

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

DORIS JOYNER,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. N15C-05-177 MMJ
)	
810 BROOM STREET)	
OPERATIONS, LLC,)	
d/b/a HILLSIDE CENTER)	
)	
Defendant.)	

Submitted: July 29, 2015
Decided: September 21, 2015

Upon Defendants' Motion to Determine
if the Affidavit of Merit
Complies with 18 *Del. C.* §§ 6853(a)(1) and (c)

ORDER

Section 6853(a)(1) of title 18 of the Delaware Code provides that all healthcare negligence complaints must be accompanied by an affidavit of merit as to each defendant signed by an expert witness, accompanied by a current *curriculum vitae* of the witness, stating that there are reasonable grounds to believe that there has been healthcare medical negligence committed by each defendant.

In this case, no affidavit of merit was filed under seal. Pursuant to 18 *Del. C.* § 6853(d), Defendants requested *in camera* review of the affidavit to determine

compliance with sections 6853(a)(1) and (c). Plaintiff argues that this case is not a “malpractice claim since the allegation is simply that they allowed the plaintiff, who was a double amputee, to fall off a table that she was on. This claim is akin to a slip and fall and there would be no need to have a doctor say that it is negligent to allow a person to fall off a therapy table.”

By letter, Defendants respond that the complaint pleads “a variety of professional negligence allegations.” In the alternative, if an affidavit of merit is not required, “Plaintiff should be precluded from producing any expert testimony addressing breach of the standard of care for a nursing home, physical therapist or physical therapy aide or breach of any applicable nursing home regulation.”

THEREFORE, the Court finds that no affidavit of merit was filed in this case in compliance with sections 6853(a)(1) and (c) of title 18 of the Delaware Code. The question of whether or not this action should be dismissed for failure to file an affidavit of merit, and whether certain expert testimony should be excluded, are not properly before the Court as part of Defendants’ instant motion. Dispositive motions and evidentiary motions *in limine* must be made pursuant to the Court’s rules and procedures.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston