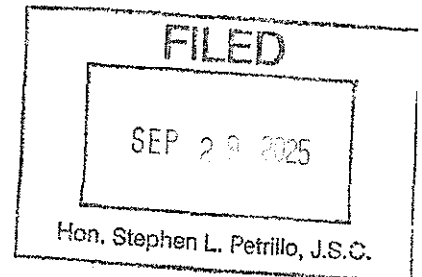


SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE
LAW DIVISION, CIVIL PART

DOCKET NO.: ESX-L-1240-25



*ESTATE OF BRENDA ADAMS, through
SHYRONDA FOUNTAINE, Administrator,
Plaintiff,*

v.

*ESSEX GARDEN GROUP, LLC d/b/a ALLIANCE CARE REHABILITATION
AND NURSING CENTER, et al.,
Defendants.*

OPINION

Petrillo, J.S.C.

I. INTRODUCTION

Before the Court is Plaintiff's motion to affirm the affidavit of merit ("AOM") executed by Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl, submitted in support of this nursing home negligence action. Defendants, Essex Garden Group, LLC d/b/a Alliance Care Rehabilitation and Nursing Center ("Alliance Care"), and related parties, oppose the sufficiency of the affidavit as to "direct/administrative" claims, specifically contending that the affiant is not a licensed nursing home administrator and thus cannot support the claims against the facility. For the reasons detailed below, and upon full review of the moving papers, certifications, opposition, and reply, the motion is **GRANTED** and the Affidavit of Merit is affirmed as to all claims against the Defendants.

II. PROCEDURAL HISTORY AND FACT SUMMARY

This case arises from allegations of nursing home negligence involving the Estate of Brenda Adams. Plaintiff, through Administrator Shyronda Fountaine, alleges that on or about June 7, 2023, Ms. Adams sustained a significant hip fracture due to a fall at Alliance Care, requiring surgery on June 8, 2023. Plaintiff asserts claims of corporate negligence, facility negligence, violation of New Jersey statutory resident rights, wrongful death, and punitive damages, all sounding in both direct

and vicarious liability against Alliance Care and related corporate entities. Compl. at ¶¶ 8–61; Certification of Evans ¶¶ 2–29.

Plaintiff filed the Complaint on February 14, 2025. The Complaint was served along with an Affidavit of Merit and curriculum vitae of Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl. Evans Cert. ¶¶ 2, 24–26; Ex. B. Defendants failed to answer timely and default was entered April 29, 2025. Evans Cert. ¶¶ 3–4. On May 19, 2025, default was vacated for Alliance Care defendants by consent order, with an answer subsequently filed June 5, 2025. Evans Cert. ¶¶ 5–7; Ex. C. One defendant, Kanene Oleka, RN, remains in default.

Over the following weeks, Plaintiff repeatedly sought to confer with Defendants’ counsel regarding Affidavit of Merit issues. Plaintiff documents at least five separate attempts to obtain Defendants’ positions following the Ferreira conference, which were met with no response. Evans Cert. ¶¶ 9–17. At the Ferreira conference, Defendants objected to the sufficiency of Nurse Sheppard’s AOM as to alleged “administrative” claims, arguing she was not a licensed nursing home administrator. A different Court provided sixty days to address AOM issues. Evans Cert. ¶¶ 18–22.

Plaintiff now moves to affirm Nurse Sheppard’s Affidavit of Merit as sufficient under the statute and controlling case law for all claims, both direct and vicarious, against the facility and related entities.

III. LEGAL FRAMEWORK

The Affidavit of Merit Statute, N.J.S.A. 2A:53A-26 to -29, requires that in any action for damages for personal injuries, wrongful death, or property damage from alleged professional malpractice, the plaintiff must provide the defendant “with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited ... fell outside acceptable professional or occupational standards or treatment practices.” N.J.S.A. 2A:53A-27.

Section 26 of the statute enumerates 19 specific categories of “licensed persons,” including registered nurses and health care facilities—but does not include nursing home administrators.

The statute is designed to screen out frivolous litigation, not to bar meritorious claims, nor to create technical minefields for innocent litigants. Cornblatt v. Barow,

153 N.J. 218, 242 (1998); Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 151 (2003); Moschella v. Hackensack Meridian Jersey Shore Univ. Med. Ctr., 258 N.J. 110, 127 (2024).

IV. APPLICATION AND ANALYSIS

A. Sufficiency of Affidavit of Merit from Charlotte Sheppard, DNP, RN-BC

Plaintiff submitted as Exhibit B Nurse Sheppard's Affidavit of Merit and detailed curriculum vitae. Sheppard is a board-certified registered nurse, Doctor of Nursing Practice, Licensed Health Care Risk Manager, Wound Care Certified, and Certified Academic Clinical Nurse Educator. Evans Cert. Ex. B. She has over thirty years of clinical and administrative nursing experience, served as a supervisor in skilled nursing home settings, and regularly consults on nursing standards and risk analysis. She is also an assisted living facility administrator and has substantial experience in policy, staff training, and risk management. Evans Cert. Ex. B.

The affidavit language tracks the statutory requirement, asserting "a reasonable probability that the care, skill, or knowledge exercised or exhibited in the treatment, practice or work performed by Alliance Care and nursing staff ... fell outside acceptable standards of practice for ensuring her health and safety and preventing falls." Evans Cert. Ex. B.

