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

Bremer County LACV006841

ERIN BARKER,
Plaintiff-Appellant,

vs.

J. MATTHEW GLASCOCK,
Defendant-Appellee.

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

Plaintiff-Appellant's Application for Further Review of the Iowa Court of Appeals Decision Filed August 19, 2026

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

QUESTION PRESENTED FOR REVIEW

I. Did the Court of Appeals err in holding that only a jurat or statement under perjury are sufficient to satisfy the affidavit requirement under Iowa Code §147.140, contrary to over a century of precedent?

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on September 8, 2026, I electronically filed the Petitioner-Appellant's Application for Further Review via EDMS with the Clerk of the Supreme Court by using the Electronic Document Management System, which will send a notice of electronic filing to Defendant-Appellee, by way of their counsel, Katie Graham. Pursuant to Rule 16.315(1)(b), this constitutes service of this Application on Defendant-Appellee for purposes of Iowa Court Rules.

/s/ Tami Fairchild
TAMI FAIRCHILD

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STATEMENT SUPPORTING FURTHER REVIEW

Iowa law recognizes that an affidavit is not defined by how its oath is proven. When the contents of a written sworn statement, signed before a qualified witness, demonstrate the affiant bound their conscience by signing, it is an affidavit. By limiting a certificate of merit affidavit to one with a traditional jurat or statement under perjury, the Court of Appeals contradicts this precedent. *State v. Hulsman*, 126 N.W. 700 (Iowa 1910), *Dalbey Brothers Lumber Co. v. Crispin*, 12 N.W.2d 277 (Iowa 1943), *State v. Walker*, 574 N.W.2d 280 (Iowa 1998), *State v. Carter*, 618 N.W.2d 374 (Iowa 2000). It does so despite Iowa Code §147.140's silence on the required affidavit's form and based on a misreading of recent decisions. *See Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024); *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267 (Iowa 2025); *Rarick v. Smidt*, 36 N.W.2d 1 (Iowa 2026). The Iowa Supreme Court should review this decision as it is "in conflict with a decision of the Supreme Court" on an "important question of changing legal principles." Iowa R. App. P. 6.1103(1)(b)(1), (3).

STATEMENT OF THE CASE

Erin Barker filed her Petition and Jury Demand asserting medical malpractice claims against Dr. J. Matthew Glascock, Mary Duetmeyer, and Waverly Health Center Foundation on October 23, 2023. (D0004, Petition and Jury Demand at 1 (10/23/23).) On February 21, 2025, Defendants filed a Motion for Summary Judgment. (D0029, Motion for Summary Judgment at 1 (02/21/25).) Erin dismissed Ms. Duetmeyer and Waverly while resisting summary judgment regarding Dr. Glascock. (D0043, Partial Dismissal at 1 (04/01/25); D0044, Resistance to MSJ at 1 (04/01/25).) On July 25, 2025, the district court granted Dr. Glascock's Motion for Summary Judgment, finding that the Certificate of Merit filed for Erin's expert, Dr. Jin Soo Yoo, did not comply with Iowa Code §147.140. (D0050, Order Granting MSJ at 1-2 (07/28/25).) Erin's Notice of Appeal was filed on August 25, 2025. (D0051, Notice of Appeal at 1 (08/25/25).) The Court of Appeals affirmed the district court on August 19, 2026. This Application for Further Review timely follows.

STATEMENT OF THE FACTS

Dr. Glascock's Answer was filed on February 16, 2024. (D0007, Answer at 1 (02/16/24).) Erin obtained a Certificate of Merit Affidavit,

prepared and executed by Dr. Yoo, and served it on March 7, 2024. (D0030, Defendants' Statement of Fact at ¶4 (02/21/25); D0030 – Ex. A, Certificate of Merit Affidavit at 3 (02/21/25).) In the Affidavit, Dr. Yoo opines that Dr. Glascock "deviated from the appropriate standard of care that a reasonably prudent and careful healthcare provider would have used" in treating Erin. (D0030 – Ex. A at ¶3.)

Dr. Yoo "certif[ied] under oath that the contents set forth" in the affidavit "are true and correct." (D0030 – Ex. A at 3.) The Affidavit does not contain the phrase "under penalty of perjury." (D0030 at ¶9.) It does open by stating that Dr. Yoo was "duly sworn." (D0030 – Ex. A at 1.) The Affidavit was notarized by a Notary Public for the State of North Carolina, County of Durham, before whom "personally appeared Jin Soo Yoo, M.D.," who was known by the Notary Public "to be the person in the above-entitled action." (D0030 – Ex. A at 3.)

