

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

YVONNE JOHNSON)
Individually and as Next Friend)
and Guardian Ad Litem for)
MAURICEONNA SATCHELL,)
a minor,) C.A. NO.: N18C-10-275 AML
)
Plaintiffs,) JURY TRIAL OF 12 DEMANDED
)
v.)
)
CHRISTIANA CARE HEALTH)
SERVICES, INC. d/b/a Christiana)
Hospital, a Delaware Corporation,)
)
Defendant.)

Submitted: November 29, 2018

Decided: December 6, 2018

ORDER

Upon Review of the Affidavit of Merit – Accepted

On November 29, 2018, Defendant Christiana Care Health Services, Inc. (“CCHS”) moved to have the Court review Plaintiffs’ affidavit of merit, *in camera*, to determine whether it complies with 18 *Del. C.* §§ 6853(a)(1) and (c).¹

Specifically, CCHS asked the Court to determine whether the affidavit: (1) is signed by an expert witness; (2) is accompanied by a *curriculum vitae*; (3) states all of its opinions with reasonable medical certainty; (4) gives an opinion that there has been healthcare medical negligence against each defendant, including agents,

¹ 18 *Del. C.* § 6853(d).

servants, and employees of CCHS; (5) gives an opinion that each breach by each defendant was a proximate cause of the injuries alleged in the complaint; and (6) indicates the expert is board certified in neonatal-perinatal medicine, is licensed to practice medicine as of the date of the affidavit, and the *curriculum vitae* establishes that the expert, for the three years preceding the alleged negligent act, has been engaged in the treatment of patients and/or in the teaching/academic side of medicine in the same or similar field of medicine as each agent, servant, or employee of CCHS that the expert states is negligent.

In Delaware, a healthcare negligence lawsuit must be filed with an affidavit of merit, signed by an expert, and accompanied by the expert's current *curriculum vitae*.² The expert must be licensed to practice medicine as of the affidavit's date and engaged in the same or similar field as the defendant in the three years immediately preceding the alleged negligence.³ The affidavit must state that reasonable grounds exist to believe the defendant was negligent in a way that proximately caused the plaintiff's injury.⁴ The statute's requirements are minimal.

² *Id.* § 6853(a)(1).

³ *Id.* § 6853(c). Although Defendant's motion is phrased as though the *curriculum vitae* must establish that the expert has been engaged in the treatment of patients or teaching for the three years preceding the alleged negligent acts, Section 6853 does not so require. Rather, under Section 6853, such experience may be attested to in the affidavit.

⁴ *Id.*

Accordingly, an affidavit of merit tracking the statutory language complies with the statute.⁵

After *in camera* review, the Court finds:

1. An expert signed the affidavit;
2. The affidavit was accompanied by a current *curriculum vitae*;
3. The expert is Board certified in Pediatrics and Neonatal-Perinatal Medicine;
4. In the three years preceding the negligent acts, the expert was engaged in the treatment of patients and in the teaching/academic side of medicine in a similar field of medicine as each agent, servant, or employee of CCHS that the expert states is negligent;
5. The affidavit states that there are reasonable grounds to believe the applicable standard of care was breached by the Defendant, including each agent, servant, or employee of CCHS that the expert states is negligent; and
6. The expert states the identified breaches of the standard of care proximately caused Satchell's injury as alleged in the complaint.

⁵ See *Dishmon v. Fucci*, 32 A.3d 338, 342 (Del. 2011) (“In order to satisfy the *prima facie* burden, an Affidavit of Merit must only contain an expert’s sworn statement that medical negligence occurred, along with confirmation that he or she is qualified to proffer a medical opinion.”).

Considering the above, the Court finds that the affidavit of merit complies with 18 *Del. C.* §§ 6853(a)(1) and (c) as to Defendant Christiana Care Health Services, Inc.

IT IS SO ORDERED.



Abigail M. LeGrow, Judge

Original to Prothonotary

cc: Richard Galperin, Esquire
Joshua H. Meyeroff, Esquire
Bartholomew J. Dalton, Esquire
Andrew C. Dalton, Esquire