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IN THE SUPREME COURT OF IOWA

NO. 25-0461

BETTY PEER,
Plaintiff-Appellant,

vs.

IRC II, INC. d/b/a THE SHORES, THE SHORES AT PLEASANT HILL, PLEASANT HILL THE SHORES AN IMMANUEL COMMUNITY (and related fictitious names), IMMANUEL, MYRA WALTERSDORF and UNKNOWN/UNNAMED STAFF PERSONAL,
Defendants-Appellees

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY LACL156259
THE HONORABLE HEATHER LAUBER

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did the district court correctly find that Iowa Code Section 147.140 applies to Plaintiff's negligence claims?

II. Did the district court correctly find Plaintiff failed to substantially comply with Iowa Code Section 147.140 because Dr. Meyer was not qualified under Iowa Code Section 147.139 to sign Plaintiff's certificate of merit?

III. Did the district court correctly grant summary judgment on Plaintiff's claims in their entirety?

ROUTING STATEMENT

Defendants agree that transfer to the Court of Appeals is appropriate under Iowa Rule of Appellate Procedure 6.1101(3) because this case involves the application of existing legal principles.

NATURE OF THE CASE

This is a medical negligence case involving care and treatment plaintiff Betty Peer ("Plaintiff") received while she was a resident at The Shores, an assisted living program operated by defendant IRC II, Inc ("The Shores"). Defendant Myra Waltersdorf ("Nurse Waltersdorf") was a registered nurse working at The Shores while Plaintiff was a resident. Plaintiff served certificates of merit as to both Defendants, signed by Nathaniel Meyer, M.D., a family practice and hospice physician. Plaintiff later designated Dr. Meyer as her only retained expert witness. Defendants moved to dismiss Plaintiff's claims under Iowa Code Section 147.140 because Dr. Meyer is not qualified to opine about Defendants' standards of care or breach under Section 147.139. Defendants also moved for summary judgment on the alternative grounds that Plaintiff lacked admissible evidence to establish a prima facie case against Defendants. The district court granted Defendants' motion and dismissed Plaintiff's claims in their entirety with prejudice. Plaintiff appeals that ruling.

INTRODUCTION

This appeal presents three issues. First, Plaintiff's claims require expert testimony to establish Defendants' standards of care and breaches of those standards, so Section 147.140 applies. Plaintiff's claims are for medical negligence. Medical negligence claims generally require expert testimony to establish the standard of care, and Plaintiff's claims do not meet the narrow exception to that rule. Negligence claims based on care in assisted living programs require expert testimony because the standard of care must balance competing considerations unique to assisted living. Plaintiff bases her claims on alleged negligence related to her care plan and Defendants' communication with her other health care providers. These specific kinds of allegations require expert testimony.

Second, Dr. Meyer, the physician who signed Plaintiff's certificates of merit, is not qualified to opine about Defendants' standards of care. Dr. Meyer is not licensed as a nurse, and he has never actively practiced or taught nursing, so he is not qualified to opine about Nurse Waltersdorf's standard of care. Dr. Meyer also lacks the relevant licensure, practical experience, or other specialized knowledge about assisted living to opine about The Shores' standard of care.

Third, the district court correctly dismissed Plaintiff's claims with prejudice. Plaintiff only plead negligence claims subject to Section 147.140. Because Dr. Meyer is not qualified under Section 147.139, Plaintiff did not substantially

comply with Section 147.140, so the district court was required to dismiss Plaintiff's claims with prejudice. Plaintiff failed to plead separate claims for breach of contract or regulatory violations. Even if Plaintiff plead such claims, she failed to identify any admissible evidence to support them. Thus, the district court correctly granted summary judgment on Plaintiff's claims. The Court should affirm the district court's dismissal of Plaintiff's claims with prejudice.

STATEMENT OF THE FACTS

This is a medical negligence case against The Shores and Nurse Waltersdorf[1] based on alleged negligence in the care and treatment provided to Plaintiff while she was a tenant at The Shores. *See generally*, D0001, Petition (7/27/2023). For purposes of their motion to dismiss, Defendants generally agree with Plaintiff's summary of the contents of the Petition. *See* Pl.'s Br. at 7-8. However, Defendants disagree that Plaintiff "entered into a contract with Defendants wherein Defendants were to provide certain and specific assisted living

[1] Plaintiff incorrectly asserts Nurse Waltersdorf was the Administrator of The Shores. Pl.'s Br., at 4. Plaintiff made no such allegation in the petition. *See* D0001. The record on Defendants' motion establishes that Nurse Waltersdorf was a registered nurse at all times relevant to this case. *See* D0022 Attach. 5, Def.s' Ex. 5 to MTD/MSJ (8/21/2024). As explained in more detail below, assisted living programs are different from nursing facilities in several important ways. One such difference is that assisted living programs need not have a licensed "Administrator" like nursing facilities. *Compare* Iowa Admin. Code r. 481-69.1-.39 *with* Iowa Admin Code r. 481-58.8 ("Each nursing facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity.").

services," Pl.'s Br. at 6, because Plaintiff's Petition failed to specify whether the contract was written or oral. *See* Iowa R. Civ. P. 1.418.

For purposes of Defendants' motion for summary judgment, Defendants further dispute Plaintiff's statement of fact regarding the alleged contract because Plaintiff offered no admissible evidence that such a contract exists. *See* Iowa R. Civ. P. 1.981(5) (noting the nonmoving party cannot rely on the allegations in its pleadings to resist summary judgment); Iowa R. App. P. 6.903(2)(a)(6) (requiring statements of fact to include citations to the record). Similarly, Defendants object to Plaintiff's statements regarding the Iowa Department of Inspections and Appeals investigation and sanction because Plaintiff offered no evidence of the citation beyond the allegations in the Petition. Pl.'s Br. at 8; Iowa R. Civ. P. 1.981(5).

Plaintiff's Statement of Facts also omits the relevant procedural background, which provides the necessary context to understand the district court's ruling. Plaintiff served certificates of merit on Defendants signed by Nathaniel Meyer, M.D., a family practice and hospice physician. D0022 Attach. 1-2, Ex. 1-2 to Def.s' MSJ/MTD (8/21/2024). In the certificates, Dr. Meyer states he is familiar with the standards of care applicable to Defendants and opined that the Defendants breached the standard of care. D0022 Attach. 2 at 1, 3, 5, 7.

Plaintiff designated Dr. Meyer as her only retained expert. D0011, Prelim. Expert Witness Cert. & Disclosure at 1-3 (4/29/2024). In his Rule 1.500(2)(b)

disclosure, Dr. Meyer opines various acts or omissions by Defendants constitute "a violation of the standard of care." *Id.* at 1-2. Dr. Meyer also opines Plaintiff's "wound-related issues, including the infections, amputation, and untimely death could have been avoided if the Defendants had not deviated from the appropriate standard of care in this case." *Id.* at 2. Dr. Meyer's disclosures state all of his opinions "are held within a reasonable degree of medical certainty," and in reaching his opinions, he relied on his "education, training, [and] experience." *Id.* at 2-3.

On August 21, 2024, Defendants filed a Motion to Dismiss and for Summary Judgment, along with a brief, statement of facts, and exhibits. D0021-23. Defendants moved to dismiss under Iowa Code Section 147.140(6) on grounds that Plaintiff's claims are all subject to Section 147.140, and Plaintiff did not substantially comply with Section 147.140 because Dr. Meyer is not qualified under Section 147.139. D0023 at 3-12. Defendant sought summary judgment because Plaintiff's claims require expert testimony and Plaintiff lacks the necessary expert testimony, so Plaintiff's proof is deficient as a matter of law. *Id.* at 13-16.

In her resistance, Plaintiff argued Section 147.140 does not apply to her claims because they are "related to contract and basic lack of communication between care providers" and are based on regulatory violations, so they do not

require expert testimony. D0028, Resistance to Def.s' MSJ/MTD at 1-2 (10/7/2024).

Defendants responded to each of Plaintiff's arguments in their reply. First, Defendants explained Plaintiff did not plead a breach of contract, and that any breach of contract claim merges into Plaintiff's negligence claim. D0032, Reply to Resistance to Def.s' MSJ/MTD at 2-4. Defendants also argued they were entitled to summary judgment on any breach of contract claim because Plaintiff offered no evidence of the terms of the contract, breach, or that any breach of contract caused her injury. *Id.* at 13-15.

Second, Defendants argued Plaintiff's negligence claims based on allegedly insufficient communication between Defendants and Plaintiff's other health care providers require expert testimony. *Id.* at 4-6.

Third, Defendants argued Plaintiff has no claims arising directly from the alleged regulatory violations, and expert testimony is necessary to make any connection between the regulations and Defendants' standards of care. *Id.* at 7-10. Defendants also explained they were entitled to summary judgment on any claims based on regulatory violations because Plaintiff offered no facts to support the existence of any violation or a causal relationship between any violation and Plaintiff's injuries. *Id.* at 14-16.

At oral argument, Defendants argued there were three types of claims before the court: negligence claims, contractual claims, and regulatory claims. D0040, Tr. Hearing on Def.s' MTD/MSJ at 3:23-4:2; 12:6-7; 14:7-9 (11/8/2024). The district court adopted this framework, asking Plaintiff to "start with the breach of contract and regulation claims and work backward." *Id.* at 18:12-14. Plaintiff argued the care plan was part of the contractual agreement between The Shores and the Plaintiff, and the agreement required Defendants to administer the stockings prescribed to Plaintiff. *Id.* at 18:23-19:12.

The district court took the matter under advisement and later issued a written ruling dismissing Plaintiff's claims in their entirety. D0034, Ruling on MTD/MSJ (2/17/2025). The court adopted Defendants' understanding that Plaintiff's arguments were based on three categories of claims: negligence claims, contract claims, and regulatory claims. *Id.* at 6.

With respect to Plaintiff's negligence claims, the court engaged in a detailed interpretation of Sections 147.139 and 147.140. *Id.* at 4-8. The court concluded Dr. Meyer is not qualified to opine about Defendants' standards of care or breaches under Section 147.139, so Plaintiff did not comply with Section 147.140 as to either Defendant. *Id.* at 8.

The court then turned to the contractual claims. It held Plaintiff failed to plead a breach of contract claim, and failed to provide any evidence of the terms of

the contract to avoid summary judgment. *Id.* at 8-9. As an additional ground for rejecting Plaintiff's contractual arguments, the district court also found Plaintiff lacked the necessary expert testimony to establish the causation element of a breach of contract claim. *Id.* at 9. The court's statement "that expert testimony may not be necessary for a jury to understand that a nurse should ensure that a patient timely and appropriately receives the items prescribed to that patient," *id.*, was in the context of its ruling on Plaintiff's breach of contract claim. The court was not discussing Plaintiff's negligence claims because it already disposed of those claims under Sections 147.139 and 147.140. *Id.* at 8.

Finally, the court addressed Plaintiff's regulatory claims. The court adopted Defendants' argument that, to any extent the regulatory claims are separate from Plaintiff's negligence claims, they fail due to the lack of any admissible expert testimony. *See id*. at 9 ("[F]or the reasons set forth in the defendants' briefing, the court finds that the defendants' violation of regulations does not alleviate Peer's need for expert testimony, particularly on the issue of causation."); D0032 at 7-10, 14. The district court granted Defendants' motion and dismissed Plaintiff's claims in their entirety with prejudice. D0034 at 9.

ARGUMENT

I. The district court did not err in finding Iowa Code Section 147.140 applies to Plaintiff's claims.

A. Error preservation

Plaintiff preserved error to the extent of the arguments raised in Plaintiff's resistance. *See State v. McClain*, 20 N.W.3d 488, 495-96 (Iowa 2025) ("Litigants may not raise issues … for the first time in an appeal." (citation omitted)); *Hartunian v. Kirkwood Cmty. Coll.*, 826 N.W.2d 516, 2012 Iowa App. LEXIS 1045, at *9 n.3 (Iowa Ct. App. 2012) (holding plaintiff's argument that the relevant statute did not apply on one ground did not preserve her argument on appeal that the same statute did not apply for a different reason).

The Court can affirm the district court's ruling on any ground raised below, even if it is not the ground relied upon by the district court. *See Chicago Cent. & Pacific R. Co. v. Calhoun Cnty. Bd. Of Sup'rs*, 816 N.W.2d 367, 373 (Iowa 2012) (noting appellate courts may "affirm a trial court on any basis appearing in the record and urged by the prevailing party."); *see also State ex rel. Dickey v Besler*, 954 N.W.2d 425, 432 (Iowa 2021) (citation omitted).

B. Standard of review

Defendants agree that appellate courts review motions for summary judgment and motions to dismiss for correction of errors at law. Pl.'s Br. at 8-9. Defendants disagree with Plaintiff's position that "correction of errors at law" is

the same as de novo review. *See id.* at 9 ("Legal issues such as these are reviewed de novo for errors at law."). Correction of errors at law and de novo are different standards of review. *See, e.g.*, *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 211 (Iowa 2018) (noting appellate courts review motions to dismiss and motions for summary judgment for corrections of errors at law, but if either type of motion is decided on a constitutional issue, the appellate court reviews it de novo).

Plaintiff's standard of review omits the standard for reviewing the district court's factual findings. Motions to dismiss under Section 147.140(6) are different from motions to dismiss under Iowa Rule of Civil Procedure 1.421. *Butler v. Iyer*, 978 N.W.2d 98, 2022 Iowa App. LEXIS 291, at *6, *19-*20 (Iowa Ct. App. 2022). Motions under Section 147.140 challenge the sufficiency of the plaintiff's certificate of merit, not the sufficiency of the pleadings, so they inherently require courts to consider facts outside the pleadings. *Id.* Appellate courts review factual findings in a motion to dismiss or a motion for summary judgment for substantial evidence in the record. *Id.* at *6, *22-*23; Iowa R. App. P. 6.904(3)(a) ("Findings of fact in a law action are binding upon the appellate court if supported by substantial evidence."); *Preferred Mktg. v. Le Mars Ins. Co.*, 908 N.W.2d 540, Iowa App. LEXIS 793, at *7 (Iowa Ct. App. 2017) (applying Rule 6.904(3)(a) in review of an order granting summary judgment).

C. Applicable law

Iowa's certificate of merit statute, Iowa Code Section 147.140, states in relevant part:

> 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 of care. The expert witness must meet the qualifying standards of section 147.139.
> …
> 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.

Given this plain language, Section 147.140 applies when:

> A plaintiff pleads (1) an "action for personal injury or wrongful death," (2) "against a health care provider," (3) which is "based upon the alleged negligence in the practice of that profession or occupation or in patient care," and (4) "includes a cause of action for which expert testimony is necessary to establish a prima facie case."

Struck v. Mercy Health Services-Iowa Corp., 973 N.W.2d 533, 539-41 (Iowa 2022) (quoting Iowa Code § 147.140(1)(a)).

On appeal, Plaintiff does not dispute that her claims satisfy the first three requirements. Instead, Plaintiff only argues Section 147.140 does not apply because her claims do not require expert testimony to establish Defendants' standards of care or breach. Pl.'s Br. at 10-14.

D. Plaintiff's negligence claims require expert testimony to establish Defendants' standards of care and breaches of those standards.

1. Plaintiff's characterization of the allegedly negligent conduct as "nonmedical, administrative, ministerial, or routine care" is irrelevant to whether expert testimony is required.

Professional negligence claims against health care providers generally require expert testimony to establish the defendant's standard of care and breach of that standard. *See Struck*, 973 N.W.2d at 539-41; *see also Cox v. Jones*, 470 N.W.2d 23, 26 (Iowa 1990) ("Professional liability cases, especially medical malpractice actions, require expert testimony of a technical nature concerning standards of care and causation."); *Johnson v. Genesis Med. Ctr.*, 696 N.W.2d 43, 2004 Iowa App. LEXIS 1265, at *12 (Iowa Ct. App. 2004) (holding a nurse's standard of care could not be established without expert testimony). The standard of care for a health care provider is the "reasonable care and skill as is exercised by the ordinary [member of that profession] of good standing under like circumstances." *Surgical Consultants, P.C. v. Ball*, 447 N.W.2d 676, 678 (Iowa Ct. App. 1989). Because the standard of care for health care providers is measured by the conduct of other similarly situated providers, the applicable standard of care is usually outside "the common understanding of the jury," so expert testimony is necessary. *Jorgensen v. Smith*, 2 N.W.3d 868, 880 (Iowa 2024) (quoting *Thompson v. Embassy Rehab. & Care Ctr.*, 604 N.W.2d 643, 646 (Iowa 2000)).

Plaintiff argues her claims do not require expert testimony because Defendants' alleged negligence in preparing the care plan, following the care plan, and communicating with Plaintiff's other health care providers is "nonmedical, administrative, ministerial, or routine care," which does not require expert testimony to establish. Pl.'s Br. at 12-13 (citing *Thompson*, 604 N.W.2d at 646). The Iowa Supreme Court recently clarified these characterizations of the conduct at issue are not useful:

> We emphasize that, in this context, the determination of whether expert testimony is needed should not depend on labels, such as whether hiring or firing a surgeon can be characterized as an "administrative" task. Rather, the necessity of expert testimony depends on whether the proper course of action is within the common understanding of the jury. Put another way, it depends on whether all the primary facts can be accurately and intelligibly described to the jury, and whether they, as persons of common understanding, are as capable of comprehending the primary facts and of drawing correct conclusions from them as are expert witnesses. If not, expert testimony is necessary.

Jorgensen, 2 N.W.3d at 880 (citation modified) (emphasis added). The exception to the expert testimony requirement in medical negligence cases is narrow. *See Kush v. Sullivan*, 836 N.W.2d 152, 2013 Iowa App. LEXIS 633, at *8 (Iowa Ct. App. 2013). For the reasons explained below, a lay jury is not qualified to determine Defendants' standards of care or breaches in the unique context of an assisted living program, and a lay jury is certainly not as qualified as an expert to do so. Thus, Plaintiff's claims do not fall within the narrow exception to the expert

testimony requirement in medical negligence cases, and the district court did not err in applying Section 147.140 to Plaintiff's claims.

2. Plaintiff's conduct demonstrates the need for expert testimony.

Plaintiff served certificates of merit signed by Dr. Meyer. D0022 Attach. 1. These would not have been necessary if Plaintiff's claims did not require expert testimony to establish Defendants' standards of care and breaches. In the certificates of merit, Dr. Meyer states, "As a result of my background, training, education, and professional experience, I am familiar with the standards of care applicable to Defendant[s.]" *Id.* at 1, 3, 5, 7; *see also* D0022 Attach. 2 (Dr. Meyer's CV setting forth his educational background and medical experience).

Plaintiff later designated Dr. Meyer to opine about Defendants' standards of care and alleged breaches of those standards. D0011. In his statement of opinions, Dr. Meyer addresses the Plaintiff's negligence allegations regarding the care plan and Defendants' communication with other providers, which Plaintiff now argues do not require expert testimony. *Id.* at 1-2. After setting forth his criticisms of Defendants, Dr. Meyer states, "All of the foregoing general opinions are held within a reasonable degree of medical certainty. In arriving at these general opinions, I am relying on my education, training, experience, the deceased's medical records, and the Petition in this case I have reviewed." *Id.* at 2-3.

When Dr. Meyer reached the opinions in his certificates of merit and expert report, he had a medical doctorate, two board certifications, and approximately twenty-five years of experience practicing medicine. *See* D0022 Attach. 3. Dr. Meyer expressly states that he bases his opinions about Defendants' standards of care and breaches on his education and experience, which a lay jury does not have. Thus, a lay jury is not "as capable of comprehending the primary facts and of drawing correct conclusions from them as" Dr. Meyer, so Plaintiff's claims require expert testimony to establish the applicable standard of care and breach, and Section 147.140 applies to Plaintiff's claims. *Jorgensen*, 2 N.W.3d at 880.

3. The unique nature of assisted living programs requires expert testimony to establish Defendants' applicable standards of care and breaches.

Assisted living programs provide services that strike a balance between meeting tenants' needs while also promoting tenants' dignity and independence. *See* 481 Iowa Admin. Code r. 481-69.1. Unlike nursing facilities or hospices, assisted living programs do not provide routine, around-the-clock nursing services. *Compare* Iowa Admin. Code r. 481-53.9, 58.19 (requiring 24-hour nursing services from hospices and nursing facilities) *with* Iowa Admin. Code r. 67.1, 69.1 (defining the "[h]ealth-related care" provided by assisted living programs as less than 28 hours per week of nursing services and other professional therapies); 69.23 (providing tenants who require more than 28 hours per week of health-related care

may not reside in an assisted living program). Given the higher level of medical care provided, patients of hospices and residents of nursing facilities must designate an attending physician to direct or manage their medical care. *See* Iowa Code §§ 135C.1; 135J.3(1); Iowa Admin. Code r. 481-53.6, 58.14. On the other hand, given the independence provided by assisted living programs, tenants need not designate an attending physician. *See generally* Iowa Code Chapter 232C; Iowa Admin. Code r. 481-69.1 et seq.

Assisted living programs, hospice programs, and nursing facilities all provide care to elderly or otherwise infirm individuals. However, the scope of services provided by assisted living programs, hospice programs, and nursing facilities varies significantly, so their standards of care are not the same. These distinctions would be lost on a lay jury, so expert testimony is necessary to explain them to the jury. In other words, a lay jury is not as capable as an expert to correctly determine:

(1) whether the standard of care required Defendants to create or follow a care plan;

(2) whether Defendants violated the standard of care in preparing Plaintiff's care plan; or

(3) what, if anything, the standard of care required Defendants to communicate to Plaintiff's other health care providers.

See Jorgensen, 2 N.W.3d at 880. Thus, Plaintiff's negligence claims require expert testimony, and Section 147.140 applies to them.

Other jurisdictions have recognized the unique nature of assisted living facilities requires expert testimony to establish the applicable standard of care for allegations that, on their surface, appear straightforward. For example, one appellate court affirmed a ruling that Minnesota's certificate of merit statute applied to claims against an assisted living facility because expert testimony was necessary to establish the standard of care for supervising the resident's shower usage:

> The claim of negligent supervision in this case does require specialized knowledge because in order to evaluate the duty of medical care or supervision owed by respondent to Jane Fridell, the jury would have to take into account her medical condition at the time of her death. Jurors would be expected to determine if and when respondent was duty-bound to enter Jane Fridell's apartment in the middle of the night, and under what circumstances her shower use was to be monitored. Jurors would need to rely on expert testimony regarding the medical condition of Jane Fridell and the standard of care owed to her by an assisted-living facility to make this determination. The district court did not err in concluding that appellant's claim of negligent supervision required expert testimony and was therefore not exempt from the requirements of [Minnesota's certificate of merit statute].

Fridell v. Commonbond Cmtys., Inc., 2008 WL 434616, 2008 Minn. App. Unpub. LEXIS 171, at *9 (Minn. Ct. App. 2008) (emphasis added).

Other courts have similarly required expert testimony for negligence claims against assisted living facilities because the applicable standard of care must account for the resident's medical condition and the scope of services provided by assisted living facilities, which are beyond the understanding of a lay jury without

expert testimony. *See, e.g.*, *Emeritus Corp. v. Highsmith*, 211 S.W.3d 321, 327 (Tex. App. 2006) (holding claims against assisted living facility based on negligence in supervising, monitoring, and protecting resident required expert testimony to establish the standard of care); *Stewart v. Civitas Senior Healthcare, LLC*, 2023 WL 2607762, 2023 Tex. App. LEXIS 1913, at *12-13 (Tex. App. 2023) (requiring expert testimony to establish assisted living facility's standard of care for monitoring the resident because determining the appropriate standard of care required medical judgments about the resident's condition and how frequently that condition needed to be monitored); *Frederick v. Billings Partners, LLC*, No. CV 21-07-BLG-SPW-TJC, 2022 U.S. Dist. LEXIS 239123, at *6 (D. Mont. Nov. 30, 2022) (requiring expert testimony to establish "the standard of care of an assisted living facility in providing for [the tenant's] oral hygiene, and in monitoring her urine and blood glucose levels" because the standard was "almost certainly beyond the common experience of the trier of fact.").

Simply put, Plaintiff's claims against Defendants require expert testimony to establish their standards of care and any breaches of those standards. Thus, Plaintiff's claims satisfy all four requirements in Section 147.140(1)(a), and Plaintiff was required to serve certificates of merit for her negligence claims against Defendants.

E. The specific allegations of negligence Plaintiff argues on appeal require expert testimony to establish Defendants' standards of care and breaches.

In her brief, Plaintiff argues her allegations of negligence with respect to her care plan and Defendants' communication with her other health care providers do not require expert testimony to establish the standard of care and breach. Pl.'s Br. at 13. In addition to the general requirement that negligence claims against assisted living programs (and their employees) require expert testimony, courts have also recognized Plaintiff's specific allegations require expert testimony to establish the applicable standard of care and breach.

1. Expert testimony is necessary to establish a health care provider's standard of care and breach of the standard for communicating with a patient's other health care providers.

Iowa courts have required expert testimony to establish the standard of care for communications between health care providers and a breach of that standard. In *Zaw v. Birusingh*, 974 N.W.2d 140, 159-161 (Iowa Ct. App. 2021), the court held expert testimony was necessary to establish a urologist's standard of care for "negligent communication" with the plaintiff's other health care providers and his staff. The court reversed the district court's denial of the urologist's JNOV motion because the plaintiff failed to present the necessary expert testimony. *Id.* Specifically, "no expert testified as to the standard of care for a urologist in obtaining information from outside care providers before performing a vasectomy"

and "no expert testified as to what steps a prudent doctor would take in talking to or meeting with his or her staff or coworkers before meeting with a patient or performing a procedure." *Id.* at 160-61. Similarly, the Iowa Court of Appeals held expert testimony was necessary to establish a nurse's standard of care for reporting changes in a patient's condition to a surgeon because the proper course of action was "not a matter of common understanding." *Johnson*, 2004 Iowa App. LEXIS 1265, at *12.[2]

In addition the relevant case law, courts also consider the content of an expert's disclosures to determine if a plaintiff's claims require expert testimony. *See Estate of Knop v. Mercy Health Servs. Iowa Corp*, 978 N.W.2d 815, 2022 Iowa App. LEXIS 379, at *6 (Iowa Ct. App. 2022) (holding plaintiff's claims required expert testimony based on the plaintiff's expert's deposition testimony, which clarified that "a normal layperson" would not "understand how the standard of care would differ for a fragile patient … without expert testimony.").

[2] These Iowa cases are consistent with cases from other jurisdictions requiring expert testimony to establish health care providers' standards of care for communications. *See, e.g., Perkins v. Susan B. Allen Mem'l Hosp.*, 146 P.3d 1102 (Kan. Ct. App. 2006) (holding claim that one x-ray technician was negligent in failing to communicate information about a patient to his replacement required expert testimony to establish the standard of care and breach); *Shadrick v. Grana*, 279 So. 3d 553, 557-58 (Ala. 2018) (holding claim that an internist/hospitalist was negligent in his communication with the patient's cardiologist required expert testimony).

Here, Dr. Meyer opines, "Defendants became aware of Ms. Peer not wearing the prescribed compression stockings, but failed to communicate this fact to any of the care providers. This is a violation of the standard of care," and "[t]he wound was never appropriately treated, addressed, documented, or communicated to others by the Defendants. This is a violation of the standard of care." D0011 at 2. As explained above, Dr. Meyer states all of his opinions "are held within a reasonable degree of medical certainty," and in reaching his opinions, he relied on his "education, training, [and] experience." *Id.* at 2-3. Because Dr. Meyer had to rely on years of training and experience to determine whether Defendants were negligent in their communication with Plaintiff's other medical providers, a lay jury is clearly not "as capable of comprehending the primary facts and of drawing correct conclusions" as Dr. Meyer. *Thompson*, 604 N.W.2d at 646. Thus, Plaintiff's claims based on alleged negligence in communication require expert testimony to establish Defendants' standards of care and breaches.

2. Expert testimony is necessary to establish a health care provider's standard of care and breach of the standard for creating or following a care plan.

In the context of nursing homes, many courts have found that developing care plans requires professional or medical judgment:

> Some patients need psychological treatment, while others require none. Some patients require enhanced supervision and additional staff or physical restraints to protect them from injuring themselves and others or to protect them from other patients, while other patients do not

> require such protections. The nature and intensity of care and treatment, including professional supervision, monitoring, assessment, quantities and types of medication, and other medical treatment are judgments made by professionals trained and experienced in treating and caring for patients and the patient populations in their health care facilities.

Diversicare Gen. Partner, Inc. v. Rubio, 185 S.W.3d 842, 850 (Tex. 2005). Because lay jurors do not know the "myriad of other questions that may need to be asked, much less answered, in making such professional judgments," the standard of care for making and following a care plan requires expert testimony. *Id.* at 851; *see also Guillory v. Royal, Inc.*, 971 So. 2d 1234, 1235-37 (La. Ct. App. 2007) (dismissing plaintiff's claims, including claims for "failing to follow doctor's orders" and "failing to follow the plan of care" for lack of expert testimony); *Ortiz v. St. Teresa Nursing & Rehab. Ctr., LLC*, 579 S.W.3d 696, 707 (Tex. App. 2019) (noting care plans are generally not "within a lay juror's common understanding," so expert testimony is required to establish the standard of care for alleged negligence regarding the care plan); *De Zacks v. Tendercare, Inc.*, 2005 WL 1788077, 2005 Mich App. LEXIS 1792, at * 11 (Mich. Ct. App. July 28, 2005) (holding plaintiff's claim that defendant was negligent in creating the resident's care plan required expert testimony to "establish whether the decedent indeed required more intensive care.").

As explained above, assisted living facilities provide a lower level of care and services than nursing homes, which allows residents greater independence and

freedom. In this context, the only way a lay jury would know if an assisted living program is required to create a care plan, what needs to be in that plan, or how closely it must follow that plan, is through expert testimony. Thus, all of Plaintiff's negligence allegations require expert testimony to establish Defendants' standards of care and breach, so Section 147.140 applies to Plaintiff's claims in their entirety.

F. The district court correctly held Plaintiff only plead negligence claims.

In her resistance, Plaintiff appeared to argue she plead claims for breach of contract and for regulatory violations separate from her negligence claims. D0028 at 1-2. On appeal, Plaintiff's Statement of Facts refers to a contract and to a regulatory sanction, Pl.'s Br. at 6-8, but Plaintiff offers no argument or authority on these issues. Thus, Plaintiff waived any argument that claims based on an alleged breach of contract or regulatory violation do not require expert testimony. *See* Iowa R. App. P. 6.903(2)(a)(8)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."); *Marchesano v. Dillon*, No. 24-1931, 2025 Iowa App. LEXIS 703, at *10 (Iowa Ct. App. Aug. 6, 2025) ("Matthew has failed to provide legal authority support for this argument. He has therefore waived the issue."). Regardless, Plaintiff failed to plead any claims other than negligence claims, so any argument that Plaintiff plead claims that do not require expert testimony fails as a matter of law.

1. Plaintiff did not, and cannot, plead claims for breach of contract.

a. Plaintiff failed to plead breach of contract as a matter of law.

Iowa Rule of Civil Procedure 1.418 requires that "[e]very pleading referring to a contract must state whether it is written or oral." Plaintiff's Petition references a contract, but does not state whether it was written or oral. D0001 at ¶ 13. Thus, Plaintiff has not properly plead any contractual claims, so she cannot prevail on any contractual theory at trial. *See Peterson v. Bottomley*, 582 N.W.2d 187, 188-89 (Iowa 1998) (reversing judgment based on theory not pleaded).

b. Any breach of contract claim fails as a matter of law because it merges into Plaintiff's negligence claims.

The nature of a claim "turns on the nature of the right sued upon and not on the elements of relief sought for the claim." *Kostoglanis v. Yates*, 956 N.W.2d 157, 159 (Iowa 2021) (citation omitted). When the substance of a breach of contract claim is that the defendant violated a standard of care, the court must treat it as a negligence claim. *See id.* at 160-62 (affirming summary judgment based on the statute of limitations for medical malpractice claims despite plaintiff's attempt to characterize the claim as a breach of contract); *Kemin Industries, Inc. v. KPMG Peat Marwick, LLP*, 578 N.W.2d 212 (Iowa 1998) (holding a professional negligence claim subsumed a related breach of contract claim because "[a]lmost all relationships involving professional services" involve a contractual relationship, and "a claim that a provider of professional services has failed to meet the standard

of care that the law has placed on that party is essentially a negligence cause of action.").[3]

Courts must eliminate professional negligence claims masquerading as breach of contract claims because permitting such claims undermines legislative efforts to regulate professional negligence claims. *See Kostoglanis*, 956 N.W.2d at 159-62 (refusing to allow plaintiff to characterize claim as a breach of contract to avoid the shorter statute of limitation adopted by the legislature for medical negligence claims); *Kemin*, 578 N.W.2d at 221 (finding claim against accountant was a negligence claim, not a breach of contract claim because "[t]o hold otherwise would render inapplicable those provisions under chapter 668 that are specifically tailored to actions involving professional negligence." (citing Iowa Code § 668.11)); Cady & Sisk, 16 Ia. Prac., Lawyer & Judicial Ethics § 13:9(a) (noting a claim against a lawyer for unsatisfactory performance "should be treated

[3] *See also Millwright v. Romer*, 322 N.W.2d 30, 32 n.1 (Iowa 1982) (noting the "contract theory 'is conceptually superfluous since the crux of the action must lie in tort in any case; there can be no recovery without negligence'") (citation omitted); *Long v. Jensen*, 522 N.W.2d 621, 624 (Iowa 1994) (finding tenant's claim against landlord was for negligence, not breach of contract; the contractual agreement to keep the property repaired "merely establishe[d] the duty element of the negligence cause of action"); *Timmerman v. Eich*, 809 F. Supp. 2d 932, 955 (N.D. Iowa 2011) (granting summary judgment on a warranty claim, as the parties agreed it was subsumed by the professional negligence claim under *Kemin*); Mark S. Cady & Gregory C. Sisk, 16 Ia. Prac., Lawyer & Judicial Ethics § 13:9(a) (2017) ("[B]ecause a tort theory of liability more readily accommodates the recovery for lawyer negligence, a complaint by a client based upon unsatisfactory performance by the lawyer ordinarily must be stated under tort law … .").

as one in tort and thus subject to the statute of limitations for professional negligence and to the rules of comparative fault.").

The Iowa Court of Appeals recently affirmed the dismissal of a plaintiff's breach of contract claims under Section 147.140 when the plaintiff's "claim for professional negligence and her breach-of-contract claim [were] based on the same alleged deficiencies in the medical care and treatment she received." *Jones v. Mercy Hosp.*, 20 N.W.3d 848, 2025 Iowa App. LEXIS 223, at *17-*18 (Iowa Ct. App. 2025). The court concluded, "at its heart, the breach-of-contract claim is just a repackaged assertion that Jones suffered damages due to alleged negligence in the medical care and treatment provided by Mercy[,]" so Section 147.140 applied to it. *Id.* at *18.

Plaintiff alleges she "entered into a contract with Defendants wherein Defendants were to provide certain and specific assisted living services." D0001 at ¶ 13. Plaintiff then lists the same conduct as both allegations of negligence and failures to provide contractual services. *Id.* at ¶¶ 13, 32. In response to Defendants' motion, Plaintiff tried to avoid Section 147.140 by recharacterizing her negligence claims as breaches of contract. Allowing Plaintiff to do so would have improperly undermined the legislature's efforts to regulate negligence claims against health care providers. *See Kemin*, 578 N.W.2d at 221; *Jones*, 2025 Iowa App. LEXIS 223, at *17-*18. Thus, the district court did not err in looking for the true nature of

Plaintiff's claim and holding "[Plaintiff] has not pled a breach of contract claim. Instead, she has brought a medical negligence claim, asserting that The Shores failed to properly treat her foot wound." D0034 at 8-9.

2. Any claims based on regulatory violations are still negligence claims that require expert testimony.

a. The regulations do not create independent causes of action.

In her resistance, Plaintiff argued her claims do not require expert testimony because Defendants allegedly violated their regulatory obligations. D0028 at 2. In effect, Plaintiff argued she does not need expert testimony to establish the standard of care because she can sue Defendants for violating the regulations. Both below and on appeal, Plaintiff cites no authority, and her position is incorrect as a matter of law.

"'Not all statutory violations give rise to a private cause of action.'" *Shumate v. Drake University*, 846 N.W.2d 503, 507 (Iowa 2014) (quoting *Mueller v. Wellmark, Inc*., 818 N.W.2d 244, 254 (Iowa 2012)). The violation of a statute will give rise to a private cause of action "'only when the statute, explicitly or implicitly, provides for such a cause of action.'" *Id.*; *see also Rose v. Martin Luther Home*, 2018 WL 1935867, at *5 (N.D. Iowa Apr. 24, 2018) ("The majority of courts to consider whether [federal nursing home laws and regulations] confer a private right of action … have concluded that they do not."); *Eickmeyer v. State,* 2003 WL 1969327, at *2 (Iowa Ct. App. 2003) (holding there was no private cause

of action for violation of nursing facility statute, Iowa Code § 135C.37, and noting "none of the remedies authorized in the chapter is expressly made available through a private cause of action").

There is nothing in Iowa Code Chapters 147, 152, 231C, or the regulations implementing those chapters, expressing any legislative intent to allow patients or residents to recover damages for violations of the statutes or regulations. To the contrary, these chapters explicitly include other criminal, administrative, and injunctive remedies, but do not create private civil causes of action. *See* Iowa Code §§ 147.83-.86, 152.101, 231C.13-.14. The express inclusion of other remedies shows the legislature did not intend to create the private cause of action Plaintiff seeks to assert. *See Meinders v. Dunkerton Comm. Sch. Dist.,* 645 N.W.2d 632, 636-37 (Iowa 2002) (by providing numerous other remedies for a violation of Iowa Code § 279.13, the legislature expressed its intention to not create a private civil cause of action); *Marcus v. Young*, 538 N.W.2d 285, 289-90 (Iowa 1995) (because the legislature provided other remedies for violations of Iowa's open records law, it did not intent to create a private cause of action for negligent dissemination); *Sanford v. Manternach*, 601 N.W.2d 360, 371 (Iowa 1999) (the fact that the express relief in the post-conviction relief statute did not include a private cause of action established the legislature did not intend to create any such cause of action). In short, Plaintiff cannot sue Defendants for violating any applicable regulation;

she must establish their standards of care and breaches of those standards through expert testimony.

b. The only conceivable relevance of the regulations is as evidence of Defendants' standards of care in Plaintiff's negligence claims, but Plaintiff's negligence claims would still require expert testimony.

Because the regulations applicable to nurses and assisted living programs do not create private rights of action, the regulations' only conceivable relevance is as evidence of the Defendants' standards of care. However, regulations, standing alone, do not establish health care providers' standards of care. *See Bedell v. Williams*, 386 S.W.3d 493, 499 (Ark. 2012) (noting that Medicare and Medicaid regulations are "rule[s] that nursing homes must follow to qualify for participation in Medicare and Medicaid" but do not "create a duty in tort."); *Satterwhite v. Reilly*, 817 So. 2d 407, 412, (La. Ct. App. 2002) ("Nothing in the [Medicare] regulation sets forth a standard of care for medical directors; the purpose is plainly to qualify providers for the Medicare and Medicaid programs."); *Banger ex rel. Freeman v. Magnolia Nursing Home, L.P.*, 234 F. Supp. 2d 633, 638 (S.D. Miss. 2002) (holding state and federal regulations of nursing homes "exist to provide guidelines and procedures, *not to create a legal standard of care for purposes of creating civil litigation*." (emphasis added)); *DeHart v. Jones*, 310 So. 3d 658, 697 (Fla. Ct. App. 2020) (rejecting argument that Medicare regulations impose a nondelegable duty on hospitals to provide nonnegligent medical care).

The only way regulations can conceivably be relevant to a health care provider's standard of care is through qualified expert testimony. In *Van Iperen v. Van Bramer*, 392 N.W.2d 480, 486 (Iowa 1986), the Iowa Supreme Court held hospital accreditation standards "without additional reliable interpretative data" did not generate a jury question on a claim the hospital was negligent in failing to adopt procedures required under the regulations. Relying on *Van Iperen*, the court later clarified, "to be admissible as some evidence of the standard of care, these accreditation standards must be authenticated and made relevant to the issue by appropriate expert testimony." *Glenn v. Carlstrom*, 556 N.W.2d 800, 803 (Iowa 1996).

Contrary to Plaintiff's argument below, courts have found the existence of applicable regulations creates, rather than obviates, the need for expert testimony to establish the standard of care. *See Rosemont, Inc. v. Marshall*, 481 So. 2d 1126, 1130 (Ala. 1985) (finding expert testimony necessary to establish the standard of care for "intermediate nursing care facilities" because the standard of care "by necessity, would be influenced by a number of considerations, *inter alia*, the applicable state and federal regulations governing such facilities, physician-imposed restrictions, and policy determinations within the industry."); *Yamin v. Baghel*, 284 A.D.2d 778, 779 (N.Y. App. Div. 2001) (noting the standard of care for fall prevention required expert testimony because it required consideration of

the standard of care for similar facilities in the community as well as state and federal regulations regarding the use of restraints).

As a matter of law, the regulations applicable to Defendants are only relevant to their standards of care for Plaintiff's negligence claims if made relevant by admissible expert testimony. Thus, even assuming Defendants violated some applicable regulation, Plaintiff's claims still sound in negligence and require expert testimony to establish Defendants' standards of care, so Plaintiff's claims are all subject to Section 147.140.

In summary, Plaintiff only plead negligence claims for personal injury against two health care providers. Those claims are based upon alleged negligence in Defendants' profession, occupation, or in patient care, and Plaintiff's claims, in their entirety, require expert testimony to establish Defendants' standards of care and breaches. Thus, Iowa Code Section 147.140 applies to Plaintiff's claims in their entirety.

II. The district court correctly held Dr. Meyer is not qualified to opine about Nurse Waltersdorf's or The Shores' standards of care or breaches of those standards.

A. Error preservation

Plaintiff offers only conclusory statements, without any citation to the record or reasoning, to support her argument that Dr. Meyer is qualified under Section 147.139. Pl.'s Br. at 13-14. Thus, the Court should deem this issue waived. *See*

Iowa R. App. P. 6.903(2)(a)(8)(3) (requiring an appellant's arguments to include "references to the pertinent parts of the record" and stating "Failure to cite authority in support of an issue may be deemed waiver of that issue."); *Christopher v. St. Luke's United Methodist Church of Dubuque*, No. 23-2117, 2025 Iowa App. LEXIS 440, at *15 n.7 (Iowa Ct. App. May 7, 2025) ("Insufficiently developed arguments are waived on appeal." (citing *Baker v. City of Iowa City*, 750 N.W.2d 93, 102-03 (Iowa 2008))). Addressing this issue on the merits would improperly force the court to speculate as to the arguments Plaintiff might have made and place the court in the partisan role of researching and advocating on behalf of Plaintiff. *See Hyler v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996); *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974).

The Court can affirm the district court's ruling on any ground raised below, even if it is not the ground relied upon by the district court. *See Chicago Cent. & Pacific R. Co*, 816 N.W.2d at 373; *Dickey*, 954 N.W.2d at 432.

B. Standard of review

Defendants restate the standard of review set forth in Section I(B).

C. Applicable law

A qualified expert witness must sign a plaintiff's certificate of merit. Specifically, the expert witness must meet the qualification requirements in Iowa

Code Section 147.139. Iowa Code § 147.140(1)(a). Section 147.139 provides, in relevant part:

> [T]he court shall only allow a person the plaintiff designates as an expert witness to qualify as an expert witness and to testify on the issue of the appropriate standard of care or breach of the standard of care if all of the following are established by the evidence:
>
> 1. The person is licensed to practice in the same or a substantially similar field as the defendant, is in good standing in each state of licensure, and in the five years preceding the act or omission alleged to be negligent, has not had a license in any state revoked or suspended.
>
> 2. In the five years preceding the act or omission alleged to be negligent, the person actively practiced in the same or a substantially similar field as the defendant or was a qualified instructor at an accredited university in the same field as the defendant.

The party offering an expert has the burden to establish the expert's qualifications. *Ranes v. Adams Labs., Inc.*, 778 N.W.2d 677, 686 (Iowa 2010).

In addition to the specific expert requirements in Section 147.139, a plaintiff's expert in a medical negligence case must also meet the expert qualification standards in Iowa Rule of Evidence 5.702 to testify at trial. *See Tappe v. Iowa Methodist Med. Ctr.*, 477 N.W.2d 396, 402 (Iowa 1991) (citing both a prior version of Section 147.139 and Rule 5.702 in affirming the district court's exclusion of testimony by the plaintiff's expert). A witness can only offer opinions under Rule 5.702 if the witness is "is qualified as an expert by knowledge, skill, experience, training, or education[.]" It is not enough that a witness has some

broad expertise, the witness must be specifically "qualified to answer the particular question propounded." *Tappe*, 477 N.W.2d at 402.

D. The district court correctly held Dr. Meyer is not qualified to opine about Defendants' standards of care or breaches of those standards.

Even if Plaintiff preserved this issue, the district court did not err in finding Dr. Meyer unqualified under Section 147.139, and Dr. Meyer is also not qualified under Rule 5.702. Plaintiff was required to disclose "A complete statement of all opinions [Dr. Meyer] will express and the basis and reasons for them[,]" as well as Dr. Meyer's qualifications to offer those opinions. Iowa R. Civ. P. 1.500(2)(b). Plaintiff elected to rely on her April 29, 2024 expert designation, which provided no information about Dr. Meyer's qualifications beyond the CV Dr. Meyer attached to his certificate of merit. D0011 at 3; D0022 Attach. 1-3. Dr. Meyer's CV shows he is a physician with board certifications in Family Practice and Hospital and Palliative Medicine. D0022 Attach. 2 at 1. He also serves as the medical director of a nursing home and a hospice. *Id.* Dr. Meyer's CV does not show that he has any license to practice, nor that he has ever actively practiced as a nurse or in an assisted living program. *Id.* at 1-2

1. Dr. Meyer is not qualified to opine about Nurse Waltersdorf's standard of care or breach of that standard.

Nurse Waltersdorf is licensed as a registered nurse and has been since August 3, 2011. D0022 Attach. 5. Nurse Waltersdorf was actively practicing as a

registered nurse at The Shores at the time of her alleged negligence. *Id.*; D0001 at ¶¶ 4, 6, 32. Dr. Meyer is not, and has never been, licensed to practice nursing, nor has he ever actively practiced as a nurse. D0022 Attach. 2. As a physician, Dr. Meyer practices medicine, which is not the same as, or substantially similar to, the practice of nursing. *Compare* Iowa Code § 148.1(2) *with* Iowa Code §§ 152.1(6), Iowa Code § 249L.2, Iowa Admin. Code r. 645-81.1. In fact, the definition of the "practice of nursing" specifically excludes the practice of medicine. Iowa Code § 152.1(6)(a). As a matter of law, Plaintiff did not meet her burden to establish that Dr. Meyer is qualified under Iowa Code Sections 147.139(1) or (2). *See Ward v. Unity Healthcare*, 974 N.W.2d 178, 2021 Iowa App. LEXIS 1039, at *15-*16 (Iowa Ct. App. Dec. 15, 2021) (affirming district court's decision preventing plaintiff's expert, an emergency medicine physician, from testifying about the standard of care or breach by the nursing staff (among others) because he had no nursing qualifications).

The district court found that "Dr. Meyer is not licensed to practice, has not actively practiced, and is not board certified in a same or substantially similar specialty as Myra Waltersdorf, a registered nurse," so Plaintiff had "not complied with the statutory requirements of Iowa Code Sections 147.139-140 as it relates to her claims against Ms. Waltersdorf." D0034 at 8. The district court based its ruling on the substantial evidence set forth above, and it correctly applied Iowa Code

Sections 147.139 and 147.140. Thus, this Court should affirm the district court's ruling.

Because the district court found Dr. Meyer unqualified under Section 147.139, it did not reach the issue of his qualification under Rule 5.702. If this Court reaches the issue, it should find that Dr. Meyer is not qualified to opine about Nurse Waltersdorf's standard of care or breach under Rule 5.702.

The mere fact that Dr. Meyer is a physician does not mean he is qualified to testify about the standard of care for nurses. *See Johnson*, 2004 Iowa App. LEXIS 1265 (affirming exclusion of a cardiologist's opinion about a nurse's standard of care for reporting changes in a patient's condition because he lacked the qualifications to offer the specific opinions at issue); *see also Singer v. Emeritus Senior Living Residence*, No. A-4635-13T3, 2015 N.J. Super. Unpub. LEXIS 1275, at *2 (Super. Ct. App. Div. June 1, 2015) (holding psychiatrist was not qualified to opine about an assisted living facility's or a nurse's standard of care because the expert "was not licensed as a nurse. Never went to nursing school. He's never taken any nursing courses. Never practiced as a nurse" and the expert "had never worked at an assisted living facility[.]"). There is nothing on the face of Dr. Meyer's CV to show that he has any knowledge, skill, experience, training, or education to qualify him to opine about Nurse Waltersdorf's standard of care, and Plaintiff offered no other evidence to establish that Dr. Meyer has any such

qualifications. Thus, the district court would have been correct in finding Dr. Meyer unqualified under Rule 5.702.

2. Dr. Meyer is not qualified to opine about The Shores' standard of care or breach of that standard.

The Shores is a certified assisted living program. D0022 Attach. 4. As an assisted living program, The Shores does not practice medicine. Assisted living programs can, but are not required to, provide health-related care. *See* Iowa Admin. Code r. 481-69.1 (defining "assisted living"); 69.27 (indicating that not all tenants receive health-related care). However, assisted living programs cannot admit or retain tenants who are "medically unstable" or "require[ ] more than part-time or intermittent health-related care[.]" Iowa Admin. Code r. 69.23(1)(f), (h). This is significantly different from the practice of medicine, which involves "undertak[ing], by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition." Iowa Admin. Code r. 653-1.1 (emphasis added). The broad nature of the practice of medicine is not the same as, or substantially similar to, the limited services provided by The Shores as an assisted living program.

The fact that Dr. Meyer has served as the medical director of a hospice and a nursing facility does not mean he is licensed to practice, or that he actively practiced, in the same or a substantially similar field as The Shores. As explained in Section I(D)(3), above, assisted living programs are significantly different from

hospices and nursing facilities. Unlike hospices and nursing facilities, assisted living programs do not have medical directors, nor are they required to ensure that tenants are under the care of an attending physician. *See* Iowa Code §§ 135C.1; 135J.3(1); Iowa Admin. Code r. 481-53.6-7., 58.4 42 C.F.R. 483.70(g). Further, assisted living programs only provide intermittent health-related care, as opposed to 24-hour nursing care. *Compare* Iowa Admin. Code r. 481-53.9, 58.19 *with* Iowa Admin. Code r. 67.1, 69.1, 69.23. Given the "statutory differences between skilled nursing facilities and assisted living facilities, … they have differing standards of care." *Apkan v. Life Care Ctrs. of Am., Inc.*, 918 N.W.2d 601, 609 (Neb. Ct. App. 2018); *see also Bruins v. Desert Villa Adult Care, Inc.*, 2011 Ariz. Super. LEXIS 82, at *3 (applying a similar qualification statute and holding an occupational therapist was not qualified to opine about an assisted living facility's standard of care because she "has never been on staff at such a facility, has not worked full time at such a facility, … and has not been a supervisor or administrator of such a facility" so she "simply does not have the requisite knowledge and experience to form an opinion about such institutional standards."), *aff'd* 2012 WL 3776687, 2012 Ariz. App. Unpub. Lexis 1021 (Az. Ct. App. Aug. 31, 2012).

The district court considered the evidence and argument in the record and concluded, "Dr. Meyer is not qualified to opine on the standard of care applicable to The Shores. … Accordingly, … Peer's certificate of merit does not meet the

statutory requirements as it relates to any claims against The Shores." D0034 at 8. Again, the district court based its conclusion on the substantial evidence in the record, and correctly applied Iowa Code Sections 147.139 and 147.140. Thus, the Court should also affirm the district court's findings that Dr. Meyer is not qualified to opine about The Shores' standard of care or breach,[4] and that Plaintiff failed to substantially comply with Section 147.140 as to her claims against The Shores.[5]

III. The district court did not err in dismissing Plaintiff's claims with prejudice.

A. Error preservation

Plaintiff has not preserved error on the court's grant of summary judgment on any breach of contract claims or claims based on alleged regulatory violations. Plaintiff's argument section only addresses the dismissal of Plaintiff's negligence claims, so Plaintiff waived any error in the dismissal of any other claims. *See* Iowa R. App. P. 6.903(2)(a)(8)(3). Plaintiff also did not preserve error on the district court's grant of summary judgment on claims against the unknown/unnamed defendants because Plaintiff did not resist that portion of Defendants' motion. *See*

[4] If any part of this case is remanded to the district court, the Court should still affirm the district court's holding that Dr. Meyer is not qualified as a standard of care expert, and thus Dr. Meyer should be barred from offering standard of care opinions in any subsequent proceedings in this case.

[5] As with the district court's ruling regarding Nurse Waltersdorf, the Court could also affirm the finding that Dr. Meyer lacked the necessary qualifications to opine about The Shores' standard of care and breach under Rule 5.702.

D0023 at 16-18; D0028 at 3. This Court can affirm the district court's ruling on any ground raised below. *See Chicago Cent. & Pacific R. Co*, 816 N.W.2d at 373; *Dickey*, 954 N.W.2d at 432.

B. Standard of review

Defendants restate the standard of review set forth in Section I(A).

C. Applicable law

"Failure to substantially comply with [the certificate of merit requirement] shall result, upon motion, in dismissal with prejudice of each cause of action" to which the certificate of merit requirement applies. Iowa Code § 147.140(6). Given the legislature's use of "shall" in Section 147.140(6), "[d]ismissal [is] mandatory under the plain language of the statute" when the plaintiff fails to substantially comply. *Est. of Fahrmann v. ABCM Corp.*, 999 N.W.2d 283, 285 (Iowa 2023).

"Substantial compliance" means "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267, 275 (Iowa 2025) (citation omitted). "The Iowa Supreme Court has described the purpose of Section 147.140 as follows:

> "We reiterate section 147.140's reasonable objective is to 'give[] the defending health professional a chance to arrest a baseless action early in the process if a qualified expert does not certify that the defendant breached the standard of care.'" *Est. of Fahrmann*, 999 N.W.2d at 287-88 (alteration in original) (quoting *Struck ...*, 973 N.W.2d [at] 541 …). Put another way, the statute "enable[s] healthcare providers to quickly

> dismiss professional negligence claims that are not supported by the requisite expert testimony." *Struck*, 973 N.W.2d at 541.

Miller v. Cath. Health Initiatives-Iowa, Corp., 7 N.W.3d 367, 374 (Iowa 2024) (first and fifth alterations in original) (emphasis added); *see also McHugh v. Smith*, 966 N.W.2d 285, 290 (Iowa Ct. App. 2021) ("By enacting section 147.140, layered over the existing mandates of section 668.11, the legislature placed higher demands on medical malpractice plaintiffs. [Section 147.140] imposes two extra burdens: (1) provide verified information about the medical malpractice allegations to the defendants *and* (2) do so earlier in the litigation.")

The legislature explicitly required certificates of merit to be signed by an expert qualified under Section 147.139, i.e., an expert who could support the plaintiff's claims at trial. The expert's qualification is material to the purpose of the statute; a certificate signed by an unqualified person would do nothing to ensure the claim actually has merit. Thus, a certificate of merit signed by an expert who is not qualified under Section 147.139 does not substantially comply with Section 147.140, and the court must dismiss the plaintiff's claims with prejudice. *See Hummel v. Smith*, 999 N.W.2d 301 (Iowa 2023) (reversing denial of motion to dismiss because physician who was not currently licensed practice was not qualified under Section 147.139, so the plaintiff failed to substantially comply with Section 147.140(1)).

A defendant can raise a defect in a certificate of merit via motion to dismiss or motion for summary judgment. *See Est. of Fahrmann*, 999 N.W.2d at 285 (affirming grant of motion to dismiss under Section 147.140(6)); *Banwart*, 18 N.W.3d at 278 (reversing denial of motions for summary judgment under Section 147.140(6)); *Miller*, 7 N.W.3d 367 (applying the same analysis to a motion to dismiss and a motion for summary judgment under Section 147.140).[6]

D. The district court did not err in dismissing Plaintiff's negligence claims with prejudice.

1. Plaintiff did not substantially comply with Section 147.140 because Dr. Meyer is not qualified, so dismissal with prejudice was mandatory.

For the reasons explained in Section I, Plaintiff's negligence claims against Defendants require expert testimony to establish Defendants' standards of care and breaches of those standards, so Section 147.140 applies to Plaintiff's claims. For the reasons explained in Section II, the district court correctly found Dr. Meyer is not qualified under Section 147.139. Because the sworn statement of a qualified expert is material to the purposes of Section 147.140, Plaintiff did not substantially

[6] Courts also have the ability to convert a motion to dismiss into a motion for summary judgment if necessary. *See George v. D.W. Zinser Co.*, 762 N.W.2d 865, 867 (Iowa 2009).

comply with Section 147.140, and the district court correctly imposed the mandatory result: dismissal with prejudice of Plaintiff's claims.[7]

Plaintiff argues the district court erred in granting summary judgment because negligence is generally a jury question, so summary judgment on negligence claims should be limited to exceptional cases. Pl.'s Br., at 14-16. This argument is meritless.

Whether a defendant raises the plaintiff's lack of compliance with Section 147.140 as a motion to dismiss or a motion for summary judgment, the issue is not whether the plaintiff can create a genuine issue of material fact on the underlying claim. Instead, the issue is whether the plaintiff substantially complied with Section 147.140. Thus, dismissal is proper even if the plaintiff can ultimately generate an issue of fact on the underlying claim. *See e.g. Est. of Fahrmann*, 999 N.W.2d at 285 (affirming dismissal under Section 147.140 despite the plaintiffs identifying an expert in their initial disclosures within the sixty day deadline and

[7] Even if the Court finds some aspect of Plaintiff's negligence claims that does not require expert testimony as to the standard of care or breach, the Court should not reverse the district court's ruling in its entirety. The proper remedy in such cases is to remand the case to the district court so it can dismiss all allegations of negligence that require expert testimony on the standard of care or breach with prejudice. *See Est. of Butterfield v. Chautauqua Guest Home, Inc.*, 987 N.W.2d 834, 842 (Iowa 2023) ("[W]e remand to the district court the question of whether expert testimony is necessary with respect to the issue of standard of care and breach. … [T]he district court should dismiss with prejudice any allegations that require expert testimony regarding standard of care and breach.").

serving a certificate of merit forty-two days after the deadline); *Miller*, 7 N.W.3d at 372 (remanding for dismissal when plaintiffs served signed but unsworn certificates of merit within the deadline and served an affidavit swearing to the contents of the certificates after the deadline).

Plaintiff argues the district court's dismissal of her claims "perverts the intent of the law[.]" Pl.'s Br. at 15. The opposite is true. The legislature's intent in enacting Section 147.140 was to protect health care providers from the costs of litigation if the plaintiff fails to show the merits of its claims, in the time (sixty days) and manner (sworn statement by a qualified expert) prescribed by the legislature. *See Miller*, 7 N.W.3d at 374; *Struck*, 973 N.W.2d at 541. The legislature used "shall" to make clear it intended for dismissal to be the mandatory result of noncompliance. *See* Iowa Code § 147.140(6). Thus, allowing Plaintiff's claims to proceed without a certificate of merit from a qualified expert would force Defendants to continue incurring unnecessary legal expenses, which would pervert the cost-avoidance purpose of Section 147.140.

The district court did not err in dismissing Plaintiff's negligence claims with prejudice, and this Court should affirm.

2. The district court did not err in granting summary judgment on Plaintiff's negligence claims.

The district court characterized its ruling as granting Defendants' motions for summary judgment, but explained its reasoning in the context of Section

147.140. D0034 at 8-9. As explained above, even if the court treated Defendants' motion to dismiss as a motion for summary judgment, it was still proper to grant summary judgment for Plaintiff's failure to substantially comply with Section 147.140. *See* Section III(C), above. Separately, the court would not have erred in granting Defendants' motion for summary judgment on the alternative ground that Plaintiff lacks the admissible expert testimony necessary to create a genuine issue of material fact about Defendants' negligence.

The purpose of summary judgment is to avoid labor and expense by weeding out claims "which are actually without substance and exist only on paper." *Estate of Gray v. Baldi*, 880 N.W.2d 451, 462 (Iowa 2016) (citation omitted). In ruling on motions for summary judgment, courts only consider evidence that would be substantively admissible at trial. *See Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 96 (Iowa 2012). Thus, if a claim requires expert testimony, summary judgment is appropriate when the plaintiff lacks admissible expert testimony as to one or more elements of the claim. *See Kennis v. Mercy Hosp. Med. Ctr.*, 491 N.W.2d 161, 164 (Iowa 1992) (holding that in medical negligence cases on summary judgment "the issue becomes not whether there was negligence in the actions of the defendant but whether there was evidence upon which liability could be found." (quoting *Cox*, 470 N.W.2d at 26)); *see also Thompson*, 604 N.W.2d at 646 (noting summary judgment is appropriate if the movant demonstrates the

opposing party's proof is "deficient as to a material element of that party's case" and granting summary judgment based on the lack of necessary expert testimony); *Susie v. Family Health Care of Siouxland, P.L.C.*, 942 N.W.2d 333, 340 (Iowa 2020) (affirming summary judgment because plaintiffs lacked admissible expert testimony on causation).

As explained in Section I, Plaintiff's negligence claims require expert testimony to establish the standard of care and breach in the unique context of an assisted living facility. Plaintiff did not dispute any of the facts about Dr. Meyer's qualifications, and the district court did not err in finding Dr. Meyer was not qualified under Section 147.139.[8] Accordingly, Dr. Meyer's testimony about Defendants' standards of care and breaches is inadmissible at trial. *See* Iowa Code § 147.139 ("[T]he court shall only allow a person the plaintiff designates as an expert witness to qualify as an expert witness and to testify on the issue of the appropriate standard of care or breach of the standard of care if" the person meets the requirements in subsection (1)-(4)). Thus, Plaintiff's proof is deficient as a matter of law on both the standard of care and breach elements of her negligence

[8] The district court did not cite Rule 5.702 in its ruling, but Defendants raised the issue below and argued it in Section II, above. Dr. Meyer's lack of qualification under Rule 5.702 provides an additional ground for the Court to find his standard of care testimony inadmissible, and thus find Plaintiff's proof of negligence insufficient as a matter of law.

claims, and summary judgment was an appropriate way for the district court to dispose of her claims. *See Thompson*, 604 N.W.2d at 646.

E. The district court did not err in granting summary judgment on any claims based on alleged breaches of contract.

The district court's ruling directly addresses the breach of contract claim to which Plaintiff referred in her resistance to Defendants' motion, and granted summary judgment on that claim. D0034 at 8-9. As explained above, Plaintiff makes no argument on appeal regarding any contractual claim, so Plaintiff waived the issue, and the Court should allow that portion of the district court's ruling to stand. Even if the issue is before this Court, the district court did not err, and the Court should affirm.

1. The district court correctly granted summary judgment because Plaintiff failed to plead a breach of contract claim.

Summary judgment is proper when a plaintiff fails to plead a claim upon which relief can be granted. *See e.g. Hargrove v. Mail Contractors of Am., Inc.*, 834 N.W.2d 82, 2013 Iowa App. LEXIS 443, at *11-*13 (Iowa Ct. App. 2013) (affirming grant of summary judgment because the plaintiff's "wrongful-discharge claim failed to state a claim upon which any relief could be granted."). Plaintiff failed to plead a breach of contract claim because Plaintiff's Petition failed to specify whether the contract was written or oral. D0001 at ¶ 13; Iowa R. Civ. P. 1.418. Also, for the reasons explained in Section I(F)(1)(b), any purported breach

of contract claim against Defendants merges with her negligence claims as a matter of law, so the separate contractual claim fails. Thus, the district court did not err in holding Plaintiff "has not pled a breach of contract claim," or in granting summary judgment on any alleged breach of contract claim. D0034 at 8.

2. The district court did not err in granting summary judgment on Plaintiff's breach of contract claim on the alternative ground that Plaintiff failed to cite any facts in the record to support the claim.

To prevail on a breach of contract claim, Plaintiff must establish:

> (1) the existence of a contract, (2) the terms and conditions of the contract, (3) that [plaintiff] has performed all the terms and conditions required under the contract, (4) the defendant's breach of the contract in some particular way, and (5) that plaintiff has suffered damages as a result of defendant's breach.

Royal Indem. Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839, 846 (Iowa 2010). (alteration in original) (citation omitted). Thus, breach of contract claims, like negligence claims, have a causation element. *See id.* at 847. The causal relationship between a breach of contract and the claimed damages can be sufficiently technical to require expert testimony. *See City of Riverside v. Metro Pavers, Inc.*, 906 N.W.2d 204 (Iowa Ct. App. 2017) (affirming summary judgment on breach of contract claim because plaintiff failed to designate an expert to connect the cracked concrete to deviations from the contractual design specifications). Questions of medical causation are highly technical and require expert testimony. *See Susie*, 942 N.W.2d at 337-39 (finding plaintiff lacked the necessary expert testimony to

establish that but for defendant's negligence, the amputation of plaintiff's arm could have been prevented).

Defendants moved for summary judgment on grounds that Plaintiff's proof was deficient as to her claims, which Defendants understood to be negligence claims. In response, Plaintiff implied she asserted a breach of contract claim, but Plaintiff cited no evidence in the record that would generate an issue of fact as to the merits of that claim. Plaintiff could not rely on the allegations in her petition to resist Defendants' motion for summary judgment, Iowa R. Civ. P. 1.981(5), and as the district court noted, Plaintiff offered no evidence "of the contract or its terms." D0034 at 9. Thus, even if Plaintiff plead a breach of contract claim, she failed to create a genuine issue of material fact about the existence of the contract or its terms, so any such claim fails as a matter of law.

The court also noted "expert testimony may not be necessary" to prove the alleged breach of contract referred to by Plaintiff in her resistance and at oral argument, but expert testimony was necessary to prove the causation element of the breach of contract claim. *Id.*[9] Specifically, the district court noted a lay jury

[9] As explained in Defendants' Statement of Facts, this portion of the district court's ruling did not address Plaintiff's negligence claims. Instead, it was an "additional[ ]" ground for disposing of Plaintiff's breach of contract claim "[e]ven assuming" she properly plead such a claim. D0034, at 9; *see also* D0040 at 18:12-19:12.

could not determine whether Defendants caused Plaintiff's injury, given that she had a preexisting wound when she came to The Shores. D0034 at 9.

Dr. Meyer is Plaintiff's only causation expert. The causation opinions in Dr. Meyer's report are (1) Plaintiff "would have lived a longer and fuller life absent these deviations from the standard of care," and (2) "[a]ll of [Plaintiff's] wound-related issues, including the infections, amputation, and untimely death could have been avoided if the Defendants had not deviated from the appropriate standard of care in this case." D0011 at 1-2 (emphasis added).

Dr. Meyer only discussed injuries caused by breaches of the standard of care, not breaches of contract. Accordingly, Dr. Meyer only opined Defendants' alleged negligence, not alleged breaches of contract, caused Plaintiff's injuries. Thus, Plaintiff has no expert testimony that would be admissible at trial to support the causation element of her breach of contract claim. *See* Iowa R. Civ. P. 1.508(4). So, "even assuming [Plaintiff] has properly brought a breach of contract claim," D0034 at 9, Plaintiff offered no admissible evidence of the existence of the contract, the terms of the contract, or the causal link between the breach of contract and her injuries, and the court did not err in granting summary judgment on Plaintiff's breach of contract claim.

F. The district court did not err in granting summary judgment on any claims for regulatory violations.

The district court's ruling addressed the claims based on regulatory violations to which Plaintiff referred in her resistance to Defendants' motion, and granted summary judgment on those claims. D0034, at 9. As explained above, Plaintiff makes no argument on appeal regarding any claims based on regulatory violations, so Plaintiff waived the issue, and the Court should allow that portion of the district court's ruling to stand. Even if the issue is before this Court, the district court did not err, and the Court should affirm.

1. Plaintiff did not plead any claim for regulatory violations because no such claim exists as a matter of law.

As explained in Section I(F)(2)(a), the regulations applicable to Defendants do not create private rights of action for a plaintiff to recover damages. To any extent Plaintiff attempted to plead a claim for damages due to regulatory violations, Plaintiff has not plead a claim upon which relief can be granted, so the district court did not err in granting summary judgment. *See Hargrove*, 834 N.W.2d 82.

2. The district court did not err in granting summary judgment on claims based on regulatory violations because Plaintiff failed to create a genuine issue of material fact on those claims.

The district court granted Defendants' motion for summary judgment on any claims based on regulatory violations because "for the reasons set forth in the

defendants' briefing … defendants' violation of regulations does not alleviate [Plaintiff]'s need for expert testimony, particularly on the issue of causation." D0034 at 9. The district court did not err in reaching this conclusion. As argued in Defendants' reply (D0032 at 9-10), and explained in Section I(F)(2)(b) above, expert testimony is necessary to make regulations (and thus violations of regulations) relevant to a defendant's standard of care.

Even if Defendants' violations of regulations are sufficient to establish their liability, claims based on such violations still require expert testimony to prove medical causation. *See Noble v. Edberg*, 98 N.W.2d 741, 744 (Iowa 1959) (holding plaintiffs still must prove causation when "the negligence charged constitutes a violation of statute or ordinance, even when such violation is held to be negligence per se."). Whether Defendants' alleged violations of regulations were the cause of Plaintiff's wound, infection, or death are the kinds of "highly technical questions of diagnoses and causation which lie beyond the understanding of a layperson [and] require introduction of expert testimony." *Donovan v. State*, 445 N.W.2d 763, 766 (Iowa 1989). Dr. Meyer's expert disclosures do not discuss the alleged regulatory violations, and Dr. Meyer only opines that breaches of the standard of care, not the violation of any regulation, caused Plaintiff's damages. D0011 at 1-3. Thus, the district court did not err in finding Plaintiff failed to generate an issue of material fact on any claim based on alleged regulatory violations.

3. Plaintiff failed to offer any evidence to support the existence of the alleged regulatory violations.

Plaintiff's resistance to Defendants' motion for summary judgment did not identify what regulations Defendants allegedly violated, nor did it include any evidence that Defendants were cited for any such violation. *See* D0028. Plaintiff claims she attached the citation to her resistance (*id.* at 2), but she failed to do so. Plaintiff referenced a citation in her Petition (D0001 at ¶ 31), but her allegations in the Petition were not sufficient to avoid summary judgment. *See* Iowa R. Civ. P. 1.981(5). Thus, the Court can also affirm the district court's ruling on the alternative ground that Plaintiff failed to offer any admissible evidence to support the existence of any underlying regulatory violation.

CONCLUSION

Defendants respectfully request that the Court affirm the district court's Order granting Defendants' motions for summary judgment and dismissing Plaintiff's claims, in their entirety, with prejudice.

REQUEST FOR NONORAL SUBMISSION

Defendants do not believe oral argument is necessary. If the Court grants oral argument, Defendants respectfully request equal time to be heard.

/s/ Graham R. Carl

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/s/ Graham R. Carl 09-12-2025
Date