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IN THE SUPREME COURT OF IOWA

No. 25-0461

BRIANNE GARRETT, as Executor of the Estate of Betty Peer,
Plaintiff-Appellant,

v.

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 PERSONNEL,
Defendants-Appellees

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

Defendants-Appellees' Application for Further Review of Court of Appeals' July 22, 2026 Decision

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Questions presented for review

1. **Whether expert testimony is required for a plaintiff to establish a prima facie case of medical malpractice based on alleged failure to properly execute a prescription.**

2. **Whether a physician holds a substantially similar license and practices in a substantially similar field as a registered nurse and an assisted living facility.**

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Statement supporting further review[1]

This appeal addresses two issues. First, it addresses whether expert testimony is required to establish alleged medical negligence by a registered nurse and an assisted-living facility in executing a prescription ordered by a physician. Second, it addresses whether a physician holds a substantially similar license and practices in a substantially similar field as a registered nurse and an assisted living facility under Iowa Code section 147.139.

In the present case, the Court of Appeals found that expert testimony was not required to support Plaintiff's allegations that a registered nurse failed to "properly prepare" Ms. Betty Peer's care plan, failed to "properly communicate" with Ms. Peer and other health care providers, and failed to "provide adequate and appropriate care" for Ms. Peer's wound. D0001, Petition, ¶ 32 (7/27/2023). The court reasoned that these issues of nursing judgment were "within the understanding of a lay juror" because "no professional judgment was required to comply with" orders from a physician. Exh. 1 at 8–9. The court's analysis was based, in part, on the way Plaintiff labeled and described her claims in the petition. Exh. 1 at 7–8.

[1] The following are attached:
Exh. 1 – Court of Appeals Decision (7/22/2026)
Exh. 2 – District Court Ruling (2/17/2025)

The Court of Appeals also found that a physician held a substantially similar license and practiced in a substantially similar field as a registered nurse and an assisted living facility based on analysis including the care at issue in the case (implementation of a prescription) and the physician's individual training and experience. Exh. 1 at 17–18.

Further review should be granted for at least three reasons. First, the Court of Appeals' decision is inconsistent with Iowa case law holding that expert testimony is required for cases in which a plaintiff alleges negligence based on medical judgment. Second, the decision is inconsistent with Iowa case law holding that expert qualifications under Iowa Code section 147.139 are to be determined using a categorical approach rather than by considering whether an expert's individual qualifications relate to the care and treatment at issue. Third, the issues of medical malpractice expert testimony requirements and expert qualifications are important questions of law and involve changing legal principles that should be resolved by the Supreme Court.

The Court of Appeals' Decision is inconsistent with Iowa Supreme Court case law.

Further review should be granted because the Court of Appeals' decision is in conflict with at least two Iowa Supreme Court opinions. Iowa R. App. P. 6.1103(b)(1).

First, the decision conflicts with *Jorgensen v. Smith*, 2 N.W.3d 868, 880 (Iowa 2024). *Jorgensen* instructs that "the determination of whether expert testimony is needed should not depend on labels, such as whether [the alleged negligence] can be characterized as an 'administrative' task." *Id.* at 880. Rather, determining the necessity of expert testimony "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." *Id.* (citing *Est. of Butterfield v. Chautauqua Guest Home, Inc.*, 987 N.W.2d 834, 842 (Iowa 2023)).

While the Court of Appeals cited this standard, it failed to apply the standard correctly. The court determined that expert testimony was not required, in part, because Plaintiff "did not limit her claims to 'professional negligence'" in the petition. Exh. 1 at 7. The court further found that some of Plaintiff's allegations "invoke[d] ordinary care" and, therefore, did not require expert testimony. Exh. 1 at 8. Such analysis is based solely on labels and does not consider whether a lay juror is as capable of comprehending the primary facts and of drawing correct conclusions from them as an expert.

