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IN THE IOWA SUPREME COURT

NO. 25-1186

JACOB KNAPP,

Appellant,

vs.

STATE OF IOWA,

Appellee

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR JOHNSON COUNTY, IOWA
Case No. LACV084416
THE HONORABLE ANDREW CHAPPELL

BRIEF OF APPELLANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The defendant's partial motion to dismiss was granted on the basis that plaintiff's certificate of merit contained claims against a certificated nurse anesthetist (CRNA) and "all other possible claims against any other providers related to this care must be dismissed with prejudice." Does Iowa Code section 147.140 estop the plaintiff from amending his petition with additionally named parties or new claims?

2. The plaintiff's certificate of merit affidavit was served timely and was challenged on the basis that it does not comply with precedent because it lacked a jurat pursuant to Iowa Code section 622.1 or was notarized. However, the certificate of merit contained a sworn oath by the expert that "[I] make the foregoing statements in good faith and under penalty of perjury." Does a certificate of merit that contains such oath substantially comply with Iowa Code section 147.140 without a jurat or notarization?

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it presents substantial issues of first impression and urgent issues of broad public importance requiring prompt and ultimate determination by the Iowa Supreme Court. *See* Iowa R. App. P. 6.1101(2)(b)-(d), (f).

STATEMENT OF THE CASE

Nature of the Case. This is a medical malpractice case involving a challenge to the plaintiff's certificate of merit affidavit under Iowa Code section 147.140, and a partial motion to dismiss that estopped the plaintiff from being able to amend his petition during the discovery process.

Course of Proceedings. On March 31, 2023, the plaintiff filed this medical negligence action against the defendant. D0001, Petition (03/31/2023).[1] On May 4, 2023, the plaintiff filed a partial dismissal that dismissed the individual provider from the case. Doc. 0006, Dis. Without Prejudice (05/04/2023) and subsequently filed an amended petition that did not include the individual provider (Brittany Van Sickle) as a named party and added a factual allegation that State of Iowa through a legal representative certified Van Sickle's employment status pursuant to Iowa Code section 669.5(2)(a). Doc0007 Amended Pet.

[1] This action was originally filed in Polk County as Case No. LACL155318.

(05/04/2023). On May 23, 2023, the plaintiff filed notice of serving certificate of merit. D00015 Notice Cert. Merit (05/23/2023). On June 12, 2023, defendant filed its first responsive pleading to plaintiff's amended petition. D0003 Answer & A.D. (06/12/2023). On June 15, 2023, the parties filed a trial scheduling and discovery plan and on June 19, 2023, the court incorporated the plan in its order setting trial. Doc. 0004 Trial Sched. (06/15/2023); Doc. 0007 Order (06/19/2023). The parties' trial scheduling and discovery plan ordered that the pleadings close "60 days before trial" or on May 15, 2025. Doc. 0004 Trial Sched. (06/15/2023); Doc. 0007 Order (06/19/2023).

On February 12, 2024, defendant filed a partial motion to dismiss along with attachments A and B for "failure to comply with Iowa Code section 147.140. Doc. 0031 (02/12/2024). The plaintiff filed his resistance to defendant's motion to dismiss with attachments one through eight. Doc. 0032, Plt Res. (02/12/2024). On February 22, 2024, defendant filed a reply to plaintiff's resistance with attachment c. Doc. 0034, Def. Reply (02/19/2024). The court entered a ruling granting defendant's motion for partial dismissal. Doc. 0043 Order (03/27/2024).

On April 14, 2024, defendant filed a second motion to dismiss to dispose of the entire case. Doc. 0067 Def. 2nd MTD (04/14/2025). The plaintiff filed his resistance and brief in support of

resistance to defendant's motion to dismiss. Doc. 0073 Brief; Doc. 0074 Resistance (05/01/2025). The defendant filed its reply to the plaintiff's resistance with attachments A through C. Doc. 0078 Def. Reply (05/16/2025). The court entered an order granting defendant's motion to dismiss and dismissed the entire action. Doc. 0106, Ruling (06/22/2025). A timely notice of appeal of all adverse rulings was filed. Doc. 0021 Notice (07/21/2025).

STATEMENT OF FACTS

The plaintiff brought this medical negligence action against the defendant because in the course of surgery on his right upper extremity the plaintiff exhibited abnormal vitals that continued in the post-surgery and when the plaintiff was fully awake after anesthesia, he had near complete blindness. Doc. 0007 Amended Pet. ¶¶ 12, 25-45, 52, 86-94 (05/04/2023). The only allegations of negligence pled in this Amended Petition are those against individual Van Sickle. Doc. 0007 Amended Pet. 87-94 (05/04/2023).

The plaintiff provided a sole certificate of merit affidavit by J. Benjamin Campbell, a CRNA. Doc. 0015 Notice (05/23/2023); Doc. 0031 MTD attachment B (02/12/2024). The certificate of merit alleged standard of care violations against only Van Sickle. Doc. 0031 MTD attachment B ¶ 4(a) through (d) (02/12/2024). The certificate of merit read as follows, "I make all of the foregoing

statements in good faith and under penalty of perjury." Doc. 0031 Attachment B ¶ 5 (02/12/2024).

In defendant's motion for partial dismissal, the defendant argued that Iowa Code section 147.140(6) "plainly mandates all other possible claims against any other possible care providers related to this care must be dismissed." Doc. 0031, MTD ¶ 3 (02/12/2024). The plaintiff's amended petition did cite the names of multiple medical providers in its recitation of factual allegations. Doc. 0007 Amended Pet. ¶¶ 10-11, 16-17, 18, 23, 27, 32, 45, 49, 50, 52, 54, 58, 60, 64, 68, 75-77. But the only allegations regarding duty, breach, or standard of care violations were those directed at Van Sickle, CRNA. Doc. 007 Amended Pet. ¶¶ 87-94 (05/04/2023). At the time the defendant filed this motion for partial dismissal, the deadline to close pleadings was fifteen months away. Doc. 0004 Trial Sched. (06/15/2023); Doc. 0007 Order (06/19/2023).

The plaintiff resisted the partial dismissal citing that the language of Iowa Code section 147.140 does not plainly state that a plaintiff in a negligence action against a health care provider is required to plead all causes of action possible, whether known or unknown, or risk dismissal with prejudice. In fact, the statute can be clearly read otherwise in section 2, "[A]n expert witness's certificate of merit does not preclude additional discovery and

supplementation of the expert witness's opinions in accordance with the rules of civil procedure." Iowa Code section 147.140(2). The statute also does not specifically disallow amendments and Iowa courts favor the grant of leave to amend one's filing. Iowa R. Civ. Pro. 1.402(3).

In defendant's motion briefing, it did not specify any case with precedent that Iowa Code section 147.140 closes the pleadings sixty days after an answer is filed. The defendant cited the plethora of prior precedent that dismissed a plaintiff's cause of action because the court found that the certificate of merit was not filed at all, untimely filed, or lacked an oath. Doc. 0031, Motion to Dismiss at ¶ 16 (02/12/2024).

The trial court entered its ruling granting the defendant's partial motion to dismiss relying upon the "suggest[ion] that the Plaintiff is indeed planning to prosecute claims against additional providers." Doc. 0043, Order at p. 3 (03/26/2024). The trial court stated in its ruling that "[P]laintiff appears to have gone to great lengths to include the names of and discuss care provided by multiple individuals during his treatment." Doc. 0043, Order at p. 3 (03/26/2024). However, it concluded that the plaintiff did not substantially comply with the statute regarding any claim of medical negligence against any provider other than Ms. Van Sickle and has not taken steps to show good cause to

support the filing of any other Certificate of Merit. Doc. 0043, Order at p. 6 (03/26/2024).