ARGUMENT

I. Dr. Yoo's Certificate of Merit Affidavit Complies With Over a Century of Iowa Precedent Regarding Affidavits and Oaths, Satisfying Iowa Code §147.140

The Court of Appeals is explicit in what it believes is required for an affidavit under Iowa Code §147.140:

> Using Barker's own words, "the oath and *proof* of the oath are two separate things. A jurat is one form of proof of an oath. A declaration under penalty of perjury is another." And the supreme court has declared that "substantial compliance with the affidavit requirement requires" one of these forms of proof within the certificate of merit to be valid. *Rarick*, 36 N.W.3d at 3. Because the certificate of merit here offers neither form, we affirm the summary judgment ruling.

(Opinion at 3.) What the Court of Appeals omits from these quotations reveals what is wrong with its holding.

Erin next quoted *Shontz v. Mercy Medical Center-Clinton, Inc.*, No. 23-0719, 2024 WL 2868931, *1 (Iowa June 7, 2024), to state, "Neither [a jurat or declaration] is mandatory if there is otherwise 'any indication that [the expert] had signed under oath.'" (Appellant Reply Br. at 8.) More importantly, *Rarick*'s first requirement is not for a jurat, but "(1) a true 'affidavit,' meaning a written declaration under oath that is made in the presence of 'any person authorized to administer oaths[.]'" *Rarick*, 36 N.W.3d at 3 (*quoting* Iowa Code §622.85). Dr. Yoo's affidavit meets this "true affidavit" requirement.

Iowa Code §147.140 requires that a plaintiff "serve upon the defendant a certificate of merit affidavit signed by an expert witness" within sixty days of the defendant's Answer. Iowa Code §147.140(1)(a). This Court has emphasized the affidavit requirement is a necessary

standard to accomplish the statute's purpose. *See Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367, 373 (Iowa 2024) (highlighting that §147.140 "uses the term 'affidavit' six times, including in the title of the enactment.") However, neither §147.140, specifically, nor Chapter 147, generally, defines "affidavit" in the context of the statute. Rather, this Court applies the definition established by Iowa Code §622.58 to certificate of merit cases: "'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.'" *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267, 273 (Iowa 2025) (*quoting* Iowa Code §622.58).

To satisfy this requirement, Dr. Yoo's Certificate was notarized by a North Carolina notary with a signature and stamp. (D0030 – Ex. A at 3.) The Certificate begins with "after being duly sworn the undersigned deposes and states" and concludes with "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," followed by Dr. Yoo's signature. (D0030 – Ex. A at 1, 3.)

Notarial acts performed by a notary public of another state are recognized to the same effect "as if performed by a notarial officer of this state." Iowa Code §9B.11(4). Iowa's statute on foreign affidavits echoes a similar effect: "An affidavit taken out of the state…before a notarial officer as provided in chapter 9B…are of the same credibility as if taken within the state." Iowa Code §622.86. For an act that "relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer." Iowa Code §9B.6. Additionally, a notarial officer "who takes a verification of a statement on oath…shall determine, from personal knowledge or satisfactory evidence…that the individual appearing before the notarial officer and making the verification has the identity claimed[.]" Iowa Code §9B.5. As the Notary Public confirmed on the Certificate, Dr. Yoo "personally appeared," with his identity being verified. (D0030 – Ex. A at 3.)

While the Iowa Code gives notaries public the power to administer oaths and take confirmations and sets forth the requirements for notarial acts, it does not "set forth the form required for a valid oath." *State v. Walker*, 574 N.W.2d 280, 285 (Iowa 1998). This is consistent with the

purpose of the affidavit requirement; namely, to ensure that the expert providing the standard of care and their opinion understands "the obligation to be truthful" and makes their oath or affirmation in a way that binds their conscience. *Miller*, 7 N.W.3d at 375 (*quoting State v. Carter*, 618 N.W.2d 374, 378 (Iowa 2000)). This binding of the affiant's conscience is the essence of an affidavit, guiding over a century of Iowa case law providing the framework for assessing an affidavit.

In *State v. Hulsman*, it was held that:

> 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.

126 N.W. 700, 701 (Iowa 1910). Forty years later, that purpose was echoed in *Dalbey Brothers Lumber Co. v. Crispin*:

> If the attention of the person making the affidavit is called to the fact that it must be sworn to and, in recognition of this, he is asked to do some corporal act and he does it, the instrument constitutes a statement under oath, irrespective of any other formalities.

