

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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**Re: Irene Harris et al. v. Christiana Care Health
Services, Inc. and Christiana Care Health System, Inc.
C.A. No. 06C-02-047 RRC**

**On Defendants' "Motion to Determine if the Affidavit of
Merit Complies with Sections (a)(1) and (c) of Title 18
§ 6853." Affidavit Reviewed.**

Submitted: March 24, 2006

Decided: April 13, 2006

Dear Counsel:

Defendants filed a motion on March 24, 2006 asking the Court to determine if the Affidavit of Merit filed on February 3, 2006 with the complaint alleging health care negligence complies with 18 Del. C. Section 6853.¹

¹This case was consolidated on April 12, 2006 with. *Irene Harris et al. v. Mary Ann*

I have reviewed the Affidavit of Merit and note the following:

1. The expert's affidavit states in part that "there are reasonable grounds to believe that the nursing staff of the Christiana Care Health Services, Inc. *and/or* Christiana Care Health System, Inc. breached the applicable standard of nursing care . . ." ² (emphasis added). Section 6853(a)(1) requires a statement by the expert that there has been health care medical negligence committed by "each" defendant.

2. The statute requires a statement that in the expert's opinion there are "reasonable grounds" to believe that there has been health care negligence. The affidavit of the expert says in part: "The opinions I have preliminarily reached in this case are based on reasonable medical probability within the field of nursing."

3. Related to paragraph 2, above, Defendants, in their motion, ask the Court to determine that the proffered expert is an expert in the area of "critical care nursing." The proffered expert does not describe himself/herself an expert in "critical care" nursing, but rather in "nursing." At this juncture, the Court is not in a position finally to conclude one way or another if an affidavit should have been submitted by an expert within any subspecialty of "critical care" nursing.

If Defendants wish to submit anything further, given the above information, any further submissions shall be filed by April 26. If nothing is filed by Defendants by that date, the Court will assume that Defendants do not challenge the legal sufficiency of the Affidavit of Merit.

Very truly yours,

RRC/mtc

Connor D.O. et al. C.A. No. 05C-06-101 RRC.

²One authority states as to "and/or": "And/or: used to indicate that either *and* or *or* may be used to connect words, phrases, or clauses depending upon what meaning is used. *And/or* is widely used in legal and business writing. Its use in general writing to mean "one or the other or both" is acceptable but can appear stilted." The American Heritage Dictionary, Second Edition (pg. 108, 1991). *See also* Ellet v. Ramzy, 2004 WL2240153 (Del. Super.) (holding that an affidavit of merit was "technically inadequate" and "equivocal" where the affidavit stated "that the breach from the applicable standard of care was a proximate cause of *and/or* was a substantial contributing factor to the injuries suffered by Plaintiff. . .") (emphasis added).

cc: John A. Elzufon, Esquire
Prothonotary