In defendant's motion to dismiss filed on April 14, 2025, defendant raised the issue of plaintiff's certificate of merit compliance because it is not a proper affidavit sworn under oath or signed with a jurat consistent with the language of Iowa Code section 622.1. Doc. 0067, MTD p. 1-2 (04/14/2025). The defendant argued that plaintiff's certificate of merit affidavit lacked substantial compliance because the certificate lacked a statement "certify[ing] the statements **to be true** and provide **the date** of the statement's execution[..]" Doc. 0067, Motion to Dismiss p. 6-7 (04/14/2025). The plaintiff argued that the certificate substantially complied with Iowa Code section 147.140 and subsequent case law because the language used by plaintiff's expert, "[..] in good faith and under penalty of perjury" substantially complied because this phrasing binds the conscience of the expert, Doc. 0073, Plt Resistance, p. 9 (05/01/2024) and that the Iowa Supreme Court had the opportunity to hold plaintiffs to a stricter criterion like a statement with jurat or sworn statement before the notary public but declined to do so. Doc. 0073 Plt Resistance, p. 9 (05/01/2024). The trial court ruled that plaintiff's certificate of merit affidavit did not substantially comply because it failed to include a jurat pursuant to Iowa Code section 622.1 or lacked the statement "made under penalty of

perjury under the laws of the State of Iowa." Doc. 0106 Order p. 11-12 (06/22/2025).

ARGUMENT

The Iowa legislature enacted a package of legislation heralded as tort reform in 2017, it included damage limitations, stricter witness criteria, and the certificate of merit requirement. Iowa Code sections 147.136A, 147.139, and 147.140. The intended purpose of the affidavit of merit statutes is to provide protection to health care providers, individuals and entities, from "frivolous" claims that is thought to drive up the cost of liability insurance and health care costs. Deborah Buckman, Constitutionality of Affidavit or Certificate of Merit Requirements in Actions Brought Against Licensed Professionals, 45 A.L.R. 7th Art. 1 (2019).

The Iowa certificate of merit statute has a two prong criteria; one of substance and one of timing. Iowa Code section 147.140. A plaintiff is required to serve a certificate of merit affidavit signed by an expert before or by sixty days after a defendant files an answer to the action. Iowa Code section 147.140(1)(a). The expert that provides the certificate of merit must meet the qualifying standards in Iowa Code section 147.139. Last, the expert must include the following information: a statement of the familiarity with the applicable standard of care,

the standard of care was breached by the provider named in the petition, and each defendant named in the petition requires a separate certificate of merit. Iowa Code section 147.140(1)(b)(1)-(2)(c).

Importantly, the statute provides safe harbor provisions to guide when extension of the sixty-day time limit should be allowed by the trial court and that dismissal with prejudice shall be the consequence for lack of "substantial compliance" with subsection of Iowa Code 147.140.

I. IOWA CODE SECTION 147.140 DOES NOT PRECLUDE A PLAINTIFF FROM AMENDING A PLEADING TO ADD NEW DEFENDANTS OR CLAIMS.

The defendant filed its partial motion to dismiss on February 12, 2024, beyond a time that plaintiff could have safely exercised his voluntary dismissal right under Iowa R. Civ. Pro. 1.943. Essentially the defendant argues that the "plain language" of the statute requires a plaintiff in a negligence claim to bring all potential or possible claims, whether known or unknown, at the time of the initial filing or face dismissal upon a motion to dismiss pursuant to Iowa Code section 147.140(6).

The plaintiff disagrees with the defendant's interpretation of the statute and cannot read any part or subsection as "plainly" requiring such a pleading standard.

A. STANDARD OF REVIEW

Iowa appellate courts "review a district court's ruling on a motion to dismiss for the correction of errors at law." *Benskin, Inc. v. W.Bank*, 952 N.W.2d 292, 298 (Iowa 2020) quoting *Shumate vs. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). Reviews on rulings of Statutory interpretation as for corrections of errors at law. *Goche v. WMG*, L.C., 970 N.W.2d 860 (Iowa 2022).

B. PRESERVATION OF ERROR

The plaintiff preserved error by filing a written resistance, brief, and attachments to the defendant's motion. Doc. 0032, Plt Resistance (02/12/2024). The trial court's ruling and order granting defendant's motion for partial dismissal was not a final decision because it did not adjudicate "all of the rights of the parties and leave nothing for the district court to do other than execute that order." Iowa R. App. 6.103(3); *In re Dethmers Mfg. Co.*, 985 N.W.2d 860 (Iowa 2023). The plaintiff filed a timely notice of appeal. Doc. 0108, Notice of Appeal (07/21/2025), Doc. 109, Amended Notice (07/21/2025).

C. DISCUSSION

> "Come one, come all, but if you don't all come, then don't come at all."[2]

The plaintiff-appellant served a certificate of merit affidavit timely and directed it to the care of Van Sickle, the

[2] The Three Musketeers, Alexandre Dumas, July 1844 or Book of Isaiah 55:1-2.

target defendant. Pursuant to Iowa Code section, 669.5(2)(a), Van Sickle was dismissed from the case, and the remaining sole defendant was the State of Iowa. Doc. 0007, Amended Pet. ¶ 3 (05/04/2023), Iowa Code section 669.5(2)(a). The plaintiff-appellant served one certificate of merit under the "Jacob Knapp vs. State of Iowa" caption and stated that "[..] find that there are standard of care violations on the part of Brittany Van Sickle in the following ways [..]" Doc. 0031 Attachment B, ¶ 4 (02/12/2024).

The defendant-appellee filed its motion for partial dismissal of all other health care providers and all other claims. Doc. 0031, Motion, p. 2-3 (02/12/2024). The defendant-appellee argued that because the amended petition was fact intensive including the names and dates of other individuals involved in the care of Knapp, he was required to bring those claims and name those defendants from the outset. The initial filing at paragraph 20, argues "[..] all claims must be dismissed except for those involving the standard of care of CRNA Van Sickle." Doc. 0031, Motion, p.7, ¶ 20 (02/12/2024). The motion relied upon case law interpretation in *Estate of Fahrmann by Fahrmann*, 999 N.W.2d 283 (Iowa 2023), *Struck v. Mercy Health Services-Iowa Corp.*, 973 N.W.2d 533, 541 (Iowa 2022); *Wolfe v. Shenandoah Medical Center*, 986 N.W.2d 134 (Table), 2022 WL 2160449, at 1-3 (Iowa Ct. App. 2022). With the exception of *Wolfe*, the cited cases are factually dissimilar to this case as

it was situated when the trial court considered the partial motion to dismiss.

1. There is no plain language prescribing that all potential defendants and claims must be brought in a plaintiff's initial petition.

In Estate of Fahrmann by Fahrmann v. ABCM Corp., 999 N.W.2d 283 (Iowa 2023), the Court only considered whether an attorney's signature on initial disclosures served as a substitute for a certificate of merit affidavit and met the "substantial compliance" provisions. In *Struck*, the Court held that if a petition alleges professional negligence claims, one cannot read into the same claims those of ordinary negligence. *Struck* at 541. Therefore, Struck was required to comply with the certificate of merit affidavit statute.

The appellate court's reasoning for its decision in *Wolfe v. Shenandoah*, 986 N.W.2d 134 (Table), 2022 WL 2160449, at 1-3 (Iowa Ct. App. 2022), actually supports the plaintiff-appellant's resistance at the trial court; despite the defendant's misleading quote to the case "(affirming partial dismissal of claims not pled due to failure to serve a certificate of merit)." Doc. 0031, Motion, p.8, ¶ 26 02/12/2024). In *Wolfe*, the plaintiff named a hospital and various individual providers in a medical negligence action. *Id*. The petition alleged in a general fashion that "[D]efendants had a duty" and "were otherwise negligent." *Id*. The

plaintiff did not specifically allege negligent supervision, negligent retention or negligent credentialing against the defendant hospital. *Id*. The plaintiff provided three separate certificates of merit by physicians; each of the certificates were directed to an individual named provider and the defendant hospital. *Id*. Two of the certificates of merit utilized the language, "defendants Jennifer Deizel and SMC have breached the standard of care with respect to the care and treatment provided to John B. Wolfe." *Id*. The third certificate of merit included standard of care violations directed at two of the named defendants and "employees at SMC." *Id*.

Defendant Shenandoah Medical Center filed a partial motion for summary judgement to dismiss any assertion of negligent supervision against SMC on the grounds that negligent supervision was not pled and no certificate of merit was filed with respect to an independent claim of negligence against SMC. *Id*. The key distinguishable difference between Wolfe and this case is that the plaintiff named SMC as a defendant which triggers the application of Iowa Code 147.140.

Again, the contrasting different with the current case is that the plaintiff-appellant did not name any other defendant and did not plead in his amended petition that any other individual was "negligent" or "breached standard of care" or "owed a duty."

Doc. 0007 Amended Petition (05/04/2023). Furthermore, the factual detail included in the amended pleading was done in order to comply with Iowa Code section 670.4(A) as *Doe v. Dubuque Community School District*, 20 N.W.3d 798 (Iowa 2025) had not yet been decided which recognized the unworkability of the heightened pleading standards to common law tort claims. As the appellate court pronounced in *Wolfe*, "[the P]laintiff is bound by the allegations actually plead within the four corners of her petition." *Id*. The plaintiff-appellee should be bound by the allegations within the four corners of his petition and which only included allegations of negligence against Van Sickle which the district considered and ruled that a certificate of merit was provided.

2. Case and Supreme Court Precedent Requires that in the absence of direct conflict or explicit language subsequent statutes do not override existing.

The Iowa Rules of Civil Procedure allow for parties to amend pleadings to conform with proof and leave of court should be granted freely when justice so requires. Iowa R. Civ. Pro. 1.402(5). The trial scheduling and discovery plan order in the parties' case closed the pleadings and set the deadline for amendments on May 14, 2025, fifteen months after the initial motion to dismiss was filed. Doc. 0004 Trial Sched. (06/15/2023); Doc. 0007 Order (06/19/2023). Just as this Court upheld in Victoriano v. City of Waterloo, "a statute will not be presumed to overturn long-established legal principles, unless that intention is

clearly expressed or the implication to that effect is inescapable." *Victoriano v. City of Waterloo*, 984 N.W.2d 178 (Iowa 2023) (quoting *Wilson v. Iowa City*, 165 N.W.2d 813, 822 (Iowa 1969)).

The language of Iowa Code section 147.140 is plain, and the triggering criteria is in an "[..] action for personal injury or wrongful death against a health care provider[..] the plaintiff shall serve upon the defendant a certificate of merit [..]." Iowa Code section 147.140(1)(a). What is clear about the requirements is a negligence-based cause of action that includes factual allegations that attack professional care and a named defendant for the expert to target a certificate of merit.

The implication of the language in Iowa Code section 147.140(2) is that once a certificate of merit is served on a defendant and the plaintiff becomes entitled to discovery; a plaintiff's expert can supplement opinions in accordance with the rules of civil procedure. Iowa Code section 147.140(2). Though the Court tells us we are to assume the legislature is familiar with the existing state of law when it enacts new legislation, this subsection acknowledges the existing rules that allow for supplementation of discovery as facts are discovered. *Victoriano v. City of Waterloo*, 984 N.W.2d 178 (Iowa 2023). If the

legislature intended to abrogate the rights of parties encompassed in Iowa R. Civ. Pro. 1.402(5), they needed to explicitly do so.

II. AN OATH SWEARING "IN GOOD FAITH AND UNDER PENALTY OF PERJURY" SUBSTANTIALLY COMPLIES WITH THE REQUIREMENTS OF IOWA CODE SECTION 147.140 AND EXISITING CASE LAW.