12 N.W.2d 277, 279 (Iowa 1943). *Dalbey* elaborated on some of the bare elements of a valid oath, holding, "there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and

present act by which the affiant consciously takes upon himself the obligation of an oath." *Id.*

This emphasis on the conscience is central to a century of case law. *See Walker*, 574 N.W.2d at 286 ("From the facts presented, the jury could have found that Walker's conscience was bound by the events which took place in the legal services office."); *Carter*, 618 N.W.2d at 376 ("[M]any of the formalities once commonly associated with an oath or affirmation have been discarded…Instead, we look to see if the oath or affirmation was accomplished in such a way that the person's conscience was bound."); *City of Cedar Rapids v. Atsinger*, 617 N.W.2d 272, 276 (Iowa 2000) ("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 ensure that this occurs."); *State v. Hiatt*, No. 12-0555, 2013 WL 1749917, at *5 (Iowa Ct. App. April 24, 2013) ("Nevertheless, as Hiatt correctly points out, no specific form of oath or affirmation is required in Iowa as long as the oath or affirmation given impresses on the conscience of the witness the need for the truth.").

Yet, the Affidavit was rejected contrary to this precedent. The Court of Appeals did not discuss any of it, but instead incorrectly relied on

Banwart and *Rarick* as requiring a jurat for a "true" affidavit. (Opinion at 3.) Such a requirement does not exist.

Consider the quote from *Banwart*: "Affidavits include a jurat…'to prove the oath was administered.'" *Banwart*, 18 N.W.3d at 273 (*quoting Miller v. Palo Alto Bd. of Supervisors*, 84 N.W.2d 38, 40 (Iowa 1957)). It is not a statement that a jurat is required for an affidavit, only that a jurat is included as proof of the required oath. It follows the Court's quoting Iowa Code §622.85. And it quotes to *Miller*'s statement on the purpose—not requirement—of a jurat:

> The purpose of the jurat is to prove the oath was administered. 67 C.J.S. Oaths and Affirmations § 7 states in part:
>
> > 'A jurat is simply evidence of the fact that an oath was properly taken before a duly authorized officer, * * *. Where the jurat of the officer administering the oath is lacking, it has been held that the actual taking of the oath may be established by other evidence, at least where the oath is in the nature of a pledge required by a statute.'

Miller, 84 N.W.2d at 40.

The citation to *Rarick* similarly misconstrues it, as its discussion of a jurat is again in the context of the proof of the oath, quoting *Banwart*'s discussion. *Rarick*, 36 N.W.3d at 6 (*quoting Banwart*, 18 N.W.3d at 273). This immediately follows a quotation of *Miller v. Catholic Health*,

explaining: "'[I]n order to make an affidavit, there must be present at the same time the officer, the affiant, and the paper, and there must be something done which amounts to the administration of an oath.'" *Id*. at 5 (*quoting Miller*, 7 N.W.3d at 374-75). This comes after the Court plainly states the requirement for an affidavit:

> Under this statutory definition, an affidavit requires two different people who are together at the same time. It requires the affiant, who provides his or her "written declaration under oath," and it also requires the officer "authorized to administer oaths," "before" whom the declaration is made.

Id. at 5 (*quoting* Iowa Code §622.85).

It is undisputed that Dr. Yoo appeared with a written declaration before a person authorized to administer oaths. It is undisputed that Dr. Yoo signed the written declaration in the presence of this person. The only dispute is whether there is sufficient evidence that something was done amounting "to the administration of an oath."

All the Court of Appeals—and the district court before it—considered was the lack of a jurat. When the controlling precedent is considered, however, it is clear Dr. Yoo's Affidavit was signed under oath. In *Dalbey*, a challenged lien stated that the signer "on oath depose and say…the statements and allegations…made are true," which was

"subscribed and sworn to" in front of a notary who knew him "to be the person named in and who executed the foregoing instrument[.]" 12 N.W.2d at 279. *Dalbey* found the language and notarization sufficient to satisfy the "purpose of an oath [which] is to secure the truth." *Id*. (*citing Hulsman*, 126 N.W. at 701). *Dalbey* noted that while the courts were "not entirely agreed as to the effect of the omission of a jurat," the majority find the omission not fatal, "so long as it appears…from the rest of the instrument…that the affidavit was…duly sworn to before an authorized officer." *Id*. at 280 (citing 1. Am.Jur. 946, par. 19). And so *Dalbey* found the affiant had "signed and thus *subscribed* to the statement" and "shown to our satisfaction, on the authority of the citations heretofore set forth, that the lien was 'sworn to.'" *Id*. (original emphasis). *Dalbey* explicitly deemphasizes the jurat for proving an oath as an affidavit "will be sufficient in this respect if *either the body or jurat or both*, recite that affiant was sworn." *Id*. at 280 (emphasis added).

Walker scrutinized a subpoena that was challenged as being insufficient to place him under oath for the purpose of perjury charges. *Id*. at 282. The Court found that no specific form or oral oath was required to make a "verification upon oath or affirmation," or declare that a

statement is true before a notarial officer. *Id*. at 285 (*citing* Iowa Code §§9E.2(2), 9E.2(5)). An oath binds the conscience when it calls attention to the requirement that the affidavit must be sworn, and the affiant is asked to do some corporal act. *Id*. (citing *Hulsman*, 126 N.W. at 701; *Dalbey*, 12 N.W.2d at 279).

Walker established clear guidelines for determining the validity of an oath, recognizing that it is not the form that establishes the obligation:

> We look, modernly, to substance more than form. In the field of law into which this case falls the manifested intent with which an act is done should weigh more heavily than the observance of punctiliousness in its ceremonial aspects. Symbolism should not be confused with solemnization.

Walker, 574 N.W.2d at 288 (*quoting People v. Walker*, 55 Cal.Rptr. 726, 732 (1967)). Applying this approach, *Walker* looked to the affiant's acts and conduct as proof of the undertaking of this obligation. *Id*. at 286 (citing *Atwood v. State*, 146 Miss. 662, 111 So. 865 (1927)). The court found "substantial evidence" that "Walker was under oath at the time he signed the proof of service," given "his actions that day, combined with the form of the proof of service and his prior experience with notarization…." *Id*. The act of "affirmatively [seeking] notarization" evidences an intent to be bound by the legal effect of the document. *Id*.

The language at the top of the document called attention to the certification of the statement that he had personally served the witness. *Id*. at 287. The significance of the word "certify" was supported by previous interpretations, demonstrating an intent to "attest [to the service] as being true or as represented." *Id*. (*quoting* Black's Law Dictionary 228 (6th ed. 1990)). Finally, the signature at the bottom represented an adequate corporal act "recognizing the import of information provided in the document." *Id*. (*citing Dalbey*, 12 N.W.2d at 279).

Dr. Yoo's Affidavit mirrors the factors identified in *Dalby* and *Walker*. Dr. Yoo sought and obtained notarization that affirmed his personal appearance. (D0030 – Ex. A at 3.) The Affidavit's statement that it is "duly sworn" called Dr. Yoo's attention to the fact that he is binding his conscience to this obligation. (D0030 – Ex. A at 3.) Like the proof of service in *Walker*, the Affidavit here uses the term "certify," indicating Dr. Yoo's intent to attest to the truthfulness of the enclosed statements. 574 N.W.2d at 287. (D0030 – Ex. A at 3.) Additionally, Dr. Yoo's signature appears at the end of the document, similarly proving the corporal act he took in front of an authorized officer. 574 N.W.2d at 287. (D0030 – Ex. A

at 3.) Those actions are indicative of the intent to bind the conscience and Dr. Yoo's "conscious[ness] of the fact that he was swearing to the correctness" of his statement. *Dalbey*, 12 N.W.2d at 279.

The Court of Appeals' reliance on *Rarick* is flawed in the same way and for the same reason as the district court's reliance on *Miller* and *Banwart*. In *Miller*, the expert's report was signed, but "did not include an affidavit, sworn oath, or any declaration that she signed under penalty of perjury." 7 N.W.3d at 371. Nor did the expert report contain any notarization or verification by an authorized official. *Id*. at 372. Not only did the *Miller* report fail to strictly adhere to §147.140, but it also failed to show that the expert took upon herself the obligation of truthfulness. *See id*. at 375. The failure of the certificate in *Miller* was due to its lack of anything ensuring the signing doctor "'recognize[d] the obligation to be truthful' when making the statement." *Id*. (*quoting* Carter, 618 N.W.2d at 376). The Court reiterated that when determining "compliance with the oath requirement, 'we look to see if the oath or affirmation was accomplished in such a way that the person's conscience was bound.'" *Id*. (*quoting* Carter, 618 N.W.2d at 376). *Miller*'s reliance on *Carter* makes

clear that such binding is not dependent on discarded formalities. *Carter*, 618 N.W.2d at 376.

