IN THE SUPREME COURT OF IOWA

NO. 22-0495
FRANKLIN CO. CASE NO. LACV501891

THE ESTATE OF DEANNA DEE FAHRMANN, by Executor Jeffrey A. Fahrmann; DENNIS C. FAHRMANN, by and through his Power of Attorney, Jeffrey A. Fahrmann; JEFFREY A. FAHRMANN, individually; and AMY J. FAHRMANN, individually, PLAINTIFFS/APPELLANTS
VS.
ABCM CORPORATION, an Iowa Corporation; KATHY MEYER-ALLBEE, individually; and LINSEY HENRY, individually, DEFENDANTS/APPELLEES

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR FRANKLIN COUNTY
HONORABLE GREGG R. ROSENBLADT, JUDGE

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. **Whether or not the Plaintiffs/Appellants substantially complied with Iowa Code § 147.140 regarding a Certificate of Merit Affidavit.**

II. **Whether or not dismissal of Plaintiffs/Appellants' Petition by the Iowa District Court was an undue prejudice to Plaintiffs/Appellants in light of the provisions of Iowa Code § 147.140.**

ROUTING STATEMENT

The case should be retained by the Supreme Court of Iowa. The case presents substantial issues of first impression and/or clarification with existing published opinions of the Court. Iowa R. App. P. 6.1101(2). The issues presented directly require clarification of the Court's opinion in *McHugh v. Smith*, 966 N.W.2d 285 (Iowa Ct. App. 2021). More specifically, Plaintiffs respectfully request that the Court retain this case for the following reasons: (1) it presents substantial issues involving conflict with published decisions of the Supreme Court of Iowa; (2) it presents substantial issues regarding first impression insofar as the Supreme Court of Iowa has not interpreted the provisions of Iowa Code § 147.140 and whether or not a plaintiff has substantially complied with the statute; (3) it presents fundamental and urgent issues of broad public importance that are likely to recur and require ultimate determination by the Supreme Court of Iowa; and (4) it presents questions of enunciating and evolving legal principles that require determination by the Supreme Court of Iowa. Iowa R. App. P. 6.1101(2). The need for the Court to clarify the ruling in *McHugh v. Smith*, for litigants, lawyers, and District Courts, cannot be overstated.

STATEMENT OF THE CASE

Nature of the Case. This is a wrongful death action brought by Plaintiffs the Estate of Deanna Dee Fahrmann, by Executor Jeffrey A. Fahrmann; Dennis C. Fahrmann, by and through his Power of Attorney, Jeffrey A. Fahrmann, Jeffrey A. Fahrmann, individually, and Amy J. Fahrmann, individually, against the former nursing facility, ABCM Corporation, an Iowa Corporation, and two of its principal involved officers and employees, Kathy Meyer-Allbee and Linsey Henry, for the negligence resulting in the death of Deanna Dee Fahrmann while in the care of the Defendants. Legally, the Defendants were required to provide competent care for Deanna Dee Fahrmann, and exercise reasonable care and steps to prevent a clinically obvious fall risk.

Plaintiffs' lawsuit sought the recovery of compensatory damages, emotional distress damages, and punitive damages, for the failure of the Defendants to exercise such reasonable care and steps to prevent a clinically obvious fall risk. Deanna Dee Fahrmann fell on more than one occasion from a lift chair in her room at ABCM Corporation's facility in Hampton, Iowa, and ultimately the last fall resulted in significant injury and her death.

More specifically, the Plaintiffs claimed that had ABCM Corporation taken away the lift controls from Deanna Dee Fahrmann, and implemented

appropriate fall prevention strategies that Deanna Dee Fahrmann would not have been injured from her falls, and the last fall would not have ultimately resulted in her death. Defendants contend that they were not negligent in the care of Deanna Dee Fahrmann, and are therefore not liable for her injuries and ultimate death.

As this is a wrongful death case against a medical care facility expert witness testimony is required for Plaintiffs to prove their case against the Defendants. Defendants contend that Plaintiffs did not comply with the requirements of Iowa Code § 147.140 for the timely filing of a Certificate of Merit Affidavit. Plaintiffs contend that their Initial Disclosures substantially complied with the requirements of Iowa Code § 147.140, and therefore a Certificate of Merit Affidavit was not required. Plaintiffs further contend that the Defendants' service of discovery requests prior to the timeframe in which a Certificate of Merit Affidavit abrogated the requirement for a Certificate of Merit Affidavit to be filed. Finally, Plaintiffs contend that even if they were not in compliance with Iowa Code § 147.140 that dismissal for the Petition was an undue prejudice to the Plaintiffs and that the District Court should have crafted an alternative outcome rather than dismissal.

Relevant Events of Prior Proceedings & Disposition of the Case in the District Court. On June 7, 2021, Plaintiffs filed their Petition in this

matter. (Petition) Plaintiffs' alleged professional negligence in Defendants' care and treatment of Deanna Dee Fahrmann. (Petition) Plaintiffs' alleged damages were compensatory damages, emotional distress damages, and punitive damages. (Petition)

Defendants filed their Answer on July 19, 2021, and the Parties agreed to a Trial Scheduling and Discovery Plan on August 16, 2021. (Answer and Trial Scheduling and Discovery Plan) Plaintiffs served their Initial Disclosures – consistent with the requirements of the Trial Scheduling and Discovery Plan – on September 1, 2021. (Notice of Initial Disclosures) Defendants served their Initial Disclosures and First Set of Interrogatories and First Set of Requests for Production of Documents on September 10, 2021. (Notice of Discovery Request and Notice of Serving Initial Disclosures) Defendants filed a Motion to Dismiss on October 28, 2021 alleging Plaintiffs were not in compliance with Iowa Code § 147.140. (Motion to Dismiss) Plaintiffs filed their Resistance on November 5, 2021. (Resistance to Motion to Dismiss and Attachment 1 to Resistance to Motion to Dismiss – Initial Disclosures and Attachment 2 to Resistance to Motion to Dismiss – Certificate of Merit Affidavit) Defendants filed their Reply in Support of Motion to Dismiss on November 11, 2021. (Reply)

The District Court held a telephonic hearing that was not reported by a court reporter on December 14, 2021. (Order Setting Hearing) The Court entered an Order dismissing the Petition on January 11, 2022. (Ruling on Defendants' Motion to Dismiss)

Plaintiffs filed their Motion to Reconsider, Enlarge, or Amend Findings on January 25, 2022. (Motion to Reconsider, Enlarge or Amend Findings, and Attachment A to Motion to Reconsider) Defendants filed their Resistance to the Motion to Reconsider, Enlarge or Amend Findings on February 4, 2022. (Resistance to Motion to Reconsider, Enlarge or Amend Findings) The District Court denied the Motion to Reconsider, Enlarge or Amend Findings on February 14, 2022. (Order Ruling on Plaintiffs' 1.904 Motion) The Plaintiffs filed their Notice of Appeal on March 13, 2022. (Notice of Appeal)

Summary of Appeal. Plaintiffs appeal on two separate grounds. First, Plaintiffs appeal on the grounds that they were in substantial compliance with the requirements of Iowa Code § 147.140, and therefore the Petition was improperly dismissed by the District Court. This argument was presented to the District Court in Plaintiffs' Resistance to the Motion to Dismiss, and Plaintiffs' Rule 1.904 Motion to Reconsider, Enlarge, or

Amend Findings. (Resistance to Motion to Dismiss and Motion to Reconsider, Enlarge, or Amend Findings)

Second, Plaintiffs assert that even if the District Court correctly found that they were not in substantial compliance with the requirements of Iowa Code § 147.140 that dismissal of the Petition with prejudice was an undue prejudice to the Plaintiffs and inappropriate under the circumstances. This argument was presented to the District Court in Plaintiffs' Resistance to the Motion to Dismiss, and Plaintiffs' Rule 1.904 Motion to Reconsider, Enlarge, or Amend Findings. (Resistance to Motion to Dismiss and Motion to Reconsider, Enlarge, or Amend Findings)

STATEMENT OF FACTS

On November 4, 2019 Deanna Dee Fahrmann tragically succumbed to injuries caused by a fall at Defendant ABCM Corporation's Rehabilitation Center of Hampton facility. (App. P. 006, ¶ 15) At the time of her passing Ms. Fahrmann was the proud mother of two children, namely Jeffrey A. Fahrmann and Amy J. Fahrmann, and the spouse of forty-three (43) years of Dennis C. Fahrmann. (App. P. 005 – 006, ¶¶ 13-14) Ms. Fahrmann had been a long term resident of the Rehabilitation Center of Hampton. (App. P. 006, ¶ 16) During her stay at the Defendants' facility her cognitive ability and mobility became limited. (App. P. 006, ¶ 16)

Out of concern for his mother's safety, Jeffrey A. Fahrmann expressed concern to the Defendants that Ms. Fahrmann had fallen from a remote control operated chair on at least one occasion, causing injury. (P App. P. 006, ¶ 17) The Defendants dismissed the concerns. (App. P. 006, ¶ 18) On October 5, 2019, Ms. Fahrmann fell from the remote controlled lift chair again, this time suffering severe injuries that ultimately resulted in her death. (App. P. 006, ¶¶ 4, 18-19) The Estate of Deanna Dee Fahrmann was opened on March 19, 2021 in Franklin County, Iowa, and Jeffrey A. Fahrmann was appointed as the Executor. (App. P. 006, ¶ 20)

APPELLANTS' ARGUMENTS

I. THE PLAINTIFFS SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF IOWA CODE § 147.140.

SCOPE & STANDARD OF REVIEW/PRESERVATION OF ERROR

The granting of a Motion to Dismiss and denial of a Motion to Reconsider, Enlarge, or Amend Findings are reviewed for correction of errors at law. *Fry v. Blauvelt*, 818 N.W.2d 123, 128 (Iowa 2012); *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 846 (Iowa 2010).

Error is preserved in the Plaintiffs' Resistance to Defendants' Motion to Dismiss, and Plaintiffs' Rule 1.904 Motion to Reconsider, Enlarge or Amend Findings, and all relevant corresponding pleadings, transcripts, and docket entries.

ARGUMENT

Plaintiffs substantially complied with the requirements of Iowa Code § 147.140 governing the early disclosure of expert opinions in professional negligence cases involving medical care facilities. Iowa Code § 147.140 provides as follows:

> **147.140 Expert Witness – certificate of merit affidavit**
>
> 1. a. In any action for personal injury or wrongful death against a health care provider based upon the alleged negligence in the practice of that profession or occupation or in patient care, which includes a cause of action for which expert testimony is necessary to establish a prima facie case, the plaintiff shall, prior to the commencement of discovery in the case and within sixty days of the defendant's answer, serve upon the defendant a certificate of merit affidavit signed by an expert witness with respect to the issue of standard of care and an alleged breach of the standard fo care. The expert witness must meet the qualifying standards of section 147.139.
>
> b. A certificate of merit affidavit must be signed by the expert witness and certify the purpose for calling the expert witness by providing under oath of the expert witness all of the following:
>
> (1) The expert witness's statement of familiarity with the applicable standard of care.
> (2) The expert witness's statement that the standard of care was breached by the health care provider named in the petition.
>
> c. A plaintiff shall serve a separate certificate of merit affidavit on each defendant named in the petition.
>
> . . .

> 6. Failure to substantially comply with subsection 1 shall result, upon motion, in dismissal with prejudice of each cause of action as to which expert witness testimony is necessary to establish a prima facie case.

Iowa Code § 147.140 (2021).

A. The Plaintiffs substantially complied with the requirements of Iowa Code § 147.140.

The Iowa legislature was silent as to the meaning of the phrase "substantial compliance" in the drafting of Iowa Code § 147.140. However, the inclusion of the phrase "substantial compliance" gives reason to believe that the Iowa legislature contemplated circumstances, similar to this case, in which a Certificate of Merit Affidavit was not filed, but a Plaintiff provided the pertinent information that would be found in a Certificate of Merit Affidavit to the defendants.

A Certificate of Merit Affidavit, as outlined in Iowa Code § 147.140(1)(b) is not akin to the disclosures commonly found in an expert's written report. An expert witness report is not required to be disclosed by Iowa law until one hundred eighty (180) days following the defendant's answer. Iowa Code § 668.11(a) Rather, the Certificate of Merit Affidavit is meant to be a preview for the defendants that there exists, somewhere in the world, an expert witness who will testify regarding the standard of care

applicable to the defendants' actions, and that the standard of care was breached. Iowa Code § 147.140(1)(b). The required content of a Certificate of Merit Affidavit are meant to be simplistic in nature as the statute contemplates that no discovery has been served, or completed, by either party at the time the affidavit is required by be disclosed and served upon a defendant.

