ELECTRONICALLY FILED SEP 08, 2026 CLERK OF SUPREME COURT

IN THE IOWA SUPREME COURT

NO. 25-1186

JACOB KNAPP,

Appellant,

vs.

STATE OF IOWA,

Appellee

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

APPLICATION FOR FURTHER REVIEW

Date of filing of Court of Appeals' Opinion under review:
August 19, 2026

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QUESTION PRESENTED FOR FURTHER REVIEW

Does a certificate of merit affidavit “substantially comply” with Iowa Code Section 147.140(1)(a)-(b) if the unsworn written statement includes the phrase “under penalty of perjury” but lacks a certification that the matter to be true under laws of this state and is undated?

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STATEMENT SUPPORTING FURTHER REVIEW

This is a medical negligence case brought against the State of Iowa for damages suffered by Plaintiff Jacob Knapp (Knapp) during a surgical procedure at the University of Iowa Hospitals and Clinics. Knapp alleges that he suffered permanent blindness as a result of negligence by Brittany Van Sickle (Van Sickle), a certified registered nurse anesthetist (CRNA).

Pursuant to Iowa Code Section 147.140, Knapp served a timely certificate of merit affidavit directed toward the acts and standard of care violations committed by Van Sickle. Nurse anesthetist J. Benjamin Campbell (Campbell) completed a certificate of merit with the language "[..] I make all of the foregoing statements in good faith and under penalty of perjury." The certificate of merit was signed by Campell but is undated.

The Defendant moved for summary judgment and the district court granted its motion because the certificate of merit affidavit did not certify that the matter is true under the laws of this state and the signature was undated. The court of appeals affirmed the district court grant of summary judgment in favor of the Defendant.

The Court of Appeals affirmed the district decision that the certificate of merit did not substantially comply with Iowa Code Section under the precedents of *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024), *Banwart v.*

Neurosurgery of North Iowa, P.C., 18 N.W.3d 267 (Iowa 2025), and *Rarick v. Smidt*, 36 N.W.3d 1 (Iowa 2026).

The Court of Appeals decision is in conflict with decisions of the Supreme Court on an important matter because it draws a narrower and stricter interpretation of "substantial compliance" than the cases relied upon in its decision. Iowa R. App. Pro. 6.1103(b)(1); *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024), *Banwart v. Neurosurgery of North Iowa, P.C.,* 18 N.W.3d 267 (Iowa 2025), and *Rarick v. Smidt*, 36 N.W.3d 1 (Iowa 2026). The Plaintiff argues that he was in "substantial compliance" because inclusion of the phrase "I make all of the foregoing statements in good faith and under penalty of perjury" objectively shows the declarant intended to be bound by the statements, therefore the "reasonable objectives of the statute were met."

TABLE OF AUTHORITIES

Cases:

Banwart v. Neurosurgery of North Iowa, P.C.,
18 N.W.3d 267 (Iowa 2025) 4, 5, 12
Estate of Fahrmann v. ABCM Co.,
999 N.W.2d 283, 288 (Iowa 2023) 9
Miller v. Catholic Health Initiatives-Iowa, Corp.,
7 N.W.3d 367 (Iowa 2024) 4, 5, 10, 11
Rarick v. Smidt, 36 N.W.3d 1 (Iowa 2026) 5, 12
Shontz v. Mercy medical Center-Clinton, Inc.,
7 N.W.3d 775 (Iowa 2024) 12
State v. Carter, 618 N.W.2d 374 (Iowa 2000) 10, 11
State v. Walker, 574 N.W.2d 280 (Iowa 1998) 11

Statutes:

Iowa Code § 147.140 ..... 2, 4, 7, 8, 9
Iowa Code § 669.5(2)(a) 7
Iowa Code § 622.1 ..... 9, 11, 13
Iowa Code § 622.1(1) 9
Iowa Code § 622.85 ..... 9, 11
Iowa R. App. Pro. 6.1103(b)(1) 5

Nature of the Case and Relief Sought

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

Course of Proceedings. On March 31, 2023, the plaintiff filed this medical negligence action against the defendant. D0001, Petition (03/31/2023).[1] On May 4, 2023, the plaintiff filed a partial dismissal that dismissed the individual provider from the case. D0006, Dis. Without Prejudice (05/04/2023). Subsequently, the plaintiff filed an amended petition that did not include the individual provider (Brittany Van Sickle) as a named party and added a factual allegation that State of Iowa through a legal representative certified Van Sickle's employment status pursuant to Iowa Code section 669.5(2)(a). D0007, Amended Pet. (05/04/2023). On May 23, 2023, the plaintiff filed notice of serving certificate of merit. D0015, Notice Cert. Merit (05/23/2023). On June 12, 2023, defendant filed its first responsive pleading to plaintiff's amended petition. D0003, Answer & A.D. (06/12/2023). On June 15, 2023, the parties filed a trial

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

scheduling and discovery plan and on June 19, 2023, the court incorporated the plan in its order setting trial. D0004 Trial Sched. (06/15/2023); D0007. The parties' trial scheduling and discovery plan ordered that the pleadings close "60 days before trial" or on May 15, 2025. D0004; D0007.

On February 12, 2024, defendant filed a partial motion to dismiss along with attachments A and B for "failure to comply with Iowa Code section 147.140. D0031, Motion to Dismiss (02/12/2024). The plaintiff filed his resistance to defendant's motion to dismiss with attachments one through eight. D0032, Resistance (02/12/2024). On February 22, 2024, defendant filed a reply to plaintiff's resistance with attachment c. D0034, Def. Reply (02/19/2024). The court entered a ruling granting defendant's motion for partial dismissal. D0043, Order (03/27/2024).

On April 14, 2024, defendant filed a second motion to dismiss to dispose of the entire case. D0067, Def. 2nd MTD (04/14/2025). The plaintiff filed his resistance and brief in support of resistance to defendant's motion to dismiss. D0073 Brief (505/01/2025); D0074 Resistance (05/01/2025). The defendant filed its reply to the plaintiff's resistance with attachments A through C. D0078, Def. Reply (05/16/2025). The court entered an order granting defendant's motion to dismiss and dismissed the entire action. D0106, Ruling (06/22/2025). A timely notice of appeal of

all adverse rulings was filed. D0021, Notice of Appeal (07/21/2025).

ARGUMENT

I. Substantial Compliance does not require perfection.

The District Court and Court of Appeals erred in the application and analysis of Iowa Code Section 147.140 when they decided that Plaintiff's certificate of merit affidavit stated and certified that Campbell's statements were made "[..]in good faith and under penalty of perjury" lacked substantial compliance.

Both the District Court and Appellate Court held that in order for Knapp to rely on "substantial compliance" to satisfy Iowa Code Section 147.140, Campbell was required to comply with Iowa Code Section 622.1. Iowa Code Section 622.1. This statute permits the use of a sworn statement by a declarant to be relied upon if the statement "recites that a person certifies the matter to be true under penalty of perjury of the laws of this state, states the date of the statement's execution and is subscribed by that person." Iowa Code Section 622.1(1).

However, this Court has foregone many opportunities to establish precedent that Iowa Code Section 147.140 is only fulfilled by an affidavit pursuant to Iowa Code Section 622.85 or a declaration pursuant to Iowa Code Section 622.1. This Court has analyzed "substantial compliance" and found a lack of "substantial compliance" in many instances. In *Estate of Fahrmann v. ABCM Co.,*

999 N.W.2d 283, 288 (Iowa 2023), this Court held that an attorney's signature on discovery responses identifying experts and an affidavit served forty-two (42) days passed the sixty-day deadline does not substantially comply with the statute. *Id* at 288.

In *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024), the plaintiff's certificate of merit affidavit was in the form of a document that was signed by the expert but did not include an affidavit, sworn oath, or any declaration that she signed under penalty of perjury. *Id* at 371. The Court held that the determinative factor in analysis and application of substantial compliance is whether the person's "conscience was bound." *Id* at 375. This Court held that the "under penalty of perjury" language must be included and the plaintiff's expert letter was not signed "under penalty of perjury."

