

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

MARGARET GERSTLEY-TRASK )  
and DALE TRASK, )  
wife and husband, )

Plaintiffs, )

v. )

JEFFREY FELZER, D.M.D., P.C. )  
d/b/a PERIODONTICS AND )  
IMPLANT DENTISTRY; )  
CHRISTIANA CARE HEALTH )  
SERVICES, INC.; )  
JOHN VORRASI, D.D.S.; )  
GEOFFREY ZINBERG, D.M.D.; )  
RYAN CALVI, D.M.D.; and )  
RICHARD HAMMOND, D.M.D., )

Defendants. )

C.A. No. N16C-02-038 AML

JURY TRIAL OF 12 DEMANDED

Submitted: March 28, 2016

Decided: April 13, 2016

**ORDER**

**Upon Review of the Affidavit of Merit**

Under 18 *Del. C.* § 6853(a)(1), 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, and stating that there are reasonable grounds to believe each defendant committed healthcare medical negligence. By its terms, an affidavit is required only in “healthcare

negligence lawsuit[s].”<sup>1</sup> “Medical negligence” is defined as “any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to a patient.”<sup>2</sup> A “health care provider” is a “person corporation, facility or institution licensed by this State pursuant to Title 24, excluding Chapter 11 thereof . . . .”<sup>3</sup>

In this case, the affidavit of merit was filed under seal, as required. As permitted by 18 *Del. C.* § 6853(d), Defendants Christiana Care Health Services, Inc., John Vorrasi, D.D.S., Geoffrey Zinberg, D.M.D., Ryan Calvi, D.M.D., and Richard Hammond, D.M.D. requested *in camera* review of the affidavit to determine compliance with Sections 6853(a)(1) and (c).

This is not a “healthcare negligence lawsuit.”<sup>4</sup> Dentists are licensed pursuant to Title 24 Chapter 11,<sup>5</sup> and, therefore, are excluded from the definition of “health care provider.”<sup>6</sup> Because Plaintiff had no obligation to file an affidavit of merit, the Court will not review the one submitted.<sup>7</sup>

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<sup>1</sup> 18 *Del. C.* § 6853(a).

<sup>2</sup> *Id.* § 6801(7).

<sup>3</sup> *Id.* § 6801(5).

<sup>4</sup> See *Jubb v. Dougherty*, 2009 WL 952217, at \*1 (Del. Super. Apr. 8, 2009).

<sup>5</sup> 24 *Del. C.* § 1124.

<sup>6</sup> *Jubb*, 2009 WL 952217, at \*1 (citing *Ragazzo v. Truono*, 1989 WL 40922, at \*1 (Del. Super. Apr. 12, 1989)).

<sup>7</sup> Although not a dentist excluded under Chapter 11, Christiana Care Health Services, Inc. is a named defendant solely for *respondeat superior* purposes and therefor does not require an affidavit of merit. See *Patrick v. Sahm*, 2009 WL 807482 (Del. Super. Mar. 19, 2009); *Hudson v. Ciampoli*, 2010 WL 629838 (Del. Super. Feb. 19, 2010).

**IT IS SO ORDERED.**

  
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Abigail M. LeGrow, Judge

Original to Prothonotary

cc: Richard Galperin, Esquire  
Gary S. Nitsche, Esquire  
William A. Crawford, Esquire