

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

WILLIAM M. DORAN & B.J.)
DORAN,)
)
Plaintiff,) C.A. No. 07C-10-116 (MJB)
v.)
)
UROLOGY ASSOCIATES OF)
SOUTHERN DELAWARE, P.A.;)
BEEBE MEDICAL CENTER; and)
DELBERT KWAN, M.D.,)
)
Defendants.)

ORDER

Submitted: July 9, 2008
Decided: July 25, 2008

*Upon Motion of Defendant Beebe Medical Center to Determine if
Plaintiff's Supplemental Affidavit of Merit Complies with 18 Delaware
Code § 6853*

This is a medical negligence claim filed by William M. Doran and B.J. Doran (collectively "Plaintiff") against Urology Associates of Southern Delaware, P.A.; Delbert Kwan, M.D. ("Dr. Kwan"); and Beebe Medical Center ("Beebe"). Plaintiff claims he received negligent medical care in

connection with a surgical procedure involving the use of a Greenlight PVP Laser (“PVP Laser”).

Dr. Kwan is a urologist who allegedly conducted the procedure at a facility owned and operated by Beebe. Plaintiff alleges that Beebe is vicariously liable for the negligent health care rendered by its agents and employees. Defendant also alleges that Beebe is directly liable for failing to properly credential, hire, train, and supervise health care providers on the use of the PVP Laser.

Pursuant to 18 Del. C. § 6853(a)(1), a medical negligence complaint must be accompanied by an Affidavit of Merit and current *curriculum vitae* from a qualified expert witness. The Affidavit of Merit must be filed under seal, but a defendant can request an *in camera* review of the Affidavit¹ to ensure that it complies with the specific, statutory requirements.²

¹ 18 Del. C. § 6853(d).

² 18 Del. C. § 6853(c) provides as follows:

Qualifications of expert and contents of affidavit. The affidavit(s) of merit shall set forth the expert's opinion that there are reasonable grounds to believe that the applicable standard of care was breached by the named defendant(s) and that the breach was a proximate cause of injury(ies) claimed in the complaint. An expert signing an affidavit of merit shall be licensed to practice medicine as of the date of the affidavit; and in the 3 years immediately 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 the defendant(s), and the expert shall be Board certified in the same or similar field of medicine if the defendant(s) is Board certified. The Board Certification requirement shall not apply to an expert that began the practice of medicine prior to the existence of Board certification in the applicable specialty.

On February 18, 2008, Dr. Kwan filed a Motion to Review Plaintiff's Affidavit of Merit. Beebe filed a similar motion on February 19, 2008. Beebe's Motion requested the Court to review the affidavit in regard to Plaintiff's vicarious liability claims as well as Plaintiff's direct liability claims of negligent credentialing, hiring, training, and supervising its health care providers.

On April 7, 2008 this Court issued an Order, which stated that Plaintiff's Affidavit of Merit complies with the statutory requirements as to Dr. Kwan. As for Plaintiff's claims against Beebe, the Order stated as follows:

[T]he Court finds that the affidavit satisfies the statutory requirements to the extent that Plaintiff has alleged that agents and employees of Beebe breached a standard of care specific to the field of urology. It is unclear whether or not Plaintiff is alleging medical negligence specific to any specialty outside of urology. To the extent that such claims exist, they are not supported by the affidavit. Further, Plaintiff has failed to meet the statutory requirements for the claims of negligent credentialing, hiring, training, and supervising. The affidavit states that the expert witness reviewed Plaintiff's medical records. Nothing in the affidavit suggests that the expert witness reviewed Beebe's procedures for credentialing, hiring, training, or supervising health care providers. The affidavit also does not state that the expert witness is qualified to offer an opinion on the proper credentialing, hiring, training, or supervising of hospital personnel.

Therefore, based on the current record, Plaintiff is precluded from asserting any claims of medical negligence against specialists outside the field of urology. Plaintiff is also precluded from asserting any claims on the negligent credentialing, hiring, training, or supervising of hospital personnel.

After making the above determination, the Court gave Plaintiff 60 days to file any additional affidavits in support of its claims against Beebe. Accordingly, on June 6, 2008 Plaintiff filed a Supplemental Affidavit of Merit. On July 9, 2008, Beebe filed the instant Motion to Determine if the Supplemental Affidavit of Merit Complies with 18 Del. C. § 6853.

The Court has reviewed the original and Supplemental Affidavits of Merit and, based upon those, finds as follows:

1. The Affidavits are signed by an expert witness who has reviewed the medical records in this case.
2. The Affidavits are accompanied by the expert witness's current *curriculum vitae*.
3. The Affidavits set forth the expert's opinion that there are reasonable grounds to believe that agents and employees of Beebe Medical Center committed medical negligence, and such negligence was the proximate cause of Plaintiff's injuries.

4. The expert witness was a licensed physician as of the date of the Affidavits.
5. In the three years immediately prior to the alleged negligent act, the expert witness was engaged in the treatment of patients and/or the teaching/academic side of medicine in the same or similar field of medicine pertinent to the allegations against Beebe Medical Center in this litigation.
6. The expert witness is board-certified in urology and is familiar with the operation and use of PVP Lasers and the credentialing, hiring, training and supervision of personnel needed to operate the equipment.

As to Plaintiff's claims of negligent credentialing, hiring, training, and supervising, the Supplemental Affidavit of Merit is sufficient with respect to any claims based upon Beebe personnel who operated or assisted in operating the PVP Laser during Plaintiff's surgical procedure. To the extent that Plaintiff has alleged negligence against any other agents and employees of Beebe, such claims are not supported by the Supplemental Affidavit.

Therefore, Plaintiff is precluded from asserting any claims of medical negligence against health care professionals outside the field of urology and against any Beebe employee who did not use or assist in the use of the PVP Laser.

IT IS SO ORDERED.

M. Jane Brady
Superior Court Judge

cc: Prothonotary