

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT DADDIO, as parent and natural
Guardian and Administrator of the Estate of
MICHAEL DADDIO, a Minor, Deceased, and
ROBERT DADDIO and TRACIE DADDIO,
Individually and in Their Own Right
v.

COMPLAINT

No. _____

The A.I. DuPont Hospital for Children
Of the Nemours Foundation
1600 Rockland Road
Wilmington DE 19803

And

JURY TRIAL DEMANDED

The Nemours Foundation
4600 Touchton Road East
Jacksonville FL 32246

And

William I. Norwood, M.D., Ph.D.
4812 Kennett Pike
Greenville DE 19807-1814

And

Christian Pizarro, M.D.
c/o A.I. DuPont Hospital for Children
1600 Rockland Road
Wilmington DE 19803

And

John Murphy, M.D.
115 Adams Dam Road
Wilmington, DE 19899

And

A. Majeed Bhat, M.D.
c/o A.I. DuPont Hospital for Children
1600 Rockland Road
Wilmington DE 19803

And

Ellen Spurrier, M.D.
c/o A.I. DuPont Hospital for Children
1600 Rockland Road
Wilmington DE 19803

And

Deborah Davis, M.D.
c/o A.I. DuPont Hospital for Children
1600 Rockland Road
Wilmington DE 19803

And

Paul Kerins, Perfusionist
c/o A.I. DuPont Hospital for Children
1600 Rockland Road
Wilmington DE 19803

And

R. Rios, Perfusionist
c/o A.I. DuPont Hospital for Children
1600 Rockland Road
Wilmington DE 19803

COMPLAINT

JURISDICTION

1. Jurisdiction is vested in this Court by virtue of federal questions arising under and pursuant to the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq., as well as 28 U.S.C. § 1331.

PARTIES

2. Plaintiffs are Robert Daddio as parent and natural guardian and Administrator of the Estate of Michael Daddio, a minor, deceased; and Robert Daddio and Tracie Daddio, parents and natural guardians, individually and in their own right. Mr. and Mrs. Daddio reside at 152 Viburnum Lane, Magnolia, DE 19962. Michael Daddio died on July 23, 2003.
3. Defendant DuPont Hospital (hereinafter “DuPont Hospital”) is a hospital licensed to operate in the State of Delaware with a physical location at 1600 Rockland Road, Wilmington Delaware.
4. Defendant Nemours Foundation, upon information and belief is a corporation and charitable foundation authorized to operate in Florida, Delaware and Pennsylvania, among other states, and owns the DuPont Hospital. Upon information and belief, Nemours Foundation also owns several physicians practices in Pennsylvania, Delaware, New Jersey, Florida and other states, and maintains offices for those physicians in those states. The headquarters of Nemours Foundation is in the State of Florida.
5. Defendant William I. Norwood, M.D., Ph.D. is a physician and surgeon licensed to practice medicine in Delaware, Florida, Pennsylvania and New Jersey, with a current address of 4812 Kennett Pike, Greenville DE 19807. At all times material hereto, Dr. Norwood was chief of cardiothoracic surgery at the Nemours Cardiac Center of the DuPont Hospital, a member of its staff, and was the primary surgeon who operated on the minor Plaintiff herein. At

all times material hereto he was employed by, and/or was the agent and/or ostensible agent of the. DuPont Hospital and/or the Nemours Foundation

6. Defendant, Christian Pizarro, M.D. is a physician and surgeon licensed to practice medicine in Delaware, Florida and Pennsylvania. At all times material hereto, Dr. Pizarro was a member of the staff of DuPont Hospital, and was a cardiothoracic surgeon at that facility. He was one of the surgeons who operated on Ian. At all times material hereto he was employed by, and/or was the agent and/or ostensible agent of the. DuPont Hospital and/or the Nemours Foundation.
7. Defendant, John Murphy, M.D. is a physician with a specialty in pediatric cardiology. At all times material hereto he was employed by, and/or was the agent and/or ostensible agent of DuPont Hospital and/or the Nemours Foundation, and was a staff member of the DuPont Hospital. Dr. Murphy has an address of 115 Adams Dam Road, Wilmington, DE 19899.
8. Defendant, A. Majeed Bhat, M.D. is a physician with a specialty in pediatric cardiology. At all times material hereto he was employed by, and/or was the agent and/or ostensible agent of DuPont Hospital and/or the Nemours Foundation, and was a staff member of the DuPont Hospital. Dr. Bhat has a business address of 1600 Rockland Road, Wilmington DE 19807.
9. Defendant, Deborah A. Davis, M.D., is a physician and anesthesiologist with a subspecialty in pediatric cardiac anesthesia and critical care medicine. At all times material hereto she was employed by, and/or was the agent and/or ostensible agent of DuPont Hospital and/or the Nemours Foundation, and was

a staff member of the. DuPont Hospital. . Dr. Davis has a business address of 1600 Rockland Road, Wilmington DE 19807

10. Defendant, Ellen Spurrier, M.D. is a physician and anesthesiologist with a subspecialty in pediatric cardiac anesthesia and critical care medicine. At all times material hereto she was employed by, and/or was the agent and/or ostensible agent of DuPont Hospital and/or the Nemours Foundation, and was a staff member of the. DuPont Hospital. Dr. Spurrier maintains a place of business at 1600 Rockland Road, Wilmington, DE 19807.
11. Defendant, Paul Kerins, is an individual working in the field of cardiopulmonary perfusion who, at all times material hereto, was a perfusionist who was employed by, or was the agent or ostensible agent of the. DuPont Hospital and/or the Nemours Foundation. Upon information and belief, Paul Kerins maintains a place of business at 1600 Rockland Road, Wilmington, DE 19807.
12. Defendant, R. Rios, is an individual working in the field of cardiopulmonary perfusion who, at all times material hereto, was a perfusionist who was employed by, or was the agent or ostensible agent of the. DuPont Hospital and/or the Nemours Foundation. Upon information and belief, R. Rios maintains a place of business at 1600 Rockland Road, Wilmington, DE 19807.

FACTS APPLICABLE TO ALL COUNTS

13. Michael Daddio was born on June 5, 2001. Shortly after birth, he was noted to be cyanotic and was transferred to Dupont Hospital for evaluation.

14. After arrival, and upon examination, DuPont Hospital and its agents determined that Michael was suffering from the following congenital heart defects: unbalanced atrioventricular canal with hypoplastic left heart syndrome.
15. Dr. Norwood planned to perform surgery to correct these defects.
16. Dr. Norwood performed surgery on Michael Daddio on June 7, 2001. In his operative note, Dr. Norwood described the surgery as a “Norwood Procedure”.
17. Prior to the actual surgery, but under Dr. Norwood’s direction, Michael was placed on cardiopulmonary bypass. After being placed on bypass, Michael was cooled to 27 degrees centigrade in 15 minutes. His circulation (meaning all flow of blood in his body) was completely stopped for 62 minutes.
18. The anesthesiologists for the June 7th procedure were Deborah Davis, M.D. and Ellen Spurrier, M.D. They recorded on the anesthesia record the temperatures and times relative to Michael’s cooling and bypass, as well as his vital signs and medications, among other information. They also cared for Michael in the cardiac intensive care unit (CICU) and on 2B and communicated with the family.
19. The perfusionist for the June 7th procedure was an individual identified as P. Kerins on the perfusion record for that surgery. Plaintiffs believe that this individual is Paul Kerins.
20. Michael had seizures after this surgery. He was eventually discharged from the hospital and went home.

21. One November 8, 2001, Michael was re-admitted to DuPont Hospital for his next surgery. On November 9, 2001, Michael was again taken to surgery by Dr. Norwood, this time for a hemi-fontan procedure.
22. The anesthesiologist for the November 9th (the second surgery) procedure was Ellen Spurrier, M.D. Dr. Spurrier recorded on the anesthesia record the temperatures and times relative to Michael's cooling and bypass, as well as his vital signs and medications, among other information. She also cared for Michael in the cardiac intensive care unit (CICU) and communicated with the family.
23. The perfusionist for the November 9th procedure was individual identified in the records as R. Rios.
24. Sometime prior to the surgery on November 9th, Michael's parents were informed that Michael would have a different procedure than had been planned. This was explained to them by Dr. Bhat, who told the Daddios that it was in Michael's best interest to have the surgery and that it would make it easier for him to have the third required procedure which would then be able to be performed in the catheterization lab by Dr. Murphy. He told them that Dr. Norwood would add a little step to combine part of the usual Stage 3 procedure into Stage 2. Dr. Bhat told them that it would make Michael's treatment less painful down the road. The Daddios were told that the pleural effusions would be minimal and would last only a few days if at all. They were told by Dr. Bhat that it would be the "new" procedure which would be performed.