Further, Iowa case law indicates that a plaintiff may not evade the expert testimony requirement simply by labeling a claim as ordinary negligence or

characterizing it as non-discretionary. Exh. 1 at 21, Mullins, J., dissenting (citing *Jorgensen*, 2 N.W.3d at 880) (noting that necessity of expert testimony "should not depend on labels"); *see also Struck v. Mercy Health Servs. – Iowa Corp.*, 973 N.W.2d 533, 542 (Iowa 2022) ("We decline to allow plaintiffs to evade the statutory requirement on appeal by relabeling a professional negligence claim as one of ordinary negligence."); *Jones v. Mercy Hosp.*, No. 24-0139, 2025 Iowa App. LEXIS 223, at *11 (Iowa Ct. App. Mar. 5, 2025) (finding expert testimony was required for the plaintiff's infliction of emotional distress, breach of contract, and res ipsa claims because they were each based on "a claim of negligent patient care that required expert testimony to prove it").

In summary, the Court of Appeals improperly relied on labels in determining that Plaintiff's claims do not require expert testimony. Such analysis directly contradicts the guidance set forth in *Jorgensen*.

Second, the decision conflicts with *Jones v. Lindell*, 32 N.W.3d 445 (Iowa 2026). *Jones* provides that Iowa courts must determine whether a plaintiff's expert is qualified under Iowa Code section 147.139 using a categorical approach "without any consideration of the actual problems or treatments at issue in the case." *Id.* at 452; *see also id.* at 451 (rejecting the defendant's argument that "field" refers to a specific area of practice or a "subset of practice" and providing that an expert's field is determined categorically based on licensure).

Here, the Court of Appeals improperly considered the care and treatment at issue. Exh. 1 at 18 (finding substantial similarity based on overlap in the duties of physicians and registered nurses as to a single task – "executing . . . prescriptions, which is Peer's central negligence allegation"). Additionally, the court considered Plaintiff's expert's specific training and experience rather than making a categorical determination about the fields of medicine and nursing. Exh. 1 at 18 (finding "the similarity [between fields] is even stronger when we factor in Dr. Meyer's training and experience"). Therefore, the Court of Appeals' decision conflicts with *Jones*.

The proper analysis to determine whether expert testimony is required when a plaintiff alleges negligence in patient care is an important question of law that should be decided by the Iowa Supreme Court.

The proper analysis for determining whether expert testimony is required in a medical negligence case in an assisted living setting is an important question of law that should be settled by the Supreme Court. Iowa R. App. P. 6.1103(b)(2). This is an important, recurring issue in Iowa cases involving allegations of negligence in the provision of care and treatment to a patient by a health care provider.[2]

[2] According to the Iowa Department of Health and Human Services, by 2050, it is estimated that 19.9% of Iowa's population will be age 65 and older. Aging Services, https://hhs.iowa.gov/family-community/aging-services (last accessed on 8/10/2026). It follows that the demand for assisted living services, and thus the

As noted above, the Court of Appeals found expert testimony was not required for Plaintiff's claims based on various allegations of nursing negligence. The present Court of Appeals opinion is inconsistent with the analysis and holdings set forth in multiple appellate cases. *See, e.g.*, *Struck v. Mercy Health Servs. – Iowa Corp.*, 973 N.W.2d 533 (Iowa 2022) (finding that determination of whether the plaintiff "was improperly medicated or supervised in light of her condition without measures to better monitor or restrain her is beyond the understanding of ordinary jurors"); *Thompson v. Embassy Rehab. & Care Ctr.*, 604 N.W.2d 643, 646 (Iowa 2000)[3] (holding expert testimony was required when plaintiff alleged that a nursing facility failed to reposition the plaintiff to avoid bedsores); *Loper v. Se. Iowa Reg'l Med. Ctr.*, No. 24-1824, 2026 Iowa App. LEXIS 189 (Iowa Ct. App. Feb. 25, 2026) (affirming district court's finding that expert testimony was required when plaintiff asserted negligence based on failure to provide a wheelchair for a patient after

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number of claims involving those services, will continue to increase as Iowa's population ages.

[3] In *Thompson*, the court noted expert testimony was necessary because whether the facility should have repositioned a nursing home resident against his wishes was a matter of judgment. 604 N.W.2d at 646. This case involves an assisted living facility, which is distinct from a nursing facility. The services provided by assisted living facilities inherently require medical judgment and professional expertise because they strike a balance between meeting tenants' needs while also promoting tenants' dignity and independence. Other courts have found these unique considerations require expert testimony to establish the assisted living facility's standard of care and breach, even when the allegations appear straightforward. *See* Defendants-Appellees' Brief at 25-28.

discharge because such a decision is based on "medical judgment"); *Jones v. Mercy Hosp.*, No. 24-0139, 2025 Iowa App. LEXIS 223 (Iowa Ct. App. Mar. 5, 2025) (finding expert testimony was required for the plaintiff's medical malpractice, breach of contract, infliction of emotional distress, and res ipsa claims because all claims were based on allegations of negligence in patient care).

Therefore, this issue should be resolved by the Supreme Court.

The proper analysis to determine substantial similarity under Iowa Code section 147.139 is an important question of law and changing legal principles that should be decided by the Iowa Supreme Court.

The question of Dr. Meyer's qualifications under section 147.139, as amended in 2017, is important and should be determined by the Iowa Supreme Court. Iowa R. App. P. 6.1103(1)(b)(2)–(3).

Whether an expert is qualified under section 147.139 is a frequently recurring issue in Iowa medical malpractice litigation. Courts have applied the statute, as amended in 2017, using varied analyses, leading to inconsistent and unpredictable results. The lack of consistent analysis leads to notable difficulties for all parties in a medical malpractice case in determining whether an expert is qualified under section 147.139. *See, e.g.*, Exh. 1 (finding a physician was qualified to testify as to a registered nurse because their licensure and fields of practice were substantially similar); *Ward v. Unity Healthcare*, No. 20-1516, 2021 Iowa App. LEXIS 1039, at *16 (Iowa Ct. App. Dec. 15, 2021) (finding a physician

"was not qualified to testify about the standard of care or breach against hospital administration [or] nurses"); *Fogle v. Catholic Health Inits. – Iowa Corp., et al.*, LACL156894 (Polk County 2026, D0148 at 2–8, Order on Pending Motions, (6/4/2026)) (finding a physician was not qualified to testify as to an advanced registered nurse practitioner because their licensures and fields of practice were not substantially similar); *Wilson, et al. v. Medical Practice Managers, et al.*, LACV085506 (Johnson County, D0083, Ruling on MSJ, (11/17/2025)) (finding a physician was qualified to testify as to an advanced registered nurse practitioner due to substantially similar licensure and field of practice); *Est. of Schwarz v. The Cedar Foundation, et al.*, LACE134977 (Scott County 2024, D0102, Order, 1/5/2024)) (finding a physician was not qualified to testify as to a nursing home's registered nurses); *Est. of Brown v. Catholic Health Inits. – Iowa Corp.*, LACL148008 (Polk County 2023, D0294, Order, (11/1/2023)) (finding a physician was qualified to testify as to a physician assistant).

Further, the Court of Appeals' decision itself indicates that the proper analysis under section 147.139 is unclear. The Court of Appeals acknowledged the Supreme Court's instruction that expert qualifications regarding board certification were to be determined on a categorical basis, but then asked:

> [D]oes that same categorical inquiry govern whether health care providers are licensed to and actively practice in a 'substantially similar' field? Is it an all-or-nothing proposition whether any doctor is qualified to present an

> expert opinion on the standard of care for any registered nurse or health facility? Or do we examine the particular training and experience of the doctor designated as an expert as relevant to the specific medical problems and treatments at issue in the case?

Exh. 1 at 14–15. These questions demonstrate the necessity of the Supreme Court deciding this issue.

In summary, the open questions and conflicting cases on both issues make it exceedingly difficult for the parties in a medical malpractice case to determine whether a court will find expert testimony is required in a medical malpractice case. Additionally, it is difficult for parties to determine whether a plaintiff's expert's license or field of practice will be found substantially similar to that of a defendant under the present case law.

These conflicts and important questions should be resolved by the Iowa Supreme Court.

Argument

I. Summary of relevant proceedings.

This is a medical negligence case involving care and treatment provided to Betty Peer while she was a resident at The Shores, an assisted living facility operated by Defendant IRC II, Inc. ("The Shores"). D0001, Petition (7/27/2023).[4]

[4] As an assisted living program under Iowa Code Chapter231C, The Shores is a "health facility" under Iowa Code section 135P.1(3), and thus is a "health care

Defendant Myra Waltersdorf ("Nurse Waltersdorf") is a registered nurse who worked at The Shores while Ms. Peer was a resident. D0001, ¶ 4. Plaintiff served certificate of merit affidavits signed by Nathaniel Meyer, M.D., on both Defendants. Exh. 1 to D0022, Certificate of Merit (8/21/2024). Dr. Meyer is a licensed physician with board certifications in family practice and hospice medicine. Exh. 2 to D0022, Dr. Meyer CV (8/21/2024). Plaintiff later designated Dr. Meyer as her only retained expert witness.

Defendants moved to dismiss Plaintiff's claims under Iowa Code section 147.140, asserting that Dr. Meyer was not qualified to opine as to Defendants' standard of care or breach under Iowa Code section 147.139. D0021, Def. Mot. to Dismiss & MSJ (8/21/2024); D0022, Def. MSJ SOF (8/21/2024); D0023, Def. MSJ Brief (8/21/2024). Defendants also moved for summary judgment on the alternative grounds that Plaintiff lacked admissible evidence to establish a prima facie case against Defendants because Plaintiff did not disclose a qualified expert. *Id.*

The district court granted Defendants' motion and dismissed Plaintiff's claims with prejudice, finding that expert testimony was required to support Plaintiff's claims and finding that a physician was not qualified to testify as to care

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provider" for purposes of Iowa Code sections 147.139 and .140. Iowa Code §§ 147.136A(1)(a), 147.139, 147.140(7).

provided by a registered nurse or an assisted living facility pursuant to section 147.139. D0034, Dismissal Order (2/17/2025). Plaintiff appealed that ruling. D0036, Plaintiff's Notice of Appeal (3/18/2025). The Iowa Court of Appeals reversed the district court's ruling, finding expert testimony was not required to support Plaintiff's claims and also finding that Dr. Meyer was qualified to testify regarding standard of care and breach as to Nurse Waltersdorf and The Shores because their licensure and fields of practice were substantially similar. Exh. 1.

II. The Court of Appeals should be reversed, and the district court should be affirmed.

A. The Court of Appeals applied incorrect analysis to determine whether expert testimony was required in this case.

1. The Court of Appeals' analysis regarding necessity of expert testimony conflicts with the Iowa Supreme Court's opinion in *Jorgensen v. Smith*.

Jorgensen provides that a court's determination of whether expert testimony is required "should not depend on labels." *Jorgensen*, 2 N.W.3d at 880. As noted in Judge Mullins' dissenting opinion, "a plaintiff may not avoid the need for expert testimony simply by characterizing a breach as non-discretionary." Exh. 1 at 21, Mullins, J., dissenting (citing *Jorgensen*, 2 N.W.3d at 880).

The Court of Appeals found that expert testimony was not required in the present case, in part, because "[i]n her petition, Peer did not limit her claims to

'professional negligence.'" Exh. 1 at 7. Such analysis based on how Plaintiff labeled her claims contradicts the Supreme Court's guidance in *Jorgensen*.

Additionally, the Court of Appeals' analysis is inconsistent with guidance from the Iowa Supreme Court in *Struck* because it considered whether Plaintiff pled claims beyond those labeled "professional negligence." Exh. 1 at 7. As noted by the Court in *Struck*,

> Section 147.140 does not use the term "professional negligence" but talks in terms of alleged negligence in the practice of that profession or occupation or in patient care" – a broader concept. So any claim for negligence in patient care requires the certificate of merit, as long as expert testimony is required to prove up the claim.

Struck, 973 N.W.2d at 540 n.6. While Iowa has liberal pleading standards, a court may not read beyond the four corners of the petition to find a claim to which section 147.140 does not apply. *Id.* at 541–42.

Further, such analysis would render section 147.140 nearly meaningless. Iowa case law makes clear that expert testimony is generally required to prove professional negligence against healthcare providers. *Struck*, 973 N.W.2d at 539. "Expert testimony is the rule, not the exception." Exh. 1 at 21, Mullins, J., dissenting (citing *Est. of Butterfield*, 987 N.W.2d at 841). If a plaintiff is permitted to circumvent the requirements of section 147.140 simply by including a claim for ordinary negligence in their petition, section 147.140 becomes meaningless. *See Struck*, 973 N.W.2d at 542 ("We decline to allow plaintiffs to evade the statutory

requirement on appeal by relabeling a professional negligence claim as one of ordinary negligence."); *see also Kostoglanis v. Yates*, 956 N.W.2d 157, 160 (Iowa 2021) (finding a plaintiff cannot evade dismissal for failure to comply with statutory requirements through artful pleading).

Such a result cannot be the intent of the legislature in implementing section 147.140. *See Harden v. State*, 434 N.W.2d 881, 884 (Iowa 1989) (stating that in interpreting statutes, Iowa courts "seek a reasonable interpretation that will best effect the purpose of the statute and avoid an absurd result").

Judge Mullins was spot-on in his dissent, stating:

> Many of Peer's claims expressly challenge nurse Waltersdorf's exercise of professional judgment in administering Peer's care plan and responding to her condition. She alleges Nurse Waltersdorf failed to "properly prepare" her care plan, failed to "properly communicate" with Peer and other providers, and failed to "provide adequate and appropriate care" for Peer's wound. These are not breaches so obvious as to be within the comprehension of a layperson. Nor are they "administrative, ministerial, or routine care," like keeping a woozy patient upright." Expert testimony is necessary for the jury to know what is "proper," "adequate," and "appropriate" for a registered nurse to do under the circumstances nurse Waltersdorf faced.

Exh. 1 at 21, Mullins, J., dissenting.

Again, given the unique nature of assisted living, expert testimony is also necessary to establish whether the standard of care required The Shores or Nurse Waltersdorf to ensure that Ms. Peer's prescription for her compression sock was

filled. A lay juror with no experience in assisted living would not be as qualified as an expert to determine what the standard of care required of the defendants in this case, and how that standard may be different than the standard of care in other contexts like hospitals, nursing homes, or hospices. *See Thompson*, 604 N.W.2d at 646.

2. The proper analysis as to whether expert testimony is required in a medical malpractice case should be settled by the Supreme Court.

The proper analysis for determining whether expert testimony is required in a medical malpractice case is an important question of law, as well as a question of changing legal principles, that should be settled by the supreme court. Iowa R. App. P. 6.1103(b)(2)–(3). This is an important, recurring issue in Iowa appellate cases. As noted above, the present Court of Appeals opinion is in conflict with multiple cases. *See, e.g.*, *Struck*, 973 N.W.2d 533; *Thompson*, 604 N.W.2d at 646; *Loper*, 2026 Iowa App. LEXIS 189; *Jones v. Mercy Hosp.*, 2025 Iowa App. LEXIS 223.

Accordingly, this issue is appropriate for resolution by the Iowa Supreme Court.

B. The Court of Appeals used improper analysis in finding a physician was qualified to testify as to a registered nurse and an assisted living facility.

1. The Court of Appeals' analysis conflicts with the Supreme Court's opinion in *Jones v. Lindell*.

The Court of Appeals' analysis is in conflict with *Jones* for at least three reasons. First, the Court of Appeals failed to consider the factors set forth in *Jones* to determine substantial similarity under section 147.139. Exh. 1 at 18. The court identified only one "noticeable overlap" when "[p]utting the medicine and nursing standards side by side." Exh. 1 at 18. The court stated the following:

> A core characteristic of practicing medicine is prescribing treatment for human ailments. And a core characteristic of being a registered nurse is executing those prescriptions, which is Peer's central negligence allegation. Thus, a categorical inquiry based on state licensing standards shows a substantial similarity between these two fields.

Exh. 1 at 18. Such analysis is inconsistent with the guidance set forth in *Jones* indicating that several factors must be considered in determining substantial similarity. *Jones*, 32 N.W.3d at 453 (stating "relevant factors might include, but are not limited to, the following: the formal definitions of the specialties, the certifying board structures, similarities in education and training, similarities in scope of practice, overlap in core and procedural competencies, professional association overlap, and hospital credentialing patterns"). As stated in *Jones*, substantial

similarity "requires more than incidental overlap or occasional clinical collaboration." *Id.*

Second, the Court of Appeals improperly considered Plaintiff's allegations, the care at issue in the case, and Dr. Meyer's specific practice area in determining substantial similarity. The court noted that a nurse's role in executing prescriptions "is Peer's central negligence allegation" and then used references to prescriptions in the statutory descriptions of the practices of medicine and nursing to support a finding of substantial similarity. Exh. 1 at 17–18.

The court further considered Dr. Meyer's individual qualifications and found "the similarity is even stronger when we factor in Dr. Meyer's training and experience." Exh. 1 at 18. The court noted Dr. Meyer's specific area of practice within his medical license – hospice and palliative medicine as well as teaching geriatrics. *Id.* The Iowa Supreme Court rejected similar analysis in *Jones*. In *Jones*, "[t]he defendants argue[d] that field must refer to some subset of practice within the license, for example a health care provider's specific area of practice." *Id.* at 451. The Court disagreed and stated:

> The defendants' argument is not consistent with the text of the statute. The statute first requires that the qualifying expert be "*licensed* to practice in the same or a substantially similar field" as the defendant health care provider. The defendants concede that Dr. Lindell does not hold a license in obstetrics and gynecology, however, because there is no separate license for obstetrics and gynecology. We thus cannot interpret field to mean the

> defendant health care provider's limited area of practice within a license without reading the word license out of the statute, and this we decline to do.

Id. at 451 (citing Iowa Code § 147.139(1) (emphasis in original); *State v. Boone*, 989 N.W.2d 645, 650 (Iowa 2023)).

The Court of Appeals' analysis also contradicts the Iowa Supreme Court's guidance in *Jones* that "[c]ourts must assess whether the specialties themselves are substantially similar without regard to whether the particular expert has individual training or experience relevant to the specific medical problems or treatments at issue in the case." *Jones*, 32 N.W.3d at 453 (emphasis added). Thus, the court's analysis is not consistent with the categorical approach prescribed in *Jones* to determine substantial similarity. *Jones*, 32 N.W.3d at 453 (providing that the inquiry as to substantial similarity "is categorical, not case specific").

Finally, the Court of Appeals' decision conflicts with *Jones* because it ignores the fact that it is Plaintiff's burden to show their expert is qualified and to provide supporting evidence. *Jones*, 32 N.W.3d at 452; Iowa Code § 147.139 (providing that expert qualifications must be "established by the evidence"). In *Jones*, the court found that the plaintiff "failed to prove [their expert] was qualified under the statute to provide expert testimony" because "the plaintiff failed to produce sufficient evidence to establish" the expert met the requirements of section 147.139. *Jones*, 32 N.W.3d at 455.

In the present case, Plaintiff cites no evidence in her appeal brief regarding her expert's qualifications – she simply recites the requirements set forth in section 147.139 and states "Dr. Meyer plainly satisfies Iowa Code § 147.139." Appellant's Brief at 13–14. A conclusory statement with no supporting evidence does not satisfy the standard set in *Jones*, nor does it meet general appellate argument standards. *Jones*, 32 N.W.3d at 454–55; *see also* Iowa R. App. P. 6.903(2)(a)(8)(3) (providing that the argument section shall include "[a]n argument containing the appellant's contentions and reasons for them with citations to authorities relied on and references to the pertinent parts of the record … [and f]ailure to cite authority in support of an issue may be deemed waiver of the issue"); *Baker v. City of Iowa City*, 750 N.W.2d 93, 103 (Iowa 2008) (holding that a party's "conclusory contention" was waived when the party cited no supporting authority or argument in his brief). As Judge Mullins correctly stated in his dissent:

> At the bottom of this appeal is a failure of proof. Peer sued a registered nurse, and it was her burden to show that Dr. Meyer is licensed to practice in a substantially similar field. She put forward nothing to support such a finding.

