IN THE IOWA DISTRICT COURT IN AND FOR POTTAWATTAMIE COUNTY

REED DICKEY, MICHAEL DICKEY, & ANDREA DICKEY Plaintiffs, vs. **JEREMY HOFF, JENNIE EDMUNDSON MEMORIAL HOSPTIAL, METHODIST JENNIE EDMUNDSON HOSPITAL, LOESS HILLS BEHAVIORAL HEALTH, JEFF RUTLEDGE, THE SCHOOL DISTRICT OF LINCOLN A.K.A. LINCOLN PUBLIC SHOOLS, AND EMILY GORMAN** Defendants.	Case No. LACV121204 **ORDER ON DEFENDANTS' MOTIONS TO DISMISS**

This matter came before the court on March 31, 2021, for a telephonic hearing on the Defendants' Motions to Dismiss. Defendants Jennie Edmundson Memorial Hospital, Methodist Jennie Edmundson Hospital, Loess Hills Behavorial Health and Emily Gorman appeared by Counsel Robert Mooney and Danielle Forsgren. Defendants Lincoln Public School and Jeff Rutledge appeared by Counsel Joshua Schauer. Defendant Jeremy Hoff appeared by Counsel Jason Miller. The Plaintiff appeared by Counsel Matt Reilly to defend against the Defendants' motions. The Court takes judicial notice of the filings in this matter and those in Pottawattamie County case number LACV120033. The Court, after taking the matter under advisement, having carefully considered arguments by counsel, having reviewed the file, and the law, finds as follows:

BACKGROUND FACTS AND PROCEEDINGS

On December 7, 2018, Plaintiff Reed Dickey (Reed) participated in an interscholastic wrestling tournament that took place in Council Bluffs, IA. Reed was a student and member of the varsity wrestling team at Lincoln East High School (Defendant "LPS"). Defendant Rutledge (Rutledge) was co-head coach for the LPS wrestling team and was coaching Reed at the December 7th

tournament. Defendant Hoff (Hoff) was a referee for the tournament. Defendant Jennie Edmundson (Jenni Ed) provided the tournament an athletic trainer, Defendant Gorman (Gorman).

Reed and his parents, Michael and Andrea Dickey, claim that during the wrestling match Reed sustained multiple blows to his head, resulting in injuries. Specifically, late in the first period of the match, Reed's head collided with the other wrestler's head, at which time Reed stopped wrestling. Due to the collision, Reed claims he sustained a concussion or other brain injury. Notwithstanding that Reed had stopped wrestling, his opponent pounced on Reed from behind and drove Reed down to the mat. As the match continued, Reed sustained additional blows to his head. He claims these additional blows exacerbated any injuries sustained to his head.

On December 6, 2019, Reed filed a lawsuit against Jenni Ed and referee Hoff, claiming negligence per se and common law negligence - Pottawattamie County case number LACV120033. In this first lawsuit, Reed alleged that the Defendants were negligent by failing to remove Reed from the wrestling match after he exhibited signs, symptoms, and behaviors of a brain injury. In this first action, Reed claimed that his injuries were caused by the acts or omissions of referee Hoff, the official overseeing the wrestling match, and Jenni Ed, through a theory of respondeat superior, related to Emily Gorman's alleged negligence in her role as athletic trainer for the event. Both Jenni Ed and referee Hoff filed Motions for Summary Judgment after Reed failed to file a Certificate of Merit Affidavit as required by Iowa Code section 147.140. Just days before the hearing was scheduled to take place on the motions, Reed filed a Notice of Dismissal Pursuant to Iowa R. Civ. P. 1.943.[1]

Reed, now joined by his parents Michael and Andrea Dickey, filed this second lawsuit on December 11, 2020. This time around the Dickeys are suing Jenni Ed and referee Hoff again, but have also added Emily Gorman individually, the high school, and coach Rutledge as Defendants. Each of the Defendants have filed Motions to Dismiss.