25. Prior to the second surgery, and at the direction and knowledge of Dr. Norwood, Michael was cooled rapidly. His circulation was completely stopped for a period of 59 minutes.
26. Michael developed severe and persistent pleural effusions. He developed scarring of his lungs and problems with his heart.
27. The appropriate treatments for pleural effusions were not undertaken.
28. At and around the time of Michael's second surgery, Dr Murphy and Dr. Norwood were undertaking a study to determine if the third and final surgery for hypoplastic left heart syndrome could be performed in the cath lab. In order to prepare patients for this experiment, the Stage II surgery (the hemi-fontan) had to be modified.
29. At all times material hereto, Dr. Norwood, Dr. Murphy, Dr. Bhat and other physicians, as well as the Hospital and Nemours Foundation, recruited patients for this experiment. There was no Institutional Review Board approval sought or obtained.
30. At all times material hereto, Michael Daddio was treated at the Nemours Cardiac Center operated by and located within the walls of the DuPont Hospital. Upon information and belief, the Nemours Cardiac Center ("the Cardiac Center") was run by Dr. Norwood as chief of the practice and director of the Cardiac Center, with the blessing and oversight of DuPont Hospital. The Cardiac Center was a part of DuPont Hospital (it occupied a wing of the second floor) as well as the Nemours Foundation itself.

31. In fact, the Nemours Foundation specifically chose Dr. Norwood to lead and operate the Cardiac Center, which opened in Delaware in 1998.
32. At all times material hereto, DuPont Hospital maintained a business venture with Thomas Jefferson University Hospital (“Jefferson”). As part of this relationship, residents from Jefferson rotate through certain specialties at DuPont Hospital, and pediatricians at Jefferson are employed by DuPont Hospital.
33. In addition, most staff cardiologists at DuPont Hospital maintained professional offices at Jefferson, or in one of Jefferson’s many offices for the purpose of seeing patients, and regularly saw patients at those offices.. In addition, Dr. Norwood and Dr. Pizarro, the cardiac surgeons at DuPont, maintained offices at Jefferson, and regularly saw patients at those offices.
34. In addition, DuPont cardiologists and pediatricians maintained offices at Bryn Mawr Hospital, and/or Main Line Health owned and operated offices for the purposes of seeing patients. Main Line Health is owned and operated by the Thomas Jefferson University Health System.
35. Practices involving nearly every pediatric specialty are served through “DuPont at Jefferson” practices. These practices include pediatric cardiology and are located at 841 Chestnut Street in Philadelphia, Pennsylvania.
36. DuPont Hospital maintains an overt clinical and business relationship with Jefferson and Main Line Health, as evidenced by the sign for DuPont Hospital which proclaims its partnership with Jefferson.

37. The Chief of the Practice of DuPont at Jefferson maintains an office both at Jefferson and at DuPont Hospital.
38. Dr. Norwood was a professor of surgery at Thomas Jefferson University Health System at all times material hereto.
39. Dr. Davis was a professor of anesthesia and critical care medicine at Thomas Jefferson University Health System at all times material hereto.
40. Dr. Spurrier was a professor of anesthesia and critical care medicine at Thomas Jefferson University Health System at all times material hereto.
41. Dr. Murphy was a professor of cardiology at Thomas Jefferson University Hospital at all times material hereto.
42. Dr. Bhat was a professor of cardiology at Thomas Jefferson University Hospital at all times material hereto.
43. Ninety day notices pursuant to 18 Del. C. §6856(3) were mailed on April 5, 2004 and May 20, 2004. True and correct copies of all notices sent pursuant to statute are attached hereto, incorporated herein and marked as Exhibit "A".
44. Affidavits of merit as to all professional defendants, against whom medical negligence is alleged, are NOT attached hereto but were collectively filed with the Court in a sealed envelope as Exhibit "B" to Plaintiffs' complaint.

COUNT I – FRAUD, FRAUDULENT CONCEALMENT & CONSPIRACY
PLAINTIFFS V. DUPONT HOSPITAL, THE NEMOURS FOUNDATION and
WILLIAM I. NORWOOD, M.D. JOHN MURPHY, M.D., ELLEN SPURRIER,
M.D., A. MAJEED BHAT, M.D., and DEBORAH A. DAVIS, M.D.

45. Paragraphs 1 through 44 are hereby incorporated by reference as though each were fully set forth at length herein.
46. Each defendant was served with the 90 Day Investigatory Notices pursuant to Delaware Statute. However, Plaintiffs contend that such notices were unnecessary because the true nature of the treatment rendered to Michael Daddio was fraudulently concealed from the Plaintiffs willfully with intent to deceive. There was no manner by which Plaintiff could possibly have considered that medical negligence occurred until the press began reporting stories of Dr. Norwood's firing from A.I. DuPont Hospital on or about February 22, 2004. Thereafter, the Daddios obtained a copy of their son's medical records. Therefore, the statute should not have begun to run until February 22, 2004.
47. Specifically, the operative report for the surgery performed on June 7, 2001 indicates that Michael was cooled to 20 degrees centigrade. The anesthesia record for that same date indicates that he was cooled, not to 20 degrees centigrade, but only to 27 degrees centigrade for a procedure that involved circulatory arrest for 62 minutes.
48. The perfusion record, commonly known as the pump sheet, indicates that the rectal temperature at circulatory arrest was 27.9 degrees.
49. At no time was any temperature measured at 20 degrees centigrade with reference to the June 7, 2001 surgery. The standard of care requires that for circulatory arrest, the patient must be cooled to a core temperature of at least

20 degrees centigrade over a period of at least twenty minutes in order to preserve brain and organ function.

50. The anesthesia record for the June 7th surgery indicates that Michael was cooled in 15 minutes. However, the perfusion record shows that he was cooled in only six minutes.
51. With reference to the November 9, 2001 surgery, the operative report, again, states that Michael was cooled to 20 degrees centigrade. However, the anesthesia record for that same surgery indicates that the rectal temperature was 24 degrees centigrade, and that circulatory arrest lasted for 62 minutes.
52. The anesthesia record for the June 7th surgery shows that Michael was cooled in 14 minutes. However, the perfusion record shows that he was cooled in only 9 minutes.
53. Operative reports signed by Dr. Norwood routinely state that the patient was cooled to 20 degrees centigrade, when, in fact such is not the case.
54. Furthermore, the pump sheet contains purported arterial blood gas results which do not appear in the comprehensive laboratory printout. Nor do they appear anywhere else in the chart.
55. In fact, in this case, the perfusion records were not provided to counsel despite the fact that the entire chart had been requested. The pump sheets were not provided until counsel requested them specifically, by name. These very pump sheets contain misleading information which was designed to deceive.
56. Even if the Daddios had obtained the entire chart at the time of Michael's death, there would have been no indication from the chart that anything

negative had occurred because all references to complications or sequelae from surgical technique and/or the cooling/perfusion/circulatory arrest process were purposefully omitted or obfuscated. For example, after the modified hemi-fontan surgery, there are no references to seizures in the chart. In order to determine seizure activity, a detailed analysis of post-operative hemodynamic and respiratory parameters must be undertaken and would only be done if a plaintiff suspected that the records were not truthful. Plaintiffs had no reason to suspect this until after February 22, 2004 for reasons previously stated. In addition, Dr. Raphaely and Dr. Norwood directed that no notations of seizure activity or other complications be noted in the chart so that potential plaintiffs could not determine what had actually happened.

Moreover, all cardiac center staff were aware of this edict.

57. Commonly, patients (their parents) are given copies of the operative reports to take to their treating pediatricians and cardiologists, but anesthesia and pump records are not usually disclosed unless requested specifically. In this case, there would have been no reason for these documents to be reviewed by anyone other than the physicians named herein.
58. It is believed, and therefore averred, that the defendant anesthesiologists, Drs. Davis and Spurrier, conspired with Dr. Norwood, the perfusionists and others to conceal from the plaintiffs the true nature of the perfusion process/strategy, cardiopulmonary bypass and circulatory arrest. None of these individuals revealed to Plaintiffs the fact that Michael's cooling and temperature at circulatory arrest were inadequate, harmful, and below the standard of care.

