

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF GABRIEL G. § No. 492, 2005
ATAMIAN, MD, MSEE, JD, §
FOR A WRIT OF MANDAMUS. § Super. Ct., C.A. No. 03C-12-038

Submitted: October 20, 2005
Decided: December 7, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 7th day of December 2005, upon consideration of the petition for a writ of mandamus filed by plaintiff, Gabriel Atamian, and the answer and motion to dismiss filed by defendant, Michael J. Ryan, DDS,¹ it appears to the Court that:

(1) In December 2003, Atamian filed a complaint in the Superior Court against Ryan and Becden Dental Laboratory. At the present time, the parties are engaged in discovery.

(2) On October 3, 2005, Atamian filed in the Superior Court a “Certification of Questions of Law” (“the application for certification”) pursuant to Supreme Court Rule 41 (“Rule 41”).² The application for

¹The Court has not considered the answer and motion to dismiss that was filed by defendant, Becden Laboratory, on November 16, 2005. *See* Supr. Ct. R. 43 (providing that an answer should be filed within twenty days of the filing of the complaint).

²*See* Supr. Ct. R. 41 (governing procedure by which Delaware courts and other courts may, prior to the entry of final judgment, certify a question of law to this Court).

certification challenged a letter issued by the Superior Court on September 28, 2005, addressing a motion for sanctions that Atamian had filed alleging overdue discovery responses on the part of Ryan. By order dated October 4, 2005, the Superior Court rejected the application for certification on the basis that Atamian had met neither the substantive nor the procedural requirements of Rule 41.³

(3) On October 20, 2005, Atamian petitioned this Court for a writ of mandamus. Atamian's mandamus petition asks this Court to review the Superior Court's order that denied the application for certification.

(4) There is no basis for the issuance of a writ of mandamus in this case. This Court issues a writ of mandamus only when the complainant has a clear right to the performance of a duty.⁴ The decision whether to certify a question or questions of law for decision under Rule 41 lies entirely within the discretion of the certifying court.⁵

³*Atamian v. Ryan, et al.*, Super. Ct., C.A. No. 03C-120-038, Young, J. (Oct. 4, 2005).

⁴*In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

⁵*See In re Marvel*, 2003 WL 1442466 (Del. Supr.) (citing *State v. Superior Court*, 141 A.2d 468 (Del. 1958)).

NOW, THEREFORE, IT IS ORDERED that Ryan's motion to dismiss is GRANTED. Atamian's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice