in opposition to defendant David Casarett, M.D.'s ("Dr. Casarett") preliminary objections.

I. INTRODUCTION

Mrs. Quinn was the wife of the late James Quinn, who died after suffering extreme pain for nine months in a clinical trial testing the AbioCor Implantable Replacement Heart (the "artificial heart") manufactured by defendant Abiomed, Inc. ("Abiomed"). This artificial heart

clinical trial was an experiment conducted under an Investigational Device Exception from the United States Food and Drug Administration at multiple sites around the country including Hahnemann University Hospital ("Hahnemann") where Mr. Quinn received his artificial heart. Abiomed controlled, coordinated and supervised the experiment at the various sites.

This was not the first experiment involving an artificial heart. The Court can take judicial notice of the last such experiment involving, among others, dentist Barney Clark. The tremendous suffering Dr. Clark endured generated disturbing issues for the then nascent bioethical community. These issues included whether true informed consent is possible when a human subject knows he or she faces imminent death, as well the ethics of causing such extreme pain not only to the subject, but also to his family, for the purpose of developing a commercial medical device. The debate over these issues resulted, in part, in a fifteen-year moratorium on such experiments. See generally Arthur L. Caplan & Daniel H. Coelho, The Ethics of Organ Transplants (1998); Renee C. Fox & Judith P. Swazey, Spare Parts – Organ Replacement in American Society (1992).

That historical context, as well as the fact that the only potential subjects for the experiment were the desperately ill with no therapeutic alternative, compelled Abiomed to utilize what the research community calls "Patient Advocates" for the experiment. These Patient Advocates are, as Dr. Casarett maintains, members of a relatively new profession, though unquestionably a profession nonetheless.

Ideally, Patient Advocates are professional advisors to the potential human research subjects whose role is to help the subjects understand the nature of the experiment as well as its risks and benefits, to help them decide whether or not to participate, and to help them once the experiment begins with any human protection issues that might arise.

II. STATEMENT OF FACTS

Abiomed contracted with Dr. Casarett to be the Patient Advocate for the artificial heart experiment at Hahnemann. (See ¶6 of Complaint.) Dr. Casarett's qualifications for this position were that he was a medical doctor, a faculty member of the Medical School of the University of Pennsylvania who specialized in ethical issues, informed consent and palliative care, and a member of the University's Center for Bioethics. (See ¶65 of Complaint and the listing of David Casarrett on the University's website at http://www.med.upenn.edu/bioethic/faculty/casarett.htmn.) Dr. Casarett was a member of a team of Patient Advocates assembled by Abiomed for the experiment. By information and belief, Abiomed informed these Patient Advocates what their roles and responsibilities would be, and brought them together for training, supervision and discussion.

As the Patient Advocate for the Quinns, Dr. Casarett was responsible for ensuring that the Quinns understood the risks and benefits of the artificial heart experiment and that they would make the decision that was right for them given their circumstances. The Quinns relied upon Dr. Casarett to advocate on their behalf, to explain to them the nature of the clinical trial, and to make sure their rights and interests were protected. (See ¶67 of Complaint.)

Specifically, and as alleged in the Complaint, Dr. Casarett's responsibilities and obligations with respect to the informed consent process included advising the Quinns about the risks associated with the experiment, the safety of the experiment, the conflicts of interest of individuals and entities involved in the experiment, and whether it was in Mr. Quinn's best interest to participate. Dr. Casarett also had the duty and responsibility to negotiate ongoing informed consent issues that might arise during the course of the experiment and to advise the Quinns with respect to end of life issues. (See ¶67 of Complaint.) Dr. Casarett understood that

Mr. Quinn was recruited to be in the experiment because he was desperate and very sick, and Dr. Casarett understood that there would be an inherent conflict of interest between clinical care for the subject and research for the general good. (See ¶73 of Complaint.)