[1] Hearing on Jenni Ed's motion was scheduled to take place on October 2, 2020. Reed filed a Notice of Dismissal of the case against Jenni Ed on September 23, 2020. Hearing on Hoff's motion was scheduled for November 24, 2020. Reed filed a Notice of Dismissal of the case against Hoff on November 20, 2020.

I. Defendant Lincoln Public Schools and Jeff Rutledge's Motion to Dismiss:

a. Dismissal Due to Failure to Serve Proper Notice on Defendant Lincoln Public Schools

Defendant LPS first requests the Court dismiss the current action due to improper service. In support, Defendant LPS's resistance outlines how, in compliance with Iowa Rules of Civil Procedure, service upon a school district or township is proper by serving its president or secretary. Iowa R. Civ. P. 1.305(10). In light of this, Plaintiff serving Kim Miller, Defendant LPS's Risk Management Director Substitute service on January 5, 2021 is not sufficient for proper service.

The Court agrees with Defendant LPS's argument, however, the record shows Plaintiff has filed proper service on Kathy Danek, Board President of Lincoln Public Schools on March 8, 2021. As this is within 90 days of the filing of the Plaintiff's petition, the Court finds Defendant LPS was properly served and dismissal is not appropriate on this basis. See Iowa R Civ. P. 1302(5).

b. Dismissal for Lack of Personal Jurisdiction on Lincoln Public Schools and Jeff Rutledge

LPS and Coach Rutledge argue that the Court lacks personal jurisdiction over them because they either lack sufficient "minimum contacts" with Iowa to be subject to the Court's jurisdiction or, even if they do have sufficient contact, the Court exercising that jurisdiction would not comport with the notions of fair play or substantial justice.

"In determining whether the suit passes due process requirements, the critical focus is on the relationship among the defendant, the forum and the litigation." *Rush v. Savchuk*, 444 U.S. 320, 327, 100 S.Ct. 571, 576, 62 L.Ed.2d 516, 524 (1980). "This relationship is defined by the defendant's contacts with the forum state, not with its residents." *Hanson v. Denckla*, 357 U.S. 235, 250–55(1958). "Jurisdiction of the person lies where the defendant has purposely directed its activities at residents of the forum state and litigation results from alleged injuries that arise out of or are related to those activities. *Meyers v. Kallestead*, 476 N.W.2d 65, 67 (Iowa 1991) citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). Iowa courts apply the two-pronged test from *Burger King Corp. v. Rudzewicz* for determining whether to exercise specific personal jurisdiction. *See Ostrem v.*

Prideco Secure Loan Fund, LP, 841 N.W.2d 882 (Iowa 2014). Under this test, a court "evaluate[s] whether the defendant has purposefully directed his activities at residents of the forum and whether the litigation results from alleged injuries that arise out of or relate to those activities." *Id.* at 893 (quoting *Capital Promotions, L.L.C.*, 756 N.W.2d at 834) (emphasis added and internal quotation marks omitted). If a plaintiff can prove the defendant has sufficient minimum contacts with Iowa, then "the court must determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." *Capital Promotions, L.L.C.*, 756 N.W.2d 828 at 834 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)) (internal quotation marks omitted). This depends on the following factors: "[T]he burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Id.* (quoting *Burger King Corp.*, 471 U.S. at 477) (internal quotation marks omitted)

Even if the Court determined that LPS and Coach Rutledge had minimal contact with Iowa due to the wrestling match, the factors articulated in *Burger King Corp.*, weigh against the Court asserting that jurisdiction. The Dickeys, LPS, and Coach Rutledge are all domiciled in Nebraska and were only in Iowa one day for the wrestling tournament. The claimed negligence of LPS and Coach Rutledge are not alleged to have been directed at residents of Iowa. Both sides of the dispute would have the burden of travel expenses if the case proceeds in Iowa. Additionally, before this suit was filed in Iowa, the Dickeys filed a similar claim against LPS and Coach Rutledge in Nebraska. In Nebraska, they have a forum that can grant them convenient and effective relief. The interstate judicial system's interest in obtaining the most efficient resolution of a dispute among these Nebraska residents is best served by the Nebraska proceeding. As such, the Court finds personal jurisdiction cannot be established on LPS and Coach Rutledge and dismissal is appropriate on this basis.

