

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
)	E-FILED
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: July 17, 2009
Decided: August 14, 2009

ORDER

Upon Review of the Affidavit of Merit

Under 18 *Del. C.* § 6853(d), Defendants Katherine Sham, M.D. and Christiana Institute of Advanced Surgery¹ asked the court to review Plaintiffs’ affidavit of merit to determine its compliance under 18 *Del. C.* § 6853(a)(1) and (c).

¹ Christiana Institute of Advanced Surgery is a named defendant solely for *respondeat superior* purposes.

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*.² 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 defendants 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 it was the proximate cause of injury.

Plaintiffs filed three affidavits of merit, one specifically addresses Dr. Sahm. After *in camera* review, 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 was re-certified in 2006 by the American Board of Surgery;
5. The affidavit states, with reasonable medical probability, that there are grounds to believe that Dr. Sahm breached her standard of care by transecting the spinal accessory nerve;
6. The expert further opines that Dr. Sahm's breach proximately caused Plaintiff's injuries.

² 18 Del. C. § 6853(a), (a)(1).

Considering the above, the court finds that the affidavit of merit, as to Katherine Sahn, M.D., complies with 18 *Del. C.* § 6853(a)(1) and (c).

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary (civil)
Bradley J. Goewert, Esquire
John A. Elzufon, Esquire
Randall E. Robbins, Esquire