Two principal requirements exist for a valid Certificate of Merit Affidavit: (1) that the expert witness is identified as being familiar with the standard of care applicable to the case and the defendants' actions, and (2) that the expert witness will proffer an opinion that the standard of care was breached by the defendant. Iowa Code § 147.140 does not require further explanation or discussion by the expert witness. In fact, in most cases such a discussion would be impossible given the early timing that a certificate of merit affidavit must be filed. Instead, it is expected, if not only possible, for an expert witness to assert the requirements of the Certificate of Merit Affidavit in generalities only.

The Court has previously had the opportunity to interpret the phrase "substantial compliance" in the context of Iowa Code § 668.11's expert witness disclosure requirements. The Court has found that substantial compliance means "compliance in respect to essential matters necessary to

assure the reasonable objectives of the statute." *Hantsbarger v. Coffin*, 501 N.W.2d 501, 504 (Iowa 1993) (quoting *Superior/Ideal, Inc. v. Bd. Of Rev.*, 419 N.W.2d 405, 407 (Iowa 1988)) Substantial compliance does not mean exact, precise, or completely ticking off every box in the statute for compliance.

The Court has more precisely examined the concept of substantial compliance in other areas of law. For instance, in *Hoekstra v. Farm Bureau Mut. Ins. Co.*, the Court found that the inclusion of a jury instruction defining compliance with the reporting requirements under a homeowner's insurance policy as "a reasonable, honest, complete, full and meaningful compliance with the terms of the policy on the party of the insured as opposed to literal, exact or perfect compliance" was appropriate. 382 N.W.2d 100, 107-08 (Iowa 1986) Likewise, in the context of contract law, substantial performance – similar to the concept of substantial compliance – has been found to mean "less than full and exact performance" by a party to a contract. *Clark v. Rodish*, 2003 Iowa App. LEXIS 111 (Iowa Ct. App. Feb. 12, 2003)

In fact, in a recent opinion, the Court explained that although a part did not follow the technical requirements of designating an expert witness in a seller disclosure case such "lack of compliance was harmless in light of the

information produced." *See Putman v. Walther* (Iowa Supreme Court April 29, 2022, No. 20-0195). The finding in *Putman* is similar to the facts of this case. The information produced in the Initial Disclosures was sufficient to place defendants on notice of the expert witness's opinions, and should not be grounds for dismissal of the case.

The purpose of the Iowa legislature in including the phrase "substantial compliance" in the statute is critical to understanding the intent of the overall statutory scheme of Iowa Code § 147.140. The overarching goal of the new statute is to ferret out unmeritorious claims prior to the parties engaging in expensive and protracted discovery. The purpose is not, however, to dispose of meritorious claims on the basis of a technicality or procedural rule. If a party engages in a reasonable and meaningful effort to comply with the statute then they have substantially complied with the requirements contained therein. *See e.g. Hoekstra*, 382 N.W.2d at 107-08; *Clark*, 2003 Iowa App. LEXIS 111 *5.

The Iowa Appellate Courts have considered the issue of compliance with Iowa Code § 147.140 in one particular instance – *McHugh v. Smith*, 966 N.W.2d 285 (Iowa Ct. App. 2021). In the *McHugh* case, the Iowa Court of Appeals found that the plaintiff did not substantially comply with the requirements of Iowa Code § 147.140 as they did not serve a Certificate of

Merit Affidavit until one hundred thirty-six (136) days after the defendant's answer was filed, did not respond to interrogatories for one hundred eighteen (118) days after they were served, and the initial disclosures filed by the plaintiff which failed to identify a single expert witness. *Id.* At 289-90. The facts of the *McHugh* case are significantly distinct from those in this case.

In this case, the Plaintiffs timely served their Initial Disclosures upon the Defendants. In their Initial Disclosures Plaintiffs identified Dr. Bruce Naughton as an expert witness. The disclosure states as follows:

> 4. Bruce Naughton, MD, 80 Depew Avenue, Buffalo, NY 14214. Dr. Naughton may be contacted through counsel. **Dr. Naughton will provide expert testimony and opinions** as to the cause of the injuries and cause of death of Ms. Fahrmann, **the appropriate standard of care** for Mrs. Fahrmann's care and treatment while a resident of the defendant entity, the damages suffered by Mrs. Fahrmann, **the violations of any applicable rules, standards or obligations of the defendant entity,** and **any and all other facts and opinions which have a bearing on this case**, and which are within his purview as an expert witness.

(emphasis added) (App. P. 046).

Unlike in *McHugh*, the Plaintiffs in this case clearly identify an expert witness – Dr. Bruce Naughton, M.D. The disclosure clearly identifies that Dr. Naughton will testify regarding the appropriate standard of care for the defendants, and the violations of the standard of care. (Plaintiffs' Initial Disclosures) There is no disagreement that

Dr. Naughton was properly identified as an expert witness in compliance with Iowa Code § 147.140(1)(a). Likewise, in substance, there is no disagreement that Dr. Naughton's disclosure identified the same requirements and terms of Iowa Code § 147.140(b)(1)-(2) in that it clearly states that he will testify regarding the standard of care – showing his familiarity with the same – and that he will testify the standard of care was breached – establishing the requirements of § 147.140(b)(2). The language of the Initial Disclosures closely mirrors the requirements of Iowa Code § 147.140. Arguably the only defect in the Initial Disclosure, when taken in comparison with the requirements of Iowa Code § 147.140(b), is that it is not in the form of an affidavit.

Similar to the circumstances in *Hantsbarger*, the Defendants in this case silently laid in wait for the Plaintiff not to file a Certificate of Merit Affidavit, and pounced on the opportunity to file their Motion to Dismiss. *See* 501 N.W.2d at 505-06. Similar to the findings in *Hantsbarger*, the Plaintiffs' actions in this case provide reasonable cause for the Court to excuse precise performance with the requirements of Iowa Code § 147.140. The *Hantsbarger* court established three factors in determining if good cause existed to

excuse exact performance by a plaintiff: (1) the seriousness of the deviation from the statute; (2) the prejudice to the defendant; and (3) the actions of the defendants' counsel. *Id.* At 505-06; *Hill v. McCartney*, 590 N.W.2d 52, 55 (Iowa Ct. App. 1998).

Taking each factor in turn, first, the seriousness of the deviation from the statute in this case is minor in nature. As discussed prior, the Plaintiffs' Initial Disclosures provided the defendants with each element of substantive information required by Iowa Code § 147.140. An expert witness was clearly identified who would testify both regarding the standard of care, and the breach of the standard of care by the defendants.

In addition, immediately upon receipt of the Motion to Dismiss the Plaintiffs cured the lack of a filing of a Certificate of Merit Affidavit by the service of such a Certificate of Merit Affidavit on the Defendants' counsel on October 29, 2021 – less than one full day after the error was realized. The Certificate of Merit Affidavit filed in this case mirrors the statute, and those filed and accepted by Courts across the State of Iowa in other cases. (Rule 1.904 Motion to Reconsider, Enlarge of Amend Findings)

Second, the Defendants neither claim any prejudice by the delayed filing nor could the Defendants establish such prejudice in this case. At the time that the Defendants filed their Motion to Dismiss the Defendants had not responded to discovery requests, trial was eighteen (18) months away – not scheduled until May 2023, and the error was immediately corrected. The timeline does not equate to establishing any cognizable prejudice. Instead, Defendants took the position at the District Court that the statute does not require them to establish prejudice to be entitled to the relief received. This is true. However, the same is true of Iowa Code § 668.11 in that the statute does not require a defendant to show prejudice to seek the exclusion of expert testimony. Yet, the *Hantsbarger* Court, and each appellate opinion considering the same issue thereafter, uniformly have read into that statute that prejudice to the defendant is one of the lynchpins of determining if good cause to excuse an error by a plaintiff exists. The same analysis should be applied here, and a cursory review of the facts demonstrates that they are in the Plaintiffs' favor.

Third, the actions of the defendant's counsel play a unique role in determining whether or not good cause exists to excuse a plaintiff's actions. In *Hantsbarger* the Court noted that although defense counsel

is not their "brother's keeper" of plaintiff's counsel's obligation to follow the statute, that the defendant cannot simply lie in wait and claim unfair prejudice either. The *Hantsbarger* Court drew comparisons of fact from that case, and a prior opinion in *Donovan v. State*. *Id.* At 505-06; *Donovan v. State*, 445 N.W.2d 763, 766 (Iowa 1989). In *Donovan*, the Court noted that the plaintiff did not designate expert witnesses until seven months after the deadline, failed to answer interrogatories seeking the same information required by the statute, failed to respond to correspondence from the defense counsel in the case, and failed to comply with a court order regarding expert disclosures. *Donovan*, 445 N.W.2d at 766. Instead, in *Hantsbarger*, the Court found that the designation of expert witnesses was one week delinquent, and no other aggravating factors existed. 501 N.W.2d at 505.

