

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

EDITH C. COUSINEAU)	
)	
Plaintiff)	
)	
v.)	CA. No.: 08C-09-015 FSS
)	
CHRISTIANA CARE HEALTH)	
SERVICES, INC., a/k/a)	
CHRISTIANA CARE HEALTH)	
SYSTEM, a Delaware Corporation)	
)	
Defendant)	

Submitted: December 1, 2008
Decided: January 9, 2009

ORDER

Upon Review of the Affidavit of Merit

Upon motion by Defendant under 18 *Del. C.* § 6853(d), the court has reviewed Plaintiff's affidavit of merit, *in camera*, to determine its compliance with 18 *Del. C.* § 6853(a)(1) and (c). As discussed below, the affidavit of merit does not comply with 18 *Del. C.* § 6853(c) because the court cannot determine whether the expert affiant was licensed and board certified at the time the document was sworn.

In Delaware, a healthcare negligence lawsuit cannot be filed unless accompanied by an affidavit of merit, signed by an expert witness, and filed with the

expert's current *curriculum vitae*.¹ The expert must be licensed to practice as of the affidavit's date, and must have been engaged in the same or similar field as the Defendant in the three years preceding the alleged negligence. The affidavit must unequivocally state that there are reasonable grounds to believe that negligence has been committed by each Defendant, which was the proximate cause of injury.

The court finds that the affidavit was filed properly. For the most part, the court finds that the affidavit of merit complies:

1. An expert witness has signed the affidavit;
2. A current *curriculum vitae* was filed with the affidavit;
3. The expert is a registered nurse who treated patients within the three years preceding the alleged negligent acts;
4. The affidavit says that there are reasonable grounds to believe that Defendant, through its health care providers, breached its standard of nursing care for each claim alleged;
5. The expert further opines that Defendant's breaches were the proximate cause of Plaintiff's injuries.

Additionally, the affidavit affirms that the expert is "a board certified Registered Nurse licensed to practice nursing [in several other states]." The *curriculum vitae*, however, is silent as to dates for the expert's registered nursing license and board certifications. Therefore, the court cannot know whether the expert was certified and licensed at the time the affidavit was sworn, as called for by 18 *Del.*

¹ 18 *Del. C.* § 6853(a), (a)(1).

C. § 6853(c).

Because the affidavit substantially complies with the statute, the Plaintiff has twenty days to file a conforming *curriculum vitae* showing that the expert was licenced and certified at the time she signed the affidavit. Without this verification, the affidavit, as it stands, is technically insufficient to pass muster under 18 *Del. C.* § 6853©. If the affidavit is properly amended, the case will not be dismissed. If Plaintiff fails to comply with this order, the court will dismiss the complaint without further notice or opportunity to be heard.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
Melanie Sharp, Esquire
Stephen Milewski, Esquire