B. Objections to Affiant's Qualifications—Statutory Argument and Case Law

Defendants argue that because Nurse Sheppard is not a licensed nursing home administrator (LNHA), she cannot support "direct" claims of administrative or corporate negligence against the facility. The opposition relies heavily on Hill Int'l v. Atlantic City Bd. of Educ., 438 N.J. Super. 562, 578 (App. Div. 2014), for the proposition that the affiant must possess the same category of professional license as the defendant sued.

This argument is rejected for several interrelated reasons.

First, as Plaintiff's brief and reply explain, N.J.S.A. 2A:53A-26 and -27 do not list nursing home administrators as licensed persons subject to the affidavit requirement. The Legislature intentionally limited the statute's application to specified "licensed persons"—and any expansion would require statutory amendment, not judicial re-writing. Saunders v. Capital Health Sys. at Mercer, 398 N.J. Super. 500, 508 (App. Div. 2008).

Second, there is no requirement in the statute that a health care facility's "direct/administrative" liability must be supported by an AOM executed by a licensed administrator, even as against claims of corporate or facility negligence. The "general knowledge standard" under Section 27 requires only expertise "in the general area ... involved in the action, as evidenced by board certification or by devotion of ... practice substantially to the general area ... for at least five years." Meehan v. Antonellis, 226 N.J. 216, 237 (2016).

Nurse Sheppard qualifies under both prongs: she is board certified and has decades of devoted nursing experience, including in supervisory and risk management functions in long-term care facilities. Evans Cert. Ex. B. Moreover, she holds administrative certifications and consults on facility operations.

Third, controlling Supreme Court precedent dictates that "[N.J.S.A. 2A:53A-27] requires that a plaintiff provide an affidavit to each defendant detailing a reasonable probability that at least one claim concerning each defendant has merit," and the statute does not require affidavits for the specific "type" of claim (direct versus vicarious) against a defendant. Fink v. Thompson, 167 N.J. 551, 560 (2001). Put differently, so long as one asserted claim against the licensed professional defendant is supported by a valid Affidavit of Merit, the statute is satisfied.

Fourth, analogous case law—Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, 416 N.J. Super. 1 (App. Div. 2010), McCormick v. State, 446 N.J. Super. 603 (App. Div. 2016), Albrecht v. Correctional Medical Services, 422 N.J. Super. 265 (App. Div. 2011)—consistently holds that the "underlying conduct of the medical personnel who allegedly harmed the injured plaintiff" controls who must supply the AOM. In nursing home cases, where the alleged negligent acts are those of professional nurses or relate to nursing care, an affidavit from a qualified nurse suffices against the facility; there is no precedent requiring a separate administrator's affidavit.

As Plaintiff correctly notes, to require an affidavit from non-licensed professionals like administrators, owners, or management companies is unsupported and would absurdly bar meritorious claims or improperly expand the statute.

C. Scope and Timeliness of the Affidavit; Procedural Issues

The record confirms that Plaintiff timely served the AOM and supporting CV at case initiation. Evans Cert. ¶¶ 2, 24–26. The language of the affidavit directly

addresses both vicarious and direct claims and specifically identifies the Defendant facility. Evans Cert. Ex. B. Similar affidavits from Nurse Sheppard have been affirmed by trial courts in other long-term care cases for claims of administrative and nursing negligence. Evans Cert. Ex. D–G.

D. No Additional AOM Required; No Need for 'Like-Licensed' Administrator

The Court finds that, contrary to Defendants' assertion, there is no statutory or precedential basis for requiring an affidavit from a licensed nursing home administrator. As Plaintiff's legal analysis and supporting authorities make clear, the Affidavit of Merit statute sets forth a limited list of professions covered by its requirements, and the necessary expertise for qualifying affiants is measured against those categories, not by analogy or administrative decision-making structures. As such, an affidavit from a registered nurse is fully sufficient for claims concerning the standard of care in a nursing home for the claims made here.

V. CONCLUSION

For all the foregoing reasons, and consistent with the statute and controlling New Jersey Supreme Court and appellate precedent, this Court holds:

- Plaintiff's Affidavit of Merit by Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl, is sufficient and timely under N.J.S.A. 2A:53A-26 to -29 for all claims asserted against Defendant Alliance Care and related healthcare facility entities.
- The statute does not require an affidavit from a licensed nursing home administrator, as such licensure is not included in the enumerated "licensed persons" categories.
- Only one AOM is required per "licensed professional" defendant; additional affidavits for multiple claims against the same defendant are not required.
- The claims for both administrative/direct and vicarious negligence are supported by Nurse Sheppard's qualifications and affidavit language.

Defendants' opposition is rejected.

Plaintiff's motion to affirm the Affidavit of Merit of Charlotte Sheppard, DNP, RN-BC, LHRM, WCC, CNEcl, is **GRANTED**.

The Affidavit is affirmed as sufficient to support all claims under the Affidavit of Merit Statute, N.J.S.A. 2A:53A-26, et seq., as to all Defendants, specifically

including Essex Garden Group, LLC d/b/a Alliance Care Rehabilitation and Nursing Center.

An appropriate Order will be filed simultaneously with this opinion.