As alleged in the Complaint, Dr. Casarett failed to conform to the standard of care for Patient Advocates. Not only did he fail to advocate for the Quinns, but he also failed to inform them that he was a physician trained and paid by Abiomed. (See ¶69 of Complaint.) He did not explain to the Quinns the purpose, duration and risks of the experiment. While he knew that the clinical trial's protocol considered an additional thirty days of survival a successful outcome, Dr. Casarett never revealed this information to the Quinns; in fact, Dr. Casarett advised the Quinns that Mr. Quinn would improve his quality of life by participating in the clinical trial. He did not make sure that the Quinns knew and understood that the artificial heart at its stage of development was not a therapeutic alternative but an experimental device in its early stages. (See ¶¶19-22, 67-69. 74 of Complaint.) Rather, Dr. Casarett conveyed to the Quinns that the clinical trial was a viable therapeutic alternative. (See ¶25 of Complaint.) As such, Dr. Casarett failed to live up to either professional or reasonable person standards in his role as the Quinns' Patient Advocate. (See ¶¶69, 74 of Complaint.)

Because this was one of the first experiments of its kind with the Abiomed artificial heart and because of the prior history of experiments with artificial hearts, Dr. Casarett knew that the benefits of participating in such an experiment were minimal to the subject and the risks of suffering extreme pain and suffering and ultimate death were great. (See ¶19 of Complaint.) In addition, Dr. Casarett knew that subjects such as Mr. Quinn were extremely vulnerable and, because of what is known as "the therapeutic misconception," would believe that enrolling in such a trial was in their best therapeutic interest. (See ¶20 of Complaint.) Contrary to what Dr.

Casarett told Mr. Quinn, however, this artificial heart was not a therapeutic alternative, and the only reason Mr. Quinn or any subject should volunteer for such an experiment would be to serve as a martyr for the greater good. (See ¶21 of Complaint.) In essence, Mr. Quinn was a human guinea pig that was poked, prodded, cut open, injected and tested in order to advance medical science and the profits of Abiomed. (See ¶22 of Complaint.)

While the Quinns relied upon Dr. Casarett as their Patient Advocate to assist them in the informed consent process and throughout the experiment, Dr. Casarett failed to advocate for the Quinns. Indeed, at the informed consent conference, Dr. Casarett made no demands and asked no questions of the investigators. (See ¶68 of Complaint.) Further, as a result of the failures of Dr. Casarett, the Quinns agreed to the artificial heart transplant because they believed that it was their only viable therapeutic alternative and that it would prolong Mr. Quinn's life in a meaningful and productive manner. (See ¶31 of Complaint.)

On November 5, 2001, in a ten-hour operation, the world's fifth implantation of Abiomed's artificial heart was performed on Mr. Quinn. Mr. Quinn immediately began experiencing pulmonary distress as his lungs filled with fluid, and he required an external oxygen machine. On December 31, 2001, Mr. Quinn suffered a stroke. On January 23, 2002, Abiomed announced that future artificial hearts would be modified because of the strokes suffered by the first recipient and Mr. Quinn. Abiomed subsequently modified the device by removing a plastic cage on a surgical cuff that attaches to the tissue of the recipient. According to Abiomed, the cage was needed for testing on calves but was not needed for humans. Abiomed also claimed that Mr. Quinn's stroke resulted from a blood clot that lodged in the right thalamus section of his brain and formed, in part, because the amount of anticoagulation drugs that he was taking was too low. (See ¶¶32-45 of Complaint.)

After Mr. Quinn's first stroke, he had difficulty with balance, a weakened left side, slurred speech and vision impairment. By February 3, 2002, Mr. Quinn was readmitted to the Hospital because of breathing difficulties. Mr. Quinn could barely breathe and was in constant, unbearable pain with extreme burning sensations in his back and chest. On March 6, 2002, Mr. Quinn was placed on a ventilator in order to breathe. (See ¶¶46-50 of Complaint.)

By June 2002, Mr. Quinn was still in the Hospital and the Quinns had become extremely dissatisfied with the clinical trial and the conduct of Dr. Casarett; the Quinns thereafter terminated Dr. Casarett as their Patient Advocate and replaced him with Sheldon Zink, Ph.D., who is also a member of the Center for Bioethics at the University of Pennsylvania and was not being paid by Abiomed. (See ¶51 of Complaint.)

