



1 of 4 DOCUMENTS

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 214th Legislature ***
2nd Annual Session (P.L. 2011 Chapter 148 and JR 8)
State Constitution current through the November, 2011 Election
Annotations current through November 14, 2011

TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
SUBTITLE 6. SPECIFIC CIVIL ACTIONS
CHAPTER 53A. TORTS

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N.J. Stat. § 2A:53A-26 (2012)

§ 2A:53A-26. "Licensed person" defined

As used in this act [C.2A:53A-26 through C.2A:53A-29], "licensed person" means any person who is licensed as:

- a. an accountant pursuant to P.L.1997, c.259 (C.45:2B-42 et seq.);
- b. an architect pursuant to R.S.45:3-1 et seq.;
- c. an attorney admitted to practice law in New Jersey;
- d. a dentist pursuant to R.S.45:6-1 et seq.;
- e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
- f. a physician in the practice of medicine or surgery pursuant to R.S.45:9-1 et seq.;
- g. a podiatrist pursuant to R.S.45:5-1 et seq.;
- h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-41.17 et seq.);
- i. a registered professional nurse pursuant to P.L.1947, c.262 (C.45:11-23 et seq.);
- j. a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2);
- k. a physical therapist pursuant to P.L.1983, c.296 (C.45:9-37.11 et seq.);
- l. a land surveyor pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);

- m. a registered pharmacist pursuant to P.L.2003, c.280 (*C.45:14-40* et seq.);
- n. a veterinarian pursuant to *R.S.45:16-1* et seq.;
- o. an insurance producer pursuant to P.L.2001, c.210 (*C.17:22A-26* et seq.); and
- p. a certified midwife, certified professional midwife, or certified nurse midwife pursuant to *R.S.45:10-1* et seq.

HISTORY: L. 1995, c. 139, § 1; amended 2001, c. 372, eff. Jan. 8, 2002; 2010, c. 88, § 1, eff. Dec. 12, 2010.

NOTES:

Amendment Note:

2010 amendment, by Chapter 88, added p., and made related changes; and substituted "P.L.1997, c.259 (*C.45:2B-42* et seq.)" for "P.L.1977, c.144 (*C.45:2B-1* et seq.)" in a., "P.L.2003, c.280 (*C.45:14-40* et seq.)" for "*R.S.45:14-1* et seq." in m., and "P.L.2001, c.210 (*C.17:22A-26* et seq.)" for "P.L.1987, c.293 (*C.17:22A-1* et seq.)" in o.

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Effective Dates:

Section 2 of L. 2001, c. 372 provides: "This act shall take effect immediately and shall apply to causes of action against physical therapists, land surveyors, veterinarians, registered pharmacists and insurance producers which occur on or after the effective date of this act." Chapter 372, L. 2001, was approved on Jan. 8, 2002.

Section 2 of L. 2010, c. 88 provides: "This act shall take effect on the 30th day next following enactment and apply to causes of action filed on or after that date." Chapter 88, L. 2010, was approved on Nov. 12, 2010.

Cross References:

Requirements for person giving expert testimony, executing affidavit., see *2A:53A-41*.

LexisNexis (R) Notes:

CASE NOTES

1. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

2. In a legal malpractice action brought by a former patent holder against two Pennsylvania-based law firms, who had bona fide offices in New Jersey, arising out of the alleged negligence by a patent attorney employed successively by those law firms and who represented the former patent holder before the United States Patent and Trademark Office, the

trial court correctly held that an affidavit of merit, pursuant to *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, was necessary arising out of alleged negligence by the patent attorney in letting the patent expire since the firms were "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26(c)*. However, the dismissal of the action for the failure to submit an affidavit of merit was vacated on equitable grounds since the case law in New Jersey was unsettled as to whether an affidavit of merit was required in such circumstances and federal decisions had taken divergent approaches on the issue with regard to firms as opposed to individually licensed persons. *Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP*, 416 N.J. Super. 1, 3 A.3d 518, 2010 N.J. Super. LEXIS 101, 99 U.S.P.Q.2d (BNA) 1339 (App.Div. 2010).

