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IN THE SUPREME COURT OF IOWA

No. 25–1186

JACOB KNAPP,
Plaintiff–Appellant
vs.
STATE OF IOWA,
Defendant–Appellee

APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY NO. LACV084416

THE HONORABLE ANDREW CHAPPELL
PRESIDING JUDGE

BRIEF OF DEFENDANT–APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **WHETHER THE DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION FOR PARTIAL DISMISSAL UNDER IOWA CODE SECTION 147.140 BY DISMISSING ANY AND ALL POTENTIAL CLAIMS ASSERTED AGAINST MEDICAL PROVIDERS NOT IDENTIFIED IN PLAINTIFF'S LONE CERTIFICATE OF MERIT TO THE EXENT PLED**

II. **WHETHER THE DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION TO DISMISS UNDER IOWA CODE SECTION 147.140 BY FINDING THE PLAINTIFF'S CERTIFICATE OF MERIT FAILED TO SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF IOWA CODE SECTION 622.1**

ROUTING STATEMENT

This matter involves a medical malpractice action filed against the Defendant based on the Plaintiff's outcome following orthopedic surgery and Plaintiff's failure to substantially comply with his certificate of merit affidavit requirements. This appeal specifically involves claims ultimately asserted against the State of Iowa based on the care rendered by a nurse anesthetist during the procedure, and whether the Iowa District Court for Polk County ("District Court") correctly dismissed all claims of medical negligence to the extent asserted against a healthcare

provider without timely service of a certificate of merit affidavit; and correctly found Plaintiff failed to substantially comply with the requirements of Iowa Code section 147.140 by failing to bind the conscience of the affiant.

The legal principles guiding the District Court's analysis have been well-established by preexisting Iowa precedent, including as articulated by the Iowa Supreme Court in *Miller v. Cath. Health Initiatives-Iowa, Corp.,* 7 N.W.3d 367, 373 (Iowa 2024) and more recently in *Banwart v. Neurosurgery of North Iowa, P.C.*, 18 N.W.3d 267, 273-75 (Iowa 2025). As such, the matter should be transferred to the Iowa Court of Appeals, as it involves the application of existing legal principles and involves issues that are appropriate for summary disposition. *See* Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

This is a medical malpractice action against the State of Iowa on behalf of the University of Iowa Hospitals and Clinics for care Plaintiff received for surgical orthopedic repair of a fractured humerus and transected radial nerve. (*See generally*, Amended Petition; D0001

(6/6/23)).[1] The Plaintiff served a single certificate of merit affidavit, signed by a nurse anesthetist, directed solely against the nurse anesthetist who rendered anesthetic care (Brittany Van Sickle, CRNA (hereinafter "CRNA Van Sickle"). First, Defendant moved to dismiss all claims stemming from the care of other care providers which required a separate certificate of merit. (Def's Motion for Partial Dismissal; D0031 (2/12/24)). The District Court granted the Motion and dismissed with prejudice any claims of medical negligence against any healthcare provider other than CRNA Van Sickle to the extent asserted by the Plaintiff. (Ruling on Motion for Partial Dismissal; D0043 (3/26/24)).

Subsequently, Defendant moved to dismiss the remainder of claims based upon CRNA Van Sickle's care due to Plaintiff's failure to substantially comply with Iowa Code Section 147.140 based on the holding in *Miller v. Cath. Health Initiatives-Iowa, Corp.,* 7 N.W.3d 367, 373 (Iowa 2024). Plaintiff's certificate of merit affidavit did not contain a jurat. It likewise omitted several key requirements of Iowa Code section 622.1, thereby rendering it inadequate to bind the affiant's conscience as

[1] This matter was originally filed in Polk County before being transferred to Johnson County.

an affidavit. Specifically, the document was undated, did not certify the statements contained therein were true, and did not certify pursuant to the laws of the state of Iowa. (Def's MTD; D0067 (4/14/25)). The District Court granted the Motion and dismissed all claims with prejudice. (Ruling on MTD; D0106 (6/22/25)). Plaintiff now appeals both adverse rulings by the District Court.

STATEMENT OF FACTS

This is a medical malpractice action against the State of Iowa on behalf of the University of Iowa Hospitals and Clinics for care Plaintiff received for surgical orthopedic repair of a fractured humerus and transected radial nerve. (*See generally*, Amended Petition; D0001 (6/6/23)). This care spanned from October 2021 through April 2022. *See id*. Plaintiff filed a tort claim with the State Appeal Board Department of Management alleging an injury of legal blindness based on allegations of negligence against multiple care providers with multiple specialties, including, anesthesiologists, CRNA's, nurses, orthopedic surgeons, and ARNP's. (*See* Def's Motion for Partial Dismissal Ex. C; D0031 (2/12/24)). Subsequently, Plaintiff filed suit against the State of Iowa alleging the same transaction of care during the same period of care, and implicating

the same care providers identified in the tort claim. (*See generally*, Amended Petition; D0001 (6/6/23)).

On May 12, 2023, Plaintiff served a single certificate of merit under Iowa Code section 147.140. (Def's Motion for Partial Dismissal Ex. B; D0031 (2/12/24)). Plaintiff's certificate of merit was signed by J. Benjamin Campbell, M.S., C.R.N.A., N.S.P.M-C. *Id*. The certificate notes that CRNA Campbell has been a "certified nurse anesthetist" for 37 years and is "familiar with the standards of care in the practice of nursing anesthetics at the time of the care in question." *Id.* ¶¶ 1–2. CRNA Campbell finds alleged violations of the standard of care "on the part of Brittany Van Sickle." *Id.* ¶ 4. The certificate of merit does not mention any other care provider, nor does it mention familiarity with the standard of care of any other medical specialty. *See id*.

CRNA Campbell's certificate of merit states: "I make all of the foregoing statements in good faith and under penalty of perjury." *Id*. The certificate of merit does not contain a jurat or any other indication that CRNA Campbell conducted an oath or affirmation in front of a qualified officer before signing the document. *Id*. Further, CRNA Campbell's certificate of merit is not dated, does not certify that the statements

contained in the certificate of merit are true, and does not certify pursuant to the laws of the State of Iowa. *Id.*

ARGUMENT

Both issues in this appeal deal with Plaintiff's failure to substantially comply with Iowa's certificate of merit requirements. There is no dispute (both at the district level and on appeal) the certificate of merit affidavit requirements apply to all facets of Plaintiff's claim, and that Plaintiff was required to serve Defendant a substantially compliant certificate of merit affidavit. Plaintiff failed to serve certificate of merit affidavits directed to the care of any provider other than CRNA Brittany Van Sickle. The lone certificate of merit affidavit served lacked key essential components rendering it insufficient to bind the conscience of the affiant. The District Court correctly granted Defendant's motions.

More specifically, in matters involving actions for personal injury against a health care provider based on the alleged negligence in the practice of that profession where expert testimony is necessary to establish a *prima facie* case, the Iowa Code mandates plaintiff serve a certificate of merit affidavit within 60 days of the defendant's answer. *See* Iowa Code § 147.140(1)(a). The affidavit must be "signed by an expert

witness with respect to the issue of standard of care and an alleged breach of the standard of care," and the expert must meet the qualifying standards as set out by Iowa Code section 147.139. *See* Iowa Code § 147.140(1)(a); *see also* Iowa Code § 147.139 (requiring that plaintiff's expert be licensed to practice in the "same or substantially similar field" as the defendant–provider, among other requirements). "Failure to substantially comply with subsection 1 [of section 147.140] **shall result, upon motion, in dismissal with prejudice** of each cause of action as to which expert witness testimony is necessary to establish a prima facie case." Iowa Code § 147.140(6) (emphasis added).

Substantial compliance means "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Hummel v. Smith*, 999 N.W.2d 301, 309 (Iowa 2023). Section 147.140 exists "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 Health Servs.—Iowa Corp.*, 973 N.W.2d 533, 539 (Iowa 2022); *see also McHugh v. Smith*, 966 N.W.2d 285, 289-90 (Iowa Ct. App. 2021) ("Section 147.140 gives the defending health professional a chance to arrest a baseless action early

in the process if a qualified expert does not certify that the defendant breached the standard of care."). The certificate of merit statute works in tandem with Iowa Code section 668.11, Iowa's expert designation requirement in professional liability cases. *See* Iowa Code § 668.11. That statute was designed for plaintiffs to have their proof prepared early in the litigation so that the professional need not spend time, effort, and expense in defending frivolous actions. *Struck*, 973 N.W.2d at 541 (citing *Hantsbager v. Coffin*, 501 N.W.2d 501, 504 (Iowa 1993) (en banc)). Early disposition has a positive impact on the cost and availability of medical services. *Id.*

These same goals are further served by section 147.140 by requiring expert certification even earlier than the previous deadline. *Id.* Further, the section "provides an earlier and more complete remedy when the plaintiff lacks an expert: dismissal with prejudice of that cause of action." *Id.* The certificate of merit requirement identifies and weeds out non-meritorious malpractice claims efficiently and promptly. *Id.* at 542. This thereby reduces the cost of medical malpractice litigation. *Id.* Accordingly, this statute gives the defending health professional a chance to arrest a baseless action early in the process if a qualified expert does

not certify that the defendant breached the standard of care. *Id.* (citing *McHugh*, 966 N.W.2d at 289-90.

Accordingly, under the statute and established Iowa precedent, Plaintiff's failure to substantially comply with the requirements of the statute mandate dismissal of Plaintiff's action with prejudice. *See* Iowa Code § 17.140(6); *see also Banwart*, 18 N.W.3d at 275; *Miller,* 7 N.W.3d at 377; *Shontz v. Mercy Med. Ctr.-Clinton, Inc.*, 7 N.W.3d 775, 2024 WL 2868931, at *2 (Iowa 2024); *McGonigle v. Finley Hosp.*, No. 24-1349, 2025 WL 2538778, at *3 (Iowa Ct. App. Sept. 4, 2025); *Frank v. Hallman*, No. 24-0998, 2025 WL 2537920, at *2 (Iowa Ct. App. Sept. 4, 2025); *Est. of Spieker by Spieker v. Cath. Health Initiatives - Iowa, Corp.*, No. 24-1599, 2025 WL 2925143, at *3 (Iowa Ct. App. Oct. 15, 2025); *Panek v. Iowa Methodist Med. Ctr.*, No. 24-1838, 2025 WL 3023008, at *2 (Iowa Ct. App. Oct. 29, 2025) *Struck*, 973 N.W.2d at 538–41 (Iowa 2022); *McHugh*, 966 N.W.2d at 287–92; *Est. of Knop v. Mercy Health Servs. Iowa Corp*, 978 N.W.2d 815, 2022 WL 1487124, at *1–2 (Iowa Ct. App. 2022); *Butler v. Iyer,* 978 N.W.2d 98, 2022 WL 1100275, at *3-9 (Iowa Ct. App. 2022); *Schmitt v. Floyd Valley Healthcare*, 965 N.W.2d 642, 2021 WL 3077022, at *1–3 (Iowa Ct. App. 2021); *see also Wolfe v. Shenandoah Medical Ctr.*,

986 N.W.2d 134, 2022 WL 2160449, at *1-3 (Iowa Ct. App. 2022) (affirming partial dismissal of claims not pled due to failure to serve a certificate of merit).

Plaintiff failed to substantially comply with his certificate of merit affidavit requirements in two separate ways. First, Plaintiff served only one certificate of merit affidavit directed solely towards the anesthetic care provided by CRNA Brittany Van Sickle. Plaintiff's action was directed at a transaction of care involving multiple separate care providers rendering separate aspects of care. If Plaintiff intended to pursue claims based on the care of those care providers, Plaintiff was obligated to serve a substantially compliant certificate of merit affidavit establishing such. Plaintiff unambiguously did not do so. Plaintiff likewise never sought leave to amend his petition to clarify claims against additional care providers.

Second, the lone certificate of merit affidavit Plaintiff served lacked key and essential components necessary to sufficiently bind the conscience of the affiant. Binding the affiant's conscience is an essential component of the certificate of merit affidavit. Accordingly, Plaintiff's failure to sufficiently bind the affiant's conscience fails to substantially

comply with Iowa certificate of merit affidavit requirements and mandates dismissal with prejudice.

I. THE DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION FOR PARTIAL DISMISSAL UNDER IOWA CODE SECTION 147.140 BY DISMISSING ANY AND ALL POTENTIAL CLAIMS ASSERTED AGAINST MEDICAL PROVIDERS NOT IDENTIFIED IN PLAINTIFF'S LONE CERTIFICATE OF MERIT TO THE EXENT PLED

A. Preservation of Error

Issues must ordinarily be both raised and decided by the district court in order to be preserved for appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Defendant agrees that Plaintiff preserved error on the issues raised in their Resistance to Defendant's Motion for Partial Dismissal. (*See* Pl.'s Resist. to Def's Motion for Partial Dismissal; D0032 (2/12/24)). However, as discussed below, to the extent Plaintiff argues he should have been allowed to amend his Amended Petition, error was not preserved because the issue was not raised or decided by the District Court.

B. Standard of Review

The Iowa Supreme Court reviews rulings on motions to dismiss under Iowa Code section 147.140(6) and the district court's statutory

construction for correction of errors at law. *Miller v. Cath. Health Initiatives-Iowa, Corp.,* 7 N.W.3d 367, 373 (Iowa 2024).

C. Plaintiff's Certificate of Merit Fails to Substantially Comply With Iowa Code Section 147.140 With Respect to Any Claims Against Healthcare Providers Other Than CRNA Van Sickle

Plaintiff's first argument fails to identify any legal error from the Court's Order. The Court correctly identified Plaintiff only served one certificate of merit affidavit directed at CRNA Van Sickle's care. (Ruling on Motion for Partial Dismissal, p. 2,5; D0043 (3/26/24)). Accordingly, the Court found to the extent Plaintiff alleged claims of medical negligence against any other healthcare provider, said claims should be dismissed with prejudice due to Plaintiff's failure to serve a certificate of merit from a qualified expert based on said care. *Id.* at p. 7. Plaintiff never subsequently moved to amend his petition to assert claims purportedly not previously alleged. (*See generally*, Docket).

In enacting the statute, the legislature placed a higher demand on plaintiffs, i.e. to timely provide verified information about the medical malpractice allegations early in the litigation. *McHugh*, 966 N.W.2d at 290. This requirement is triggered before plaintiffs even have the opportunity to engage in discovery. *See* Iowa Code § 147.140(1)(a)

(requiring the service of the affidavit before the commencement of discovery); *see also Butler v. Iyer*, 978 N.W.2d 98, 2022 WL 1100275, at *5 (Iowa Ct. App. 2022) (proscription of the certificate of merit applies solely to the plaintiffs as a duty they must fulfill before they may engage in discovery). As the Iowa Court of Appeals stated, to "an even greater degree than section 668.11, section 147.140 seeks to relieve defendants of the burden to ferret out the details of plaintiffs' malpractice claims." *McHugh*, 966 N.W.2d at 291.

In a case against a healthcare entity such as the Defendant, which implicates the care of numerous healthcare providers with distinct specialties, the statute's purpose is heightened. It is the Defendant's right and the Plaintiff's burden to identify early on in the matter which of those care providers he criticizes and which lack merit. *See McHugh*, 966 N.W.2d at 291. It is not Defendant's burden to languish in the discovery phase expending costs ferreting out these details. *See id.*

In *Wolfe v. Shenandoah Medical Center*, the plaintiff brought suit against a medical center and served certificate of merit affidavits based on the care of the doctors. 986 N.W.2d 134, 2022 WL 2160449, at *1 (Iowa Ct. App. 2022). The defendant medical center moved for partial summary

judgment on any claims of negligent supervision as they were not pled and no certificate of merit was filed. *Id.* The district court found the claim was not pled and no certificate of merit affidavit was served on those claims. *Id.* at *2. Subsequently the plaintiff filed a motion to amend to assert the claim. *Id.* at *3. The district court denied the motion to amend. *Id.* The Iowa Court of Appeals affirmed the district court. *Id.*

It can hardly be deemed legal error for the District Court to find claims alleging malpractice requiring expert testimony must be supported by a timely certificate of merit affidavit from a qualified expert. (*See* Ruling on Motion for Partial Dismissal, p. 3; D0043 (3/26/24)). Likewise, it can hardly be deemed legal error for the District Court to find such claims lacking a substantially compliant affidavit must be dismissed with prejudice. See Iowa Code § 147.140(6). It was undisputed on the record Plaintiff only directed a certificate of merit affidavit towards the care of CRNA Van Sickle. Accordingly, the District Court was correct in its ruling to the extent Plaintiff alleged claims of medical negligence against any healthcare provider other than CRNA Van Sickle, they should be dismissed with prejudice.