Coach Rutledge and LPS also raise a Statue of Limitations challenge. Because all of the Defendants have raised that same issue, the Court will address that subject in detail below.

II. Defendants Jennie Edmundsen Memorial Hospital, Methodist Jennie Edmundsen Hospital, & Emily Gorman's Pre-Answer Motion to Dismiss concerning Iowa Code § 147.140.

a. Dismissal Due to Noncompliance With Iowa Code § 147.140

Defendants Jennie Edmundsen Memorial Hospital, Methodist Jennie Edmundsen Hospital, & Emily Gorman move for dismissal based on noncompliance with Iowa Code § 147.140. Section 147.140 requires that in any action against a health care provider based upon alleged negligence and in which expert testimony is needed to establish a prime facie case, Plaintiff must, "prior to the commencement of discovery in the case and within sixty days of the defendant's answer, serve a certificate of merit affidavit signed by an expert witness with respect to the issue of the standard of care and alleged breach of the standard of care." Iowa Code § 147.140 (1) (a). Failure to substantially comply with these requirements, "**shall** result, upon motion, in dismissal with prejudice of each cause of action as to which expert witness testimony is necessary to establish a prime facie case." *Id.* at (6) (emphasis added).

Defendants specifically allege Plaintiff purposefully endeavored to circumvent the requirements of Section 147.140 and the resulting consequence of dismissal with prejudice by voluntarily dismissing his initial action and then refiling an identical action immediately thereafter. In response, Plaintiff not only admits this is exactly what occurred, but also argues it is supported by Iowa case law.

During Plaintiff's first action against Defendants, Plaintiff failed to file the mandatory certificate of merit as required by Section 147.140. Plaintiff never filed for an extension of time, nor attempted to show good cause for an extension which the statute provides to prevent dismissal with prejudice. In short, Plaintiff did not substantially comply with Section 147.140 and Defendants Jennie Edmundsen Memorial Hospital, Methodist Jennie Edmundsen Hospital, & Emily Gorman were entitled to dismissal of the action with prejudice as a matter of law pursuant to Section 147.140.

Defendants moved for summary judgment requesting dismissal with prejudice on September 23, 2020. A hearing was scheduled on the motion for October 2, 2020. Before the hearing could take place, Plaintiff voluntarily dismissed Jennie Edmundsen as a defendant, and then voluntarily dismissed the entire action on November 20, 2020. Plaintiff then refiled an identical suit approximately three weeks later on December 11, 2020.

In support of his actions, Plaintiff cites *Venard v. Winter*, 524 N.W.2d 163 (Iowa 1994) in which the Supreme Court of Iowa held that the right to voluntary dismissal is not affected by and does not offend the requirements of 668.11 and that plaintiff was entitled to dismiss without prejudice for any reason. *Id.* at 168.

In contemplating the legislature's purpose and intent behind Section 147.140, and without abridging Plaintiff's statutory right to voluntarily dismiss, the Court finds Section 147.140 does not allow for consequences of 147.140 to be avoided by voluntary dismissal and refiling.

i. The Intent of Section 147.140 Prohibits Successive Refiling to Avoid Dismissal

