ELECTRONICALLY FILED DEC 30, 2025 CLERK OF SUPREME COURT

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

REPLY BRIEF OF APPELLANT

MOLLY M. HAMILTON
STEVE HAMILTON

Hamilton Law Firm, P.C.
12345 University Avenue, Suite 309
Clive, Iowa 50325
(515) 309-3536
molly@hamiltonlawfirmpc.com
steve@hamiltonlawfirmpc.com
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Table of Contents..... 2

Table of Authorities..... 3

Statement of Issues Presented for Review..... 4

ARGUMENT..... 5

I. PLAINTIFF'S PETITION DID NOT PLEAD CLAIMS AGAINST ANY OTHER HEALTHCARE PROVIDER IN HIS PETITION; THEREFORE, HE WAS NOT REQUIRED TO PROVIDE A CERTIFICATE OF MERIT PURSUANT TO IOWA CODE SECTION 147.140. 5

II. AN OATH CONTAINING "UNDER PENALTY OF PERJURY" SUBSTANTIALLY COMPLIES WITH IOWA CODE SECTION 147.140 BECAUSE IT BINDS THE CONSCIENCE OF THE SIGNATOR AND RECOGNIZES THE OBLIGATION TO BE TRUTHFUL. 11

Conclusion..... 13

Certificate of Filing..... 13

Certificate of Service..... 14

Certificate of Compliance..... 14

TABLE OF AUTHORITIES

Cases:

Borst Brothers Construction, Inc., v. Finance of America Commercial, LLC et al, 975 N.W.2d 690 (Iowa 2022) 6
Brown v. City of Red Oak, 990 N.W.2d 309 (Iowa Ct. App 2022) 8
Estate of Fahrmann v. ABCM Co., 999 N.W.2d 283, 288 (Iowa 2023) 12
Helland v. Yellow Freight Sys. Inc., 204 N.W.2d 601, 602 (Iowa 1973) 8
In re Prop. Seized for Forfeiture from Foley, No. 16-1676, 2017 WL 3525221 (Iowa Ct. App. Aug. 16, 2017), ... 11
Miller v. Catholic Health Initiatives-Iowa, Corp., 7 N.W.3d 367 (Iowa 2024) 11, 12
Ronnenfeldt v. Shelby County Chris A. Myrtue Memorial Hospital, 984 N.W.2d (Iowa 2023) 8
State v. Adams, 810 N.W.2d 365, 370 (Iowa 2012) 8
Struck v. Mercy Health Services-Iowa Corp., 973 N.W.2d 533 (Iowa 2022) 7
Tuna v. St. Francis Hospital, 363 N.J.Super. 301, 832 A.2d 936 (N.J. Super. Ct. App. Div. 12
United Elec., Radio & Mach. Workers of Am. V. Iowa Pub. Emp't Rels. Bd., 928 N.W.2d 101, 109 (Iowa 2019) 7
Victoriano v. City of Waterloo, 984 N.W.2d 178 (Iowa 2023) .. 8
Wilson v. Iowa City, 165 N.W.2d 813, 822 (Iowa 1969) 8, 9
Wolfe v. Shenandoah Medical Center, 986 N.W.2d 143, 2022 WL 2160449 (Iowa 2022) 9

Statutes:

Iowa Code § 147.140 ..... passim
Iowa Code § 147.140(1) 7
I.C.A. 147.140(1)(a),(c) 7, 8
Iowa Code § 809A.13(4) 12
Iowa R. Civ. Pro. 1.402(4) 8
Iowa R. Civ. Pro. 1.405 12

Other Authorities:

Wiig et al., v. Holtz, et al., No. 24-1697 (IA Sup.Ct., Jan. 29, 2025)..... 11

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. **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 § 147.140 ESTOP THE PLAINTIFF FROM AMENDING HIS PETITION WITH ADDITIONALLY NAMED PARTIES OR NEW CLAIMS?**

II. **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 § 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 § 147.140 WITHOUT A JURAT OR NOTARIZATION?**

ARGUMENT

I. PLAINTIFF'S PETITION DID NOT PLEAD CLAIMS AGAINST ANY OTHER HEALTHCARE PROVIDER IN HIS PETITION; THEREFORE, HE WAS NOT REQUIRED TO PROVIDE A CERTIFICATE OF MERIT PURSUANT TO IOWA CODE SECTION 147.140.

