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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.

Decision of Iowa Court of Appeals Filed August 19, 2026

Defendant-Appellee's Resistance to Plaintiff-Appellant's Application for Further Review

Christine L. Conover
Carrie L. Thompson
Simmons Perrine PLC
115 Third Street SE, Suite 1200
Cedar Rapids, Iowa 52401
(319) 366-7641
(319) 366-1917 (Fax)
cconover@sp.law
cthompson@sp.law
ATTORNEYS FOR DEFENDANT-APPELLEE

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STATEMENT OPPOSING FURTHER REVIEW

The Iowa Court of Appeals correctly affirmed the District Court's grant of summary judgment for Defendant J. Matthew Glascock ("Dr. Glascock"), finding that Plaintiff's certificate of merit did not substantially comply with Iowa Code section 147.140's affidavit requirement. This case is not in conflict with any supreme court or court of appeals decision, nor does this case implicate an important question of changing legal principles warranting this Court's attention under Iowa Rule of Appellate Procedure 6.1103(1)(b).

The Court of Appeals applied this Court's recent precedents regarding certificates of merit, including holdings in *Rarick v. Smidt*, 36 N.W.3d 1 (Iowa 2026) and *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267 (Iowa 2025). The law is well-settled through a consistent line of recent decisions, and the Court of Appeals correctly affirmed the district court's ruling. Further review should be denied.

ARGUMENT

I. FURTHER REVIEW SHOULD BE DENIED BECAUSE THE COURT OF APPEALS CORRECTLY APPLIED THIS COURT'S WELL-SETTLED PRECEDENT INTERPRETING IOWA CODE SECTION 147.140.

Plaintiff's primary basis for further review is that the Court of Appeals decision conflicts with over a century of Supreme Court precedent on the nature of oaths. That argument fails. The Court of Appeals faithfully applied this Court's holdings in *Rarick*, 36 N.W.3d, *Banwart*, 18 N.W.3d, and *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024), which establish two exclusive pathways to substantial compliance with Iowa Code section 147.140's affidavit requirement: (1) a true affidavit executed before an authorized officer, or (2) a statement under penalty of perjury. Dr. Yoo's certificate satisfies neither. Plaintiff's secondary basis—that this case presents an important question of changing legal principles—fares no better, as the law in this area is well-settled and was most recently reaffirmed in *Rarick* just months ago.

a. The Court of Appeals Opinion is Not in Conflict with Any Decision of the Supreme Court or Any Precedential Decision of the Court of Appeals.

In this case, the Court of Appeals cited two controlling Supreme Court decisions in support of its ruling: *Rarick*, 36 N.W.3d, and *Banwart*, 18 N.W.3d. *Rarick*, decided just three months before the Court of Appeals ruled, discussed and applied this Court's interpretation of Iowa Code section 147.140, including the principles established in *Banwart*.

Iowa Code section 147.140(1)(a) requires a plaintiff in a medical malpractice action to serve a certificate of merit affidavit signed by an expert witness. The certificate must substantially comply with the statute's requirements. Iowa Code § 147.140(6); *Banwart*, 18 N.W.3d at 275. Applying *Miller* and *Banwart*, the Court in *Rarick* held:

> All told, then, there are two ways for a plaintiff to substantially comply with section 147.140's affidavit requirement. The plaintiff must either provide (1) an actual "affidavit" executed by an expert before a separate person who is "authorized to administer the oath," or (2) "the permissible substitute," namely, a document compliant with section 622.1, which "requires the statement that the person is signing under 'penalty of perjury.' "

Rarick, 36 N.W.3d at 6 (quoting *Banwart*, 18 N.W.3d at 273 n.3). Failing to include penalty-of-perjury "language is fatal." *Id.*

In reaching this holding, the Court expressly "refuse[d] to abandon" *Miller* and *Banwart* even when confronted with a certificate

containing "duly sworn on oath" language nearly identical to Dr. Yoo's. *See Rarick*, 36 N.W.3d at 3, 8–9 (certificate stated affiant was "first duly sworn on oath" but lacked notary stamp, jurat, or "penalty of perjury" language). Justice Waterman's concurrence specifically noted that "Iowa district courts and the court of appeals have correctly applied *Banwart*" and that "[l]ike cases should be treated alike, and our court should not repeatedly relitigate the same issues." *Id.* at 13 (Waterman, J., concurring).

The Court of Appeals opinion is entirely consistent with these holdings. It noted that Plaintiff's certificate of merit lacked the phrase "penalty of perjury," so it limited its analysis to the "true affidavit" alternative. Opinion at 3. The Court of Appeals applied the rule that "[a]ffidavits include a jurat completed by the notary (or other authorized person) 'to prove the oath was administered.'" *Banwart*, 18 N.W.3d at 273. It observed that a proper jurat certifies the expert signed and swore to the affidavit before an authorized officer, confirming the oath was administered. Opinion at 3 (citing Iowa Code § 9B.16(3); *Rarick*, 36 N.W.3d at 4, 6). Because Dr. Yoo's certificate

offered neither proof of an oath nor a jurat, the Court of Appeals affirmed the district court's summary judgment ruling. Opinion at 3.

Plaintiff's reliance on *Shontz v. Mercy Medical Center-Clinton, Inc.*, No. 23-0719, 2024 WL 2868931 (Iowa June 7, 2024) similarly falls short. As a threshold matter, *Shontz* is an unpublished per curiam opinion and therefore not precedential. *See State v. Shackford*, 952 N.W.2d 141, 145 (Iowa 2020) ("Unpublished opinions of this court are not precedential . . . which is why our court generally does not cite them."). The *Rarick* majority decided the issue squarely and did not adopt a broad "any indication" test. To the contrary, it held that even language such as "duly sworn on oath" was insufficient standing alone, and that extrinsic evidence of the expert's subjective belief did not change the analysis. *Rarick*, 36 N.W.3d at 9.

Plaintiff does not identify any actual conflict between the Court of Appeals and this Court; she is asking this Court to overrule its own recent, well-considered decisions. That is not a basis for further review under Iowa Rule of Appellate Procedure 6.1103(1)(b)(1).

b. Dr. Yoo's Certificate of Merit is Not a "True Affidavit" Because the Notarial Acknowledgment is Not a Jurat.

The critical factual and legal distinction present here is whether Dr. Yoo's certificate of merit is a true affidavit. The issue is not whether a notary was present, but whether the notary administered an oath and certified that fact through a jurat. The notarial statement on Dr. Yoo's certificate is an acknowledgment, not a jurat. The acknowledgment states only that Dr. Yoo "personally appeared" and was "known by [the notary] to be the person in the above-entitled action." (D0030 – Ex. A to Def. M. Summary Judgment, Certificate of Merit Affidavit at 3 (02/21/25).) It does not confirm that the notary placed Dr. Yoo under oath or that he swore to the truth of the contents.

Plaintiff's reliance on Iowa Code sections 9B.5, 9B.6, 9B.11(4), and 622.86 does not alter this analysis. Even assuming the North Carolina notarization is entitled to full recognition under Iowa law, the relevant question is not whether a notary was present, but what type of notarial act the notary performed. Iowa Code section 9B.16 prescribes distinct certificate forms for distinct notarial acts. A jurat—the certificate form that verifies an oath or affirmation—requires language that the document was "[s]igned and sworn to (or affirmed) before me." Iowa Code § 9B.16(3). An acknowledgment—the certificate form the North

Carolina notary actually used—confirms only that the signer "personally appeared" and was identified. Iowa Code § 9B.16(1). The focus is type of notarial act. Because the notary performed an acknowledgment rather than a jurat, Plaintiff's foreign-notarization argument fails.

This distinction is dispositive. Under Iowa Code section 622.85, "an affidavit requires two different people who are together at the same time." *Rarick*, 36 N.W.3d at 5. "[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." *Miller*, 7 N.W.3d at 374–75 (alteration in original) (quoting *Tunia v. St. Francis Hosp.*, 832 A.2d 936, 939 (N.J. Super. Ct. App. Div. 2003)); *see also Rarick*, 36 N.W.3d at 5. The authorized officer must then attach 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)). "[A] lone person cannot put themselves under oath and create a true affidavit." *Rarick*, 36 N.W.3d at 5–6; *see In re Est. of Hoyt*, 67 N.W.2d 528, 532 (Iowa

1954); *State v. Carter*, 618 N.W.2d 374, 377 (Iowa 2000) (en banc); Iowa Code § 9B.6(1).

A notarial acknowledgment that merely confirms identity and execution but that does not certify the administration of an oath is not a technicality but a fundamental defect. "'[T]he failure to place a declarant under oath'" is not "'a mere "technical" deficiency,'" but rather "'goes to the very nature of what an affidavit is.'" *Miller*, 7 N.W.3d at 375 (quoting *Tunia*, 832 A.2d at 939); *see also Est. of Fahrmann v. ABCM Corp.*, 999 N.W.2d 283, 288 (Iowa 2023) (citing *Tunia* with approval).