On August 23, 2002, Mr. Quinn suffered a massive stroke and, on August 25, 2002, he was declared brain dead. Two days later, on August 26, 2002, the AbioCor heart was programmed to be turned off and, shortly thereafter, Mr. Quinn opened his eyes, sat up, extended his arms upward, closed his eyes, crossed his hands, lay back down and died. (See ¶¶54-57 of Complaint.)

During the course of the experiment, the Complaint alleges, Mr. Quinn had no quality of life and his essential human dignity had been taken from him. (See ¶61 of Complaint.) The Quinns would not have participated in the experiment given the knowledge of what was actually to occur. (See ¶62 of Complaint.) They made that choice, however, because of the desperate circumstances of Mr. Quinn's failing health, their lack of sophistication in matters involving cutting edge research, and the failure of Dr. Casarett to perform his duties as a Patient Advocate.

Dr. Casarett has all but admitted that the informed consent process failed the Quinns, a circumstance he was hired to expressly avoid. In a lecture he gave to a medical school class in

January 2002, Dr. Casarett explained that Mr. Quinn was "coerced by his illness" into consenting to participate and that, because of the particular circumstances and factors present, informed consent was virtually impossible. (See streaming video of Dr. Casarett's lecture on Mr. Quinn at http://www.cu2000.med.upenn.edu and a copy of lecture materials attached hereto and incorporated herein as Exhibit "A.")

II. LEGAL ARGUMENT

A. Standard of Review

The legal standard for the review of preliminary objections in the nature of a demurrer is well established in Pennsylvania. All well-pleaded material facts contained in the complaint and every inference fairly deducible therefrom are admitted as true. Turner v. Medical Center, Beaver, PA, Inc., 454 Pa. Super. 645 (1996), appeal denied, 548 Pa. 673 (1997). The court must be able to say with certainty that, upon the facts averred, the law will not permit recovery. Id. Under this standard, preliminary objections should be sustained only in cases that are clear and free from doubt. Interstate Traveler Services, Inc. v. Commonwealth, Dept. of Env. Resources, 486 Pa. 536, 406 A.2d 1020 (1979).

In construing the complaint, the trial court maintains broad discretion in determining the adequacy of the pleadings. United Refrigerator Co. v. Appelbaum, 410 Pa. 210, 189 A.2d 253 (1963). The novelty of a claim or theory does not compel the affirmance of a demurrer. Denton v. Silver Stream Nursing & Rehabilitation Ctr., 739 A.2d 571, 575 (Pa. Super. 1999). Furthermore, if a doubt exists as to whether a demurrer should be sustained, that doubt should be resolved in favor of overruling the demurrer. Pacurariu v. Commonwealth, 744 A.2d 389, 391 n.1 (Pa. Cmmw. 2000)

B. Mrs. Quinn sufficiently maintains a claim against Dr. Casarett for Professional Malpractice

It is well established that a professional has a duty " to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities." Robert Wooler Co. v. Fidelity Bank, 330 Pa. Super. 523, 531 (1984) (quoting Restatement (Second) of Torts §299A); see Bloomsburg Mills, Inc. v. Sodoni Constr. Co., 401 Pa. 358, 361-62 (1960). This duty applies to all persons who render services to another in the practice of a profession or to others in the practice of a skilled trade. See Comment B to Restatement (Second) of Torts §299A. It applies equally to all professionals, be it physicians, attorneys, accountants, engineers, pharmacists, machinists, pilots or plumbers. Id. In order to establish a case for malpractice, plaintiff must prove a "want of proper care and skill in the performance of a professional act." Hodgson v. Bigelow, 335 Pa. 497, 504 (1939).

Mrs. Quinn alleges that Dr. Casarett was bound by the duty of a professional, as a Patient Advocate. Specifically, she alleges that Dr. Casarett failed to live up to the skill and knowledge employed by others in his field by: (1) failing to advise the Quinns of all of the risks associated with the experiment; (2) failing to advise the Quinns of the limited benefits and substantial risks of participating in the experiment; (3) failing to ensure that the Quinns understood the risks of participating in the experiment; (4) allowing the Quinns to believe that Mr. Quinn's participation in the experiment was his best therapeutic alternative; (5) failing to disclose to the Quinns the extent to which the defendants knew about the risks of the experiment; (6) failing to inquire and/or inform the Quinns about prior experience with this and other artificial hearts; (7) failing to inquire and/or inform Mr. Quinn of the pain and suffering he would endure; (8) failing to ensure that Mr. Quinn received 24 hour nursing care after the surgery; (9) failing to advocate for the Quinns with respect to nursing, homecare and/or billing issues; (10) informing the Quinns