Contrary to Defendant's arguments, Plaintiff did not assert allegations of negligence in his Petition against any other healthcare providers employed by the Defendant. (D0001 First Amended Pet.; ¶¶20-35, (05/04/2023)). The Defendant argues that when the Plaintiff made the following allegations of fact in his Petition: he was not warned by Dr. Buckwalter at ¶ 17; referenced the consent by Dr. Karam at ¶ 28; lack of an arterial line ¶¶ 33-34; Dr. Buckwalter planned to perform the surgery in a prone position at ¶ 36; "no hand-off" at ¶ 45; no interventions documented at ¶ 53; and vision loss was caused by University of Iowa Hospitals and Clinics; and Plaintiff's "recent surgery, prone position, and post-operation hypotension" caused his posterior ischemic optic neuropathy at ¶¶ 62, 71, other provider's were implicated in negligence.

These truncated excerpts from Plaintiff's First Amended Petition are at best that, and at worst, gross misrepresentations of the allegations contained therein. The misrepresentation is that several of the allegations Defendant attributes to other providers are paragraphs that do not contain the specific providers by name; specifically; paragraph 17 does not specifically name Dr.

Buckwalter but describes the consent event; paragraph 28 does not specifically name Dr. Karam; paragraphs 33-34 mention three other providers in addition to the negligent provider; paragraphs 62 and 71 are more specific about the factual causation of Plaintiff's damages than the Defendant's elude to in their brief. *Id.*

The Plaintiff pled in his First Amended Petition that "Brittany Van Sickle was an employee and/or agent of the University of Iowa Hospitals and Clinics and the State of Iowa and was acting within the scope of such employment at all relevant times for the purposes of this petition." *Id.* at ¶ 2. The Plaintiff did not make any similar allegation of any other healthcare provider referenced in his Petition. *Id.* Further, the Plaintiff only used language like "owed a duty,"[..] violated that duty [..]," and "[H]ad Nurse Van Sickle complied with the standard of care[..]" when making fact allegations against the alleged negligent provider, Brittany Van Sickle. *Id.* at ¶¶ 86-87. The Plaintiff did not allege any other individual "owed a duty" or "violated" that duty in his petitions. *Id.*

To interpret the provisions of Iowa Code § 147.140, the Court's first task is to determine whether the relevant language is ambiguous. If it is not, and the language is plain and meaning clear, the Court is not to search for legislative intent beyond the express terms of the statute. *Borst Brothers Construction, Inc., v. Finance of America Commercial, LLC et al*, 975 N.W.2d 690

(Iowa 2022) (quoting *United Elec., Radio & Mach. Workers of Am. V. Iowa Pub. Emp't Rels. Bd.*, 928 N.W.2d 101, 109 (Iowa 2019)).

In *Struck v. Mercy Health Services-Iowa Corp.*, 973 N.W.2d 533 (Iowa 2022), the Court determined that the legislative goal of the statute was to enable health care providers to quickly dismiss professional negligence claims that are not supported by the requisite expert testimony. *Struck v. Mercy Health Services-Iowa Corp.*, 973 N.W.2d 533 (Iowa 2022), Iowa Code § 147.140. The statute provides that the plaintiff shall serve a separate certificate of merit on each defendant named in the petition, and the timing is set for on or before sixty (60) days after service of the defendant's answer. I.C.A. 147.140(1)(a),(c).

The certificate of merit clearly takes an individualized approach rather than a holistic approach because the requirement is that a plaintiff provides a certificate of merit for each defendant.

The trial court relied on subsection 1(a) and 6 of the statute to find that Plaintiff's failure to comply with 147.140(1) shall result in dismissal of each cause of action for which the necessary expert witness Certificate of Merit has not been provided. D0043 Order (03/27/2024). The trial court later also found that "[T]o the extent Plaintiff's First Amended Petition potentially alleges any claims of medical negligence against any healthcare provider

other than Brittany Van Sickle, they should be dismissed with prejudice."

Nothing in the plain language of Iowa Code §147.140 indicates the statute abrogates Iowa R. Civ. Pro. 1.402(4). The rules of civil procedure have the same force and effect as statute. *Ronnenfeldt v. Shelby County Chris A. Myrtue Memorial Hospital,* 984 N.W.2d (Iowa 2023)(quoting *Helland v. Yellow Freight Sys. Inc.,* 204 N.W.2d 601, 602 (Iowa 1973)). Iowa Rule of Civil Procedure 1.402(4) provides parties "[L]eave to amend[..] shall be freely given when justice so requires." I.R.C.P. 1.402(4). The allowance of an amendment to a pleading is the rule and denial the exception. *Brown v. City of Red Oak,* 990 N.W.2d 309 (Iowa Ct. App 2022).

There is no conflict between the rules of civil procedure and I.C.A. 147.140 and even if the Court were to determine there was a conflict; they should be construed to give effect to both and "a statute will not overturn a long-established legal principle, unless that intention is clearly expressed[..]." *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 Court assumes the legislature is familiar with the existing state of the law when it enacts new legislation. *Victoriano v. City of Waterloo*, 984 N.W.2d 178 (Iowa 2023)(quoting *State v. Adams*, 810 N.W.2d 365, 370 (Iowa 2012)). A new 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. *Wilson v. Iowa City*, 165 N.W.2d 813, 822 (Iowa 1969).

The facts in *Wolfe v. Shenandoah Medical Center*, 986 N.W.2d 143, 2022 WL 2160449 (Iowa 2022), are distinct but the analysis and holding are instructive for this case. In *Wolfe*, the plaintiff filed a medical negligence petition against two (2) individual providers and a hospital. *Id.* The plaintiff referenced the "defendants" generally when making the allegations related to the elements of negligence. *Id.* However, the negligence allegations pled by the plaintiff were related to professional negligence related to the treatment of the plaintiff's decedent. *Id.* The plaintiff timely served a certificate of merit affidavit that was sufficiently individualized to Defendant Jenifer Deziel, Connie Spencer, and Haysam Akkad. Each of the certificates encompassed "SMC" the named hospital entity and one contained a statement that "[..] it is my opinion that the standard of care was breached by employees at [SMC][..]" *Id.* Defendant SMC moved for partial summary judgment on the negligent supervision count and the court granted the motion. *Id.*

The court found that the only allegations the plaintiff alleged against Defendant SMC was that "all Defendants were negligent in care of Mr. Wolfe" and the "acknowledgement that SMC was the employer of other Defendants." *Id*. at 2. The plaintiff later filed a motion to reconsider and motion for leave to amend

to file an amended petition with the negligent supervision and direct negligence against SMC pled, and the court rejected it, finding it "unnecessary" to consider the motion for leave to amend because the matter was adjudicated in the summary judgment phase. *Id.* at 3.

Wolfe is instructive because the plaintiff had named the party at issue and pled negligence against this defendant without a sufficiently individualized certificate of merit affidavit to support the negligence allegation. *Id.* The identity of party, naming a defendant, and pleading negligence against that party is the triggering application of Iowa Code § 147.140. The Plaintiff here did NOT name additional parties and did not plead negligence allegations against additional parties. Likewise, in Wolfe, there was no requirement that a motion for leave to amend be filed to preserve error. *Id.*

The plaintiff did not name any other party other than Nurse Van Sickle[1] and did not make any allegations of negligence against the other providers. The other providers were mentioned sparingly in the factual allegations. The plaintiff was not required to plead all possible claims in his petition and Iowa law stands for the principle that courts should allow the parties to amend their filings consistent with evidence discovered during discovery.

[1] Later the State of Iowa was substituted for Nurse Van Sickle.

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.

Miller v. Catholic Health Initiatives-Iowa, Corp., 7 N.W.3d 367 (Iowa 2024), is the instructive case on the issue of the oath requirement and substantial compliance. In Miller, this Court determined that the oath ensures the person recognizes the obligation to be truthful when making the statement. *Id.* at 375.

The Defendant takes issue with Plaintiff expert's certificate of merit on multiple fronts; lacks a date, lacks a statement that "statements are true and correct," and lacks reference to laws of state of Iowa. (Def. Brief pp. 32-33.)

In a previous instance the Court had the opportunity to review a trial court decision denying dismissal with a certificate of merit signed in the same manner: no date, and the language used was "in good faith and under penalty of perjury" and the Court denied review. (Wiig et al., v. Holtz, et al., No. 24-1697 (IA Sup.Ct., Jan. 29, 2025, cert. denied).

In *In re Prop. Seized for Forfeiture from Foley*, No. 16-1676, 2017 WL 3525221 (Iowa Ct. App. Aug. 16, 2017), a defendant contested the forfeiture of certain property. The defendant filed a written declaration that disputed underlying allegations that the seized property was allegedly connected with illegal activity, provided factual statements as to the sourcing of the funds, and

provided his current temporary residence. *Id*. at 1. Iowa Code § 809A.13(4) provides for the format in which a defendant is to file an answer to the forfeiture action; this requires that the defendant provide certain factual information in a declaration that complies with Iowa R. Civ. Pro. 1.405 and "signed by the owner or interest holder under penalty of perjury." *Id.*

The defendant did not comply with Iowa R. Civ. Pro. 1.405 or the oath provision. *Id.* Despite this less than perfect performance, this Court entertained that had the defendant included a "penalty of perjury provision" they would entertain whether such language substantially complied with the statutory requirement. *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024).

Arguably, the defendant in *Foley* had a higher burden to prove substantial compliance. His statute specified the manner in which his declaration was to be drafted, consistent with Iowa R. Civ. Pro. 1.405 and penalty of perjury language. Iowa Code § 147.140 is less restrictive and does not specify the type of declaration the plaintiff is required to produce and the Plaintiff's expert complied with the phrase of importance the Court has consistently pronounced, "under penalty of perjury." *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024); *Estate of Fahrmann v. ABCM Co.,* 999 N.W.2d 283, 288 (Iowa 2023); *Tuna v. St. Francis Hospital,* 363 N.J.Super. 301, 832 A.2d 936 (N.J. Super. Ct. App. Div. 2003).

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_____
STEVE HAMILTON, AT0003128
MOLLY M. HAMILTON, AT0013636
Hamilton Law Firm, P.C.
12345 University Avenue, Suite 309
Clive, Iowa 50325
(515) 309-3536
steve@hamiltonlawfirmpc.com
molly@hamiltonlawfirmpc.com
ATTORNEYS FOR APPELLANT

CERTIFICATE OF FILING

I, Molly M. Hamilton, hereby certify that I have filed the foregoing "Reply Brief of Appellant" with the Clerk of the Supreme Court of Iowa through the ECF/EDMS System on December 30, 2025.

_/s/ Molly M. Hamilton_____
MOLLY M. HAMILTON, AT0013636
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

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

Mr. Stacie M. Codr
Mr. Aaron J. Redinbaugh
Mr. Peter R. Lapointe
Attorneys at Law
699 Walnut Street, Suite 1700
Des Moines, Iowa 50309
scodr@finleylaw.com
aredinbaugh@finleylaw.com
plapointe@finleylaw.com
cc: fdavis@finleylaw.com
ATTORNEYS FOR DEFENDANT/APPELLEE

_/s/ Molly M. Hamilton_____
MOLLY M. HAMILTON, AT0013636
ATTORNEY FOR APPELLANT

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 197 number of lines of text, excluding the parts of the brief exempted by Iowa R.App.P. 6.903(1)(g)(2).

_/s/ Molly M. Hamilton_____
MOLLY M. HAMILTON, AT0013636
ATTORNEY FOR APPELLANT