

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

| | | |
|------------------------------|---|--------------------------|
| ELIZABETH WINWARD and |) | |
| JOSEPH WINWARD, her husband, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | C.A. No. N14C-11-112 JAP |
| |) | |
| PAPASTAVROS' ASSOCIATES |) | |
| MEDICAL IMAGING, L.L.C., |) | |
| ANTHONY J. SCOLA, M.D., |) | |
| CHRISTOPHER H. WENDEL, M.D., |) | |
| and CHRISTOPHER H. WENDEL, |) | |
| M.D., P.A., |) | |
| |) | |
| Defendants. |) | |
| |) | |

ORDER

1. This is a medical negligence case in which defendants Papastavros' Associates and Scola have requested the court to review the adequacy of the Affidavit of Merit filed with the court. In a separate motion defendant Wendel and his professional corporation have made the same request.

2. Section 6853 of title 18 requires that a plaintiff in a medical negligence action file with the complaint an "affidavit of merit as to each defendant signed by an expert witness, as defined in § 6854 of this title, and 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.”¹

3. Plaintiffs have filed two affidavits of merit—one relating to defendants Papastavros and Scola, and the other relating to the Wendel defendants. The court has reviewed the affidavits and finds that they both comply with the requirements of section 6853.

4. Plaintiffs have, however, failed to file the required curriculum vitae of their experts. But “a failure to enclose the *curriculum vitae* in a sealed envelope does not, by itself, justify dismissal.”² Here the affidavits themselves demonstrate that the affiant is qualified under section 6853 to render the opinions contained in the affidavits. The court will therefore not dismiss the action at this time.

It is therefore **ORDERED** that within 30 days of the date of this order Plaintiffs shall file under seal the curriculum vitae of the authors of the Affidavits of Merit. Plaintiffs shall not serve the curriculum vitae of defendants but shall serve notice of the filing under seal of those documents.

February 5, 2015

John A. Parkins, Jr.
Superior Court Judge

¹ 18 Del. C. §6853.

² *Dishmon v. Fucci*, 32 A.3d 338, 345 (Del. 2011).

oc: Prothonotary

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