Since its inception the certificate of merit requirement has faced multiple challenges in the appellate courts. These challenges include findings by courts that an interrogatory answer signed by an expert does not serve as a substitute that substantially complies with the statute, *McHugh v. Smith*, 966 N.W.2d 285 (Iowa Ct. App. 2021); a retired and unlicensed physician did not meet the criteria standards of Iowa Code section 147.139, 147.140, *Hummel v. Smith*, 966 N.W.2d 285, 291-92 (Iowa Ct. App. 2021); signature by counsel on initial disclosures does not meet substantial compliance with statute, *Estate of Fahrmann by Fahrmann v. ABCM Corp.,* 999 N.W.2d 283, 288 (Iowa 2023); a personal signature by expert on certificate of merit is required by the language of the statute, *Miller v. Catholic Health Initiatives-Iowa Corp.*, 7 N.W.3d 367, 374 (Iowa 2024); and the certificate of merit requires a declaration before a person authorized to administer oaths or a declaration signed expressly under penalty of perjury, *Banwart v. Neurosurgery of North Iowa, P.C.,* 18 N.W.3d 267, 272-74 (Iowa 2025).

No case, even the most recent *Banwart* opinion, has gone as far as to hold that a plaintiff is absolutely required to utilize a sworn notarized affidavit or an unsworn declaration with a jurat consistent with Iowa Code section 622.1. The statute language is substantial compliance, not "perfect compliance."

A. STANDARD OF REVIEW

Iowa's appellate courts "review a district court's ruling on a motion to dismiss for the correction of errors at law." *Benskin, Inc. v. W.Bank,* 952 N.W.2d 292, 298 (Iowa 2020) quoting *Shumate vs. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 514). Reviews on rulings of statutory interpretation as for corrections of errors at law. *Goche v. WMG, L.C.,* 970 N.W.2d 860 (Iowa 2022).

B. PRESERVATION OF ERROR

The plaintiff preserved error by filing a written resistance, and brief to the defendant's motion. Doc. 0073 Resistance (05/01/2025), Doc. 0074 Brief (05/01/2025). The trial court entered a ruling granting the motion and order dismissing the entire action. Doc. 0106 Ruling (06/22/205). The plaintiff filed a timely notice of appeal. Doc. 0108, Notice of Appeal (07/21/2025), Doc. 109, Amended Notice (07/21/2025).

C. DISCUSSION

1. The most recent precedent held that a timely certificate, signed by the expert under oath or under penalty of perjury satisfies the affidavit requirement of Iowa Code section 147.140.

The Iowa Supreme Court in last year's session furthered the application of the substantial compliance subsection of Iowa Code section 147.140. In *Banwart v. Neurosurgery of North Iowa, P.C.,* 18 N.W.3d 267 (Iowa 2025), the Court re-stated the definition of "substantial compliance" and it means "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." Id at 8, quoting *Hummel v. Smith*, 999 N.W.2d 301, 309 (Iowa 2023). The certificate of merit signed under oath or a declaration that it is signed under penalty of perjury serves its intended legislative purpose to "weed out non-meritorious" claims early because experts would otherwise be deterred by the risk of criminal prosecution. *Banwart v. Neurosurgery of North Iowa, P.C.,* 18 N.W.3d 267 (Iowa 2025) at 8.

Prior to *Banwart*, the Court held in *Miller v. Catholic Health Initiatives-Iowa Corp.,* 7 N.W.3d 367, 374 (Iowa 2024), that appearance before a notary was not necessary; just that the oath or affirmation accomplished the objective to bind the conscience of the expert. *Id.*

The certificate of merit served by the plaintiff-appellant contained the exact language contemplated by *Banwart*, "[..] under penalty of perjury" and contains an actual signature. Doc. 0031, Attachment B (02/12/2024). The defendant-appellee explicitly argues that without a date and implicitly without a statement

certifying the statements to be true and correct, the conscience of the expert Campbell was not bound. Doc. 0106 at pp. 6-7 Ruling (06/22/2025).