The same is true in this case. Although the lack of a Certificate of Merit Affidavit was slightly more than one week as in *Harntsbarger*, the Plaintiffs immediately cured the defect less than twenty-four (24) hours after being notified of the same. Plaintiffs worked diligently with defense counsel to complete initial discovery responses, timely provided their initial disclosures – which disclosed

the expert witness anyways – and immediately responded to counsel regarding the disclosure of expert witnesses. Arguably, had defense counsel made any effort to resolve the disputed matter prior to filing a Motion to Dismiss, Plaintiffs would have immediately realized the error and corrected it the same timeframe as their certificate of merit affidavit was filed on October 29, 2021. Unlike in *Donovan*, this case is akin to the actions of defense counsel in *Hantsbarger*, and good cause exists to excuse perfect compliance with the requirements of Iowa Code § 147.140, and find that Plaintiffs have substantially complied with the requirements of the statute.

II. The Plaintiffs are severely prejudiced by the District Court's Ruling.

SCOPE & STANDARD OF REVIEW/PRESERVATION OF ERROR

The granting of a Motion to Dismiss and denial of a Motion to Reconsider, Enlarge, or Amend Findings are reviewed for correction of errors at law. *Fry v. Blauvelt*, 818 N.W.2d 123, 128 (Iowa 2012); *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 846 (Iowa 2010).

Error is preserved in the Plaintiffs' Resistance to Defendants' Motion to Dismiss, and Plaintiffs' Rule 1.904 Motion to Reconsider, Enlarge or Amend Findings, and all relevant corresponding pleadings, transcripts, and docket entries.

ARGUMENT

The District Court dismissed the Plaintiffs' lawsuit with prejudice. (Ruling on Motion to Dismiss) In doing so, the Plaintiffs are barred from advancing a clearly meritorious claim against Defendants and are barred from recovery for their injuries. The intent of the legislature in Iowa Code § 147.140 is not fulfilled by this result.

The clear intent of the legislature in enacting Iowa Code § 147.140 was to reduce unmeritorious claims at the courthouse, and reduce defense costs for ferreting out such claims for defendants. That purpose has not been served by dismissal in this case. Rather, the opposite is true.

Plaintiffs claims, as shown by the Initial Disclosures and Certificate of Merit Affidavit, passed muster to proceed as a meritorious claim against the Defendants. Whether or not the Court, or a jury, would ultimately rule in the favor of Plaintiffs is irrelevant as Plaintiffs are, and were, entitled to their day in Court. That has been taken from them by a strict interpretation of a statute that has gone beyond its designed intentions.

The Court must consider the implications of reversal of its decision upon the parties, and litigants in the State. First, reversal will

cause no prejudice to the Defendants. It is fully expected that Defendants will complaint that if the Court breathes new life into these claims that they will incur additional costs in defending the same. That is not in and of itself a justification to support dismissal. It is further expected that Defendants will assert that reversal would undermine the intentions of the statute by abrogating the need for certificate of merit affidavits. Again this is hardly true. Reversal of the District Court's decision would not alter the statute in any way, but breathe the same life into meritorious claims the *Hantsbarger* Court did to ensure that justice is done on the merits of claims – not technicalities.

Second, reversal of the District Court's decision allows the facts and merits of a case which has substantial public policy and legal implications to move forward. Nursing home negligence is rapidly becoming a scourge in Iowa. Administrative penalties alone are an insufficient deterrent, and the only mechanism to truly hold offending parties responsible is the court system. If the Court allows the Defendants to shelter themselves behind a statute in which they have suffered no actual harm or prejudice it fails to do justice for not only these Plaintiffs, but countless other aggrieved parties. The purpose of

our civil justice system is ultimately to right wrongs. This is a wrong that should not go unpunished nor should the Defendants be allowed off the hook for their actions.

CONCLUSION

The dismissal of Plaintiffs' Petition should be reversed, and the Court should remand the case for further action consistent with the reversal of the District Court's Order.

APPELLANT'S REQUEST FOR ORAL ARGUMENT

Plaintiffs-Appellants hereby request to be heard in oral argument. Iowa Rule of Appellate Procedure 6.908.

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