Dr. Yoo's certificate fails both pathways to substantial compliance. It is not a true affidavit because the notarial acknowledgment confirms only that Dr. Yoo appeared and was identified but not that an oath was administered. The certificate recites that Dr. Yoo was "duly sworn" (D0030 at 1) and that he "certif[ied] under oath," (D0030 at 3) but this does not cure the defect. "[N]o matter how the document is titled, what language it contains, what the person believes, or how reasonable their beliefs may be," a document without proof of an oath before an authorized officer is not an affidavit. *Rarick*, 36 N.W.3d at 9. Nor is it a

valid affidavit-substitute, because it omits the phrase "under penalty of perjury" required by Iowa Code section 622.1. *See Miller*, 7 N.W.3d at 375; *Banwart*, 18 N.W.3d at 273. The Court of Appeals correctly applied this precedent in affirming summary judgment.

c. Plaintiff's Reliance on Pre-*Miller* General Oath Cases is Misplaced in the Specific Statutory Framework of Iowa Code Section 147.140.

Plaintiff relies on *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), and *Carter*, 618 N.W.2d, to argue that the Court of Appeals opinion conflicts with this Court's precedent on the sufficiency of oaths. It does not. Those cases addressed the general nature of oaths and the requirements to bind an affiant's conscience in contexts entirely outside Iowa Code section 147.140 (perjury prosecutions, lien disputes, and subpoena challenges). None involved the specific statutory framework governing certificates of merit in medical malpractice cases.

This Court has already considered and applied those general-oath principles within the section 147.140 framework. In *Miller*, the Court acknowledged that the purpose of an oath is to ensure the expert

"'recognize[s] the obligation to be truthful.'" *Miller*, 7 N.W.3d at 375 (quoting *Carter*, 618 N.W.2d at 378). But the Court held that section 147.140 requires specific proof of that obligation as opposed to subjective evidence of sincerity. *Id.* The Court stated 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." *Id. Banwart* reinforced the point, holding that "[t]he 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." 18 N.W.3d at 275. These are the exclusive statutory means of compliance, not illustrative examples.

Rarick put the matter to rest. The majority expressly declined to "abandon" *Miller* and *Banwart* even when confronted with a certificate containing "duly sworn on oath" language and extrinsic evidence of the expert's subjective belief that he was under oath. *Rarick*, 36 N.W.3d at 9. Plaintiff's argument is, in substance, the position advanced by the *Rarick* dissent, which argued for a flexible, conscience-binding standard untethered from the jurat or penalty-of-perjury

requirements. *See id.* at 15–26 (Mansfield, J., dissenting); *id.* at 23–26 (McDermott, J., dissenting). The majority rejected that position. This Court should not grant further review to revisit an argument it considered and declined to adopt just months ago.

d. This Case Does Not Present an Important Question of Changing Legal Principles.

Plaintiff's second basis for further review invokes Iowa Rule of Appellate Procedure 6.1103(1)(b)(3), claiming this case demonstrates an "important question of changing legal principles." As summarized above, the legal principles are well-settled and unambiguous. The Supreme Court has now issued a consistent line of decisions[1] all reinforcing the same principles. Here, the Court of Appeals simply applied those principles. The fact that Plaintiff disagrees with the court's application does not make it a changing legal principle warranting further review.

[1] *Est. of Fahrmann v. ABCM Corp.*, 999 N.W.2d 283 (Iowa 2023); *Miller v. Catholic Health Initiatives-Iowa, Corp.*, 7 N.W.3d 367 (Iowa 2024); *Shontz v. Mercy Med. Ctr.-Clinton, Inc.*, No. 23-0719, 2024 WL 2868931 (Iowa June 7, 2024); *Banwart v. Neurosurgery of N. Iowa, P.C.*, 18 N.W.3d 267 (Iowa 2025); *Rarick v. Smidt*, 36 N.W.3d 1 (Iowa 2026).

CONCLUSION

For the reasons stated herein, Defendant respectfully requests that the Court deny Plaintiff's Application for Further Review.

Dated: September 17, 2026

/s/ Christine L. Conover

Christine L. Conover AT0001632
Carrie L. Thompson, AT0009944
SIMMONS PERRINE PLC
115 Third Street SE, Suite 1200
Cedar Rapids, Iowa 52401
(319) 366-7641; Fax: 319-366-1917
cconover@sp.law
cthompson@sp.law

ATTORNEYS FOR DEFENDANT-APPELLEE J. MATTHEW GLASCOCK

CERTIFICATE OF COMPLIANCE

This resistance complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(5) because:

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/s/ Christine L. Conover September 17, 2026

CERTIFICATE OF SERVICE AND FILING

I certify that on September 17, 2026, I served the foregoing Defendant's-Appellee's Resistance to Plaintiff-Appellant's Application for Further Review of by electronically filing the document with EDMS, which will notify all parties of the electronic filing.

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