



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DOROTHY YODER,)
Plaintiff,)
)
v.)
)
PIKE CREEK HEALTHCARE)
SERVICES, LLC, d/b/a CADIA)
REHABILITATION PIKE CREEK,)
PHYSICIAN'S MOBILE X-RAY, a)
foreign corporation, SMITH)
RADIOLOGY, INC., a foreign)
corporation, PREMIER RADIOLOGY)
SERVICES, LLC, a foreign corporation,)
HENRY K. SMITH, D.O., and WALTER)
Y. UYESUGI, D.O.,)
Defendants.)

C. A. No. N21C-01-026 ALR

Upon Request of Defendant
Pike Creek Healthcare Services, LLC d/b/a Cadia Rehabilitation Pike Creek
to Determine if Affidavits of Merit Comply with 18 Del. C. §§ 6853(a)(1) and (c)

ORDER: Curriculum Vitae - Do Not Comply

Section 6853(a)(1) of title 18 of the Delaware Code provides that 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, stating that there are reasonable grounds to believe that there has been healthcare medical negligence committed by each defendant. In this case, affidavits of merit were filed under seal, as required.

Pursuant to 18 Del. C. § 6853(d), Defendant Pike Creek Healthcare Services, LLC d/b/a Cadia Rehabilitation Pike Creek requested *in camera* review of the affidavits to determine compliance with sections 6853(a)(1) and (c). The Court has reviewed the applicable affidavits of merit and the accompanying *curricula vitae*

and has determined that the *curricula vitae* submitted by Plaintiff do NOT fully comply with 18 Del. C. §§6853 (a)(1), (c) and §6854 because both *curricula vitae* are dated 2018 for a lawsuit filed in 2021. As such, the Court cannot discern whether the experts meet the qualifications set forth in the statute.

The Court notes, on the other hand, the affidavits do include opinions regarding the care provided by Defendant Pike Creek Healthcare Services, LLC d/b/a Cadia Rehabilitation Pike Creek and, in that regard, do comply with the statute's requirements. Specifically, Plaintiff's experts state that there are reasonable grounds to believe the applicable standards of care were breached and that the breaches were proximate causes of Plaintiff's injuries.

While there are deficiencies in Plaintiff's affidavits of merit, "[t]he statute does not ... contemplate that affidavits that are initially incomplete are automatically subject to outright dismissal."¹ The nature and scope of the deficiencies may have been the result of administrative error.² The Court "must give weight to Delaware's well-known public policy that favors permitting a litigant to have his day in court."³ To that end, the Court will allow Plaintiff 30 days to comply with the statutory requirements. If Plaintiff files *curriculum vitae* that comply with 18 Del. C. § 6853(a)(1) and (c) within 30 days, the lawsuit shall move forward. If Plaintiff does not file *curriculum vitae* that comply with the statutory requirements, the Court will dismiss the complaint.

¹ *Dishmon v. Fucci*, 32 A.3d 338, 345 (Del. 2011).

² *Janssen v. Christiana Care Health System, Inc.*, 2015 WL 105727, at *1 (Del. Super. Feb. 10, 2015) (stating that a defect in an affidavit of merit could have been a mere drafting error).

³ *Dishmon*, 32 A.3d at 344.

NOW, THEREFORE, this 22nd day of February, 2021:

1. Plaintiff's affidavits of merit do not comply with 18 *Del. C.* § 6853(a)(1) and (c) because the *curriculum vitae* are not current.

2. Plaintiff is granted leave to file *curriculum vitae* that comply with 18 *Del. C.* § 6853(a)(1) and (c) within 30 days.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli