

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

GILBERT MCBRIDE, individually, )  
and as Executor of the Estate of )  
Helen McBride, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SHIPLEY MANOR HEALTH )  
CARE, and SUNRISE SENIOR )  
LIVING, INC., )  
 )  
Defendants )

C.A. No.: 04C-06-291-FSS

**ORDER**

**Upon Defendant's Application for Certification of  
Interlocutory Appeal - - *DENIED***

This is a health care medical negligence case. Defendant is a skilled nursing home facility. On March 23, 2005, the court issued an order denying Defendant's motion to dismiss, based on Plaintiff's failure to submit a timely Affidavit of Merit, required by 18 *Del. C.* § 6853.

In its March 23, 2005 order, the court decided that Defendant was a health care provider and, therefore, the recently enacted Affidavit of Merit

requirement applied to this case. The court, however, granted Plaintiff time to submit a proper Affidavit of Merit.

Plaintiff obeyed the court's order. Plaintiff submitted a proper Affidavit of Merit, supporting Plaintiff's claim against Defendant. The case will proceed to trial.

The court appreciates that its order sustained controverted jurisdiction and an order may terminate the litigation. That is often the case, however, when a trial court denies a dispositive motion, especially one contesting the court's jurisdiction to grant an extension where a statute of limitations is involved. Nevertheless, the court views it as more likely that allowing an interlocutory appeal will delay this case's resolution and result in piecemeal litigation. The Affidavit of Merit requirement is jurisdictional, but the law does not prohibit the court from granting an extension, in its discretion, if the complaint is timely, there is cause, and an extension will cause no prejudice.

For the foregoing reasons, Defendant's application for this court to certify an interlocutory appeal is ***DENIED***.

**IT IS SO ORDERED.**

\_\_\_\_\_  
April 28, 2005

Date

\_\_\_\_\_  
/s/ Judge Fred S. Silverman

Judge

oc: Prothonotary  
pc: Edward J. Fornias, Esquire  
Thomas J. Gerard, Esquire