Plaintiff appears to argue his Amended Petition solely asserted claims against CRNA Van Sickle, so he was not required to serve a certificate of merit as to others, and he should have been allowed to amend his Amended Petition to assert such claims. Plaintiff's argument fails as he either sufficiently pled additional claims requiring supporting certificate of merit affidavits, or he did not and subsequently failed to amend his Petition to assert such claims. Under either scenario, the District Court was correct in its ruling.

First, Plaintiff's Amended Petition does in fact sufficiently plead allegations of negligence implicating the medical care provided by medical professionals beyond CRNA Van Sickle.[2] Under Iowa's liberal notice pleading rules, plaintiffs need not plead specific theories. *See Christensen v. Shelby Cnty.*, 287 N.W.2d 560, 563 (Iowa 1980). Similarly, plaintiffs need not plead specific facts. *See Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 93 (Iowa 1985). Rather, Plaintiff solely must plead in a manner sufficient to put the Defendant on notice of the care at issue. That was done so in this case for all of the other care providers.

[2] This matter is governed by the State Tort Claims Act found in Iowa Code Chapter 669. Pursuant to the Act, Plaintiff could not name the care providers individually. *See* Iowa Code § 669.5.

More specifically, Plaintiff raised several allegations implicating other care providers beyond CRNA Van Sickle. (*See* Amended Petition, ¶ 17 (Dr. Buckwalter did not warn), ¶ 28 (Dr. Karam consent), ¶¶ 33-34 (lack of an arterial line), ¶ 36 (Dr. Buckwalter planning prone positioning), ¶ 45 (no handoff), ¶ 53 (no interventions documented), ¶ 63 (only recommended follow-up from ophthalmology), and ¶ 82 (allegation vision loss was caused by University of Iowa Hospitals and Clinics); D0001 (6/6/23)). Plaintiff's Petition alleged his recent surgery, prone position, and post-operation hypotension caused his posterior ischemic optic neuropathy. (*See id.* ¶¶ 62, 71).

Under Iowa's notice pleading standards, Plaintiff sufficiently pled a cause of action implicating the care of other healthcare providers. *See Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004) ("A petition complies with the 'fair notice' requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature."); *Soike v. Evan Matthews & Co.*, 302 N.W.2d 841, 842 (Iowa 1981) ("Under such 'notice pleading,' . . . it is sufficient if the petition apprises a defendant of the incident giving rise to the claim and of the general nature of the action."); *Gosha v. Woller*, 288 N.W.2d 329, 331 (Iowa 1980)

("[N]otice pleading requires a fair notice of the claim asserted to allow that party to make an adequate response.") (internal quotations omitted)). Likewise, Plaintiff had previously filed a tort claim[3] with the State Appeal Board Department of Management alleging an injury of legal blindness based on allegations of negligence against multiple care providers with multiple specialties, including, anesthesiologists, CRNA's, nurses, orthopedic surgeons, and ARNP's. (*See* Def's Motion for Partial Dismissal Ex. C; D0031 (2/12/24)).

Plaintiff appears to argue that he should have been allowed to amend his Amended Petition to assert additional claims and was precluded by the Court's Order. This argument is a red herring as this hypothetical never manifested itself. Plaintiff never moved to amend his Amended Petition at any time before or after the District Court ruled on Defendant's Motion for Partial Dismissal. (*See generally*, Docket). This issue is not before the Court and Plaintiff failed to preserve error. *See Meek v. State*, No. 01-1334, 2002 WL 31882881, at *3 (Iowa Ct. App. Dec. 30, 2002) ("Because Meek did not at any time in the trial court seek to amend her petition or assert a right to do so she has

[3] Pursuant to Iowa Code Chapter 669.

not preserved error on this claim and we decline to address its merits."); *Vogt v. Ogden*, 928 N.W.2d 672, 2019 WL 1752672, at *1 (Iowa Ct. App. 2019) (holding that plaintiff failed to preserve error on her argument that the district court should have allowed her to amend her petition where she never filed a motion to amend and the court never ruled on the matter).

Even if Plaintiff had moved to amend to assert claims against additional providers, there would have been no justification for such an amendment, as the record demonstrates that as early as September 8, 2022, before the filing of Plaintiff's Petition, Plaintiff was aware of causes of action against anesthesiologists, CRNA's, orthopedic surgeons, ARNP's, and nurses, in relation to his surgery and subsequent blindness as demonstrated in Plaintiff's State Tort Claims Act claim. (Def's Motion for Partial Dismissal Ex. C; D0031 (2/12/24)).[4]; *Wolfe*, 2022 WL 2160449,

[4] *See Glenn v. Carlstrom*, 556 N.W.2d 800, 804 (Iowa 1996) (denying amendment where potential claims known for over a year and amendment would prejudice the defense); *Britt-Tech Corp. v. Am. Magnetics Corp.*, 487 N.W.2d 671, 674 (Iowa 1992) (upholding denial of amendment as untimely when the application was filed "contemporaneously with" the hearing on the opposing party's motion for summary judgment on the existing claim); *Wooldridge v. Central United Life Insur. Co.*, 568 N.W.2d 44, 47-48 (Iowa 1997) (affirming trial court's denial of motion for leave to amend to assert counterclaim, when the

at *3 (affirming the district court's denial of plaintiff's "belated" motion for leave to amend to add an additional claim after such claim was dismissed under Iowa Code section 147.140). Similarly, while Iowa Code section 147.140 allows plaintiffs to seek an extension of the certificate of merit deadline for good cause, Plaintiff never sought such an extension and would not have been able to show "good cause" in any event given his previous knowledge of these potential claims. *See* Iowa Code § 147.140(4).[5]

Though unclear, Plaintiff's argument regarding Iowa Code § 147.140(2) is likewise unavailing. Plaintiff purportedly suggests the

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amendment would "inject new issues into the litigation" and pertained to matters known for some time); *Allison-Kesley Ag Ctr., Inc. v. Hildebrand*, 485 N.W.2d 841, 845–46 (Iowa 1992) (affirming trial court's denial of plaintiff's application for amendment in part because plaintiff "knew or should have known as of the inception of their suit" certain information pertinent to their proposed amendment).

[5] Even if Plaintiff had moved for and been granted leave to amend his Amended Petition, an amended pleading does not extend the 60-day deadline under Iowa Code section 147.140. Under the plain language of the statute, the filing of the defendant's answer begins the sixty-day clock without regard to whether the defendant subsequently files an answer to an amended petition. *See Est. of Fahrmann v. ABCM Corp.*, 999 N.W.2d 283, 285 (Iowa 2023) ("The defendants timely filed their answer on July 19, triggering the plaintiffs' statutory sixty-day deadline to serve certificate of merit affidavits signed by a qualified expert by September 17.").

timeliness of his certificate of merit signed by CRNA Campbell allows issuance of expert opinions later in the case addressing the care of additional providers. Such an argument ignores the 60-day deadline set forth in the statute.

Plaintiff cannot cure an untimely or non-compliant certificate of merit affidavit by later serving a compliant certificate of merit affidavit or an expert report. *See, e.g., Miller*, 7 N.W.3d at 377 (subsequent expert report signed under penalty of perjury but served over 90 days after the statutory deadline did not "cure" plaintiff's previous non-compliant certificate of merit); *Est. of Fahrmann*, 999 N.W.2d at 287-88 (holding that a properly sworn certificate of merit affidavit served forty-two days after the statutory deadline did not cure the violation). It also ignores the requirement that the expert must meet the qualifying standards of section 147.139. *See* Iowa Code § 147.140(1)(a); *see also* Iowa Code § 147.139 (requiring that plaintiff's expert be licensed to practice in the "same or substantially similar field" as the defendant–provider, among other requirements). CRNA Campbell is not qualified to render expert opinions regarding the care of other medical providers identified in his Amended Petition such as physicians, orthopedic surgeons, nurses,

ophthalmologists, etc. *See* Iowa Code § 147.139. Moreover, even to the extent he could, his certificate of merit solely professed familiarity of the standard of care for a CRNA. (Def's Motion for Partial Dismissal Ex. B; D0031 (2/12/24)).

In sum, the futility of Plaintiff's arguments is evident given that Plaintiff fails to articulate the error in the District Court's ruling on Defendant's Motion for Partial Dismissal or the relief he now seeks. Plaintiff generally posits that he was not required to assert all potential claims in his Amended Petition and that the rules of civil procedure generally allow for amending pleadings and supplementing expert opinions. However, Plaintiff never moved to amend his Amended Petition, never sought an extension of the certificate of merit deadline for good cause, and never issued supplemental opinions from CRNA Campbell addressing additional claims of negligence. Plaintiff fails to explain how, under the record before the District Court, any claims against healthcare providers other than CRNA Van Sickle should have survived Defendant's Motion for Partial Dismissal. Therefore, the District Court did not err in granting Defendant's Motion for Partial Dismissal.

II. THE DISTRICT COURT PROPERLY GRANTED DEFENDANT'S MOTION TO DISMISS UNDER IOWA CODE SECTION 147.140 BY FINDING THE PLAINTIFF'S CERTIFICATE OF MERIT FAILED TO SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF IOWA CODE SECTION 622.1.

A. Preservation of Error

Issues must ordinarily be both raised and decided by the district court in order to be preserved for appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Defendant agrees that Plaintiff preserved error on the issues raised in their Resistance to Defendant's Motion to Dismiss. (*See* Pl.'s Resist. to Def's MTD; D0074 (5/1/25)).

B. Standard of Review

The Iowa Supreme Court reviews rulings on motions to dismiss under Iowa Code section 147.140(6) and the district court's statutory construction for correction of errors at law. *Miller v. Cath. Health Initiatives-Iowa, Corp*., 7 N.W.3d 367, 373 (Iowa 2024).

C. Plaintiff Failed to Substantially Comply With Iowa Code Section 147.140 Because His Certificate of Merit Was Not a Proper Affidavit Sworn Under Oath

Similar to the arguments raised at the district level, Plaintiff's appeal fails to substantively address the fundamental and essential

insufficiencies in his certificate of merit. Rather, Plaintiff adopts a similar line of argument raised by plaintiffs in *Miller* and *Miller's* progeny, i.e. a plea that the language used was purportedly close enough. This argument fails because it neglects the essential component *Miller* recognized as necessary to demonstrate substantial compliance, that the affiant's conscience was bound. Indeed, as the statute requires and established Iowa precedent solidifies, Plaintiff was required to serve a certificate of merit affidavit sufficient to bind the conscience of the affiant. Plaintiff's certificate lacked essential components rendering it insufficient to bind the conscience of the affiant. In fact, the language used definitively establishes this point. Plaintiff fails to provide any arguments or authority to the contrary. The District Court properly dismissed Plaintiff's claims with prejudice in accordance with the plain language of Iowa Code section 147.140 and Iowa case law.

More specifically, Iowa Code section 147.140(1)(b) "unambiguously requires that the expert witness personally sign the certificate of merit under oath." *See Est. of Fahrmann*, 999 N.W.2d at 287. Stated another way, the certificate of merit needs to be a proper affidavit. *See id.* Indeed, as the Iowa Supreme Court noted, Iowa Code section 147.140 uses the

term "affidavit" six times. *Miller*, 7 N.W.3d. at 375. Generally, this requires a jurat completed by a notary proving an oath was administered.[6] *See Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267, 273 (Iowa 2025).

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[6] An affidavit is "a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state." Iowa Code § 622.85; *see also* 2A C.J.S. *Affidavits* § 1, at 245 (2023) (defining an "affidavit" as "a written declaration under oath sworn to before a person with authority under the law to administer oaths"). An "oath" is a "solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise[.]" Oath, Black's Law Dictionary (11th ed. 2019); *see State v. Middlekauff,* 974 N.W.2d 781, 793 (Iowa 2022) (explaining that the court can use dictionary definitions in statutory interpretation). The oath ensures that the person "recognize[s] the obligation to be truthful" when making the statement. *State v. Carter*, 618 N.W.2d 374, 376 (Iowa 2000). "[O]ur prior cases revealed a common aspect of an oath [or affirmation is] the presence of an official to participate in the process in such a manner to assure the persons conscience is bound." *Id.* at 377. *See, e.g.*, *City of Cedar Rapids v. Atsinger*, 617 N.W.2d 272, 276 (Iowa 2000) (en banc) ("We are convinced that the factor of binding one's conscience . . . is not to be accomplished alone in the oath-taking process. Some person must be present to assure that this occurs."); *Dalbey Bros. Lumber Co. v. Crispin*, 12 N.W.2d 277, 289 (Iowa 1943) ("Hence, to make a valid oath, there must be in some from, in the presence of an office authorized to administer it, an unequivocal and present act by which the affiant consciously takes upon himself the obligation of an oath."); *see also* Am. Jur. 2d Oath and Affirmation § 17 (1989) ("To make a valid oath, the declarant must take upon him-or herself the obligations of an oath in the presence of an officer authorized to administer it."). "Thus, it is essential that a person appear before a designated officer to satisfy the oath or affirmation requirement." *Id.* Proving that a proper affirmation was conducted is

It is undisputed Plaintiff's certificate of merit lacked a jurat or any other indication that Mr. Campbell conducted an oath or affirmation in front of a qualified officer before signing the document. If an affidavit lacks a jurat, the party submitting the affidavit must provide independent proof that a proper administration of an affirmation occurred to the signer of the affidavit. *In re Est. of Entler*, 398 N.W.2d 848, 850 (Iowa 1987). Alternatively, the affidavit requirement may be signed by a declaration containing the certification under penalty of perjury language contained in Iowa Code section 622.1. *See Banwart*, P.C., 18 N.W.3d at 273 (citing Iowa Code § 622.1).

Indeed, as the Iowa Supreme Court has recognized, section 622.1 is the only Iowa statute eliminating the requirement for the presence of another for an oath or affirmation. *See Carter*, 618 N.W.2d at 377. If the certificate lacks a jurat, then the requirements of section 622.1 must be met to satisfy section 147.140. *See Banwart, P.C.*, 18 N.W.3d at 273-74 (citing *Miller*, 7 N.W.3d at 375; *Carter*, 618 N.W.2d at 377-78). The Iowa Supreme Court reiterated and reaffirmed the importance of 622.1's

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generally demonstrated by a jurat that identifies the who, when, what, and where of the affirming. *Miller v. Palo Alto Bd. of Supervisors*, 84 N.W.2d 38, 40 (Iowa 1957).

requirements. *Banwart, P.C.*, 18 N.W.3d at 274 (quoting *Carter*, 618 N.W.2d at 377-78).

Like the administration of an oath, the requirements of Iowa Code section 622.1 are meant to ensure that the declarant is "conscience bound" when signing the statement. *See Carter*, 618 N.W.2d at 377-378. Section 622.1 permits "sworn written statements required or permitted by law to be attested by a signed and *dated* unsworn written statement that the person '*certifies* under penalty of perjury' the statement is '*true and correct*.'" *Banwart, P.C.*, 18 N.W.3d at 274 (quoting *Carter*, 618 N.W.2d at 377-78) (emphasis added). If the requirements of section 622.1 are not satisfied, then the presence of another remains necessary to place the affiant under oath. *See id.* (quoting *Carter*, 618 N.W.2d at 378). The Iowa Supreme Court specifically reaffirmed the holding in *Carter*. *Id.* at 274.

In the matter *sub judice*, the record is undisputed Plaintiff's certificate lacked essential requirements from section 622.1. Plaintiff does not dispute this fact. Instead, Plaintiff misconstrues *Miller* and its progeny in incorrectly asserting his language satisfies section 622.1's requirements. Plaintiff ignores the certificate lacks essential components

sufficient to bind the conscience of the affiant. Accordingly, Plaintiff's certificate does not substantially comply with Iowa's affidavit requirements, and thereby does not substantially comply with section 147.140.

1. The District Court Correctly Found CRNA Campbell's Certificate of Merit Did Not Satisfy Section 622.1 By Lacking Requisite Components

Iowa Code section 622.1 provides the following:

> 1. When the laws of this state or any lawful requirement made under them requires or permits a matter to be supported by a sworn statement written by the person attesting the matter, the person may attest the matter by an unsworn written statement if that statement recites that the person *certifies the matter to be true* under penalty of perjury under the *laws of this state*, states the *date of the statement's execution* and is subscribed by that person. This section does not apply to acknowledgments where execution is required by law, to a document which is to be recorded under chapter 558 or to a self-proved will under section 633.279, subsection 2.

Iowa Code § 622.1(1). (emphasis added). Indeed, the section provides a demonstrative of satisfactory form of the certification:

> I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.
>
> _____ _____
> Date Signature

Id. § 622.1(2). As the statute lays out, and the demonstrative illustrates, section 622.1 has several requirements beyond simply including "penalty of perjury" language. The statement must contain a certification the matter is true, must be pursuant to the laws of the state of Iowa, and state the date the statement was executed. *See id.*

In sharp contrast, CRNA Campbell's statement lacked these components in solely stating:

> I make all of the foregoing statements in good faith and under penalty of perjury.

(Def's Motion for Partial Dismissal Ex. B; D0031 (2/12/24)). Indeed, the statement lacked a certification of truthfulness, lacked a subscription to the laws of the state of Iowa, and lacked a date of execution. (*See id.*).

The District Court correctly recognized the authority cited *supra* in that a statement can alternatively satisfy the affidavit requirement by complying with section 622.1's requirements. (Ruling on MTD, p. 6; D0106 (6/22/25)). However, the District Court also correctly noted the statute's requirements include subscribing to the laws of Iowa, dating of execution, and certifying the truthfulness. (*Id.*). The District Court also correctly recognized if the requirements of section 622.1 were not

satisfied, the presence of another to administer an oath remained necessary. (*Id.* at pp. 6-7). The District Court identified the deficiencies in CRNA Campbell's statements outlined *supra* as clear violations of section 622.1's requirements. (*Id.* at p. 11). Plaintiff fails to identify any errors in the Court's reasoning.

Indeed, these requirements are clear from the plain language of the statute. *See* Iowa Code § 622.1(1). In other words, the statute outlines the elements the statement must contain if it is to be unsworn. CRNA Campbell's unsworn statement undisputedly lacked several of these requirements. (Def's Motion for Partial Dismissal Ex. B; D0031 (2/12/24)).

The District Court also correctly recognized a previous unpublished case from the Iowa Court of Appeals finding a notice was not an actual affidavit, and noncompliant with Iowa Code section 622.1, given it was undated, notarized, sworn, or made under penalty of perjury. (Ruling on MTD, p. 11; D0106 (6/22/25) (citing *Citibank (S. Dakota), N.A. v. Makohoniuk*, 778 N.W.2d 219, 2009 WL 4842835, at *2 (Iowa Ct. App. 2009)). Plaintiff fails to distinguish this authority, beyond a singular claim the Court's finding was not essential to the final disposition. (Pl.

Brief, p. 25). The finding was relevant to the final disposition as it related to a genuine issue of material fact. *Citibank (S. Dakota), 2009 WL 4842835, at* *2. Further, Plaintiff omits the reasoning establishing the statement as noncompliant, i.e. the failure to include the requirements of the statute.

The District Court's Ruling finding Plaintiff's certificate of merit violated section 622.1's requirements is consistent with federal case law interpreting a similar federal statute.[7] Federal courts have held statements do not comply with 28 U.S.C § 1746 if they do not certify that the statements contained therein are true.[8] This is true even where the

[7] 28 U.S.C. § 1746 provides a federal alternative to making a sworn statement much like section 622.1. That statute likewise requires that the statement be signed, dated, and averred to being true under penalty of perjury. *See* 28 U.S.C. § 1746; *see also Wells v. Cramer*, 2008 WL 110088, * 3 (11th Cir. Jan. 11, 2008).

[8] *See, e.g.*, *Ramsey v. Bossier City*, 638 F. Supp. 3d 676, 682 (W.D. La. 2022) (declaration failed to meet the requirements of 28 U.S.C. § 1746 because it did not "certify, verify, or state that the information contained therein is 'true and correct.' "); *In re Potter*, No. ADV. 07-1062 M, 2008 WL 5157877, *3 (Bankr. D.N.M. July 29, 2008) (finding two declarations did not comply with 28 U.S.C. § 1746 where "Mr. Potter failed to sign his declaration and failed to certify that the statements made the declaration are true and correct, and Mr. Friedlander failed to certify that the statements contained in his declaration are true . . .").

statement contains penalty of perjury language.[9] Additionally, federal courts have identified the requirement for the document to be dated.[10] An overwhelming number of federal courts at both the appellate and district

[9] *See Matter of Muscatell*, 106 B.R. 307, 308-09 (Bankr. M.D. Fla. 1989); *Sterling Fifth Assocs. v. Carpentile Corp., Inc.*, No. 03 Civ. 6569(HB), 2003 WL 22227960, at *5 (S.D.N.Y. Sept. 26, 2003) (unsworn declaration stating: "YOUSEF S. AL MAJID, pursuant to 28 U.S.C. § 1746 and under penalty of perjury declares and says...." failed to substantially comply with the statute); *Andrews v. United States*, No. 1:12CR117-1, 2023 WL 3728421, at *19 (M.D.N.C. Feb. 27, 2023), *report and recommendation adopted,* No. 1:12CR117-1, 2023 WL 3727577 (M.D.N.C. May 30, 2023) (holding that an "affidavit" bearing notation of "Signed under the penalty of perjury," but without declaration "that the foregoing is true and correct," did not comply with the minimum requirements for an affidavit or declaration under section 1746).

[10] *Roy v. Ivy*, 53 F.4th 1338, 1348 (11th Cir. 2022) (citing 28 U.S.C. § 1746); *Wells v. Cramer,* 2008 WL 110088, at * 3 (11th Cir. Jan. 11, 2008)("Federal law. . . does provide an alternative to making a sworn statement, but requires that the statement include a handwritten averment, **signed and dated**, that the statement is true under the penalties of perjury.); *Bonds v. Cox,* 20 F.3d 697, 702 (6th Cir.1994)("Unsworn declarations are permitted to be used as evidence only if 'subscribed ... as true under penalty of perjury, ***and dated****[.]'"*). "When a declarant fails to include a signed and dated declaration under penalty of perjury, courts will disregard the substance of the statement." *Giglio Sub s.n.c. v. Carnival Corp.*, No. 12-21680-CIV, 2012 WL 4477504 at *6 (S.D. Fla. Sept. 26, 2012), aff'd, 523 F. App'x 651 (11th Cir. 2013).

level have held that the failure to date a statement renders it noncompliant with 28 U.S.C. § 1746.[11]

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[11] *See, e.g.*, *Counts v. Kraton Polymers, U.S., LLC,* 260 F. App'x 825, 829 (6th Cir.2008) (affirming that district court did not abuse its discretion by striking undated declaration); *Flovac, Inc. v. Airvac, Inc.,* 817 F.3d 849, 854 n.2 (1st Cir. 2016) (concluding that an undated declaration executed under § 1746 was "intrinsically deficient" and failed to "comport with statutory requirements."); *Puente v. Ridge*, 324 F. App'x 423, 430 (5th Cir. 2009) (concluding that an "undated, unnotarized statement" failed to comply with § 1746); *Russell v. Cook Cnty.*, 661 F. App'x 443, 445 (7th Cir. 2016) (noting that declarations made under 28 U.S.C. § 1746 must show "exactly when the document was signed"); *McMiller v. Corrections Corp. of Am.*, 695 F. App'x 344, 348 (10th Cir. 2017) ("Perhaps the printed name represents [the appellant's] signature, but without a date, the declaration does not satisfy 28 U.S.C. § 1746."); *Reynolds v. Sealift, Inc.*, 311 F. App'x 422, 425 (2d Cir. 2009) (excluding three affidavits because they "lacked a precise date" and therefore did not comply with 28 U.S.C. § 1746); *Mendez v. MCSS Rest. Corp.*, 564 F. Supp. 3d 195, 210 (E.D.N.Y. 2021) (Failure to date an unsworn declaration is non-compliance with section 1746); *Wheeler v. Baxter Healthcare Corp.*, No. 4:11CV00263 JLH, 2011 WL 5402446, at *2 (E.D. Ark. Nov. 8, 2011) (undated declaration did not comply with 28 U.S.C. § 1746); *Jennings v. Nat'l R.R. Passenger Corp.,* No. 97C6385, 1998 WL 460270, at *7 (N.D.Ill. July 30, 1998) ("Additionally, [the] affidavit contains no date of execution. The court would be justified in striking these affidavits for technical non-compliance with Rule 56(e) and § 1746."); *Hughes v. Dale Cnty. Med. Ctr.*, No. 1:06CV595-SRW, 2008 WL 1757768, at *1 (M.D. Ala. Apr. 16, 2008) ("However, the statute expressly requires that to substitute for a sworn declaration or affidavit, an unsworn declaration must be dated. The undated declaration does not meet the requirements of the statute and, therefore, is inadmissible in its entirety on the present motion."); *Kalra v. United States*, No. 12-CV-3154, 2013 WL 1749385, at *3 (N.D. Ill. Apr. 23, 2013) ("Groscost's statement does not qualify as an unsworn declaration under 28 U.S.C. § 1746 because it lacks a specific date."); *Johnke v. Espinal-Quiroz*, No. 14-CV-6992, 2017 WL 3620745, at

Plaintiff provides no legal authority purporting to support Plaintiff's certificate complies with section 622.1. Rather, Plaintiff misconstrues *Banwart*, *Miller*, and *Carter* in incorrectly arguing the Plaintiff's certificate of merit contained the exact language contemplated by *Banwart*. (Pl. Brief, p. 22). This is incorrect. It bears emphasizing that while *Banwart* and *Miller* make reference to including penalty of perjury language, both cases did so whilst citing *Carter*, and in the context of referencing the requirements of section 622.1.[12] *See Banwart, P.C.*, 18 N.W.3d at 273 (*citing Miller*, 7 N.W.3d at 375 (citing *Carter*, 618 N.W.2d at 378)); *see also Miller*, 7 N.W.3d at 375 (citing *Carter*, 618 N.W.2d at 378).

The Iowa Supreme Court in *Miller* and *Banwart* specifically quoted and relied upon the following delineation in *Carter*:

> Yet, the only statute which eliminates the presence of another requirement for an oath or affirmation is found in section 622.1. This section now permits sworn written

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*3 (N.D. Ill. Aug. 23, 2017) ("Additionally, the affidavits are not dated. Thus, they are not admissible as unsworn declarations under 28 U.S.C. § 1746 . . ."); *Lentz v. Spanky's Rest. II, Inc.*, 491 F. Supp. 2d 663, 669–70 (N.D. Tex. 2007) (declining to consider undated affidavit by the plaintiff because it failed to comply with Rule 56(e) and 28 U.S.C. § 1746).

[12] Iowa Code section 622.1 is titled "Certification under penalty of perjury." *See* Iowa Code § 622.1.

> statements required or permitted by law to be attested by a signed and *dated* unsworn written statement that the person "*certified* under penalty of perjury" the statement is "*true and correct*."
>
> …
>
> A certification which does not contain language which substantially complies with this phrase is outside the statute. If the *requirements of section 622.1* are not satisfied, the presence of another to administer an oath remains necessary to support a perjury charge under section 720.2. Moreover, we can find *no other instance* where our legislature has relaxed the oath or affirmation requirement to support the charge of perjury.

See Banwart, P.C., 18 N.W.3d at 274 (quoting *Carter*, 618 N.W.2d at 377-78 (emphasis added)); *see also Miller*, 7 N.W. 3d at 375 (quoting and citing *Carter*, 618 N.W.2d at 377-78 (emphasis added)). In other words, the Iowa Supreme Court's references of the penalty of perjury language were to the requirements of section 622.1. *See id.*

Neither *Banwart* nor *Miller* supports Plaintiff's contention his unsworn statement contained the language contemplated; just the opposite in fact. Rather, the cases clearly establish that if the Plaintiff submits an unsworn statement, it must comply with the requirements of section 622.1 and failure to substantially comply with those requirements renders the statement inadequate to bind the conscience of the affiant.

See Banwart, P.C., 18 N.W.3d at 273-74; *Miller*, 7 N.W. 3d at 375-76; *Carter*, 618 N.W.2d at 377-78. The District Court correctly found Plaintiff's certificate of merit failed to meet the requirements of section 622.1 and correctly granted Defendant's motion to dismiss.

2. CRNA Campbell's Certificate of Merit Does Not Substantially Comply With Iowa Code Section 622.1 Because it Does Not Bind His Conscience

The District Court also correctly found Plaintiff's certificate of merit failed to substantially comply with Iowa Code section 622.1 by lacking essential requirements of the statute. In simple terms, Plaintiff's unsworn statement failed to bind CRNA Campbell's conscience. Accordingly, Plaintiff's failure to substantially comply with section 622.1 renders Plaintiff equally noncompliant with section 147.140.

Iowa Code section 147.140 mandates dismissal with prejudice upon Plaintiff's failure to substantially comply with its requirements. *See* Iowa Code § 147.140(6). Substantial compliance requires Plaintiff to comply with respect to the essential matters necessary to assure the reasonable objectives of the statute. *Miller*, 7 N.W. 3d at 374. In the context of the oath requirement, substantial compliance necessitates Plaintiff accomplish the oath or affirmation in such a way sufficient to bind the

affiant's conscience rendering the individual susceptible to the risk of criminal penalties for perjury. *See Banwart, P.C.*, 18 N.W.3d at 273-74; *Miller*, 7 N.W. 3d at 375-76; *Carter*, 618 N.W.2d at 377-78.

More specifically, the Iowa Supreme Court found the expert's sworn oath essential to the objectives of section 147.140. *See Miller*, 7 N.W. 3d at 374. "The Iowa legislature made the policy choice to deter false expert testimony in medical malpractice actions by requiring the expert to sign the certificate of merit under oath or under penalty of perjury." *See Banwart, P.C.*, 18 N.W.3d at 275. The oath requirement ensures the affiant recognizes the obligation to be truthful when making the statement. *See Miller*, 7 N.W. 3d at 375 (quoting *Carter*, 618 N.W.2d at 376). "This requirement can help weed out weak cases early when experts are deterred by the risk of criminal penalties for perjury and decline to sign the requisite certificate under oath." *See Banwart, P.C.*, 18 N.W.3d at 275 (quoting *Miller*, 7 N.W. 3d at 376).

The Iowa Supreme Court quoted the highest court of Maine with approval in saying, "[t]he oath provision in a statute is more than a mere technicality. Its function is both to make clear the significance of filing the document itself and to provide a basis for a perjury action upon proof

of falsification." *Miller*, 7 N.W. 3d at 376 (quoting *Paradis v. Webber Hosp.*, 409 A.2d 672, 675 (Me. 1979), *superseded by statute on other grounds*, 1985 Me. Laws ch. 804, § 12 (codified at Me. Stat. tit. 24, § 2851–2859 (2012)), *as recognized in Frame v. Millinocket Reg'l Hosp.*, 82 A.3d 137, 145 & n.6 (Me. 2013)). The Iowa Supreme Court reiterated 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." *See Banwart, P.C.*, 18 N.W.3d at 275 (quoting *Shontz*, 2024 WL 2868931, at *1 (quoting *Miller*, 7 N.W. 3d at 375)). Accordingly, to determine Plaintiff's compliance with the oath requirement, the court looks to whether the oath or affirmation was accomplished to bind the conscience of the affiant. *Miller*, 7 N.W. 3d at 375 (citing *Carter*, 618 N.W.2d at 376).

In *Miller*, the Iowa Supreme Court found an unsworn signed expert report was not signed under oath consistent with Iowa Code section 622.85, did not contain language consistent with Iowa Code section 622.1(2), and thereby did not comply with Iowa Code Section 147.140(1)(b). *See Miller*, 7 N.W. 3d at 374-76. In *Banwart* and *Shontz*, the Iowa Supreme Court found certificates of merit signed with language

of "affirms and states as follows" was not signed under oath or consistent with Iowa Code section 622.1. *See Banwart, P.C.*, 18 N.W.3d at 273-75; *Shontz*, 2024 WL 2868931, at *1. In *Entler*, the Iowa Supreme Court held that the language, "the undersigned, being duly sworn (or affirmed), states . . ." did not satisfy the requirements of section 622.1 and therefore the plaintiff failed to establish that its claim was sworn or accompanied by a proper affidavit, as was required by statute. *In Re Est. of Entler*, 398 N.W.2d 848, 849-850 (Iowa 1987).

Iowa authority has made clear an expert's certificate of merit must be either (1) signed by the expert after being administered an oath or affirmation by a qualified officer; or (2) signed by the expert in compliance with Iowa Code section 622.1. *See Miller*, 7 N.W.3d at 375. In order to sufficiently bind the conscience of the signatory, Iowa Code section 622.1 requires the person sign and date the statement with a certification the matter is true, under penalty of perjury, pursuant to the laws of the state of Iowa. Iowa Code § 622.1. Indeed, as reiterated by the Iowa Supreme Court, there is no other instance where the Iowa legislature has relaxed the oath or affirmation requirement to support the charge of perjury. *See Banwart, P.C.*, 18 N.W.3d at 274 (quoting *Carter*, 618 N.W.2d at 378).

Again, it is undisputed Plaintiff's certificate of merit lacked several requirements of section 622.1 including a certification of truth, the date, and subscription to the laws of the state of Iowa. These requirements are essential pieces necessary to bind the conscience of CRNA Campbell. Plaintiff fails to provide any arguments or authority minimizing these requirements. Moreover, Plaintiff fails to cite any legal authority establishing CRNA Campbell's statement was sufficient to subject him to penalty of perjury. Indeed, the Court need only look at the plain language used by CRNA Campbell to conclude just the opposite.

