

**FILED**

**FEB 16 2012**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**COURT OF APPEALS**

**DIVISION III**

**OF THE STATE OF WASHINGTON**

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**RODOLFO ANAYA – GOMEZ,  
As Personal Representative of the  
Estate of Christina Palma – Anaya, Deceased**

**Appellant,**

**v.**

**MARK F. SAUERWEIN, M.D. and  
THE YAKIMA VALLEY FARM WORKER'S CLINIC,  
A Washington Corporation,**

**Respondents.**

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**REPLY BRIEF OF APPELLANT**

**Cause No. 09 – 2 - 02034 – 4**

**Appeal No. 30098 – 6 - III**

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## Reply Argument

It is undisputed that the defendant physician was advised by a qualified, independent laboratory microbiologist that the patient had a material abnormality in her blood. (Ex. 7 & R.P. 6/7/2011, pp. 48 – 53).

It is undisputed the physician / the patient's medical clinic did not tell the patient of the abnormality reported by the microbiologist. (R.P. 6/7/2011, pp. 67 – 69).

It is undisputed that the patient, and her family, did not know she had the abnormality. (R.P. 6/7/2011, p. 70).

It is undisputed that the abnormality went untreated for a sufficient amount of time that it cost the patient her life. (Ex. 3A & R.P. 6/9/2011, p. 33; Ex. 8 & R.P. 6/9/2011, p. 28, and R.P. 6/7/2011, p. 73).

On this foundation, this case presents a clear legal issue: Do these defendants have liability for failing to obtain the informed consent of the patient?

The defense maintains this is a straight medical negligence case. The defense maintains no liability for failure of informed consent here, as a matter of law.

Plaintiff's position is if this is not a case of liability for failure of informed consent, then what case is? Why did the legislature create a cause of action for liability for failure of informed consent if it doesn't apply to this case?

The cases the defense relies upon - *Backlund v. University of Washington*, 137 Wn.2d 651, 975 P.2d 950 (1999), *Bays v. St. Lukes Hospital*, 63 Wn.App. 876, 825 P.2d 319, *Rev. Den'd.*, 119 Wn.2d 1008, 833 P.2d 387 (1992), *Burnet v. Spokane Ambulance*, 54 Wn.App. 162, 772 P.2d 1027 (1989), and *Gustav v. Seattle Urological Associates*, 90 Wn.App. 785, 954 P.2d 319 (1998) are all distinguishable on the facts.

When a physician becomes aware of a condition which indicates risk to the patient's health, he has a legal duty to disclose it to the patient. *See, Gates v. Jensen*, 92 Wn.2d 246, 595 P.2d 919 (1979), *Keogan v. Holy Family Hospital*, 95 Wn.2d 306, 622 P.2d 1246 (1980), *Miller v. Kennedy*, 11 Wn.App.272, 522 P.2d 852 (1974), *Aff'd.* at 85 Wn.2d 151, 530 P.2d 334 (1975). The defendant doctor was aware of the condition in the decedent's blood, he / her clinic didn't disclose it to her, and it cost her her life. It's as simple as that.

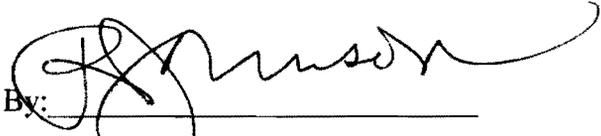
## CONCLUSION

Substantial justice had not been done here. We submit that this court should reverse and order a new trial limited to damages proximately caused by the defendant doctor because he was / is liable herein, as a matter of law, for failure to advise the decedent of the known abnormality in her blood which killed her.

DATED at Yakima, WA. this 14<sup>th</sup> day of February, 2012.

Respectfully submitted,

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By: 

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