IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PATRICIA E. WILSON,	)	
	)	
Plaintiff,	)	
	)	C.A. No. K20C-05-015 NEP
v.	)	In and For Kent County
	)	
GI ASSOCIATES OF DELAWARE, P.A., a Delaware Professional Association, and NATWARLAL V. RAMANI, M.D., Individually,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

Submitted: August 3, 2020
Decided: August 20, 2020

ORDER

Upon Review of the Affidavit of Merit
ACCEPTED

This matter involves a healthcare negligence suit filed by Plaintiff Patricia Wilson ("Plaintiff") against Defendants GI Associates of Delaware, P.A. ("GI Associates") and Natwarlal V. Ramani, M.D. (hereinafter "Moving Defendant Ramani" and, along with GI Associates, collectively "Defendants"). Moving Defendant Ramani has asked the Court to review the affidavit of merit filed in this case to determine whether it satisfies 18 *Del. C.* § 6853.

Plaintiff filed her Complaint on May 11, 2020, alleging that Moving Defendant Ramani, acting on behalf of Defendant GI Associates, was medically negligent and breached the applicable standard of care, and that as a result, Plaintiff suffered permanent physical and mental injuries including fistualization and the need for extensive surgical intestinal resections. The Complaint alleges that Moving

Defendant Ramani is a physician and provided medical treatment and care to Plaintiff while employed or as an agent for GI Associates.

In Delaware, a healthcare negligence lawsuit must be filed with an affidavit of merit as to each defendant, signed by an expert, and accompanied by the expert's current *curriculum vitae*.[1] The expert must be licensed to practice medicine as of the affidavit's date, engaged in such practice in the same or similar field as the defendant in the three years immediately preceding the alleged negligence, and Board certified in the same or similar field as the defendant if the defendant is Board certified.[2] The affidavit must state that reasonable grounds exist to believe that the defendant was negligent in a manner that proximately caused the plaintiff's injury.[3] Additionally, the affidavit must be filed under seal and, upon request, may be reviewed *in camera* to ensure compliance with statutory requirements.[4] The

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[1] 18 *Del. C.* § 6853(a)(1).

[2] *Id.* § 6853(c). Of course, these requirements apply only if the expert is a physician, and the requirements regarding "same or similar field" apply only if the defendant is a physician. *McNulty v. Correct Care Solutions, LLC*, 2017 WL 1323711, at *2 (Del. Super. Apr. 7, 2017) (requirement of "same or similar" Board certification does not apply where defendant is not a physician); *accord Zappaterrini v. St. Francis Hosp., Inc.*, 2009 WL 1101618, at *1 (Del. Super. Apr. 22, 2019) ("[B]ecause the defendant is not a physician, the statutory requirement of similar Board certification is not applicable."). Here, the statutory requirements that the expert have the "same or similar" Board certification and practice in the "same or similar field" as the defendant are applicable because Moving Defendant Ramani is a physician. Therefore, the expert in the present case must have the "same or similar" Board certification as Moving Defendant Ramani and, likewise, have "been engaged in the treatment of patients and/or in the teaching/academic side of medicine in the same or similar field" as Moving Defendant Ramani. 18 *Del. C.* § 6853(c). If the expert holds such Board certification and practices in the same or similar field as Moving Defendant Ramani, the expert may speak to whether Moving Defendant Ramani was negligent.

[3] 18 *Del. C.* § 6853(c).

[4] *Id.* § 6853(d).

affidavit's requirements are "purposefully minimal."[5] Affidavits that merely track the statutory language are deemed sufficient.[6]

With regard to the affidavit of merit filed with the Court on May 11, 2020, the Court has performed an *in camera* review.

Turning to the expert in question, a physician, the Court finds as follows:

a. The expert signed the affidavit.

b. The current *curriculum vitae* of the expert is attached.

c. The expert was licensed to practice medicine as of the date of the affidavit.

d. For the three years immediately preceding the alleged negligent conduct, the expert was engaged in the practice of medicine.

e. The expert is Board certified in the fields of Gastroenterology and Internal Medicine and has experience in those areas.

f. The affidavit states that reasonable grounds exist to believe that Defendants breached the applicable standard of care, and that the breaches were a proximate cause of the injuries to Plaintiff.[7]

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[5] *Mammarella v. Evantash*, 93 A.3d 629, 637 (Del. 2014) (quoting *Dishmon v. Fucci*, 32 A.3d 338, 342 (Del. 2011)).

[6] *Dishmon*, 32 A.3d at 342-43.

[7] In this matter, because Plaintiff has not alleged that Defendant GI Associates breached the applicable standard of care separately from Moving Defendant Ramani (i.e., Plaintiff seeks to hold Defendant GI Associates vicariously liable for Moving Defendant Ramani's alleged breaches), Plaintiff has met the statutory requirement that an affidavit of merit be filed "as to" each defendant. The recent decision of this Court in *Woerner v. Christiana Care Health Services, Inc.*, 2020 WL 4596791 (Del. Super. Aug. 10, 2020), where the Court found that the affidavit of merit filed by the plaintiffs did not comply with 18 *Del. C.* § 6853(a)(1) because it referred to the defendants collectively (and thus was not filed "as to" each defendant), is distinguishable because the plaintiffs in that case had alleged that the defendants had breached the applicable standard of care in different ways. *See* Compl. ¶¶ 13, 15 (D.I. 1), *Woerner v. Christiana Care Health Serv., Inc.*, C.A. No. N19C-10-156 AML.

WHEREFORE, in consideration of the above, the Court finds that the affidavit of merit filed with the Court on May 11, 2020, complies with 18 *Del. C.* § 6853(a)(1) and (c).

IT IS SO ORDERED.

/s/ Noel Eason Primos
Judge

NEP/wjs
Via *File & ServeXpress*
Oc: Prothonotary
Counsel of Record