The Court first examines intent behind the sizeable and significant amendments to 147.140 by Acts 2017 (87 G.A.) ch. 107. Requiring substantial compliance to avoid statutory dismissal with prejudice, the Iowa Supreme Court has defined substantial compliance as "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Nedved.* at 240. (quoting *Hantsbarger v. Coffin*, 501 N.W.2d 501, 504 (Iowa 1993) (citations omitted)). "When determining legislative intent, we look first to the language of the statute." *State v. Soboroff*, 798 N.W.2d 1, 6 (Iowa 2011). "We determine legislative intent from the words chosen by the legislature, not what it should or might have said." *Reg'l Util. Serv. Sys. v. City of Mount Union*, 874 N.W.2d 120, 124 (Iowa 2016). We also look to the purpose behind the statute for aid in gleaning legislative intent. *State v. Hensley*, 911 N.W.2d 678, 682 (Iowa 2018).

The language chosen by the legislature for the 2017 amendments are consistent with protecting against frivolous lawsuits and narrowing the path by which actions can be brought against healthcare

professionals. In the absence of substantial amount of case law on the 2017 amendments, the court considers what a recent unpublished, yet instructive case says:

> Section 147.140 is more narrowly tailored to . . . show that the plaintiff's claim at least has colorable merit.' That . . . is a . . . rationale for the sixty-day deadline. And it is consistent with . . . allowing dismissal with prejudice, a remedy our courts have traditionally considered a "harsh" consequence for noncompliance.

McHugh v. Smith, No. 20-0724, 2021 WL 1016596, at *4 (Iowa Ct. App. Mar. 17, 2021) Iowa Code § 147.140(6).

As well as requiring early preparedness in litigation, the Court also notes the legislature's deliberate mandating of dismissal with prejudice for noncompliance as written in the statute. By placing the language, "shall result, upon motion, in dismissal with prejudice" the legislature has completely removed any judicial discretion that would be potentially exercised by the judiciary with regard to penalty for noncompliance. Iowa Code Ann. § 147.140(6). As Defendants point out in their brief, using "shall" instead of "may" implicates mandatory action instead of permissive or discretionary.

In considering the language the Court concludes the purpose and intent of the Section 147.140 is to protect healthcare professionals from having to defend themselves against frivolous lawsuits by requiring early certificates of merit and imposing harsh penalties for noncompliance. The Court finds permitting plaintiffs to circumvent compliance and avoid the harsh penalty simply by dismissing and refiling is contrary to the intent and completely enfeebles the efforts of the legislature in enacting the 2017 amendments.

ii. *Venard v. Winter* is Pre-2017 Amendments and is Distinct

The case Defendant relies on is *Venard v. Winter*, 524 N.W.2d 163 (Iowa 1994). In *Vernard*, the Supreme Court of Iowa held a Plaintiff was permitted voluntary dismissal in order to avoid the consequences of noncompliance with 668.11. The Court finds this case is distinct from the instant case and does not control.

First, occurring in 1994, *Vernard* was decided before the 2017 Amendments. The 2017 Amendments apply to "causes of action that accrue on or after the effective date of this act." 2017 Ia. SF 465; Iowa Code § 147.140. *Vernard* only discusses Section 668.11 which governs time deadlines for expert witnesses in general. At the time of *Vernard*, Section 147.140 was not in existence. Section 668.11 is the more general section which governs expert witnesses and was used for medical malpractice cases prior to the 2017 enactments. The specialized and targeted Section 147.140, enacted specifically to apply to actions against healthcare professionals and designed to be layered over the existing Section 668.11, was not considered at the time *Vernard* was ruled upon.

Secondly, in its ruling, the *Vernard* court reasons that, "Section 668.11 says *nothing* about dismissal of *any* lawsuit. We have said that this section is 'procedural or remedial rather than substantive.'" *Venard v. Winter*, 524 N.W.2d 163, 167 (Iowa 1994). In contrast, to Section 668.11, Section 147.140(6) clearly mentions dismissal, outlining mandatory dismissal with prejudice for noncompliance. The Court finds this particular reasoning used in *Vernard* not applicable to Section 147.140 and is another way the case is distinguished from the current case.