that Mr. Quinn's quality of life would improve if he participated in the experiment; (11) failing to advise the Quinns of all of the conflicts of interest of individuals and entities involved in the experiment; (12) failing to inform the Quinns that it was not in Mr. Quinn's best personal interest to participate in the experiment; (13) failing to inform the Quinns that Abiomed would consider the experiment a success if Mr. Quinn survived for sixty (60) days; (14) failing to inform the Quinns that Abiomed's AbioScore mortality prediction tool, which determined that Mr. Quinn had an Eighty Percent (80%) likelihood of dying within thirty days and was used to qualify Mr. Quinn for the experiment, was part of a separate experiment to determine if it was accurate; (15) failing to negotiate and/or explain ongoing informed consent issues that arose during the course of the experiment; (16) failing to advocate and/or advise the Quinns with respect to end of life issues; (17) failing to protect the interests of the Quinns with respect to the informed consent process; (18) failing to set up communications with the wives of other subjects; (19) failing to protect the interests of the Quinns with respect to privacy issues; and (20) failing to disclose that he was getting paid by Abiomed.

For purposes of establishing a sufficient cause of action for professional malpractice, Mrs. Quinn has alleged all of the necessary elements: (1) a duty owed by the Patient Advocate to the Quinns; (2) a breach of that duty; (3) that the breach of duty was the proximate cause, or substantial factor in bringing about the harm suffered by the Quinns; and (4) damages suffered as a direct result of the harm. Mitzelfelt v. Kamrin, 526 Pa. 54 (1990); Poleri v. Salkind, 453 Pa. Super. 159, 166-67 (1996); Gregorio v. Zeluck, 451 Pa. Super. 154, 158 (1996). More specifically, Mrs. Quinn alleges that Dr. Casarett held himself out as one who was capable in the area of Patient Advocacy; the Quinns relied upon Dr. Casarett's purported expertise when he

acted as the Quinns' Patient Advocate; and, as a result of Dr. Casarett's failure to use the ordinary skill and knowledge of others in his field, the Quinns were harmed.

Dr. Casarett argues that the Patient Advocate malpractice claim should be dismissed. First, he argues that he cannot be sued for medical malpractice because he was not the treating physician. We agree. He further argues, however, that he cannot be sued for Patient Advocate malpractice because there is no standard of care for such a professional. This proposition is absurd and, if accepted, would render this emerging practice of medicine and ethics, a practice in which Dr. Casarett claims to be a leading pioneer, to be a fraud on human subjects such as Mr. Quinn.

The responsibilities and duties Dr. Casarett assumed when he agreed to be the Patient Advocate for the Quinns were as important as the responsibilities and duties of any member of the research team. It was his responsibility to make sure the Quinns not only gave their consent to the procedure, but that the consent was informed—that is, they understood the nature, risks and benefits of the experiment—and that the consent was voluntary—that is, free of coercion. These are the requirements of human subject research in this Commonwealth, throughout the country and the free world. United States v. Stanley, 483 U.S. 669 (1987); see also H.H.S. Regulations governing human research at 45 C.F.R., Part 46; see also The Nuremberg Code (reprinted at www.ushmm.org/research/doctors/nuremberg_code.html.)

Rather than acting as a health care provider, Dr. Casarett's role was more akin to that of an attorney who advocates and provides legal advice for his or her client. If that attorney fails to advocate properly on behalf of his or her client, and fails to render competent advice, thereby failing to live up to the standards of the profession, and it results in harm to the client, that attorney is liable for malpractice. In this case, Dr. Casarett was acting, not as a legal advocate

but as a Patient Advocate. It is alleged that he failed in his duties as an advocate for the Quinns; he failed to ensure that the Quinns were fully informed and uncoerced in the informed consent process; and he failed to otherwise protect their interests in the experiment. In so acting, the Complaint alleges, Dr. Casarett failed to act in accordance with the standards of his profession, however new that profession might be. This is the essence of a professional malpractice claim.

