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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

Defendant-Appellee's Brief

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the District Court Erred in Holding That the Certificate of Merit Did Not Satisfy the Affidavit Requirement of Iowa Code Section 147.140.

ROUTING STATEMENT

Defendant agrees with Plaintiff that this case should be transferred to the Iowa Court of Appeals because it involves the application of existing legal principles. *See* Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

This is a medical negligence case in which Plaintiff alleges Defendant J. Matthew Glascock, M.D. ("Dr. Glascock") was negligent in the care and treatment provided to Plaintiff. (D0004, Petition at Law, Oct. 23, 2023.) The district court dismissed Plaintiff's claims against Dr. Glascock with prejudice because Plaintiff served an unsworn certificate of merit affidavit on Defendant by Jin Soo Yoo, M.D. ("Dr. Yoo"). (D0050, Ruling on Defendant's Mot. for Summary Judgment, July 28, 2025.) The district court found Dr. Yoo's affidavit failed to substantially comply with Iowa Code § 147.140. (*Id.*) Plaintiff appealed the district court's dismissal of Plaintiff's claims against Dr. Glascock. (D0051, Notice of Appeal, Aug. 25, 2025.)

STATEMENT OF THE FACTS

Plaintiff Erin Barker filed a Petition and Jury Demand on October 23, 2023, asserting medical negligence claims against Dr. Glascock, Mary Deutmeyer, and Waverly Health Center Foundation d/b/a Waverly Health Center ("WHC"), arising from care and treatment related to Plaintiff's bariatric weight loss surgery. (D0004, Petition at Law (10/23/2023).) Defendants filed their Answer and Jury Demand on February 16, 2024. (D0007, Answer and Jury Demand of Defts. (2/16/2024).) On March 7, 2024, Plaintiff served a certificate of merit prepared by Dr. Jin Soo Yoo, M.D. ("Dr. Yoo"), via email. (D0030 – Exhibit A to Deft. Motion for Summary Judgment, Certificate of Merit by Dr. Yoo, (2/21/2025).) The certificate addresses only the care and treatment provided by Dr. Glascock. (*Id.*) Dr. Yoo opines that Dr. Glascock deviated from the appropriate standard of care by failing to "check for anatomic post-operative complication in a patient who is unable to eat and drink properly following surgery." (*Id.* at ¶ 3(f).)

Dr. Yoo's certificate states: "I, Jin Soo Yoo, M.D., on this 7th day of March, 2024, do hereby certify under oath that the contents set forth

herein are true and correct." (*Id.* ¶ 8.) The notarial acknowledgment on the certificate states:

> "STATE OF North Carolina
> COUNTY OF Durham
> On this 7th day of March, 2024, before me, a Notary Public in and for said County and State, personally appeared Jin Soo Yoo, M.D., known by me to be the person in the above-entitled action."

(*Id.* at 3.) The certificate does not contain a jurat[1]. It also does not include the phrase "under penalty of perjury," nor does it indicate the specific oath taken or to whom it was sworn. (*Id.* at ¶¶ 11–12.) Plaintiff has not served any other certificates of merit regarding Dr. Glascock's care and treatment.

On April 1, 2025, Plaintiff dismissed her claims against Mary Deutmeyer and WHC. (D0043, Dismissal of Mary Deutmeyer and WHC (4/1/2025).) On July 28, 2025, the district court granted summary judgment in favor of Dr. Glascock, finding that Plaintiff's certificate of merit failed to comply or substantially comply with Iowa Code § 147.140. (D0050, Ruling on Defendant's Mot. for Summary Judgment

[1] "A 'jurat' is a certificate added to an affidavit stating when, before whom, and where it was made." 3 Am. Jur. 2d Affidavits § 10.

(7/28/2025).) Plaintiff filed her Notice of Appeal on August 25, 2025. (D0051, Notice of Appeal (8/25/2025).)

ARGUMENT

I. The District Court Correctly Held That Plaintiff's Certificate of Merit Does Not Satisfy Iowa Code Section 147.140.

Plaintiff's certificate of merit does not contain the essential and necessary features of a certificate of merit affidavit under Iowa law. As such, Dr. Yoo's certificate fails to comply or substantially comply with Iowa Code section 147.140(1)(b). Thus, the district court properly dismissed Plaintiff's claims against Dr. Glascock and WHC.

a. Preservation of issue and standard of appellate review.

Pursuant to Iowa R. App. P. 6.903(3), Defendant agrees with Plaintiff that this issue was preserved for appeal and further agrees that this Court's review of the District Court's ruling granting of a motion for summary judgment and statutory interpretation is for correction of errors at law. (*See* Plaintiff's Br. at 9–10.)

b. Dr. Yoo's certificate of merit is not valid because it lacks a proper oath or declaration under penalty of perjury.

Plaintiff's certificate of merit does not contain the essential and necessary features of a certificate of merit affidavit under Iowa law. As such, Dr. Yoo's certificate fails to comply with Iowa Code section

147.140(1)(b), and the district court properly dismissed Plaintiff's claims against Dr. Glascock.

Iowa's certificate of merit statute requires every medical negligence plaintiff whose case requires expert testimony to serve an expert affidavit within sixty days of the defendant's answer. Iowa Code § 147.140. Both the affidavit and the expert must meet several conditions set forth in Iowa Code sections 147.139 and 147.140. The goal of these requirements is to "provide a mechanism for early dismissal with prejudice of professional liability claims against healthcare providers when supporting expert testimony is lacking." *Struck v. Mercy*, 973 N.W.2d 533, 539 (Iowa 2022).

Relevant here, Iowa Code section 147.140 requires that a plaintiff's certificate of merit affidavit demonstrate that a designated officer placed the expert under oath or affirmation, or that the expert otherwise signed the certificate of merit under penalty of perjury. *See Shontz v. Mercy Med. Ctr.-Clinton, Inc.*, No. 23-0719, 2024 WL 2868931, at *1–2 (Iowa June 7, 2024). The Iowa Supreme Court has repeatedly emphasized that the expert's sworn oath is essential. *Miller v. Catholic Heath Initiatives-Iowa, Corp.*, 7 N.W.3d 367, 374 (Iowa 2024).

The Iowa Supreme Court again reaffirmed these principles in *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267 (Iowa 2025). The Court made clear that "to satisfy section 147.140's affidavit requirement, counsel must ensure that a timely certificate of merit is signed by the expert under oath or under penalty of perjury." *Id.* at 274.

Dr. Yoo's certificate of merit does not meet either requirement. It lacks a jurat and does not contain the phrase "under penalty of perjury." (D0030 – Ex. A.) The certificate includes language such as "certify under oath" and "personally appeared," but these phrases do not establish that Dr. Yoo was placed under oath by a notarial officer or that he executed the certificate under penalty of perjury. (*Id.*) The notarial acknowledgment merely states that Dr. Yoo appeared before the notary and was known to her. (*Id.* at 3.) It does not confirm that he swore or affirmed the truth of the contents in the notary's presence.

c. The certificate's lack of a jurat renders it invalid under Iowa law.

Dr. Yoo's certificate's notarial acknowledgement fails to include a jurat. In *Miller*, the Iowa Supreme Court squarely rejected the argument that a certificate not signed under oath in accordance with Iowa Code section 622.1, and lacking the "under penalty of perjury"

language required by section 622.1(2), could nonetheless satisfy section 147.140(1)(b). *Miller,* 7 N.W.3d at 374–76. The Court "reiterate[d] that section 147.140 'unambiguously requires that the expert witness personally sign the certificate of merit under oath within sixty days of the defendants' answer.'" *Id.* at 374 (quoting *Estate of Fahrmann v. ABCM Corp.*, 999 N.W.2d 283, 287 (Iowa 2023). The *Miller* Court emphasized that omitting an oath is not a mere technicality but a fundamental defect. *Id.* at 376.