59. At no time were the Daddios ever informed that Michael's cardiopulmonary bypass and cooling procedures were inadequate and harmful. Instead, Dr. Spurrier and Dr. Davis, who are also critical care physicians and cared for Michael in the ICU, continually told Mr. and Mrs. Daddio that they did not know what was causing the problems with Michael. Dr. Norwood did not tell the Daddios why Michael was deteriorating, despite the fact that, given the cooling and perfusion, and surgical technique he used on Michael, he knew at the time that this was a problem.
60. In addition, with regard to the November 9th surgery, the parents were never told that the surgery was materially any different than a standard hemi-fontan, and that it was experimental. In fact, the parents were told by Dr. Bhat specifically that this surgery was safe, and that Dr. Norwood was trying to ease the pain down the road. No one told them that Michael was to be only the second child to have this particular surgery.
61. In fact, with regard to the second surgery, Dr. Norwood, Dr. Pizarro and Dr. Murphy, as well as Mr. Rios and Dr. Spurrier, were aware that the surgery was experimental and that it carried a high risk of pleural effusions. Yet, even with this knowledge, none of these individuals told the Daddios what was wrong with Michael, causing them to believe that Michael was sick despite their efforts, not because of them.
62. The blood gas readings on the perfusion record do not all appear on the comprehensive laboratory printout. The I-STAT machines (portable blood gas analyzers) used to measure arterial blood gases in the operating room are

designed to have their data uploaded to a central repository via a docking station. This uploading occurs every evening. The central repository is medical records which then prints out the results and purportedly makes them part of the medical record. Either Paul Kerins, Mr. Rios, Dr. Spurrier, Dr. Davis, Dr. Pizarro or Dr. Norwood or someone acting on their behalf or on behalf of each other, purposefully failed to upload these blood gas results to the laboratory database. The failure to upload blood gas results run on any I-STAT machine in use in 2001 required an overt act to change the name of the test so that there would be no recordable transfer to the lab and therefore no record of a bad blood gas. There is no other manner in which an operator of an I-STAT machine can change a value.

63. The same practice of not uploading blood gas results was followed for many other children as well so that these records are also missing blood gas results. Plaintiffs are in possession of these records.
64. Under the specific direction of Dr. Norwood and Dr. Raphaely, no overt references to seizure activity, infection and/or other complications were permitted to be made in the medical charts in order to prevent plaintiffs' attorneys from discovering any problems with the care of children at the cardiac center, thereby causing any reader of the chart entries to conclude that no seizures, or other complications occurred when, indeed, they did occur.
65. Michael Daddio did, in fact, have seizures post-operatively, but this fact was purposefully obfuscated pursuant to the direction of Drs. Norwood and Raphaely, as aforesaid, for the purpose of avoiding liability by misleading

parents. In fact, the Daddios were unaware of Michael's condition in this regard until the records were examined for obfuscation of seizure activity.

66. Dr. Norwood knew at the time he treated Michael Daddio that cooling to less than 20 degrees centigrade is necessary to protect the brain and other organs of the body during cardiopulmonary bypass with circulatory arrest.
67. Dr. Norwood knew, at the time he performed surgery on Michael Daddio, that cooling to only 27 degrees centigrade (Michael was at 27 degrees centigrade for his first surgery, and 24 degrees centigrade for his second surgery) gives protection to the brain and other organs during circulatory arrest for only about 30 minutes.
68. In addition, Dr. Norwood knew at the time that he performed surgery on Michael Daddio that cooling a patient for less than 20 minutes in preparation for circulatory arrest was in direct contravention of the substantial body of medical literature on the subject which required cooling to take place for no less than 20 minutes, and was known at the time to be harmful.
69. Dr. Norwood dictated and signed both operative reports which purportedly describe Michael's temperature as well as the surgical procedure which was performed. However, as the other records in possession of the Plaintiffs make clear, the operative reports, not only for Michael, but for *many other children* is inaccurate and misleading at best.
70. Plaintiffs contend that the temperature contained in Michael's operative reports was listed at 20 degrees centigrade in an overt effort to deceive the

patient, his parents and relatives and his caregivers, upon whom they would rely for further care and recommendations for care.

71. It is the surgeon's job to know at all times what are the various measured temperatures of the patient during cooling. This is known to be Dr. Norwood's practice.
72. Furthermore, the Delaware Department of Health, Facilities Management Division, (which is an agent for the U.S. Department of Health and Human Services) has found the following long-standing deficiencies in the cardiopulmonary bypass and circulatory arrest procedures of the hospital:
 - a. Failure to have any policies at all related to perfusion, cardiopulmonary bypass and/or circulatory arrest.
 - b. Failure to require that such policies be made and followed.
73. The defendants, Dr. Norwood, Dr. Pizarro, Dr. Davis, Dr. Spurrier, Mr. Rios and Mr. Kerins, knew at the time that Michael was treated that the cooling/perfusion processes which were being used were inadequate, harmful and negligent and they undertook a course of action to hide this from the plaintiffs through overt actions (e.g., stating to the Daddios that they had no idea what was wrong with Michael, when in fact, they knew exactly what was wrong with Michael) as well as failing to tell plaintiffs what they had done, and falsifying the medical chart to back it up, (e.g., indicating that the temperature on circulatory arrest was 20 degrees centigrade when it was not, and failing to properly report and record blood gases).

74. Moreover, Dr. Murphy, Dr. Norwood and Dr. Pizarro were operating a study of an experimental procedure on human subjects, with the cooperation and full participation of Dr. Bhat, Dr. Davis and Dr. Spurrier (who obtained “consent” from parents and talked up the procedure), without approval of the Institutional Review Board and without appropriate consent from the parents.
75. DuPont Hospital and the Nemours Foundation knew at all times material hereto that this study was being undertaken and did not require that any approvals be sought from the IRB or any other body in order to protect the welfare of the patients to be subjected to experimentation.
76. At no time and in no manner were the Daddios informed that their child would be subjected to a surgical experiment. In fact, as aforesaid, they were told only that this surgery would make it less painful down the road. They were not given a choice, but were told by Dr. Bhat that this would be the procedure which Michael would have.
77. At no time and in no manner were the Daddios ever told that Michael’s complications were due to the experimental surgery, or that they (the surgeons) caused his problems. At no time and in no manner were the Daddios ever told that Michael’s complications were not properly treated. On the contrary, the Daddios were specifically told by Dr. Norwood and Dr. Bhat that Michael’s complications were specifically NOT from the surgery.
78. DuPont Hospital, as well as the Nemours Foundation itself, were aware of the cooling and bypass practices of Dr. Norwood long before he was hired. At the time that Dr. Norwood was recruited by the Foundation and hired to run its

cardiac centers in Wilmington and Florida, all hospitals were required under the Health Care Quality Improvement Act to make an investigation into the background of each physician whom they wanted to credential. This included a requirement that upon application for privileges, as well as *every two years*, letters be sent to all hospitals or facilities where the physician held privileges, no matter the location or duration of time, and it also included a requirement that upon application for privileges as well as every two years, the hospital inquire formally to the National Practitioner Databank to learn of any lawsuits which had been brought, whether settled or tried to verdict against the physician applying for privileges. If DuPont Hospital and/or the Nemours Foundation had done as required, they would have known about Dr. Norwood's practices, which had not changed since he was a fellow at Boston Children's Hospital.

79. An "investigation" into Dr. Norwood's lawsuits and conduct was conducted by a representative of the Nemours Foundation who was an old friend of Dr. Norwood's. This "investigation" purportedly turned up nothing. However, the Foundation was, in fact, put on notice that there were problems with Dr. Norwood's lawsuits and conduct.
80. Furthermore, the Hospital and the Foundation were specifically informed, prior to 2001, of the problems with Dr. Norwood's practices and chose to dismiss them instead of properly investigating them.
81. At no time, and in no manner, did anyone from the Hospital or the Foundation or Dr. Norwood, Dr. Pizarro, Dr. Murphy, Dr. Spurrier, Dr. Bhat or Dr. Davis,

communicate with Mr. and Mrs. Daddio or anyone acting on their behalf, to inform them that the cardiopulmonary bypass, circulatory arrest, perfusion and surgical procedures had been below the standard of care/negligent. This is a direct violation of the duty a hospital, and physicians, owe to their patients to inform them of exactly the nature of their conditions and the manner in which their care was carried out.

82. In addition to preventing Mr. and Mrs. Daddio from knowing the true cause of their son's illness and death, this and this other actions and inactions of the hospital, foundation, Dr. Norwood, Dr. Pizarro, Dr. Spurrier, Dr. Davis, Dr. Muprhy and Dr. Bhat, and Mr. Kerins and Mr. Rios, constituted fraud in the inducement such that the Daddios never would have consented to the procedures had they known. Nor would the Daddios have allowed their son to stay at a facility and under the care of these defendants.
83. In fact, not only did no one at the Hospital or the Foundation, or Dr. Norwood tell the Daddios about their son's terrible predicament and medical condition, they overtly chose to fail to tell them that they – Dr. Norwood, Dr. Davis, Dr. Pizarro, Dr. Murphy, Dr. Bhat, Dr. Spurrier, Mr. Rios and Mr. Kerins and the Hospital and Foundation – caused their son's condition and his death. This was done in order to conceal their own negligence, and to prevent the plaintiffs' discovery of their claim and/or to ensure that the conspiracy was of such a nature as to be self-concealing.
84. Even if Mr. and Mrs. Daddio had gotten complete records immediately after Michael's death, they would not have received the pump sheet which contains

the arterial blood gases not reported/uploaded to the lab. The pump sheets are not kept with the patient's chart and are not a part of it (or are not produced despite being part of it). Unless the pump sheet (perfusion record) is specifically requested by name, it is routinely not produced by the hospital in response to a request for the "entire chart" no matter whether that chart is requested by an attorney or a parent. Therefore, there would have been no way for them to have known about any missing lab results.

85. With regard to the cooling/perfusion/bypass/circulatory arrest procedures and methods, at the time Dr. Norwood operated on Michael Daddio he was aware of the standard of care for cooling, which was to cool over a period of at least 20 minutes on bypass. Yet, he chose to disregard this standard in favor of his own "standard", despite the knowledge of the damage this could cause.
86. Dr. Norwood specifically told the Daddios about four weeks prior to Michael's death that he would be fine, that there was nothing wrong, and that his condition was not uncommon.
87. With regard to the research study being run by Drs. Norwood, Pizarro, Murphy, Davis and Spurrier and Bhat, and the hospital and Foundation, all participants were well aware at all times material hereto that proposed experimentation on human beings, especially children, is required to be cleared through and approved by the institution's Institutional Review Board which is designed to protect human subjects from unauthorized and unconsented experimentation.

88. Dr. Norwood and A.I. DuPont Hospital and the Nemours Foundation held themselves out to be masters of cardiac surgery and patient care in that regard, the best of the best. This “holding out” induced the plaintiffs to seek care from Dr. Norwood and the Hospital and Foundation.
89. Dr. Norwood held himself out to be one of the best congenital heart surgeons in the world. The Hospital and Foundation held him out in the same manner in advertisements and in their annual reports. In fact, the Hospital and/or Foundation and Dr. Norwood claimed results on par with all other major congenital heart centers
90. In fact, the mortality rate of the Nemours Cardiac Center under the direction of Dr. Norwood and owned and operated by the Hospital and Foundation was more than 12 percent. This was never conveyed to parents, and certainly not to the Daddios.
91. Mr. and Mrs. Daddio relied upon the statements, and lack of statements from Dr. Norwood and the anesthesiologists as well as other hospital personnel and health care providers employed by the Hospital and/or Foundation that they had no idea why Michael was so sick. They relied on this because they trusted them. They violated that trust by causing the death of their son with the methods and manner by which they chose to use to care for him, and then by covering it up. By failing to inform Mr. and Mrs. Daddio about the procedures routinely followed with regard to Cardiac Surgery and cooling/perfusion/circulatory arrest, they deprived her of the opportunity to transfer Michael to a facility which could competently care for their son and

which had staff which was competent to perform cardiac surgery in a manner consistent with the standard of care.

92. By failing to inform the Daddios of the truly experimental nature of the hemifontan surgery, and by not offering other non-experimental options, the coerced and induced the Daddios to submit Michael to their care which caused his death.
93. The Hospital and the Foundation also chose not to act on their knowledge of Dr. Norwood's impairment and took no steps to prevent this from affecting patient care, including the care of Michael Daddio.
94. The Hospital and the Foundation also chose not to act on their knowledge of Dr. Murphy's impairment and took no steps to prevent this from affecting patient care, including the care of Michael Daddio.
95. Dr. Norwood intentionally disregarded his duty of care to disclose risks a reasonable and prudent person would want to know in advance of surgery and treatment in order to decide whether to proceed. He also intentionally disregarded his duty of care to Michael Daddio and his parents by failing to inform them of Michael's true condition and its cause. Mr. and Mrs. Daddio never questioned what happened to their son because Dr. Norwood, the Hospital and the Foundation held Dr. Norwood out to be the best there is.
96. Dr. Spurrier and Dr. Davis intentionally disregarded their duty of care to Michael and his parents by failing to inform them of Michael's true condition and its cause, and by intentionally failing, or conspiring with others, as aforesaid, to fail to report blood gas results drawn in the operating room to the

lab and/or falsifying same in order to make it look like Michael was in better shape than he was.

97. Dr. Murphy and Dr. Bhat intentionally disregarded his duty of care to Michael and his parents by failing to inform them of Michael's true condition and purposefully failing to inform them of the nature of the experiment to be performed on Michael, and in fact, purposefully failing to tell them that it was an experiment at all.
98. Mr. Kerins and Mr. Rios intentionally disregarded their duty of care to Michael and his parents by failing, or conspiring to fail, to report blood gas results drawn in the operating room to the lab and/or falsifying same in order to make it look like Michael was in better shape than he was.
99. Dr. Raphaely and Dr. Norwood intentionally disregarded their duty to Michael and his parents by preventing any staff from making an accurate and truthful medical record which prevented Michael and others like him from getting the care they required. It also prevented the Daddios from knowing that anything untoward had happened to Michael.
100. The Hospital and the Foundation knew well before the time Michael was treated that Dr. Norwood and Dr. Murphy did not attend medical staff meetings and that cardiac cases were not presented to the Medical Review Committee. The hospital was aware of the deaths but there was no quality review in an attempt to obfuscate the true nature of the deaths. The Hospital was charged with physician and procedure oversight and they knew before Michael was treated, and at the time she was treated, that Dr. Norwood was

reckless and that the cardiac center were out of control and they did nothing in an attempt to 1) continue to entice patients to come to the cardiac center for treatment and 2) prevent others who had been treated there from discovering the true set-up and mortality rates at the center. The administrative staff at the hospital and the Foundation were active in obfuscating what was going on at the Cardiac Center. The Hospital administrators were specifically told by employees well before Michael Daddio was treated that there were severe, serious and life-threatening problems at the Cardiac Center and they failed to act.

101. The acts and omissions of defendants described herein plainly constitute a scheme or artifice reasonably calculated to deceive persons of ordinary prudence and comprehension.
102. As a result of their reckless, wanton and willful and negligent behavior of these defendants, Plaintiffs, Mr. and Mrs. Daddio and their son, Michael Daddio, were injured and suffered grievous injury and death. The Daddios suffered the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son Michael Daddio, during the remainder of his natural life. In addition, Mr. and Mrs. Daddio have incurred expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio. Michael Daddio lost his life, but not before suffering terribly, and he lost the ability to enjoy his natural life and earn a living. In addition, the Plaintiffs incurred the cost of the hospitalization and burial.

WHEREFORE, Plaintiffs demand judgment against Defendants, DuPont Hospital, the Nemours Foundation, Dr. William Norwood, Dr. Christian Pizarro, Dr. John Murphy, Dr. Deborah Davis, Dr. Ellen Spurrier, and Dr. A. Majeed Bhat for compensatory damages, including attorney's fees and costs, as well as punitive damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT II – WRONGFUL DEATH

PLAINTIFFS V. THE DUPONT HOSPITAL

and THE NEMOURS FOUNDATION

**NEGLIGENT SUPERVISION, MONITORING, AND RETENTION OF
HEALTH CARE PROVIDERS**

103. Paragraphs 1 through 102 are hereby incorporated by reference as though each were fully set forth herein.
104. Plaintiffs bring this action in accordance with the Delaware Wrongful Death Statute and its provisions.
105. All the medical professional defendants named herein, perfusionists, and the nurses, advanced practice nurses, physician assistants and technicians at DuPont Hospital who cared for and were responsible for the treatment of plaintiff Michael Daddio, were the duly appointed agents, ostensible agents, servants and/or employees of. DuPont Hospital , were acting within the scope of their agency and/or employment, and either worked in, operated out of, and/or had privileges at Dupont's facilities.

106. Defendants. DuPont Hospital and the Nemours Foundation had a duty under the law of corporate negligence to ensure the safety of Michael Daddio while he was a patient within the walls of DuPont Hospital.
107. DuPont Hospital and the Nemours Foundation had a duty under the corporate negligence doctrine to ensure, among other duties, that all persons practicing medicine within its walls who attended to the care and treatment of Michael Daddio complied with the prevailing standard of care in their care and treatment of Michael.
108. Under Delaware law, the Hospital had a duty to protect patients from dangers flowing from negligent care by
 - a. assuring that only competent staff were granted privileges;
 - b. that only competent staff retained privileges;
 - c. that rules and regulations for patient safety were in effect and followed; and
 - d. that medical care provided within the walls of the hospital was adequately monitored.
109. DuPont Hospital and the Nemours Foundation itself, carelessly and negligently breached its duty to Michael Daddio by failing to conform to the standard of care required of a hospital acting in the same or similar circumstances.
110. DuPont Hospital and the Nemours Foundation failed to act on their knowledge of the impairment of the chief of cardiothoracic surgery, Dr. William Norwood, both before and after he was hired.

111. DuPont Hospital and the Nemours Foundation failed to remove William Norwood, M.D. from the active practice of surgery at the Hospital as a result of his impairment, as well as for his failure to follow accepted standards of care on a regular, habitual and continual basis.
112. DuPont Hospital and the Nemours Foundation hired and retained others who helped to cover up Dr. Norwood's and Dr. Murphy's impairment and negligence, with the knowledge of DuPont Hospital and Nemours Foundation.
113. DuPont Hospital and the Nemours Foundation failed to require that all persons making notes in the chart actually enter truthful and accurate notes.
114. DuPont Hospital and the Nemours Foundation failed to take steps to assure that all federal regulations with regard to patient care were being followed by the Cardiac Center and the named defendants herein.
115. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, DuPont Hospital and the Nemours Foundation, their employees, servants, agents, and/or ostensible agents, Michael Daddio's surgery, his perfusion and cardiopulmonary bypass, including circulatory arrest, as well as his medical and subsequent surgical care were improperly managed, resulting in the preventable pain and suffering and death of Michael Daddio.
116. By reason of and as a result of the aforesaid carelessness and/or negligence as well as the reckless, wanton and willful conduct of defendants, DuPont Hospital and the Nemours Foundation, their employees, servants, agents,

and/or ostensible agents, acting by and through their employees, servants, agents, and/or ostensible agents, the Daddios suffered the loss of their child.

117. As a further result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct, of. DuPont Hospital and the Nemours Foundation, their employees, servants, agents, and/or ostensible agents, resulting in the death of baby, Michael Daddio, Mr. and Mrs. Daddio suffered mental anguish and the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son Michael Daddio, during the remainder of his natural life. In addition, the Daddios have incurred expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio.
118. In addition, as a result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct of defendant, DuPont Hospital and the Nemours Foundation, their employees, servants, agents, and/or ostensible agents, directly resulting in the untimely death of Michael Daddio, Mr. and Mrs. Daddio suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.

WHEREFORE, plaintiffs Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor and against defendants DuPont Hospital, ,the Nemours Foundation, William I. Norwood, M.D., Ellen Spurrier, M.D., Deborah Davis, M.D, John Murphy, M.D., A. Majeed Bhat, M.D., R. Rios, and Paul Kerins, jointly and severally, for compensatory and

consequential damages and costs in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT III – WRONGFUL DEATH

PLAINTIFFS V. WILLIAM I. NORWOOD, M.D.

NEGLIGENCE

119. Paragraphs 1 through 118 are hereby incorporated by reference as though each were fully set forth herein.
120. Plaintiffs bring this action in accordance with the Delaware Wrongful Death Statute and its provisions.
121. At all times material hereto, Dr. Norwood was employed by and/or was the agent and/or ostensible agent of the DuPont Hospital, as well as the Nemours Foundation, as a physician and cardiothoracic surgeon. He was chief and director of the Nemours Cardiac Center of DuPont Hospital.
122. At all times material hereto, Dr. Norwood was an impaired physician who should not have been performing surgery.
123. Upon information and belief, Dr. Norwood was not able to effectively and properly perform surgery because he was impaired.
124. At all times material hereto, Dr. Norwood employed a “cooling strategy” on cardiopulmonary bypass and for circulatory arrest which was below the standard of care.

125. In addition, Dr. Norwood failed to meet the standard of care with regard to Michael's surgeries by failing to perform the appropriate surgery, and failing to perform the surgery which was done in a competent and proper manner.
126. In addition, Dr. Norwood failed to properly and adequately perform the second surgery on November 9, 2001.
127. At the time that Dr. Norwood performed the surgeries on Michael Daddio, including directing the cooling process, he was well aware that his "cooling strategy" was dangerous and did not offer adequate protection to the brain and other organs of the body, and that it entailed a great risk to the patient's well-being.
128. In addition, Dr. Norwood failed to perform the necessary treatments to ameliorate Michael's complications.
129. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, Michael Daddio's surgery, his perfusion and cardiopulmonary bypass, including circulatory arrest, as well as his medical and subsequent surgical care were improperly managed, resulting in the preventable pain and suffering and death of Michael Daddio.
130. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, Mr. and Mrs. Daddio suffered the loss of their child.
131. As a further result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct, of defendant, Dr. Norwood,, resulting in

and contributing to the death of baby, Michael Daddio, the Daddios suffered mental anguish and the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son Michael Daddio, during the remainder of his natural life. In addition, the Daddios have incurred expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio.

132. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, directly resulting in and contributing to the untimely death of baby Michael Daddio, Mr. and Mrs. Daddio suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.

WHEREFORE, plaintiffs Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor and against defendant, William I. Norwood, M.D., Ph.D., jointly and severally with the other named defendants for compensatory and consequential damages and costs in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT IV – WRONGFUL DEATH

PLAINTIFFS V. WILLIAM NORWOOD, M.D., Ph.D., JOHN MUPRHY, M.D. &

A. MAJEED BHAT, M.D.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

133. Paragraphs 1 through 132 are hereby incorporated by reference as though each were fully set forth herein.

134. Due to all of the aforementioned facts and allegations, Mr. and Mrs. Daddio suffered emotionally from the care Michael received at the Hospital under the care of the defendants which caused him to require medical treatment.
135. Mr. and Mrs. Daddio had no reason to believe until they obtained Michael's medical records and had them reviewed, that Michael had died at the hands of the Defendant, William Norwood, among others. They were not told the true reason for Michael's death, but were purposefully misled by Dr. Norwood and others into believing that Michael was "very sick" and that his condition was "one of those things." The distress caused by this information and the knowledge that the true nature of Michael's condition was overtly kept from them caused them severe emotional distress which has manifested itself in serious physical ailments. In addition, finding out that Michael had undergone an experimental surgery was devastating news to the Daddios.
136. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, Dr. Muprhy and Dr. Bhat directly resulting in and contributing to the untimely death of baby Michael Daddio, Mr. And Mrs. Daddio suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.
137. Mr. And Mrs. Daddio have suffered long-continuing physical manifestations of this emotional distress.

WHEREFORE, plaintiffs Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of Michael Daddio, demand judgment in their favor and

against defendants, William I. Norwood, M.D., Ph.D., John Murphy, M.D. and A. Majeed Bhat, M.D., jointly and severally with the other named defendants for compensatory and consequential damages and costs in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT V – WRONGFUL DEATH

PLAINTIFFS V. R. RIOS & PAUL KERINS, PERFUSIONISTS

NEGLIGENCE

138. Paragraphs 1 through 137 are hereby incorporated by reference as though each were fully set forth at length herein.
139. Plaintiffs bring this action in accordance with the Delaware Wrongful Death Statute and its provisions.
140. At all times material hereto, Paul Kerins and R. Rios were employees and/or agents and/or ostensible agents of the DuPont Hospital, as well as the Nemours Foundation, as perfusionists in the Department of Cardiac Anesthesia of the Nemours Cardiac Center of DuPont Hospital.
141. At all times material hereto, Mr. Kerins and Mr., Rios employed a “cooling strategy” on cardiopulmonary bypass and for circulatory arrest which was well below the standard of care.
142. At the time that the surgeries were performed on Michael Daddio, they were well aware that the “cooling strategy” was dangerous and did not offer adequate protection to the brain and other organs of the body, and that it entailed a great risk to the patient’s well-being.

143. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, Paul Kerins and R. Rios, Michael Daddio's perfusion and cardiopulmonary bypass, including circulatory arrest, were improperly managed and implemented, resulting in the preventable pain and suffering and death of baby Michael Daddio.
144. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Paul Kerins and R. Rios, Mr. and Mrs. Daddio suffered the loss of their child.
145. As a further result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct, of defendants, R. Rios and Paul Kerins, resulting in and contributing to the death of baby, Michael Daddio, the Daddios suffered mental anguish and the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son Michael Daddio, during the remainder of his natural life. In addition, the Daddios have incurred expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio.
146. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, R. Rios and Paul Kerins, directly resulting in and contributing to the untimely death of baby Michael Daddio, the Daddios

suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.

WHEREFORE, plaintiffs Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor and against defendants, R. Rios and Paul Kerins, jointly and severally with the other named defendants for compensatory and consequential damages and costs in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT VI – INFORMED CONSENT

PLAINTIFFS V. WILLIAM I. NORWOOD, M.D., JOHN MURPHY, M.D., A. MAJEED BHAT, M.D., ELLEN SPURRIER & DEBORAH DAVIS, M.D.

147. Paragraphs 1 through 146 are hereby incorporated by reference as though each were fully set forth herein.
148. Mr. and Mrs. Daddio were never informed that the cooling strategy/perfusion/circulatory arrest procedures to be used on their son, Michael, were such that the risk of brain injury and organ damage was great.
149. The Daddios were never given information regarding the varying success rates of the alternative procedures for cooling, perfusion and circulatory arrest, nor the surgical procedures, used by Defendants as compared to standard procedures used by other specialists and hospitals for treating Michael's cardiac condition.
150. The Daddios were never told that the plan was to do an experimental surgical procedure on Michael. They were never given a choice to refuse the

experimental procedure or to choose the standard procedure because the options were not presented. In fact, the Daddios signed a consent form for a hemi-fontan procedure, not a modified hemi-fontan. The “Explanation of Surgical Procedure” states “connect upper body blood return to pulmonary arteries, close present shunt”. Period. There is no mention on the form that any type of other surgical procedure would be performed. The procedure which Dr. Bhat told them would be performed is not the procedure consented to.

151. The surgical procedures and cooling strategy/perfusion/circulatory arrest procedures represent material information which a parent on behalf of their child who was to undergo major open heart surgery, would have wanted to know in order to make an informed decision about the surgery. Given that heart surgery with body cooling and circulatory arrest is a highly specialized procedure, any deviation from the standard procedures (for which morbidity and mortality numbers are generally available) constitutes a material risk about which the consenting individual must know in order to make an informed decision.
152. Had the Daddios been told about the surgical procedures and the mortality rate, and the cooling strategy/perfusion/circulatory arrest procedure and its ramifications, they would not have consented to the surgery and would have had Michael transferred to another facility capable of performing these procedures safely and within the standard of care.

153. Due to the Daddio' lack of information as to a material aspect of Michael's surgery, Michael was injured, suffered great pain and died.
154. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, William Norwood, M.D, Deborah Davis, M.D., John Murphy, M.D., Ellen Spurrier, M.D. and A. Majeed Bhat, M.D. in failing to inform the Daddios of the material risks to the procedures they were about to perform, Michael Daddio was injured, suffered greatly and died.
155. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, William Norwood, M.D, Deborah Davis, M.D. John Murphy, M.D., Ellen Spurrier, M.D. and A. Majeed Bhat, M.D., in failing to inform the Daddios of the material risks to the procedures they were about to perform, Mr. and Mrs. Daddio suffered the loss of their child.
156. As a further result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct, of defendants, William Norwood, M.D, Deborah Davis, M.D., John Murphy, M.D., Ellen Spurrier M.D., and A. Majeed Bhat, M.D., resulting in and contributing to the death of baby, Michael Daddio, the Daddios suffered mental anguish and the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son Michael Daddio, during the remainder of his natural life. In addition, the Daddios have

incurred expenses associated with the surgeries and cardiopulmonary bypass/perfusion/cooling and subsequent management of Michael Daddio.

157. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, William Norwood, M.D, Deborah Davis, M.D., John Muprhy, M.D., Ellen Spurrier, M.D. and A. Majeed Bhat, M.D., directly resulting in and contributing to the untimely death of baby Michael Daddio, the Daddios suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.

158. Plaintiffs, Robert Daddio and Tracie Daddio justifiably relied to their detriment upon the expertise defendants, William Norwood, M.D, Deborah Davis, M.D., John Murphy, M.D., Ellen Spurrier, M.D. and A. Majeed Bhat, M.D., and relied upon them and each of them to inform them of the material risks to the procedures to be performed on Michael

WHEREFORE, plaintiffs, Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor and against defendants, William Norwood, M.D, Deborah Davis, M.D., John Murphy, M.D., Ellen Spurrier M.D., and A. Majeed Bhat, M.D., jointly and severally with the other named defendants for compensatory and consequential damages and costs as well as for punitive damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT VII – WRONGFUL DEATH/SURVIVAL

PLAINTIFFS V. DuPont Hospital, THE NEMOURS FOUNDATION AND

WILLIAM I. NORWOOD, M.D., Ph.D. DEBORAH DAVIS, M.D., JOHN

MURPHY, M.D., ELLEN SPURRIER, M.D., CHRISTIAN PIZARRO, M.D. & A.

MAJEED BHAT, M.D.

VIOLATIONS OF THE REHABILITATION

159. Paragraphs 1 through 158 are hereby incorporated by reference as though each were fully set forth at length herein.
160. The children, including Michael Daddio, admitted to the Nemours Cardiac Center of the DuPont Hospital, were handicapped under the definitions provided pursuant to the Rehabilitation Act, 29 U.S.C.S 701, et seq., and the Americans with Disabilities Act, 42 U.S.C.S. 12182, et seq., and all applicable federal regulations.
161. The DuPont Hospital and the Nemours Cardiac Center, receive federal funds in the form of Hill-Burton Funds, Medicare and Medicaid payments, among others. Furthermore, Hospitals are places of public accommodation under the ADA, 28 C.F.R. 36.104.
162. Dr. Norwood, Dr. Pizarro, Dr. Murphy, Dr. Davis, Dr. Spurrier, and Dr. Bhat maintain offices in the Hospital and see patients there. These offices are owned and maintained by the Hospital and the Foundation. These physicians received federal funds as aforesaid.
163. Michael Daddio had a congenital heart defect which substantially limited one or more of his major life activities and it was well known to his caregivers that

this was the case. He was otherwise qualified to be admitted to the DuPont Hospital, but was diverted to the Cardiac Center and its staff (which was not shared with the rest of the Hospital).

164. Michael through his parents, sought surgical and the accompanying anesthesia and perfusion services from the Nemours Cardiac Center of the DuPont Hospital and Dr. Norwood, and he was excluded from the appropriate services which he and his parents sought, solely based upon his handicap.
165. No children in the rest of the DuPont Hospital, most of whom had some kind of handicap as defined by the Rehabilitation Act, were treated in the manner in which Michael and other children at the Nemours Cardiac Center were treated.
166. No other children in the hospital receiving anesthesia, surgical and perfusion services were subjected to the anesthesia/perfusion/cooling and surgical techniques which were used in the Cardiac Center and by Dr. Norwood and the other defendants.
167. Dr. Davis and Dr. Spurrier were not part of the Department of Anesthesiology which encompasses every other anesthesiologist at the Hospital. Their only loyalty and only obligation was to the Cardiac Center.
168. Dr. Norwood and Dr. Pizarro were not part of the Department of Surgery which encompasses every other surgeon in the Hospital. Dr. Norwood's and Dr. Pizarro's only loyalty and only obligation were to the Cardiac Center.

169. Dr. Murphy failed to seek and/or receive IRB approval for his experiments as was done throughout the rest of the hospital by other staff seeking to experiment on children.
170. The Hospital failed to require that Cardiac Center physicians seek and obtain IRB approval for experiments they wished to carry out on children.
171. Dr. Norwood and his Cardiac Center staff did not attend or report to the Medical Board, the Peer Review Committee, or any other hospital committee or group, even those designed to improve patient care. At all times material hereto, the hospital was aware of this lack of participation and never required same from any of the defendants or any staff from the cardiac center, despite requiring this participation from all other departments of the hospital.
172. This lack of participation, with the knowledge and blessing of the Hospital and Nemours Foundation caused children admitted to the cardiac center to be segregated and subjected to lesser standards of care than children being treated in all other areas of the hospital – solely based on the fact that they had a heart defect instead of some other type of defect which would have protected them from this total lack of oversight, control and care.
173. Under Delaware law, the Hospital had a duty to protect patients from dangers flowing from negligent care by
 - a. assuring that only competent staff were granted privileges;
 - b. that only competent staff retained privileges;
 - c. that rules and regulations for patient safety were in effect and followed; and

- d. that medical care provided within the walls of the hospital was adequately monitored.
174. DuPont Hospital and Nemours Foundation conspired with all other named defendants in this action to assure that Michael was not provided with any protection from danger as was provided to other patients admitted to the hospital who were afforded the benefit of the hospital performing the protective duties described in the preceding paragraph.
175. Michael was denied the protections described in paragraph 173 solely because of his handicap.
176. Michael was deprived so that the Hospital could maximize profits by accommodating Dr. Norwood with autonomy to operate the Cardiac Center without any hospital monitoring.
177. At all times material hereto, the Hospital and the Foundation knew or in the exercise of reasonable diligence should have known that the surgical, anesthesia/perfusion/bypass/cooling techniques utilized at the Cardiac Center were discriminatory and negligent.
178. The anesthesia/cooling/perfusion procedures used with the children at the Cardiac Center were not done in accordance with the standards in the department of anesthesiology. The Cardiac Center's anesthesiologists were not a part of the Department of Anesthesiology. These anesthesiologists were under the umbrella of the Cardiac Center, Dr. Raphaely and Dr. Norwood, all of whom should have been supervised and their actions overseen by the Hospital and the Foundation.

179. There would have been no accommodation necessary and no undue burden would have resulted in order to allow these children, including Michael Daddio, who were admitted to the Cardiac Center, to have adequate and non-harmful surgical and anesthesia/perfusion/cooling services. Any changes to technique or practice would not have been onerous especially to a program/strategy/practice which even the Delaware Department of Health found deficient.

180. In the delivery of anesthesia and surgical services, and all that this entails, the children, including Michael Daddio, were discriminated against on the basis of their handicap, and this discrimination prevented them from receiving care which was appropriate and which was not harmful. Had these children, including Michael Daddio, not been admitted to the Nemours Cardiac Center as it was set-up and run, they would not have received the type of anesthesia and surgical care which they received, and they would not have suffered the dire consequences which they did suffer, including pain, suffering and death

181. Because of the discrimination suffered by Michael Daddio, he was denied adequate anesthesia and surgical services and because of this, he suffered severe pain and he died.

182. At no time during Michael's hospitalization at the Cardiac Center of DuPont Hospital was consent from his parents sought whereby they were informed of the options for surgery, anesthesia care and/or perfusion practices on cardiopulmonary bypass and circulatory arrest. The practice chosen was

preordained due in large part to the discriminatory set-up of the entire program.

183. The decisions made by Dr. Norwood, Dr. Pizarro, Dr. Murphy, Dr. Davis, Dr. Spurrier and Dr. Bhat, and permitted by the Hospital and the Foundation, violated the Rehabilitation Act in that they caused Michael Daddio to be treated differently and to be discriminated against based solely on his handicap, and prevented him from receiving appropriate care and services for which he was otherwise qualified to receive. The entire Cardiac Center, with the blessings of and under the oversight of the Hospital and the Foundation was designed in such a manner that such discrimination was inevitable.
184. Moreover, Dr. Norwood, Dr. Pizarro, Dr. Murphy, Dr. Spurrier, Dr. Davis and Dr. Bhat purposefully discriminated against Michael and other children like him based on their disability because they overtly chose to use a surgical and anesthesia/perfusion/cooling strategy which they knew or should have known to be below the standard of care, and/or experimental and then overtly and purposefully failed to document this fact as well as the results of this strategy and practice.
185. The Delaware State Health Department's investigation found the Cardiac Center's surgery and anesthesia/cooling and perfusion practices different from other high-risk procedures in the rest of the hospital. In addition, no policies and procedures were in place for the use of anesthesia and perfusion in the cardiac center.

186. It was unlawful for these defendants to provide Michael Daddio, as a qualified handicapped person under the ADA and Rehabilitation Act, with benefits or services that are not as effective as the benefits or services provided to others.

187. By reason and as a result of the actions and inactions of Dr. Norwood, Dr. Murphy, Dr. Pizarro, Dr. Spurrier, Dr. Davis and Dr. Bhat, the DuPont Hospital and the Nemours Foundation, Michael Daddio suffered pain and lost his life; his parents suffered the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son, Michael Daddio, during the remainder of his natural life. In addition, Mr. And Mrs. Daddio have incurred expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio. Michael Daddio lost his life, but not before suffering terribly, and he lost the ability to enjoy his natural life and earn a living. In addition, the Plaintiffs incurred the cost of the hospitalization and burial.

188. By reason and as result of the actions and inactions of Dr. Norwood, Dr. Murphy, Dr. Pizarro, Dr. Spurrier, Dr. Davis and Dr. Bhat, the DuPont Hospital and the Nemours Foundation, Mr. And Mrs. Daddio have incurred attorneys' fees and costs associated with investigating and bringing this claim.

WHEREFORE, Plaintiffs demand judgment against Defendants, DuPont Hospital, the Nemours Foundation, Dr. William Norwood, Dr. Christian Pizarro and Dr. Deborah Davis, Dr. Ellen Spurrier, Dr. A. Majeed Bhat for consequential and compensatory damages, including attorney's fees and costs, as permitted by statute.

COUNT VIII – SURVIVAL ACTION

PLAINTIFFS V. DuPONT HOSPITAL and THE NEMOURS FOUNDATION

**NEGLIGENT SUPERVISION, MONITORING, AND RETENTION OF
HEALTH CARE PROVIDERS**

189. Paragraphs 1 through 188 are hereby incorporated by reference as though each were fully set forth herein.
190. Plaintiffs bring this action pursuant to the Delaware Survival Act and the provisions thereof.
191. All the medical professional defendants named herein, perfusionists, and the nurses, advanced practice nurses, physician assistants and technicians at DuPont Hospital who cared for and were responsible for the treatment of plaintiff Michael Daddio, were the duly appointed agents, ostensible agents, servants and/or employees of DuPont Hospital , were acting within the scope of their agency and/or employment, and either worked in, operated out of, and/or had privileges at DuPont’s facilities.
192. Defendants. DuPont Hospital and the Nemours Foundation had a duty under the law of corporate negligence to ensure the safety of Michael Daddio while he was a patient within the walls of. DuPont Hospital. .
193. DuPont Hospital and the Nemours Foundation had a duty under the corporate negligence doctrine to ensure, among other duties, that all persons practicing medicine within its walls who attended to the care and treatment of Michael

Daddio complied with the prevailing standard of care in their care and treatment of Michael.

194. Under Delaware law, the Hospital had a duty to protect patients from dangers flowing from negligent care by
 - a. assuring that only competent staff were granted privileges;
 - b. that only competent staff retained privileges;
 - c. that rules and regulations for patient safety were in effect and followed; and
 - d. that medical care provided within the walls of the hospital was adequately monitored.
195. DuPont Hospital and the Nemours Foundation itself, carelessly and negligently breached its duty to Michael Daddio by failing to conform to the standard of care required of a hospital acting in the same or similar circumstances.
196. DuPont Hospital and the Nemours Foundation failed to act on their knowledge of the impairment of the chief of cardiothoracic surgery, Dr. William Norwood, as well as the chief of cardiology, John Muprhy, M.D., both before and after he was hired.
197. DuPont Hospital and the Nemours Foundation failed to remove William Norwood, M.D. and John Muprhy, M.D., from the active practice of surgery at the Hospital as a result of his impairment, as well as for his failure to follow accepted standards of care on a regular, habitual and continual basis.

198. DuPont Hospital and the Nemours Foundation hired and retained others who helped to cover up Dr. Norwood's and Dr. Murphy's impairment and negligence, with the knowledge of DuPont Hospital and Nemours Foundation.
199. DuPont Hospital and the Nemours Foundation failed to require that all persons making notes in the chart actually enter truthful and accurate notes.
200. DuPont Hospital and the Nemours Foundation failed to take steps to assure that all federal regulations with regard to patient care were being followed by the Cardiac Center and the named defendants herein.
201. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, DuPont Hospital and the Nemours Foundation, its employees, servants, agents, and/or ostensible agents, Michael Daddio's surgery, her perfusion and cardiopulmonary bypass, including circulatory arrest, as well as her medical and subsequent surgical care were improperly managed, resulting in the preventable pain and suffering and death of baby Michael Daddio.
202. By reason of and as a result of the aforesaid carelessness and/or negligence as well as the reckless, wanton and willful conduct of defendants, DuPont Hospital and the Nemours Foundation, their employees, servants, agents, and/or ostensible agents, acting by and through their employees, servants, agents, and/or ostensible agents, Mr. and Mrs. Daddio suffered the loss of their child.
203. By reason of and as a result of the aforesaid carelessness and/or negligence as well as the reckless, wanton and willful conduct of defendants, DuPont

Hospital and the Nemours Foundation, its employees, servants, agents, and/or ostensible agents, acting by and through their employees, servants, agents, and/or ostensible agents, Michael Daddio suffered horribly before her death.

204. As a further result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct, of DuPont Hospital and the Nemours Foundation, its employees, servants, agents, and/or ostensible agents, resulting in the pain, suffering and death of baby, Michael Daddio, the Daddios suffered the losses of comfort, aid, assistance, services, counseling, guidance, solace and financial contribution that they would have received from their son Michael Daddio, during the remainder of his natural life. In addition, the Daddios have incurred medical expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio. Plaintiffs Robert Daddio and Tracie Daddio are entitled to recover for the decedent Michael Daddio's conscious pain and suffering, loss of earning capacity and any other pecuniary losses which the decedent sustained as a result of his preventable, and untimely death.

205. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, directly resulting in and contributing to the untimely death of baby Michael Daddio, the Daddios suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.

WHEREFORE, plaintiffs, Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor

and against defendant DuPont Hospital and the Nemours Foundation, jointly and severally with the other named defendants for compensatory and consequential damages and costs as well as for punitive damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT IX – SURVIVAL ACTION

PLAINTIFFS V. WILLIAM I. NORWOOD, M.D.

NEGLIGENCE

206. Paragraphs 1 through 205 are hereby incorporated by reference as though each were fully set forth herein.
207. Plaintiffs bring this action pursuant to the Delaware Survival statute and its provisions and law.
208. At all times material hereto, Dr. Norwood was employed by and/or was the agent and/or ostensible agent of the DuPont Hospital, as well as the Nemours Foundation, as a physician and cardiothoracic surgeon. He was chief and director of the Nemours Cardiac Center of DuPont Hospital.
209. At all times material hereto, Dr. Norwood was an impaired physician who should not have been performing surgery.
210. Upon information and belief, Dr. Norwood was not able to effectively and properly perform surgery because he was impaired.

211. At all times material hereto, Dr. Norwood employed a “cooling strategy” on cardiopulmonary bypass and for circulatory arrest which was below the standard of care.
212. In addition, Dr. Norwood failed to meet the standard of care with regard to Michael’s surgeries by failing to perform the appropriate surgery, and failing to perform the surgery which was done in a competent and proper manner.
213. In addition, Dr. Norwood failed to properly and adequately perform the second surgery on November 9, 2001.
214. At the time that Dr. Norwood performed the surgeries on Michael Daddio, including directing the cooling process, he was well aware that his “cooling strategy” was dangerous and did not offer adequate protection to the brain and other organs of the body, and that it entailed a great risk to the patient’s well-being.
215. In addition, Dr. Norwood failed to perform the necessary treatment to ameliorate Michael’s complications.
216. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, Michael Daddio’s surgery, her perfusion and cardiopulmonary bypass, including circulatory arrest, as well as his medical and subsequent surgical care were improperly managed, resulting in the preventable pain and suffering and death of baby Michael Daddio.
217. Plaintiffs, Robert Daddio and Tracie Daddio are entitled to recover for the decedent Michael Daddio’s conscious pain and suffering, loss of earning

capacity and any other pecuniary losses which the decedent sustained as a result of his preventable, and untimely death.

218. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, directly resulting in and contributing to the untimely death of baby Michael Daddio, the Daddios suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.

WHEREFORE, plaintiffs, Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor and against defendant, William I. Norwood, M.D., Ph.D., jointly and severally with the other named defendants for compensatory and consequential damages and costs as well as for punitive damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT X –SURVIVAL

PLAINTIFFS V. WILLIAM NORWOOD, M.D., Ph.D., JOHN MUPRHY, M.D. &

A. MAJEED BHAT, M.D.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

219. Paragraphs 1 through 218 are hereby incorporated by reference as though each were fully set forth herein.

220. Due to all of the aforementioned facts and allegations, Mr. And Mrs. Daddio suffered emotionally from the care Michael received at the Hospital under the care of the defendants which caused him to require medical treatment.
221. Mr. And Mrs. Daddio had no reason to believe until they obtained Michael's medical records and had them reviewed, that Michael had died at the hands of the Defendant, William Norwood, among others. They were not told the true reason for Michael's death, but were purposefully misled by Dr. Norwood and others into believing that Michael was "very sick" and that his condition was "one of those things." The distress caused by this information and the knowledge that the true nature of Michael's condition was overtly kept from them caused them severe emotional distress which has manifested itself in serious physical ailments. In addition, finding out that Michael had undergone an experimental surgery was devastating news to the Daddios.
222. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Dr. Norwood, directly resulting in and contributing to the untimely death of baby Michael Daddio, the Daddios suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.
223. Mr. and Mrs. Daddio have suffered long-continuing physical manifestations of this emotional distress.

WHEREFORE, plaintiffs, Robert Daddio and Tracie Daddio, individually, and as Administrator of the Estate of baby Michael Daddio, demand judgment in their favor and

against defendants, William I. Norwood, M.D., Ph.D., John Murphy, M.D., A. Majeed Bhat, M.D., jointly and severally with the other named defendants for compensatory and consequential damages and costs as well as for punitive damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

COUNT XI – SURVIVAL

PLAINTIFFS V. PAUL KERINS and R. RIOS, PERFUSIONISTS

NEGLIGENCE

224. Paragraphs 1 through 223 are hereby incorporated by reference as though each were fully set forth at length herein.
225. Plaintiffs bring this action in accordance with the Delaware Survival Statute and its provisions.
226. At all times material hereto, Paul Kerins and R. Rios were employees and/or agents and/or ostensible agents of the DuPont Hospital, as well as the Nemours Foundation, as perfusionists in the Department of Cardiac Anesthesia of the Nemours Cardiac Center of DuPont Hospital.
227. At all times material hereto, Mr. Kerins and Mr. Rios employed a “cooling strategy” on cardiopulmonary bypass and for circulatory arrest which was well below the standard of care.
228. At the time that the surgeries were performed on Michael Daddio, they were aware that the “cooling strategy” was dangerous and did not offer adequate protection to the brain and other organs of the body, and that it entailed a great risk to the patient’s well-being.

229. By reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendant, Paul Kerins and R. Rios, Michael Daddio's perfusion and cardiopulmonary bypass, including circulatory arrest, were improperly managed and implemented, resulting in the preventable pain and suffering and death of baby Michael Daddio.
230. As a further result of the carelessness and/or negligence as well as the reckless, wanton and willful conduct, of defendants, R. Rios and Paul Kerins, resulting in and contributing to the death of Michael Daddio, Mr. and Mrs. Daddio have incurred expenses associated with the surgeries and cardiopulmonary bypass and subsequent management of Michael Daddio.
231. In addition, by reason of, and as a result of the aforesaid incidents, and the negligence and carelessness as well as the reckless, willful and wanton conduct of defendants, R. Rios and Paul Kerins, directly resulting in and contributing to the untimely death of baby Michael Daddio, the Daddios suffered severe emotional distress, and serious injuries to their nerves and other parts of their bodies.
232. Plaintiffs, Robert Daddio and Tracie Daddio are entitled to recover for the decedent Michael Daddio's conscious pain and suffering, loss of earning capacity and any other pecuniary losses which the decedent sustained as a result of his preventable, and untimely death.

WHEREFORE, plaintiffs Robert Daddio and Tracie Daddio, individually, and as Administrators of the Estate of baby Michael Daddio, demand judgment in their favor

and against defendants, R. Rios and Paul Kerins, jointly and severally with the other named defendants for compensatory and consequential damages and costs as well as for punitive damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00).

JURY DEMAND

Plaintiffs hereby demand trial by jury as to all claims.

Respectfully submitted,

EATON & McCLELLAN

By: Signature Validation Code TMB3393

/s/ Theresa M. Blanco
Theresa M. Blanco, Esquire (ID #77468)

Dated: January 31, 2005