

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MARGARET GERSTLEY-TRASK)
and DALE TRASK,)
wife and husband,)

Plaintiffs,)

v.)

JEFFREY FELZER, D.M.D., P.C.)
d/b/a PERIODONTICS AND)
IMPLANT DENTISTRY;)
CHRISTIANA CARE HEALTH)
SERVICES, INC.;)
JOHN VORRASI, D.D.S.;)
GEOFFREY ZINBERG, D.M.D.;)
RYAN CALVI, D.M.D.; and)
RICHARD HAMMOND, D.M.D.,)

Defendants.)

C.A. No. N16C-02-038 AML

JURY TRIAL OF 12 DEMANDED

Submitted: March 28, 2016

Decided: April 13, 2016

ORDER

Upon Review of the Affidavit of Merit

Under 18 *Del. C.* § 6853(a)(1), all healthcare negligence complaints must be accompanied by an affidavit of merit as to each defendant, signed by an expert witness, accompanied by a current *curriculum vitae* of the witness, and stating that there are reasonable grounds to believe each defendant committed healthcare medical negligence. By its terms, an affidavit is required only in “healthcare

negligence lawsuit[s].”¹ “Medical negligence” is defined as “any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to a patient.”² A “health care provider” is a “person corporation, facility or institution licensed by this State pursuant to Title 24, excluding Chapter 11 thereof”³

In this case, the affidavit of merit was filed under seal, as required. As permitted by 18 *Del. C.* § 6853(d), Defendants Christiana Care Health Services, Inc., John Vorrasi, D.D.S., Geoffrey Zinberg, D.M.D., Ryan Calvi, D.M.D., and Richard Hammond, D.M.D. requested *in camera* review of the affidavit to determine compliance with Sections 6853(a)(1) and (c).

This is not a “healthcare negligence lawsuit.”⁴ Dentists are licensed pursuant to Title 24 Chapter 11,⁵ and, therefore, are excluded from the definition of “health care provider.”⁶ Because Plaintiff had no obligation to file an affidavit of merit, the Court will not review the one submitted.⁷

¹ 18 *Del. C.* § 6853(a).

² *Id.* § 6801(7).

³ *Id.* § 6801(5).

⁴ See *Jubb v. Dougherty*, 2009 WL 952217, at *1 (Del. Super. Apr. 8, 2009).

⁵ 24 *Del. C.* § 1124.

⁶ *Jubb*, 2009 WL 952217, at *1 (citing *Ragazzo v. Truono*, 1989 WL 40922, at *1 (Del. Super. Apr. 12, 1989)).

⁷ Although not a dentist excluded under Chapter 11, Christiana Care Health Services, Inc. is a named defendant solely for *respondeat superior* purposes and therefor does not require an affidavit of merit. See *Patrick v. Sahm*, 2009 WL 807482 (Del. Super. Mar. 19, 2009); *Hudson v. Ciampoli*, 2010 WL 629838 (Del. Super. Feb. 19, 2010).

IT IS SO ORDERED.



Abigail M. LeGrow, Judge

Original to Prothonotary

cc: Richard Galperin, Esquire
Gary S. Nitsche, Esquire
William A. Crawford, Esquire