The certification of truth is an essential component of section 622.1. The declarant's acknowledgment of the obligation to be truthful is at the heart of an oath or affirmation. *See, e.g.*, *Miller*, 7 N.W.3d at 375 (Iowa 2024) ("The oath ensures that the person "*recognize[s] the obligation to be truthful*" when making the statement.")[13] (emphasis added) (citing *Carter*, 618 N.W.2d at 376 (Iowa 2000)); *State v. Walker*, 574 N.W.2d

[13] *See also MountainView Hosp., Inc. v. Eight Jud. Dist. Ct.*, 128 Nev. 180, 273 P.3d 861, 866 (2012) (finding an acknowledgment in a medical malpractice certificate of merit case did "not contain any statement that Dr. McNamara 'swore to or affirmed that the statements in the document are true'"; and thus could not constitutes an affidavit." (citations omitted)), cited with approval in *Miller*, 7 N.W.3d at 377.

280, 285 (Iowa 1998) ("*the purpose of an oath is to secure the truth*, and hence any form thereof which is 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, is sufficient.") (emphasis added).

Indeed, an "oath" is a "solemn declaration, accompanied by a swearing to God or a revered person or thing, *that one's statement is true or that one will be bound to a promise*[.]" Oath, Black's Law Dictionary (11th ed. 2019) (emphasis added). Similarly, "[a]n affidavit consists of a statement of fact which is *sworn to as the truth* . . ." 2A C.J.S. Affidavits § 2 (emphasis added); *Callenius v. Blair*, 309 N.W.2d 415, 418 (Iowa 1981) ("The affidavit may be in the form of a verification, that is, a sworn statement of *the truth of the facts stated in the instrument verified*.") (emphasis added). Likewise, a "verification" is a "*confirmation of the correctness, truth, or authenticity*, by an affidavit, oath, or deposition, or an affidavit of the truth of the matter stated." 2A C.J.S. Affidavits § 2 (emphasis added). Similarly, a "certification" is an authentication, a vouching, an attestation as being true; certifying means "to testify to a thing in writing." *See Walker*, 574 N.W.2d at 286-87 (interpreting the

word "certify" in reference to Black's Law Dictionary and Iowa case law interpreting the term as indicating testimony in writing).

The certification of truth is an essential requirement because it is *false* or *untrue* statements which subject one to the penalties of perjury, not for making statements "in bad faith" under oath. *See* Iowa Code § 720.2 (perjury consists of making a false statement of material facts while under oath or affirmation).[14] That is why section 622.1 requires a "certification" to be made under penalty of perjury. *See* Iowa Code § 622.1 (titled "Certification under penalty of perjury"). As *Miller* articulates, the basis of a perjury charge requires "*proof of falsification*." *Id*. at 376 (emphasis added). Accordingly, a certification that the statements contained in an affidavit are *true* is an essential part of binding the conscience of the declarant and therefore an essential part of a proper affidavit. It is undisputed Plaintiff's certificate of merit lacked any statement of truth, or any certification for that matter.

Similarly, the date requirement is also an essential component to bind the conscience of the declarant. An "affidavit that does not show

[14] *See also* 18 U.S.C.A. § 1621 (person is guilty of perjury who, in an unsworn declaration under penalty of perjury, willfully subscribes as true any material matter which he does not believe as true).

when the affiant swore to it could not show that he committed perjury." *Yorko v. State*, 672 S.W.2d 3, 5 (Tex. App. 1983). Without a date of execution on the document, it is impossible to determine whether certain statements in the statement are true, as the truth of such statements could be dependent upon when the statement was made. *See* Iowa Code section 622.1 (requiring statement to state the date of the execution). Again, Plaintiff's certificate of merit lacked the date of execution.

The Court need look no further than CRNA Campbell's statement in comparison to the concerns outlined in *Banwart* to recognize such concerns are equally manifest in this specific case. In emphasizing the importance of binding the expert's conscience, the Iowa Supreme Court said:

> What if the expert lies about his or her qualifications? *See, e.g., State v. Wolfrum*, 145 Idaho 44, 175 P.3d 206, 207 (Idaho Ct. App. 2007) (affirming the perjury conviction of an expert witness who lied about his credentials); *State v. Sullivan*, 24 N.J. 18, 130 A.2d 610, 615–16 (1957) (affirming the perjury conviction of a medical doctor and rejecting his argument that he could not be criminally liable for giving medical opinions). Or what if the medical expert falsely testifies to holding opinions he or she in fact disbelieves? *See State v. Hawkins*, 620 N.W.2d 256, 262–63 (Iowa 2000) (en banc) (affirming the defendant's perjury conviction for false opinion testimony and collecting cases upholding perjury convictions when the witness in fact had no such

> belief or opinion). Experts, like other humans, have been known to lie. Experts and lay witnesses alike must raise their right hand at trial.

Banwart, P.C., 18 N.W.3d at 274-75.

These same concerns are implicated by CRNA's Campbell's statement. Again, CRNA Campbell had no certification or statement of the truth. Rather, he made all of his statements in "good faith." That cannot subject him to penalty of perjury because there is no threat of falsity. For instance, under said statement it is very possible the expert could personally believe the care provider did not breach the standard of care, but believed a good faith argument could be made that it was breached even if he does not believe it. Regardless of the "under penalty of perjury," there would be no means to subject the expert to a perjury charge as the expert never averred the statements therein were true. There would likewise be no grounds for a perjury charge if the expert did in fact believe the standard of care was not breached, but signed the opposite.

CRNA Campbell's Certificate of Merit, as written, would allow him to "circumvent the penalties for perjury in signing onto intentional falsehoods." *See Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306 (5th

Cir. 1988). This is true despite the fact that Mr. Campbell's Certificate of Merit was signed "under penalty of perjury," because a declarant can state falsehoods while recognizing he or she is under penalty of perjury since the declarant has not declared the statement to be true. *See id*. Thus, by merely making the statements in his certificate of merit "in good faith and under penalty of perjury" in the absence of a certification that the statements are true, CRNA Campbell was not sufficiently "conscience bound" as is required under section 622.1 and *Miller*. *See Miller*, 7 N.W.2d at 375-376.

The Iowa Supreme Court's concerns about an expert's qualifications are likewise aptly demonstrated by the date requirement in the certificate of merit context. For example, whether the expert meets Iowa's qualifying standards outlined in section 147.139, such as the five-year active practice in a substantially similar field may depend on the date the affiant executed the statement. *See* Iowa Code § 147.139(2) (requiring the expert actively practice in the same or substantially similar field for the preceding five years). Similarly, section 147.139 requires that the expert be "licensed to practice in the same or a substantially similar field as the defendant." Iowa Code § 147.139(2). This must be a "current active

license to practice" as opposed to an expired or inactive license at the time the certificate of merit is signed. *See Hummel v. Smith*, 999 N.W.2d 301, 309 (Iowa 2023). Whether the expert has a current active license when they sign a certificate of merit may depend on the date they sign it. Thus, the date requirement of section 622.1 is another essential element that ensures the truth of the matters stated in a certificate of merit and allows for a perjury action should the certificate contain false statements.

This is consistent with federal case law. Many federal courts have recognized "a statement that the information in the declaration is true" is a "critical element."[15] Likewise, an overwhelming number of federal

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[15] *United States v. McNeal*, 82 F. Supp. 2d 945, 950 (S.D. Ind. 2000); *see also United States v. 8 Gilcrease Lane, Quincy Fla. 32351*, 587 F. Supp. 2d 133, 139 (D.D.C. 2008)(an assertion that the facts are true and correct is "essential to a proper verification under § 1746."). *Luxul Tech. Inc. v. NectarLux, LLC*, No. 14-CV-03656-LHK, 2016 WL 3345464, at * 5 (N.D. Cal. June 16, 2016) (citing *Schroeder v. McDonald*, 55 F.3d 454, 460 n.10 (9th Cir. 1995)) ("Substantial compliance requires the declarant to make two assertions in the declaration: (1) that the statements in the declaration were made "under penalty of perjury," and (2) "that the contents were true and correct."); *Sterling Fifth Assocs. v. Carpentile Corp., Inc.*, No. 03 Civ. 6569(HB), 2003 WL 22227960, at *5 (S.D.N.Y. Sept. 26, 2003) ("Section 1746 permits an unsworn declaration made under penalty of perjury to substitute for a sworn affidavit, but only if the claimant states that its contents are true and correct."); *Barroca v. Santa Rita Jail*, No. C04-0482 VRW (PR), 2006 WL 571355 at *4 (N.D. Cal. Mar. 3, 2006) ("A declaration is not admissible as evidence if not verified as true and correct and signed under penalty of perjury.");

courts at both the appellate and district court level have held the failure to date an affidavit or declaration renders the document noncompliant. (*See* authority cited *supra* Part II.C.1., footnote 11, p. 36). This is true even when the statement contains "penalty of perjury" language.[16]

For similar reasons, the multitude of absent requirements from CRNA Campbell's statement renders the statement far short of

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Atlanta Fiberglass USA, LLC v. KPI, Co., Ltd., 2013 WL 4786912, at *5 (N.D. Ga. 2013) (noting that § 1746 requires that declarant state under penalty of perjury that his assertions are true and correct); *Way v. City of Missouri City*, 133 F.4th 509 (5th Cir. 2025) ("An unsworn declaration may be treated as an affidavit if it contains a statement that the contents of the declaration are 'true and correct' under penalty of perjury." (citing 28 U.S.C. § 1746); *Acosta v. Mezcal, Inc.*, No. CV JKB-17-0931, 2019 WL 2550660 at *2 (D. Md. June 20, 2019) ("Courts construing the statute consider the requirements that an unsworn declaration be (1) avowed to be 'true and correct' and (2) made 'under penalty of perjury' to be independent elements.").

[16] *See Bonds v. Cox*, 20 F.3d 697, 702 (6th Cir. 1994) ("Although Bonds' additional affidavits were subscribed under penalty of perjury, they were undated. Given the explicit language of the statute, they must therefore be excluded from consideration."); *Gipson v. Hamilton Cnty. Common Pleas Ct.*, No. 1:22-CV-764, 2023 WL 8091343, *3 (S.D. Ohio Nov. 21, 2023) (holding that "affidavits" which included the declarant's signature and representation that the statements are made under penalty of perjury were invalid under section 1746 because they were undated); *Coleman v. Experian Info. Sols., Inc.*, 655 F. Supp. 3d 1285, 1321 (N.D. Ga. 2023) ("Plaintiff's unsworn declaration under penalty of perjury is signed, but not dated, and thus does not comply with the statutory requirements governing such declarations.").

substantially complying with the language required by section 622.1. *See Carter*, 618 N.W.2d at 378 (language of the certification fell far short of substantially complying with the language required by the statute). CRNA's Campbell's statement lacked a certification of truth, lacked a date, and lacked a subscription to the laws of the state of Iowa. CRNA Campbell's statement cannot be found substantially compliant with section 622.1 given the sheer totality of requirements he failed to include. *See In re Est. of Entler*, 398 N.W.2d at 849-850 (finding language, "the undersigned, being duly sworn (or affirmed), states . . ." did not satisfy the requirements of section 622.1 and therefore the plaintiff failed to establish that its claim was sworn or accompanied by a proper affidavit).

This is once again consistent with federal cases applying similar federal law. *See, e.g.*, *Jennings*, 1998 WL 460270, at *7 (holding that "affidavits" that were undated and did not certify the matter to be true and correct did not comply with section 1746 even though they were made "under penalty of perjury"); *Johnke v. Espinal-Quiroz,* No. 14-CV-6992, 2017 WL 3620745, at *3 (N.D. Ill. Aug. 23, 2017) (holding that "affidavits" that "fail[ed] to comply with two requirements of § 1746" were non-compliant with the statute).

The substantial absences and deviations in CRNA Campbell's statement in comparison to section 622.1 renders it far short from section 622.1's requirements. The fact that CRNA Campbell stated that his statements were made "in good faith" is in no way tantamount to a certification that his statements are true. *See Roy v. Ivy*, 53 F.4th 1338, 1348 (11th Cir. 2022) ("[I]nmate Salter acknowledged that his statement was made 'in good faith.' This language does not come close to substantially complying with the requirements or pattern language of § 1746."). Further, not only did Plaintiff fail to include requirements, but Plaintiff likewise failed to include any substantially similar language in their stead.

Plaintiff fails to present persuasive arguments or authority CRNA Campbell's conscience was bound beyond the generic assertion the language used was enough.[17] (Pl. Brief, pp. 24-25). Plaintiff's argument is eerily reminiscent of the arguments ultimately rejected in *Miller* and

[17] Plaintiff's reference to the Court's denial of an application for interlocutory appeal is irrelevant to the Court's analysis as it was not only an unpublished decision but also involved different issues and did not result in a ruling on the merits, and thereby carries no precedential or persuasive value to the issues at hand. *See* Iowa R. App. P. 6.904(2)(c) (providing that "[u]npublished opinions or decisions of a court or agency do not constitute controlling legal authority.").

Banwart, in that it asks the Court ignore both the plain requirements articulated by the Legislature in the statute, as well as the language used in the statement. The Iowa Supreme Court rejected that approach. *See Banwart, P.C.*, 18 N.W.3d at 275 ("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.'") (quoting *Shontz*, 2024 WL 2868931 at *1 (quoting *Miller*, 7 N.W. 3d at 375)).

The Iowa legislature specifically outlined the requirements an unsworn statement must include to subject the affiant to penalties of perjury. *See* Iowa Code § 622.1; *see also Carter*, 618 N.W.2d at 377-78 ("the only statute which eliminates the presence of another requirement for an oath or affirmation is found in section 622.1…we can find no other instance where our legislature has relaxed the oath or affirmation requirement to support the charge of perjury."). These include a certification of truthfulness, a subscription to the laws of the state of Iowa, and the date of execution. Iowa Code § 622.1. Defendant has previously articulated *supra* why these are essential components and necessary to bind the conscience of the affiant and subject him to penalties of perjury. The Legislature specifically did not prescribe

statements solely made under penalty of perjury as sufficient without these other requirements. *See* Iowa Code § 622.1. Plaintiff's argument ignores the plain language of the statute whilst simultaneously rendering significant portions of the statute superfluous. *See Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue,* 301 N.W.2d 760, 765 (Iowa 1981) (a "statute should not be construed so as to make any part of it superfluous unless no other construction is reasonably possible."). Moreover, it would cause the Court to insert itself in place of the Legislature and rewrite the requirements. *See Vagts v. N. Nat. Gas Co.*, 8 N.W.3d 501, 516 (Iowa 2024), *as amended* (Aug. 30, 2024) (noting that courts are "not at liberty to rewrite" statutes).

Lastly, it bears emphasizing the requirements of section 622.1 are not onerous, nor is Defendant advancing a hyper-technical reading of the statute. Rather, the legislature plainly articulated the requirements an unsworn statement must contain to subject the affiant to penalties of perjury. *See* Iowa Code § 622.1(1). Moreover, the Legislature provided a demonstrative illustrating compliance where substantially in the form. *See id. §* 622.1(2). It is undisputed Plaintiff did not include the requirements, nor did Plaintiff replace said language with the

substantial equivalent. The Court cannot ignore what Plaintiff said and substitute for what Plaintiff should have said.

The District Court correctly found "nothing in Defendant's Motion that seeks application of any standard that differs from the standards that have been set forth and utilized in the cases that have interpreted sections 147.140 and 622.1." (Ruling on MTD, p. 10; D0106 (6/22/25)). Plaintiff's certificate of merit lacked essential components outlined by section 622.1, and was thereby insufficient to bind the conscience of CRNA Campbell. Pursuant to the Iowa Code and established Iowa precedent, Plaintiff's certificate of merit did not substantially comply, and Plaintiff's claims must be dismissed. *See* Iowa Code § 147.140(6); *see also Banwart, P.C.*, 18 N.W.3d at 275; *Miller*, 7 N.W. 3d at 377 (remanding for an order dismissing the case with prejudice where the plaintiff's certificate of merit was not a proper affidavit under oath). The District Court must be affirmed.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that the Court affirm the District Court's rulings on Defendant's Motion for Partial Dismissal and Motion to Dismiss.

STATEMENT REGARDING ORAL ARGUMENT

Defendant believes oral argument is not necessary here, and this appeal could appropriately be resolved upon a review of the District Court record and the parties' briefs. Plaintiff has requested oral argument. In the event the Court deems to order oral argument on this matter, Defendant wishes to be heard orally on all issues presented in this appeal.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitations of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 font and contains 11,293 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

/s/ Peter R. Lapointe Date: 11/25/2025

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on November 25, 2025, the undersigned did serve the Defendants–Appellees' Brief with the Iowa Supreme Court and upon counsel for the other parties appearing in this appeal through the EDMS system to:

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