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IN THE SUPREME COURT FOR THE STATE OF IOWA
No. 25-1382

Bremer County LACV006841

ERIN BARKER,
Plaintiff-Appellant,

vs.

J. MATTHEW GLASCOCK,
Defendant-Appellee.

Appeal From the Iowa District Court for Bremer County
Honorable Gregg R. Rosenbladt, Judge

Plaintiff-Appellant's Reply Brief

Adam C. Witosky
Christopher Stewart
Matthew M. Boles
BOLES WITOSKY STEWART LAW PLLC
2015 Grand Avenue
Des Moines, Iowa 50312
(515) 235-0551
(515) 243-3696 (Fax)
adam@bwsiowa.com
chris@bwsiowa.com
matt@bwsiowa.com
ATTORNEYS FOR PLAINTIFF-APPELLANT

CERTIFICATE OF SERVICE AND FILING

I hereby certify e-filing of the Plaintiff-Appellant's Reply Brief via EDMS with the Appellate Court on January 7, 2026, with the following counsel served by EDMS:

Christine L. Conover
Carrie L. Thompson
SIMMONS PERRINE, P.L.C.
115 Third Street SE, Suite 1200
Cedar Rapids, Iowa 52401
ATTORNEYS FOR DEFENDANTS-APPELLEES

I hereby certify on January 7, 2026, the Plaintiff/Appellant's Reply Brief was served on Plaintiff-Appellant Erin Barker.

/s/ Adam Witosky
Adam Witosky

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STATEMENT OF REPLY ISSUES

I. Iowa Code §147.140 Does Not Change How an Affidavit's Sufficiency is Assessed

REPLY ARGUMENT

I. Iowa Code §147.140 Does Not Change How an Affidavit's Sufficiency is Assessed

Whatever the Appellees' preferred framing, the issue on appeal is and always has been whether the Certificate of Merit, the contents of which Dr. Jin Soo Yoo "certif[ied] under oath" as being "true and correct" after being "duly sworn[,]" suffices as an affidavit. (D0030 – Ex. A, Certificate of Merit at 1, 3 (02/21/25).)

In arguing it does not, Appellees assert that the legislature abrogated 115 years of case law in passing Iowa Code §147.140 as it "…codified specific mechanisms for satisfying the affidavit requirement in the context of medical malpractice claims" by requiring it to "be signed either under oath administered by an authorized officer or under penalty of perjury." (Appellees Br. at 21.) There is no citation to the statute on this point, as Iowa Code §147.140 does not say that, because the legislature did not do it.

What Iowa Code §147.140 does is require "a certificate of merit affidavit signed by an expert witness." Iowa Code §147.140(1)(a). It then requires the expert-signed affidavit to "certify the purpose for calling the expert witness by providing under the oath of the expert witness" their familiarity with the standard of care and that the standard was breached. Iowa Code §147.140(1)(b).

That's it. A valid Certificate of Merit must be 1) an affidavit and 2) signed by the expert under oath. There is no dispute that these are statutory requirements. There is no dispute that the absence of either is fatal to the Certificate and, potentially, the claim. What is in dispute is whether this *was* done here, and Iowa Code §147.140 is silent on *how* this question is to be answered.

As noted in initial briefing, this Court knows the legislature did not change the meaning of "affidavit" for Certificates of Merit and that the term still means "'a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state.'" *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367, 375 (Iowa 2024) (*quoting* Iowa Code §622.85).

The legislature is assumed to know the state of existing precedent when it passes a statute. *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 182 (Iowa 2023) (*quoting State v. Adams*, 810 N.W.2d 365, 370 (Iowa 2012). Because of this, statutes "will not be presumed to overturn long-established legal principles, unless that intention is clearly expressed or the implication to that effect is inescapable." *Id*. (*quoting Wilson v. Iowa City*, 165 N.W.2d 813, 822 (Iowa 1969)).

Iowa Code §147.140 does not express a clear intent to remove Certificate of Merits from the century of case law for analyzing affidavits. Rather, the repeated inclusion of the term affidavit demonstrates the opposite: "We are not at liberty to eliminate the requirement that the expert sign the certificate of merit under oath when the governing statute uses the term 'affidavit' six times." *See Miller*, 7 N.W.3d at 375.

Since 1910, Iowa law has recognized that an affiant's oath suffices if done in any form "ordinarily calculated to appeal to the conscience of the person to whom it is administered, and by which he signifies that his conscience is bound[.]" *State v. Hulsman*, 126 N.W. 700, 701 (Iowa 1910). Dr. Yoo's Certificate of Merit bears the hallmarks of an affidavit, indicating his intent to bind his conscience, his consciousness of the fact

that he was swearing to its correctness, and a corporal act doing so performed in front of a witness. *Dalbey Brothers Lumber Co. v. Crispin*, 12 N.W.2d 277, 279 (Iowa 1943). This is sufficient to find the expert signed under oath.

Appellees' argument is not based on the language of Iowa Code §147.140, but rather on misreading *Miller*, *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.2d 267 (Iowa 2025), and *Shontz v. Mercy Medical Center-Clinton, Inc.*, No. 23-0719, 2024 WL 2868931 (Iowa June 7, 2024). How *Miller* and *Banwart* apply here is addressed in the initial briefing. (Appellant Br. at 19-21.) *Shontz* is much the same, as a case again involving a letter signed by an expert without a jurat, declaration of signing under penalty of perjury, nor "any indication that Dr. Gordan had signed under oath." *Shontz*, 2024 WL 2868931 at *1.

These cases recognize what Appellees still overlook: that the oath and *proof* of the oath are two separate things. A jurat is one form of proof of an oath. A declaration under penalty of perjury is another. Neither is mandatory if there is otherwise "any indication that [the expert] had signed under oath." *Id.* Such proof is present in Dr. Yoo's Certificate of Merit. (D0030 – Ex. A, Certificate of Merit at 1, 3 (02/21/25).)

It is the signature under *oath*, not the jurat, that "is necessary to ensure the reasonable objectives of section 147.140." *Miller*, 7 N.W.2d at 374. It is the *oath*, not the jurat, that "ensures that person 'recognize[s] the obligation to be truthful' when making the statement." *Id.* at 375 (*quoting State v. Carter*, 618 N.W.2d 374, 376 (Iowa 2000)). It is '[t]he expert's sworn *oath*[,]" not the jurat, that "is essential." *Id.* [Emphasis added.] As established by the language of the affidavit signed in the presence of a notary empowered to administer an oath, Dr. Yoo's Certificate of Merit has so sworn.

CONCLUSION

It is the signature under oath, not the form in which it is done, that is essential to an affidavit. Jurats and declarations under perjury may be the clearest evidence of an oath, but under long-standing Iowa law, they are not the only evidence. Nor is either required under Iowa Code §147.140. The body of Dr. Yoo's Certificate of Merit and signature done in the presence of a notary establish his conscience was sufficiently bound for an affidavit. Summary judgment was erroneously granted and reversal is required.

BOLES WITOSKY STEWART LAW PLLC

BY: /s/ Adam Witosky
Adam C. Witosky AT0010436
Matthew Boles AT0001037
Christopher Stewart AT0013127
2015 Grand Avenue, Suite 200
Des Moines, Iowa 50312
Telephone: (515) 235-0551
Fax: (515) 243-3696
Email: adam@bwsiowa.com
matt@bwsiowa.com
chris@bwsiowa.com
ATTORNEYS FOR APPELLANT

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) (no more than 7,500 words) because this brief contains 996 words, excluding those parts exempted.

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/s/ Adam Witosky
Adam Witosky

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