

12/22/09 - after review of all submissions, Motion DENIED.
Theresa E. Connolly

Norton

MALPRACTICE

COMMONWEALTH OF MASSACHUSETTS

12-22

8

SUFFOLK, SS.

SUPERIOR COURT

Civil Action No.: SUCV2009-01808-A

11-24

KIMBERLY NORTON and
EDWARD NORTON,
Plaintiffs

v.

STEVEN J. RALSTON, M.D. and
JANE DOE, R.N.,
Defendants

NOTICE SENT
12-24-09.
K.D.
S.W.
W.J.D.H.
N.J.T.

(LAT)

**DEFENDANTS, STEVEN J. RALSTON, M.D. AND JANE DOE, R.N.'S,
MOTION TO INCREASE BOND UNDER G.L. c. 231, §60B**

NOW COME the defendants, Steven J. Ralston, M.D. and Jane Doe, R.N., and, pursuant to G.L. c. 231, §60B, hereby move this Honorable Court for an Order increasing the bond necessary for the plaintiffs, Kimberly Norton and Edward Norton, to pursue their claims against the defendants to \$40,000.

FACTUAL AND PROCEDURAL BACKGROUND

1. The plaintiffs filed their complaint against the defendants on May 1, 2009, alleging negligence, breach of contract, lack of informed consent and loss of consortium.
2. The defendants filed an answer to the plaintiffs' complaint and a request for a medical malpractice tribunal in accordance with G.L. c. 231, §60B on June 29, 2009.
3. On October 19, 2009, the Court sent an Order for Medical Malpractice Tribunal to be held on November 30, 2009. The Court further ordered that the "[p]laintiff MUST send copies of plaintiff's offer of proof at least five days before the date of the tribunal to the Court,

and the medical and legal members of the tribunal and the other parties or counsel as they are represented.” (See Exhibit A.)

4. The Plaintiff failed to the Offer of Proof as ordered.

5. On November 30, 2009, the Finding of the Medical Malpractice Tribunal was issued in favor of the Defendants. (See Exhibit B).

LEGAL STANDARD

G.L. c. 231, §60B provides that the judge who presides over the tribunal “may, within his discretion, increase the amount of the bond required to be filed.” If a plaintiff declines to make an offer of proof, then the judge may assume that the plaintiff’s claims are entirely frivolous. In that case, the judge may, without abusing his discretion, increase the bond to an amount calculated to cover all the costs which the defendant is likely to incur in defending the suit, including attorneys’ fees. In setting the amount of the bond the judge may consider, among other factors, that discovery is an ancillary purpose of the tribunal hearing, and the judge may properly consider the extra cost, if any, to a defendant, caused by the lost opportunity for discovery. Denton v. Beth Israel Hospital, 392 Mass. 277 (1984).

ARGUMENT

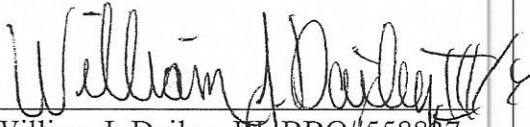
This malpractice action arises out of care and treatment rendered to Kimberly Norton on or about May 18, 2006. Suit was commenced in Suffolk Superior Court on May 1, 2009, close to the time that the claim would be barred by the statute of limitations. The plaintiffs have had ample time (over three years) to retain an expert to comment on the merits of the plaintiffs’ case and to further obtain a report and/or affidavit from said expert for purposes of submitting an Offer of Proof to the Court. The Court may infer that the plaintiffs’ claims are frivolous and

ought to increase the bond requirement in order to defray the costs incurred by the defendants in the defense of a meritless claim. Furthermore, the Court ought to increase the bond where the plaintiffs have wasted the court's time and resources in assembling a medical malpractice tribunal when it was clear that plaintiffs had no intention of submitting an offer of proof.

CONCLUSION

WHEREFORE, the defendants, Steven J. Ralston, M.D. and Jane Doe, R.N., pray that this Honorable Court Order that the bond necessary for the plaintiffs, Kimberly Norton and Robert Norton, to pursue their claim against the defendants, under G.L. c. 231, §60B, be increased to \$40,000.

Respectfully Submitted,
STEVEN J. RALSTON, M.D. and
JANE DOE, R.N.,
The Defendants, By Their Attorney,

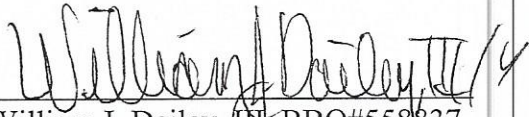

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Date: 12-3-09

CERTIFICATE OF SERVICE

I, William J. Dailey, III, Esq., hereby certify that on December 3, 2009, I served a true copy of the foregoing document, upon the following parties of record, by first class mail, postage prepaid, to:

Kevin Donius, Esq.
LAW OFFICES OF
KEVIN DONIUS, P.C.
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