

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

	)	
AMY PATRICK, and	)	
MARK BAUMEL, her husband	)	
	)	
Plaintiffs	)	
	)	
v.	)	CA. No.: 08C-12-223 FSS
	)	
KATHERINE SAHM, M.D.,	)	
CHRISTIANA INSTITUTE OF	)	
ADVANCED SURGERY, P.A.,	)	
a Delaware Corporation, VICTOR	)	
KALMAN, D.O., and MORGAN	)	
KALMAN CLINIC, P.A., a	)	
Delaware Corporation	)	
	)	
Defendants	)	

Submitted: March 6, 2009

Decided: March 19, 2009

**ORDER**

**Upon Review of the Affidavit of Merit**

This is a medical malpractice case based upon Defendants' alleged negligence in identifying and timely treating Amy Patrick's spinal accessory nerve injury. In Delaware, a healthcare negligence lawsuit cannot be filed unless accompanied by an affidavit of merit, signed by an expert witness, and filed with the

expert's current *curriculum vitae*.<sup>1</sup> The expert must be licensed to practice as of the affidavit's date, and must have been engaged in the same or similar field as the defendant in the three years preceding the alleged negligence. The affidavit must unequivocally state that there are reasonable grounds to believe that negligence has been committed by each defendant, and such negligence was the proximate cause of injury.

Defendants Victor Kalman, D.O. and Morgan Kalman Clinic filed an 18 *Del. C.* § 6853(d) motion requesting the court to review Plaintiffs' affidavits of merit, *in camera*, to determine their compliance with 18 *Del. C.* § 6853(a)(1) and (c). Plaintiffs filed three affidavit of merits, one which specifically addresses Dr. Kalman.<sup>2</sup> As to that affidavit, the court finds:

1. An expert witness has signed the affidavit;
2. A current *curriculum vitae* was filed with the affidavit;
3. At the time the affidavit was sworn, the expert was a licensed physician who treated patients within the three years preceding the alleged negligent acts;
4. The expert is board certified in Orthopaedic Surgery;
5. The affidavit states, with a reasonable degree of medical

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<sup>1</sup> 18 *Del. C.* § 6853(a), (a)(1).

<sup>2</sup> Morgan Kalman Clinic is a named defendant solely for *respondeat superior* purposes.

probability, that there are reasonable grounds to believe that Dr. Kalman breached his standard of care for each claim alleged;

6. The expert further opines that Dr. Kalman's breaches were the proximate cause of Plaintiff's injuries.

Defendants' motion specifically requests the court review the affidavit to ensure the expert is board certified in Emergency Medicine. As stated above, the expert is certified in Orthopaedic Surgery. It appears that the request was made in error, as the complaint makes no mention of emergency care. Therefore, the court finds that the affidavit of merit complies with 18 *Del. C.* § 6853(a)(1) and (c), as to Victor Kalman, D.O.

**IT IS SO ORDERED.**

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/s/ Fred S. Silverman

Judge

cc: Prothonotary (civil)  
Gary W. Alderson, Esquire  
John A. Elzufon, Esquire  
Randall E. Robbins, Esquire