Banwart involved two certificates of merit signed by experts, both of which stated, "In compliance with Iowa Code Section 147.140, [the expert] does hereby affirm and state, as follows…" 18 N.W.2d at 271. No jurat, witness signature, or statement indicating an oath or penalty of perjury was present. *Id*. *Banwart* held that because of these deficits, the certificates failed "to fulfill an essential purpose of the statute." *Id*. at 275.

Unlike *Banwart*, the Affidavit here fulfills the purpose of both Iowa Code §147.140 and §622.85, both through the language used to bring Dr. Yoo's attention to the obligation of the oath, and the notarization and signature showing his conscience was bound in the presence of another. (D0030 – Ex. A at 3.) *See Banwart*, 18 N.W.2d at 275 (§147.140 designed "to deter false expert testimony…by requiring the expert to sign the certificate of merit under oath[.]"); *Rarick*, 36 N.W.3d at 13 (Waterman, J., concurring) ("[B]inding the conscience of the expert through the oath…is essential to the statute's reasonable objectives[.]"); at 24 (McDermott, J., dissenting) ("The *objective* of the statute isn't the

production of a perfect affidavit; the *objective*…is cutting off baseless malpractice lawsuits early where plaintiffs lack a sworn certification[.]")

This is in line with *Banwart*'s guidance on the sufficiency of an oath taken before a notary public, with or without a jurat. It notes the certificates presented had "[n]o jurat (notarization) or *other* signature by a witness[.]" *Id.* at 271 (emphasis added). *Banwart* clarifies the jurat's purpose by including the parenthetical on notarization and emphasizing the necessity of a witness to the affiant's act. *Id*; *see also Walker*, 574 N.W.2d at 286 ("It has been noted that a jurat is not conclusive evidence of administration of an oath.") (*citing* 67 C.J.S. *Oaths & Affirmations* §7 (1978)). *Banwart* does not identify any singular form for an oath, but rather emphasizes the importance of a witness to the act of swearing, looking to—and expressly reaffirming—existing precedent "'that it be accomplished in the presence of an authorized official.'" *Banwart*, 18 N.W.3d at 274 (*quoting Carter*, 618 N.W.2d at 377).

The Court of Appeals jurat requirement conflicts with *Banwart*, *Miller*, and the long history of cases on oaths preceding them. It also conflicts with what this Court just said about "true affidavits" in *Rarick*. A true affidavit is one "executed under oath in the presence of an

authorized officer." *Rarick*, 36 N.W.3d at 8. The certificate considered in *Rarick*, signed by the expert "on his own"—just like in *Miller* and *Banwart*—failed as a true affidavit because:

> Again, a lone person cannot sign a document and thereby create a true affidavit. That's true no matter how the document is titled, what language it contains, what the person believes, or how reasonable their beliefs may be. Rather, a true affidavit must be executed in the presence of an authorized officer.

Id. at 9. Because there was no evidence that the "certificate was executed in the presence of an authorized officer[,]" it could not be an affidavit regardless of what it said. *Id*. By this holding, *Rarick* reaffirms what this Court held 116 years ago, that as "[t]he purpose of an oath is to secure the truth," its form is irrelevant so long as it "is ordinarily calculated to appeal to the conscience of the person to whom it is administered" and an act is done before a notary "by which he signifies that his conscience is bound[.]" *Hulsman*, 126 N.W. at 701.

CONCLUSION

Dr. Yoo signed the Certificate of Merit Affidavit "after being duly sworn" certifying "under oath that the contents…are true and correct" having "personally appeared" before a notary. This corporal and witnessed act and the language of the Affidavit make it a true affidavit

as established by 116 years of precedent. The Court of Appeals erred in affirming the grant of summary judgment. Erin requests that the Court reverse this decision and remand the case for trial.

BOLES WITOSKY STEWART LAW

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

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) (no more than 5,600 words) because this brief contains 3,750 words, excluding the parts of the brief exempted by Rule 6.1103(4) and Rule 6.903(1)(*g)*(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface and type-style requirements of Iowa R. App. P. 6.903(1)(e)-(f) as it is prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in font size 14, Century Schoolbook.

/s/ Adam Witosky Date: September 8, 2026
Adam Witosky