Exh. 1 at 23, Mullins, J., dissenting (citing Iowa Code § 147.139; *Jones*, 32 N.W.3d at 454–55).

2. The Court of Appeals' analysis is inconsistent with the 2017 amendments to section 147.139.

The Iowa legislature amended Iowa Code section 147.139 in 2017. The prior language of section 147.139 allowed a designated expert to testify regarding standard of care and breach "if the person's medical … qualifications relate directly to the medical problem at issue and the type of treatment administered in the case." Iowa Code § 147.139 (2016). The pre-2017 version of section 147.139 did not require an expert to practice in a substantially similar field or hold a substantially similar license and board certifications. *See id.* An expert was simply required to "be generally qualified in a field of expertise and must also be qualified to answer the particular question propounded." *Vezeau-Crouch v. Abraham*, No. 17-1213, 2019 Iowa App. LEXIS 24, at *12 (Iowa Ct. App. Jan. 9, 2019) (citing *Tappe v. Iowa Methodist Med. Ctr.*, 477 N.W.2d 396, 402 (Iowa 1991)).

It is presumed that the legislature intended to change the requirements of Iowa Code section 147.139 when it was amended in 2017. *See State v. Ludtke*, 446 N.W.2d 797, 798 (Iowa 1989) ("When the legislature amends a statute, we assume the amendment was adopted to accomplish a purpose and was not simply a futile exercise of legislative power."). If the legislature had intended to continue allowing plaintiffs' experts in medical malpractice cases to establish that they are qualified simply by showing the expert and the defendant both provide the type of care and

treatment at issue in the case, there would have been no need to amend section 147.139.

Indeed, the Iowa Supreme Court in *Hummel v. Smith*, 999 N.W.2d 301 (Iowa 2023) confirmed that "[p]reviously Iowa law simply required that the standard-of-care expert's 'medical or dental qualifications relate directly to the medical problem or problems at issue and the type of treatment administered in the case.'" *Hummel*, 999 N.W.2d at 304. The Court then stated that "[t]he 2017 legislation established more elaborate standards." *Id.*

The current language of section 147.139 requires the court to make a categorical determination of whether a plaintiff's expert is qualified based on licensure, field of practice, and board certification. *See* Iowa Code § 147.139 (2017); *Jones*, 32 N.W.3d at 451. The care and treatment at issue is no longer a factor in the analysis. Therefore, the Court of Appeals' analysis was incorrect.

In summary, the Court of Appeals' analysis noted above conflicts with Iowa Code section 147.139 as amended in 2017 and the Iowa Supreme Court's decision in *Jones*. Accordingly, this issue is appropriate for resolution by the Supreme Court.

III. Conclusion

For the reasons set forth above, Defendants-Appellees IRC II, Inc., Immanuel, and Myra Waltersdorf request that the Court grant further review of the Court of Appeals' July 22, 2026 Decision; that the Court of Appeals' Decision be reversed; and the district court's decision be affirmed.

/s/ Graham R. Carl
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Certificate of Compliance with Typeface Requirements and Type-Volume Limitation

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(5) because:

> [x] this application has been prepared in a proportionally spaced typeface using Times New Roman 14 point and contains 4905 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(5)(a).

/s/ Graham R. Carl 8/11/2026
Signature Date

Certificate of filing and service

The undersigned certifies that this Application was electronically filed and served on the 11th day of August, 2026, upon the following persons and upon the Clerk of the Supreme Court using the Electronic Document Management System, which will send notification of electronic filing (constituting service):

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