Miller also cited with approval out-of-state authority, including New Jersey authority, which concluded that "'the failure to place a declarant under oath' is not 'a mere 'technical' deficiency,' rather 'it goes to the very nature of what an affidavit is.'" *Id.* at 375 (quoting *Tunia v. St. Francis Hosp.*, 832 A.2d 936, 939 (N.J. Super. Ct. App. Div. 2003)). The Court also made clear that to utilize the sworn statement standard from Iowa Code section 622.1(2) the "under penalty of perjury" language is essential to compliance with section 622.1(2) and, by extension, Iowa Code section 147.140. *Id.*

The Court reaffirmed the *Miller* holding in *Shontz*, where it again held that section 147.140 "unambiguously requires the expert to timely

sign the certificate under oath" and that an unsworn certificate does not substantially comply. *Shontz,* 2024 WL 2868931, at *1. The Court applied that rule to a certificate that was not signed under penalty of perjury and did not contain a jurat. *Id*. Ultimately, the court rejected the argument that the certificate substantially complied without those elements. *Id*.

Most recently in *Banwart*, the Court reiterated that the legislature made a deliberate policy choice to require experts to sign under oath or penalty of perjury to deter unsupported claims and ensure accountability. *Banwart,* 18 N.W.3d at 275. That requirement is not optional. The Court again made clear that a certificate lacking either element does not substantially comply. *Id*. The provision ensures that weak cases are weeded out early in litigation and that experts are deterred from perjury by potential criminal prosecution. *Id*.

Although Plaintiff contends that decisions such as *Tunia*, 832 A.2d 936, and *MountainView Hospital, Inc. v. Eighth Judicial District Court*, 273 P.3d 861 (Nev. 2012), are inapplicable, the Iowa Supreme Court has cited both with approval in its analysis of statutory certificate of merit affidavit requirements.

In *Tunia*, the New Jersey court rejected a certificate of merit that included only a notarial acknowledgment. The acknowledgment stated that the expert "acknowledged under oath and to my satisfaction that he (a) is named in and personally signed this document; and (b) signed this document as his act and deed." 832 A.2d at 938. The *Tunia* court found this language insufficient because it merely confirmed the expert's identity and voluntary execution of the document, rather than demonstrating that an authorized officer had actually administered an oath. *Id.* at 939. The court emphasized that this was not a minor flaw, stating, "[w]e cannot, however, consider the failure to place a declarant under oath a mere 'technical' deficiency. In our view, it goes to the very nature of what an affidavit is." *Id.*

The Iowa Supreme Court directly quoted this passage in *Estate of Fahrmann* and reaffirmed its significance in *Miller*: "In *Estate of Fahrmann*, we approvingly cited *Tunia* . . . for the proposition that 'counsel's signature did not substantially comply with section 147.140(1)'s requirement that the expert sign the certificate of merit affidavit under oath." *Miller,* 7 N.W.3d at 374 (quoting *Est. of Fahrmann*, 999 N.W.2d at 288). The Court ultimately held that the

certificate of merit at issue lacking a proper jurat or declaration under penalty of perjury did not satisfy the statute. *Miller,* 7 N.W.3d at 374–75 (citing *Tunia*, 832 A.2d at 939). These citations make clear that Iowa courts do not view *Tunia* as an outlier or irrelevant authority. Rather, they have adopted its core holding: that a certificate of merit must include either a jurat confirming that an oath was administered or a declaration under penalty of perjury. Plaintiff's attempt to dismiss *Tunia* as inapplicable is therefore unpersuasive in light of the Iowa Supreme Court's express reliance on it.

In *MountainView*, the Nevada Supreme Court held that an expert opinion letter accompanied by a notarial acknowledgment, rather than a jurat, did not qualify as an affidavit. *MountainView*, 273 P.3d. at 866. The acknowledgment in *MountainView* confirmed only that the expert appeared before the notary and executed the document, without stating that the expert swore to or affirmed the truth of its contents. *Id*. at 866. The Nevada court concluded that this was insufficient to meet the statutory affidavit requirement. *Id*. The Iowa Supreme Court cited *MountainView* as persuasive authority in support of the broader principle that a certificate of merit must include either a jurat or a

declaration under penalty of perjury to satisfy statutory affidavit requirements. *See Miller*, 7 N.W.3d at 376–77.

Dr. Yoo's certificate of merit suffers from the same deficiencies identified in *Tunia* and *MountainView*. The notarial acknowledgment states only that Dr. Yoo "personally appeared" before the notary and was known to her. (D0030 – Ex. A at 3.) It does not indicate that the notary placed him under oath or that he swore to the truth of the contents. Nor does the certificate include a declaration under penalty of perjury. As in *Tunia* and *MountainView*, the acknowledgment here merely confirms identity and execution, not the administration of an oath or affirmation.

Plaintiff's reliance on general language such as "certify under oath" or "being duly sworn" does not cure Dr. Yoo's deficient certificate of merit. The Iowa Supreme Court has made clear that language such as what Dr. Yoo used in his certificate of merit, standing alone, is insufficient. A valid affidavit under section 147.140 must either include a jurat confirming that an authorized official administered an oath or contain a declaration that the expert signed under penalty of perjury.

See Miller, 7 N.W.3d at 376–77; *Shontz*, 2024 WL 2868931 at *2–3. Dr. Yoo's certificate includes neither.

Moreover, the certificate does not fall within the statutory exception provided by Iowa Code section 622.1(2), which permits a written declaration made under penalty of perjury to substitute for a sworn affidavit. The certificate contains no such declaration. As the Court explained in *Miller*, the "under penalty of perjury" language serves the same conscience-binding function as a formal oath and is essential to the statute's purpose of ensuring the reliability of expert opinions at the outset of litigation. 7 N.W.3d at 375.

The appellate courts in Iowa have now repeatedly affirmed that the affidavit requirements are not optional. They are central to the statutory scheme enacted by the legislature to prevent unsupported medical negligence claims and to ensure that expert opinions are verified. Dr. Yoo's certificate does not meet these requirements as it fails to identify he signed the certificate of merit under penalty of perjury or pursuant to an oath administered by a qualified individual. (D0030 – Ex. A.) Like the defective certificates in *Tunia* and *MountainView*, it fails to qualify as an affidavit under Iowa law. The

District Court correctly concluded that the certificate was invalid and dismissed Plaintiff's claims accordingly.

d. Plaintiff's attempt to reframe the issue as one of "affidavit sufficiency" ignores the demands of section 147.140.

Plaintiff argues that the certificate qualifies as an affidavit under general Iowa law because it "binds the conscience" of the affiant. Plaintiff's argument misses the point and ignores an essential holding in *Banwart*:

> Although our legislature permits a written attestation to be accomplished alone, it also requires the certification to expressly impress upon the person that it is made "under penalty of perjury." This is an important requirement because the "under penalty of perjury" language, like the administration of an oath by an official, acts to bind the conscience of the person and emphasizes the obligation to be truthful.

Banwart, 18 N.W.3d at 274. Section 147.140 does not merely require an affidavit in the abstract. It requires a certificate of merit affidavit that satisfies specific statutory conditions.

Plaintiff's reliance on older cases discussing the conscience-binding nature of oaths such as *Dalbey Brothers Lumber Co. v. Crispin*, 12 N.W.2d 277 (Iowa 1943), and *State v. Hulsman*, 126 N.W. 700 (Iowa 1910), is misplaced. Those cases addressed general affidavit

requirements, not the specific statutory framework of section 147.140. While those cases recognize that an oath may be valid if it binds the conscience of the affiant, the legislature has since codified specific mechanisms for satisfying the affidavit requirement in the context of medical malpractice claims. Section 147.140 requires that the certificate of merit be signed either under oath administered by an authorized officer or under penalty of perjury. These are not illustrative examples; they are the exclusive means of compliance.

The Iowa Supreme Court has made clear that courts are not free to substitute subjective indicators of sincerity or intent for the formal requirements set forth in the statute. In *Banwart*, the Court emphasized that the "under penalty of perjury" language, like the administration of an oath by an official, is what binds the conscience and emphasizes the obligation to be truthful. *Banwart,* 18 N.W.3d at 274. The Court rejected the notion that other indicia of sincerity could suffice. *Id.* Similarly, in *Miller*, the Court stated that it was "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." *Miller*, 7 N.W.3d at 375.

Plaintiff's argument invites the Court to disregard the statute's express language in favor of a more flexible, common-law approach. But the legislature has spoken clearly. The statute does not permit courts to infer compliance based on general language or the affiant's subjective intent. It requires either a jurat or a declaration under penalty of perjury. Dr. Yoo's certificate includes neither. Absent those essential features, Dr. Yoo's certificate of merit does not substantially comply with section 147.140. *Id.*

e. Plaintiff did not substantially comply with section 147.140, requiring dismissal.

Plaintiff expressly disclaims that substantial compliance is at issue, yet her argument relies on the premise that the certificate should be deemed valid despite lacking the required oath or declaration.[2] That assertion misses the mark. Failure to substantially comply with the statute's requirements requires dismissal with prejudice of "each cause

[2] In her discussion of *Tunia*, 832 A.2d 936 and *MountainView*, 273 P.3d 861, Plaintiff asserts that *Miller* cited those cases only for the proposition that substantial compliance is insufficient. Plaintiff then states that "substantial compliance is not at issue here." (*See* Plaintiff's Br. at 23). Yet the entire thrust of her argument is that Dr. Yoo's certificate should be deemed valid despite lacking a jurat and a declaration under penalty of perjury—precisely the kind of argument *Miller* and *Banwart* rejected.

of action as to which expert witness testimony is necessary to establish a prima facie case." Iowa Code § 147.140(6).

The district court found the certificate deficient because it lacked either a jurat or a declaration under penalty of perjury, which are fatal deficiencies under *Miller* and *Banwart*. Plaintiff's brief attempts to sidestep this precedent by arguing that the certificate fully satisfies the statutory affidavit requirement. But in doing so, she relies on flexible, pre-*Miller* case law about oaths and conscience-binding acts. Plaintiff is effectively asking the Court to accept a less formal, more forgiving standard. That is, in substance, a substantial compliance argument, even if she avoids using the term. Iowa law, however, does not permit that approach. As *Miller* made clear, section 147.140 requires that the certificate be signed under oath or under penalty of perjury, and Plaintiff's attempt to reframe the issue does not cure the certificate's statutory defects. *Miller,* 7 N.W.3d at 376–77.

The purpose of the doctrine of the "substantial compliance" exception to statutory enforcement is to ensure "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Superior/Ideal, Inc. v. Board of Review of City of Oskaloosa*,

419 N.W.2d 405, 406 (Iowa 1988). The reasonable objectives of the certificate of merit statute are to "(1) provide verified information about the medical malpractice allegations to the defendants and (2) do so earlier in litigation." *McHugh v. Smith*, 966 N.W.2d 285, 289 (Iowa Ct. App. 2021). The failure to demonstrate that the certificate of merit was executed under a proper oath or under penalty of perjury undermines both objectives, but most directly compromises the "verified information" objective. *Id*. As such, dismissal is required. *See Struck*, 973 N.W.2d at 541 ("[S]ection 147.140 provides an earlier and more complete remedy when the plaintiff lacks an expert: dismissal with prejudice.")

The Iowa Supreme Court has already concluded in *Miller*, *Shontz*, and *Banwart* that, as a matter of law, an expert must be contemporaneously sworn under proper oath or expressly sign under penalty of perjury to satisfy the affidavit requirement, neither of which occurred with Dr. Yoo's certificate. *See Banwart*, 18 N.W.3d at 275. Ultimately, Plaintiff's certificate of merit does not contain the essential and necessary features under Iowa law. As such, the certificate fails to

substantially comply with Iowa Code section 147.140(1)(b) and the District Court properly dismissed Plaintiff's claims.

CONCLUSION

The District Court correctly dismissed Plaintiff's claims against the only remaining defendant, Dr. Glascock, because Plaintiff failed to file a certificate of merit affidavit that substantially complies with Iowa Code section 147.140.

STATEMENT REGARDING ORAL ARGUMENT

Defendant submits oral argument is not necessary. If the Court grants oral argument, Defendant respectfully requests to be heard.

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/s/ Christine L. Conover December 17, 2025

CERTIFICATE OF SERVICE AND FILING

I certify that on December 17, 2025, I served the foregoing Brief of Defendants-Appellees by electronically filing the document with EDMS, which will notify all parties of the electronic filing.

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