

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

KATHLEEN JANSSEN)
individually, and as the Executrix)
of the Estate of)
JOHN H. JANSSEN, III,)
JOHN H. JANSSEN, IV,)
JOSEPH W. JANSSEN, heirs of)
JOHN H. JANSSEN, III,)

Plaintiffs,)

v.)

CHRISTIANA CARE HEALTH)
SYSTEM, INC., a Delaware)
corporation,)

Defendant.)

C.A. No.: N14C-12-149 FSS

Submitted: December 19, 2014

Decided: February 10, 2015

ORDER

Upon Review of the Affidavit of Merit – *REJECTED*.

On December 19, 2014, Defendant moved to have the court review Plaintiff's affidavit of merit, *in camera*, to determine whether it complies with 18 *Del. C.* § 6853(a)(1) and (c).¹ The affidavit does not comply because it does not say whether the standard of care's breach caused Mr. Janssen's death.

¹ 18 *Del. C.* § 6853(d).

In Delaware, a healthcare negligence lawsuit must be filed with an affidavit of merit, signed by an expert and accompanied by the expert's *curriculum vitae*.² The expert must also be licensed to practice as of the affidavit's date and engaged in the same or similar field as Defendant in the three years immediately preceding the alleged negligent act.³ The affidavit must state that reasonable grounds exist to believe Defendant was negligent, and that negligence proximately caused Plaintiff's injury.⁴ If the required affidavit is not filed, the suit shall be dismissed.⁵

Here, Plaintiff's affiant is a statutorily qualified doctor who opines that Defendant breached the standard of care. Affiant offers no clear opinion, however, that the negligence proximately caused Mr. Janssen's complications and ultimately his death. Specifically, affiant only opines that "applicable standards of care were breached...culminating in his preventable death."

The court must be satisfied that the expert is prepared to meet the "but for" proximate cause standard.⁶ "If the expert believes Defendants' negligence proximately caused [Plaintiff's] injuries, the affidavit should say so in simple, clear

² *Id.* § 6853(a)(1).

³ *Id.* § 6853(c).

⁴ *Id.*

⁵ *Id.* § 6853(a).

⁶ *Ellet v. Ramzy*, No.Civ. A. 04C03201FSS, 2004 WL 2240153 (Del. Super. Sept. 29, 2004).

language.”⁷ Otherwise, without a proper affidavit, this case may not go on.⁸

Because the affidavit substantially complies with the statute and the deficiency may be merely a drafting error,⁹ the court will allow Plaintiff three weeks from this order’s date in which to file an acceptable affidavit of merit clearly stating that “but for Defendant’s negligence, Plaintiff’s death would not have occurred,” if that is what the expert believes.

If the affidavit is amended, the court will review it. If the affidavit is not perfected in time, 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 (Civil)
Stephen A. Hampton, Esquire
John D. Balaguer, Esquire

⁷ *Kalinowski v. Adams*, C.A. No. 12C-01-063 FSS, 2012 WL 1413999, at *1 (Del. Super. Mar. 9, 2012).

⁸ *Id.*

⁹ *Id.* at *2.