

SUPERIOR COURT
OF THE
STATE OF DELAWARE

SCOTT BRADLEY
JUDGE

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RE: Ashley v. Tull
C.A. No. 05C-02-024-ESB

Submitted: May 23, 2005
Decided: July 12, 2005

Dear Counsel:

This is my decision on Defendant Duane E. Tull, M.D.' s Motion to Determine if the Affidavit of Merit complies with 18 Del. C. §6853(a)(1) and (c). I have reviewed the Affidavit of Merit and reached the following conclusions on the issues raised by the defendant' s motion:

1. The Affidavit of Merit is signed by an expert witness, as “ expert witness” is defined in 18 Del. C. §6854.
2. The Affidavit of merit is accompanied by a *curriculum vitae*.
3. The Affidavit of Merit states that there are reasonable grounds to believe that Dr. Tull breached the applicable standard of care for performing laparoscopic surgery on the plaintiff.
4. The Affidavit of Merit states that there are reasonable grounds to believe that Dr. Tull' s breach of the standard of care was one of the proximate causes of the plaintiff' s injuries.
5. The Affidavit of Merit and the *curriculum vitae* do not clearly state that expert was

licensed to practice medicine as of the date of the Affidavit of Merit. However, the Affidavit of Merit and *curriculum vitae* do state that the expert is currently in private practice and has staff privileges at two hospitals. Thus, I would assume that the expert is currently licensed to practice medicine. However, to resolve any uncertainty over this issue, I will require that the plaintiff submit a revised Affidavit of Merit clarifying this issue within twenty (20) days of the date of this letter.

6. The Affidavit of Merit states that the expert has been engaged in the active practice of medicine for the last three years. It does not state that he has been in the practice of general surgery for the last three years. However, the expert is board certified in surgery. Thus, I would assume that he has been engaged in the practice of surgery for the last three years. However, to resolve any uncertainty over this issue, I will require that the plaintiff submit a revised Affidavit of Merit clarifying this issue within twenty (20) days of the date of this letter.
7. That Affidavit of Merit and *curriculum vitae* state that the expert is board certified in surgery.

IT IS SO ORDERED

Very truly yours,

E. Scott Bradley

Original to Prothonotary