In analyzing the Miller facts, the Court referenced to a criminal case in which the state attempted to prosecute a board of pharmacy applicant for perjury when she failed to disclose a conviction for a felony when the application required disclosure of convictions other than a traffic violation. *State v. Carter*, 618 N.W.2d 374 (Iowa 2000) at 375. The application did not require a notary, but only the statement that "I certify to the Iowa Board of Pharmacy Examiners that the information I have provided on this registration application is true and correct." *Id*. As the Court noted in *Carter*, the legislature has discarded many of the

formalities once commonly associated with an oath or affirmation. *Carter* citing *State v. Walker*, 574 N.W.2d 280, 286 (Iowa 1998) and instead look to see if the oath or affirmation was accomplished in such a way that the person's conscience was bound. *Carter* citing *State v. Walker*, 574 N.W.2d 280 (Iowa 1998). The holding in *Carter*, also reaffirmed that the operative language of Iowa Code Section 622.1 is "under penalty of perjury" which acts to bind the conscience of the person and emphasizes the "obligation to be truthful." *Carter* at 377.

In *Miller*, the Court had an opportunity to rule that "substantial compliance" require an affidavit pursuant to Iowa Code Section 622.85 or a declaration with jurat pursuant to Iowa Code Section 622.1 but did not rule as such. Instead, it emphasized that 'under penalty of perjury' language acts to bind the conscience of the person and obligation to be truthful. Id at 376. The plain language of Plaintiff's certificate of merit says "[..] I make all of the foregoing statements in good faith and under penalty of perjury." On its face, Campbell stated that such declarations or statements of fact were made under penalty of perjury without a statement that the statements were true and correct. For Campbell to escape prosecution for perjury would be akin to deciding that one can escape prosecution as long as his fingers are crossed behind his back.

Similarly, in *Rarick v. Smidt*, 36 N.W.3d 1 (Iowa 2026) plaintiff's expert signed with statement that "[T]he above information is true and correct to the best of my knowledge and belief[,]" without any penalty of perjury language or date of signature and *Banwart v. Neurosurgery of North Iowa, P.C.,* 18 N.W.3d 267 (Iowa 2025) plaintiff's expert relied upon "affirm" and "state" language with a date and signature without a jurat. *Rarick v. Smidt*, 36 N.W.3d 1 (Iowa 2026) at 3, *Banwart v. Neurosurgery of North Iowa, P.C.,* 18 N.W.3d 267 (Iowa 2025) at 271. The Court noted in *Banwart* that "[N]either certificate includes a statement that it was signed under oath or under penalty of perjury." *Id* at 271. The Court's careful use of language is again indicative that the phrase of import is "under penalty of perjury" not reference or phrasing that statements are true and correct or date to signature.

This Court specifically refers back to *Shontz v. Mercy Medical Center-Clinton, Inc*., 7 N.W.3d 775 (Iowa 2024) at 1, a case in which plaintiff's expert relied upon "state and affirm" language with a signature but no date. The Court held in Shontz that without an oath or penalty of perjury language, the certificate lacked substantial compliance. Again, this Court did not hold that lack of "statements are true and correct" language or the undated signature also presented substantial compliance issues.

None of the cases cited by the appellate court in its decision in this case turn the summary of case holdings into a dichotomy

that substantial compliance is **only** met through a "true affidavit" or a statement with a jurat pursuant to Iowa Code Section 622.1.

In each case cited by the appellate court, this Court held that the operative language is "under penalty of perjury." The Plaintiff's expert included this language in the certificate of merit, therefore met the statutory requirement of substantial compliance and is consistent with prior precedents of this Court.

CONCLUSION

For the reasons stated above, the Plaintiff/Appellant requests this Court to grant this application for further review.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

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

Respectfully submitted,

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CERTIFICATE OF FILING

I, Molly M. Hamilton, hereby certify that I have filed the foregoing "Application for Further Review" with the Clerk of the Supreme Court of Iowa through the ECF/EDMS System on September 8, 2026.

_/s/ Molly M. Hamilton_____
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CERTIFICATE OF SERVICE

I, Molly M. Hamilton, hereby certify that on this same date, I served the attached "Application for Further Review" through the ECF/EDMS System on the following:

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CERTIFICATE OF COMPLIANCE

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

This brief has been prepared in a monospaced typeface using Courier New in 12 characters per inch and contains 153 number of lines of text, excluding the parts of the brief exempted by Iowa R.App.P. 6.903(1)(g)(2).

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