Furthermore, in construing the adequacy of the Complaint, it is not Mrs. Quinn's burden to specifically allege the standard of care for Patient Advocates. There can be no doubt, however, that a standard of care exists. It requires specialized knowledge and training. It is the subject of lectures and scholarly articles by individuals who are doctors either of medicine or philosophy or both. In short, it is a profession with standards like any other profession. If not, consider the level of deceit researchers would be engaged in if they provided to a potential subject a Patient Advocate who could say or do anything and whose standard of care was no greater than if he or she had been selected at random off the streets of Philadelphia.

Thus, while the profession of Patient Advocacy is a relatively new one, there is no law that provides a haven from malpractice for new or novel specialties. In Fort Washington Resources, Inc. v. Tannen, 901 F. Supp. 932, 941 (3d Cir. 1995), the court held that a doctor who held himself out as one who was capable in the area of investigational new drug preparation and filing carried out his duty of care in a negligent manner and was liable for professional malpractice. The case stands for the proposition that just because there may never have been a malpractice claim brought against a particular profession does not mean it is not legally cognizable. The defendant, like Dr. Casarett, was not acting as a treating physician. Both doctors were using their education and experience to become specialists in a new medical field. Experts in Fort Washington Resources testified that the defendant should have and failed to take

certain steps with respect to preparation of the investigational dosage form and failed to attack his task in the manner of a reasonable and prudent consultant in the investigational new drug filing area. For this breach of the standard of care, Dr. Tannen was liable for the resulting damages. Similarly, Mrs. Quinn will provide expert testimony showing that Dr. Casarett's conduct fell below the standards of his profession and that he failed to act in the manner of a reasonable and prudent Patient Advocate.

Dr. Casarett cites one case in support of his position that he cannot be liable for Patient Advocate malpractice, Miller v. Perrige, 71 D.&C.2d 476 (Northumberland Co. 1975). The facts of Miller, however, are simply not on point with the facts here. Unlike the allegations in this case, the plaintiffs in Miller filed suit against their physician for medical malpractice. Plaintiff makes no such medical malpractice claim here. This is a claim for professional malpractice of a Patient Advocate. A Patient Advocate is expressly what Dr. Casarett held himself out to be; it is a role Dr. Casarett promised by contract he would fulfill. Moreover, the court in Miller found only that the allegations in the Complaint were not specific enough. The court held that the allegation of failing to properly advise and inform plaintiff, without any other allegations as to what should have been advised, was not specific enough. Contrary to Miller, in this case, it is specifically and plainly alleged what Dr. Casarett should have done and what he failed to do.

Dr. Casarett also argues that the Complaint contradicts itself because it is alleged that Dr. Casarett was responsible for advising the Quinns about the informed consent process, yet the informed consent document signed by the Quinns does not list Dr. Casarett as an investigator. Dr. Casarett misses the point. He was not an investigator. He was supposed to be on the Quinns' side not Abiomed's. He was not responsible for obtaining the informed consent; he was responsible for making sure any consent the Quinns gave was informed and voluntary. He failed

in that responsibility by his own admission since he has admitted that Mr. Quinn was coerced by his illness into giving consent.

Dr. Casarett's claim that there is no standard of care for his profession because he was the only Patient Advocate for an artificial heart transplant subject in Pennsylvania is simply untrue, and he knows it. Even in this experiment, another Patient Advocate assumed that role after Dr. Casarett was terminated by the Quinns. It is true there were no other Patient Advocates for artificial heart transplants in Pennsylvania before Dr. Casarett; Mr. Quinn was the first such subject. But there were other Patient Advocates at the other locations where Abiomed was conducting the experiment. And there are numerous other Patient Advocates involved in other types of human subject research in this country and around the world.

In any event, the issue of whether there is a standard of care for Patient Advocates is a question for summary judgment and is not appropriate at this stage of the litigation. Through the discovery process, Mrs. Quinn will provide evidence and testimony with respect to the standard of care that Dr. Casarett now claims does not exist.