The *Vernard* court goes on to say, "[i]f . . . the legislature intended a relationship between rule 215 [dismissal statute] and section 668.11, it could easily have said so. *Id.* at 167. Again in contrast, Section 147.140 explicitly contains dismissal language and also explicitly sets out a relationship between Section 147.140 and Section 668.11 by stating, "The parties shall comply with the requirements of section 668.11 and all other applicable law governing certification and disclosure of expert witnesses." Iowa Code Ann. § 147.140(3).

While the Court affirms Plaintiff's absolute right to voluntary dismissal pursuant to Iowa R. Civ. P. 1.943, the Court finds that allowing plaintiffs to blatantly utilize this right to avoid the consequences of noncompliance with 147.140 is glaringly against the objective and intent of the legislature in enacting Section 147.140 in 2017. In this case, Plaintiff used his voluntarily dismissal after Defendants made their motion to dismiss with prejudice pursuant to Section 147.140.

Rather than seeking to abridge or minimize Plaintiff's absolute right to voluntary dismissal, as was the concern in *Vernard*, the Court is concerned with the preservation of the intent and purpose of Section 147.140 in its application to medical malpractice cases. Just as Section 147.140 is uniquely written and applicable only to malpractice actions against healthcare professionals, so should its provisions and penalties be uniquely applied to such cases. Consequently, in the context of a medical malpractice case that is subject to Section 147.140, because Plaintiff did not file the certificate of merit in a timely manner, did not file for an extension or attempt to show good cause, and Defendants' Motion for Summary Judgment was made, the Court finds Plaintiff did not substantially comply and dismissal with prejudice is appropriate on this basis.

b. <u>Jenni Ed and Emily Gorman argue that Michael and Andrea's vicarious claims should also be dismissed</u>.

Michael and Andrea Dickey's claims include claims for medical expenses and loss of income related to Reed's medical care and treatment, loss of services, companionship and society, and emotional distress due to the alleged negligence of Jenni Ed and Emily Gorman. Jenni Ed and athletic trainer Gorman argue the claims by Michael and Andrea should be dismissed because the statute of limitations ran on Reed's claims against them and Michael and Andrea's claims directly derived from Reed's claims as theirs would not exist but for Reed's claims. The Court will address all the Defendants Statute of Limitations arguments below.

c. <u>Dismissal Due to Failure to Serve Proper Notice on Emily Gorman</u>

The Court finds from a review of the filings that Emily Gorman was properly served on February 25, 2021, and dismissal is not appropriate on this basis.

III. Defendant Jeremy Hoff's Pre-Answer Motion to Dismiss

a. <u>Dismissal Due to Noncompliance With Iowa Code § 147.140</u>.

The question before the Court concerning referee Hoff's motion on this subject is, does it apply? If it does, his motion should be sustained just as Jenn Ed's and Emily Gorman's. The Dickeys argue that referee Hoff is not a healthcare provider, but a wrestling official, and therefore they were not required to file a certificate of merit in the first case. Referee Hoff, on the other hand, argues he is a "healthcare provider" within the meaning of 147.140.

In pertinent part to referee Hoff's argument, Iowa Code section 147.136A defines "health care provider" as "any . . . person or entity who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession." Iowa Code § 147.136A(1)(a). Reed, in the first case he filed, was pursuing an action against referee Hoff under Iowa Code section 280.13C for purportedly negligently allowing Reed to participate in a wrestling match after he exhibited signs, symptoms, and behaviors of a concussion or brain injury. Referee Hoff argues that Iowa Code section 280.13C imposes duties on contest officials surrounding concussions that include the administration of healthcare in the practice of their profession. Contest officials, such as referee Hoff, are required to complete training every two years regarding the "evaluation, prevention, symptoms, risks, and long-term effects of concussions and brain injuries." Iowa Code § 280.13C(3)(a). Referee Hoff further argues that Section 280.13C(5)(a) imposes a duty on contest officials to immediately remove a student from participation in an extracurricular interscholastic activity if the official "observes signs, symptoms, or behaviors consistent with a concussion or brain injury". § 280.13C(5)(a). Referee Hoff goes on to argue that because a "law of this state", not only authorizes or permits, but in this case, *requires* Hoff to remove a student from a match if he observes signs, symptoms, or behaviors consistent with a concussion or brain injury, he is in effect administering health care in the ordinary course of officiating a match and therefore falls within the definition of a "health care provider" in Iowa Code section 147.136A. The Court disagrees. While referee Hoff is required to undergo training every two years regarding the evaluation, prevention, symptoms, risks, and long-term effects of concussions and brain injuries and is required to remove a student from a wrestling match if he

observes those signs, he is not authorized or permitted by law to administer healthcare. Removal from a match is not "administering" healthcare. It is *removal* in order to allow someone else who is *trained* to administer care. Iowa Code section 280.13C(5)(b) goes on to state that if referee Hoff removes a student from a match, the student cannot return to participation or practice until the student has been evaluated by a *licensed* health care provider *trained* in the evaluation and management of concussions and other brain injuries. The Court does not find that referee Hoff is a Healthcare provider within the meaning of Iowa Code section 147.140 & 147.136A. Therefore his motion regarding this issue should be denied.

b. Hoff's Dismissal Request Due to Claim Preclusion under Iowa Rules of Civil Procedure 1.943

Referee Hoff secondly requests dismissal based on the theory of claim preclusion due to Reed voluntarily dismissing the initial petition in November of 2020. In support, referee Hoff argues that even though voluntary dismissals are generally without prejudice, the Court should still dismiss because Reed did not file the certificate of merit in time, which mandates dismissal with prejudice. Referee Hoff additionally asserts that because Reed did not file a resistance to referee Hoff's Motion for Summary Judgment, the combined effect of the failure to file a certificate of merit and the failure to file a resistance is a dismissal with prejudice.

For a defense of claim preclusion, the Court looks for three factors: "the parties in the first and second action were the same; the claim in the second suit could have been fully and fairly adjudicated in the prior case; and there was a final judgment on the merits in the first action." *Arnevik v. Univ. of Minnesota Bd. of Regents*, 642 N.W.2d 315, 319 (Iowa 2002) (internal citations omitted). "The absence of any one of these elements is fatal to a defense of claim preclusion." *Id.*

Due to the Court's finding that Section 147.140 is not applicable to referee Hoff and not available to bolster his contention that the first case was "effectively" dismissed with prejudice, the Court finds referee Hoff's defense of claim preclusion fails. While the first two factors may be argued

to exist, the Court finds the last factor, which requires a final judgment on the merits, has not been met.

Reed's voluntary dismissal of the first action is governed by Iowa Rule of Civil Procedure 1.943. Rule 1.943 clearly states "[a] dismissal under this rule **shall** be without prejudice, unless otherwise stated." Iowa R. Civ. P. 1.943. This is also reiterated in Rule 1.946 which states, "[a]ll dismissals **not** governed by rule 1.943 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise." Iowa R. Civ. P. 1.946 (emphasis added). Stated another way, dismissals governed by 1.943 are not considered to be a final adjudication on the merits. The Court finds that because Reed's voluntary dismissal is governed by Rule 1.943 and does not fall into any exception, there was never a final adjudication on the merits and claim preclusion does not attach. Furthermore, due to the Court's finding that the certificate of merit requirement is not applicable to referee Hoff, the Court rejects referee Hoff's argument that Reed's voluntary dismissal was with prejudice. Accordingly, claim preclusion does not attach and dismissal is not appropriate on this basis.

The Court will address referee Hoff's statute of limitations argument below.

IV. <u>All Defendants' Motions for Dismissal in Light of the Iowa Supreme Court's Supervisory Order Extending the Statute Of Limitations</u>

A brief recap of the relevant facts:

Reed suffered a head injury on December 7, 2018, during a high school wrestling match. He filed a lawsuit on December 6, 2019, against Jenni Ed and referee Hoff. Reed dismissed the lawsuit against Jenni Ed on September 23, 2020, and against referee Hoff on November 20, 2020. Reed, joined by his parents, filed a second lawsuit on December 11, 2020, this time adding athletic trainer Gorman, Coach Rutledge, and Lincoln Public Schools as Defendants. The statute of limitations for these types of claims is two years and ran on December 7, 2020. Under normal circumstances, the second lawsuit would now be barred because it was filed four days after the statute of limitations had run. Due to the impact of the COVID-19 National Pandemic, and in an effort reduce the spread of the coronavirus,

the Chief Justice of the Iowa Supreme Court issued Supervisory Orders on April 2, May 8, and May 22, 2020, tolling any statute of limitations for 76 days. Under the extension granted by the Supervisory Order, the deadline for filing the second lawsuit was February 24, 2021. All Defendants challenge the constitutionality of the Supervisory Order's tolling of the statute of limitations.

Under the Iowa Constitution, the powers of our government are divided into three different departments: the legislative, executive, and judicial, each distinct from the other, and "No person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted." Iowa Const. art. III, Three Separate Departments, § 1. The separation of powers doctrine is the very foundation of our constitutional system and is violated if one branch of government seeks to use powers granted by the constitution to another branch. *State v. Barker*, 116 Iowa 96, 108, 89 N.W. 204, 208 (1902); *State v. Phillips*, 610 N.W.2d 840, 842 (Iowa 2000).

The Legislature is vested with the authority to pass laws. Iowa Consti. Art. III, Legislative Department, § 2. The legislature may pass any kind of legislation it sees fit so long as it does not infringe the state or federal constitutions. *City of Waterloo v. Selden*, 251 N.W.2d 506 (Iowa 1977). Duly *elected* officials, after careful debate and compromise, adopted Iowa Code sections 614.1(2) and 614.1(9), which each set the statute of limitations for matters such as the ones at issue in this case at two years. Our Court has "long recognized that statutes of limitation have been enacted 'to afford security against stale demands, after the true state of the transaction may from a variety of causes, be either forgotten, or rendered incapable of explanation.' *Penley v. Waterhouse,* 3 Iowa 418, 441 (1856). 'The public has a legitimate interest in limiting time for bringing suits.' *Conner v. Fettkether*, 294 N.W.2d 61, 63 (Iowa 1980)."). "The legislative power to control the court's jurisdiction is the power to control what parties and cases may come before the court and when. *See In re Marriage of Mantz*, 266 N.W.2d 758, 759 (Iowa 1978); *Franklin v. Bonner*, 201 Iowa 516, 518, 207 N.W. 778, 779 (1926).

With these COVID related Supervisory Orders, Chief Justice Christensen tolled the statute of limitations for 76 days. The judicial department has constitutional authority to *supervise* and administer "all inferior judicial tribunals throughout the state" and has statutory authority to "prescribe all rules of pleading, practice, evidence, and procedure, and the forms of process, writes, and notices, for all proceedings in all courts of this state." Iowa Const. art. V, § 4., Iowa Code § 602.4201(1). Additionally, "Where the legislature *has not acted*, courts possess a residuum of inherent common-law power to adopt rules to enable them to meet their independent constitutional and statutory responsibilities." *See Iowa Civil Liberties Union v. Critelli* 244 N.W.2d 564, 569 (Iowa 1976) (en banc) (emphasis added).

In this case, the Legislature *had* acted by passing legislation setting the statute of limitations at two years, which the Governor then signed into law. With a worldwide pandemic at hand, should the Legislature have convened to extend the deadlines? Possibly. However, "Courts do not pass on the policy, wisdom, advisability or justice of a statute. The remedy for those who contend legislation which is within constitutional bounds is unwise or oppressive is with the legislature…."*City of Waterloo v. Selden*, 251 N.W.2d 506 (Iowa 1977).