In issuing its ruling, the only other case cited by the trial court to support its finding that plaintiff-appellant's certificate of merit lacked substantial compliance was *Carter v. State*, 618 N.W.2d 374 (Iowa 2000). In *Carter*, an applicant to the pharmacy board completed a document that inquired into her criminal background. The application required a signature and contained the language, "I certify to the Iowa Board of Pharmacy Examiners that the information I have provided on this registration applicable is true and correct." *Id* at 375. The applicant answered that she had never been charged or convicted of a crime other than a traffic violation involving a fine of less than $100 when in reality she carried a felony conviction for possession of cocaine with intent and was sentenced to a period of incarceration. *Id* at 375. She was subsequently charged with perjury in violation of Iowa Code section 720.2 (1997). *Id* at 375. However, the court dismissed the charge because the application did not constitute an oath or affirmation essential to the commission of perjury. *Id* at 376.

The *Carter* case does not support a requirement that in order for the expert's "conscience to be bound" the certificate of merit must include a date and the "under penalty of perjury in the state

of Iowa." In fact, citation to the *Carter* case along with the holdings in *Banwart* and *Miller*, support the conclusion that expert Campbell's conscience was bound because "under penalty of perjury" language was included. *Banwart* at 273-274.

This Court had the opportunity to address whether a certificate of merit that lacked a date with a signature lacked substantial compliance when the trial court denied a defendants' motion to dismiss and Court denied the application for interlocutory review. *Wiig et al v. Holtz & Siouxland OB&GYN, P.C.*, 24-1697 (Iowa 2025).

The remaining case cited by the trial court that was relied upon in determining the certificate of merit lacked substantial compliance was unpublished case from 2009, *Citibank (South Dakota), N.A. v. Makoniuk*, No. 09-0762, 2009 WL 4842835 (Iowa Ct. App. Dec. 17, 2009). The citation utilized by the trial court in its ruling was dicta. Doc. 0106 Ruling p. 11 (06/22/2025). The case was an action on credit card debt; the defendant filed a general denial, and the plaintiff later filed a motion for summary judgment. *Id.* At issue was an affidavit by defendant's attorney stating facts relative to the "Notice of Right to Cure Default" mailed to the plaintiff. *Id*. The affidavit was not notarized, dated, sworn, or made under penalty of perjury; and made factual representations that the notice was mailed on a certain date based

upon knowledge of regular office practices not personal knowledge as required by Iowa R. Civ. Pro. 1.981(5). The court's finding that the affidavit was not notarized, dated, sworn, or made under penalty of perjury was not essential to the final disposition of the matter. *Id*.

To argue that the oath relied upon by the plaintiff-appellant's certificate of merit, "in good faith and under penalty of perjury" does not bind the conscience of expert Campbell, is to essentially argue that as long as a witness crosses the fingers of their left hand behind their back while raising their right hand to take the oath administered by the judge, the witness does not have to worry about a perjury charge for intentionally making "false statements of material facts." Iowa Code section 720.2. This stretches the bounds of the reasonable minds God gave us all and disregards the safe harbor the legislature intended to adopt into the law. Iowa Code section 147.140(6).

CONCLUSION

For the reasons stated above, the district court's partial dismissal of unfiled claims and the dismissal of the entire action with prejudice should be reversed and the case remanded.

Respectfully submitted,

_/s/ Molly M. Hamilton_____
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REQUEST FOR ORAL ARGUMENT

Plaintiff-appellant respectfully requests this case to be submitted with oral argument.

Respectfully submitted,

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CERTIFICATE OF FILING

I, Molly M. Hamilton, hereby certify that I have filed the foregoing "Brief of Appellants" with the Clerk of the Supreme Court of Iowa through the ECF/EDMS System on September 26, 2025.

_/s/ Molly M. Hamilton_____
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CERTIFICATE OF SERVICE

I, Molly M. Hamilton, hereby certify that on this same date, I served the attached "Brief of Appellants" through the ECF/EDMS System on the following:

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs.App.P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

This brief has been prepared in a monospaced typeface using Courier New in 12 characters per inch and contains 488 number of lines of text, excluding the parts of the brief exempted by Iowa R.App.P. 6.903(1)(g)(2).

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