C. Mrs. Quinn sufficiently maintains additional claims against Dr. Casarett for Negligence, Wrongful Life, Infliction of Emotional Distress and Misrepresentation

Mrs. Quinn's claims against defendants Drexel University, Tenet Healthcare and Hahnemann University Hospital have been discontinued, and the preliminary objections of these defendants have been withdrawn. Dr. Casarett has neither filed preliminary objections nor a memorandum in support of preliminary objections with respect to the remaining counts against him and cannot rely or incorporate the preliminary objections of the dismissed defendants, as they are not before the Court. Still, Mrs. Quinn will briefly respond to those objections.

1. The Complaint sufficiently alleges claim of negligence against Dr. Casarett.

First, as noted above, the claims for negligence against Dr. Casarett are not based upon Dr. Casarett's failure to obtain informed consent as he was not a treating physician and had no duty to obtain Mr. Quinn's informed consent. The duty he had was to make sure that any consent the Quinns gave was informed and voluntary. The claims for negligence against Dr. Casarett are based on standard negligence principles. Dr. Casarett owed a duty to the Quinns, a duty he contracted to assume and one he represented to the Quinns he was obligated to fulfill. Second, he breached that duty by failing to act in accordance with the standard of care for such actions. Thus, if this Court accepts Dr. Casarett's absurd argument that he had no professional standard of care as a Patient Advocate, he still had a duty to act as a reasonable person would in performing those duties. Finally, it is alleged, the breach of that standard of care resulted in damage to the Quinns because they had to endure pain and suffering which they would not have otherwise endured.

2. Claim for Wrongful Life

42 Pa.C.S.A. §8305 provides that there shall be no cause of action for wrongful life or birth, and it precludes an award of damages based on a claim that, but for an act or omission of the defendant, a person conceived would or should not have been born. This statute only applies to infants who were born or should not have been born due to the negligence of a defendant. It does not apply to patients like Mr. Quinn who, after a full life, was caused to endure an additional nine months of pain, suffering and loss of dignity until his last breath.

3. The Complaint sufficiently alleges claim of intentional and negligent infliction of emotional distress against Dr. Casarett

Mrs. Quinn's claims for intentional and negligent infliction of emotional distress are not

based upon Dr. Casarett's failure to obtain Mr. Quinn's informed consent. Paragraph 84 of the Complaint states "The . . . [of] in making false statements to Mr. Quinn and Mrs. Quinn, knowing they would rely upon these statements in making his decision to participate in the experiment, has caused emotional harm and was extreme and outrageous." It is these purposeful false and misleading statements made to a dying patient in order to deceive him that is particularly cruel, causing emotional distress. Moreover, Dr. Casarett's conduct in failing to perform his duties and by intentionally deceiving the Quinns, knowing the Quinns were relying on him to conduct himself in an ethical manner, is extreme and outrageous conduct.

4. The Complaint sufficiently alleges claim of misrepresentation against Dr. Casarett

Finally, Mrs. Quinn's claim for intentional misrepresentation is not duplicative and is not encompassed within her claim for lack of informed consent. As explained above, there is no claim for lack of informed consent against Dr. Casarett.

The elements of a fraudulent misrepresentation are (1) a misrepresentation; (2) a fraudulent utterance thereof; (3) an intention by the maker to induce the recipient thereby; (4) justifiable reliance by the recipient on the misrepresentation; and (5) damage to the recipient as a proximate result of the misrepresentation. Thomas v. Seaman, 451 Pa. 347, 350 (1973). The allegations of the Complaint show that Dr. Casarett made the following misrepresentations: (1) that the risks of the experiment are minimal; (2) that the benefits are great; (3) that Dr. Casarett was paid by Abiomed; (4) that all bills would be paid for; (5) that a trust would be created to care for Mrs. Quinn; (5) that 24 hour nursing care would be provided at all times after the surgery; and (6) that Mr. Quinn's quality of life would improve. None of these statements made to the Quinns was truthful and all were done in an attempt to induce the Quinns to participate in the experiment.

III. CONCLUSION

For the foregoing reasons, this Court should overrule Dr. Casarett's preliminary objections and Order Dr. Casarett to answer the Complaint.

SHERMAN, SILVERSTEIN, KOHL, ROSE & PODOLSKY

DATED:_____

BY:_____
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