In this case, the Supervisory Orders infringed upon the legislature's authority by changing the statues of limitations applicable to all cases brought in Iowa Courts and essentially created new law. This law making power was expressly given to the legislative branch, and has not been abrogated or delegated to the judicial branch even during extreme times such as the pandemic. The Court in attempting to balance the need to reduce the spread of the virus while conducting necessary business felt the need to toll the statutes of limitations. Neither the Constitution nor case law support the judicial branch having constitutional authority to issue orders altering statutes of limitations set by the legislature.

Without regurgitating the Defendants' well-reasoned briefs, the Court finds Iowa case law, including rulings from the Iowa Supreme Court itself, have also consistently supported strong separation of powers between the legislative, executive, and judicial branches while prohibiting one

branch from using the powers granted to another branch. *State v. Phillips*, 610 N.W.2d 840, 842 (Iowa 2000); *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs.*, 642 N.W.2d 255, 261 (Iowa 2002) (defining judicial power vested in the courts by the Iowa Constitution is "the power to decide and pronounce a judgment and carry it into effect.") The Court finds this is to be adhered to even in the face of the pandemic:

> It is fundamental to our system of government that the authority for courts to act is conferred by the constitution or by statute. Yet, it is equally fundamental that in addition to these delegated powers, courts also possess broad powers to do whatever is reasonably necessary to discharge their traditional responsibilities. This type of judicial authority is known as inherent power, and it is derived from the separation of powers between the three branches of government, as well as limited by it. Inherent powers are necessary for courts to properly function as a separate branch of government**, but cannot be used to offend the doctrine of separation of powers by usurping authority delegated to another branch of government.**

State v. Hoegh, 632 N.W.2d 885, 888 (Iowa 2001) (internal citations omitted) (emphasis added).

Here, the Supervisory Orders were issued in response to the ongoing COVID-19 pandemic and not in the face of any case or controversy before the court. The Court was exercising powers specifically designated to the legislature. As a result, the Court finds the Iowa Supreme Court has no constitutional authority to issue the supervisory order tolling the statute of limitations set by the Iowa legislature. Its issuance was therefore in violation of the doctrine of separation of powers as stated in the Iowa and U.S. Constitutions and the Court finds the Plaintiffs cannot utilize it to correct their otherwise untimely filing of the current action and equity does not save the their claims from dismissal. Acknowledging the unconstitutionality of the Iowa Supreme Court's supervisory order as a violation of separation of powers, the Court finds it has no effect on untimeliness of filing in this case.

CONCLUSION

In conclusion and for the aforementioned reasons, the Court finds dismissal appropriate in this case.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

All Defendants' Motion to Dismiss for Statute of Limitations having run is GRANTED.

Defendant Hoff's Pre-Answer Motion to Dismiss is:
DENIED in part as to violation of Iowa Code Section 147.140;
DENIED in part as to claim preclusion.
GRANTED in part as to statute of limitations.

Defendants Jennie Edmundsen Memorial Hospital, Methodist Jennie Edmundsen Hospital & Emily Gorman's Pre-Answer Motion to Dismiss is:
GRANTED as to noncompliance with Iowa Code Section 147.140.
GRANTED in part as to statute of limitations.

Defendants Lincoln Public Schools and Jeff Rutlege's Motion to Dismiss is:
DENIED in part as to failure to serve proper notice;
GRANTED in part as to lack of personal jurisdiction.
GRANTED in part as to statute of limitations.

State of Iowa Courts

Case Number	**Case Title**
LACV121204	REED DICKEY ET AL. VS JEREMY JOFF ET AL
Type:	DISMISSED PER COURT

So Ordered

Michael Hooper, District Court Judge,
Fourth Judicial District of Iowa

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