3. New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., applied to a medical malpractice complaint filed in the United States District Court of New Jersey on the ground of diversity of citizenship because there was no direct conflict between the New Jersey statute and *Fed. R. Civ. P. 8* and *Fed. R. Civ. P. 9*, the New Jersey statute was substantive law that was outcome determinative on its face, failure to apply it would encourage forum shopping and lead to the inequitable administration of the law, and there was no overriding federal interest that would have prevented application of the state law by the federal courts. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

4. Motion pursuant to *Fed. R. Civ. P. 12(b)(6)* for dismissal with prejudice under *N.J. Stat. Ann. § 2A:53A-26* against one law firm was denied because a client satisfied the sworn statement alternative, pursuant to *N.J. Stat. Ann. § 2A:53A-28*, to the sworn affidavit pleading requirement under *N.J. Stat. Ann. § 2A:53A-27* for filing a malpractice case, where the firm failed to turn over records as requested by the client, but the motion was granted as to two other law firms because the client failed to satisfy the sworn statement alternative where he did not request records from the other firms. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1 2003).

5. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

6. As a company under contract with the New Jersey Department of Corrections to treat prisoners did not provide evidence that it was a licensed health care facility under *N.J. Stat. Ann. § 2A:53A-26(j)*, it did not show that New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, applied to it; therefore, the trial court erred in dismissing an inmate's malpractice suit for his failure to provide the company with an affidavit of merit. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

7. As defendant, which did not establish that it was a licensed health care facility, also failed to establish that it was a professional corporation whose shareholders were all licensed professionals, it was not entitled to the protections of New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

8. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

9. Supreme Court of New Jersey holds that, in the future, a physician defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was involved when rendering treatment to the plaintiff. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

10. The Superior Court of New Jersey discerns no basis within the public policy underpinnings of the affidavit of merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53-29*, that requires it to be broadly applied to a covered person or entity even when that person or entity functions in some other manner, especially on behalf of a third party involved in a complex project which cannot claim the benefit of *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53-29*. *Murphy v. New Road Const.*, 378 N.J. Super. 238, 875 A.2d 955, 2005 N.J. Super. LEXIS 179 (App.Div. 2005).

11. Motion pursuant to *Fed. R. Civ. P. 12(b)(6)* for dismissal with prejudice under *N.J. Stat. Ann. § 2A:53A-26* against one law firm was denied because a client satisfied the sworn statement alternative, pursuant to *N.J. Stat. Ann. § 2A:53A-28*, to the sworn affidavit pleading requirement under *N.J. Stat. Ann. § 2A:53A-27* for filing a malpractice case, where the firm failed to turn over records as requested by the client, but the motion was granted as to two other law firms because the client failed to satisfy the sworn statement alternative where he did not request records from the other firms. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1 2003).

12. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

13. Environmental engineering is a sub-field and/or specialty of engineering and clearly falls within the purview of the engineering licensing statute, *N.J. Stat. Ann. § 45:8-28*; as such, an environmental engineer is a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)*, and professional negligence claims asserted against a licensed environmental engineer, either individually or under the respondeat superior doctrine, are subject to the affidavit of merit requirements imposed by *N.J. Stat. Ann. § 2A:53A-27*. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

14. Plaintiffs' failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* resulted in the dismissal of the professional malpractice claims asserted against an environmental consulting firm; the firm was a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)* because it was an engineering firm licensed pursuant to *N.J. Stat. Ann. § 45:8-28*, the unlicensed scientists who actually performed the environmental investigation work that was the subject of plaintiffs' claims worked for the firm that plaintiffs sought to hold liable under a respondeat superior theory, and an affidavit of merit was required because expert testimony was necessary to prove plaintiffs' claims. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

15. Plaintiffs' failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* resulted in the dismissal of the professional malpractice claims asserted against an environmental consulting firm; the firm was a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)* because it was an engineering firm licensed pursuant to *N.J. Stat. Ann. § 45:8-28*, the unlicensed scientists who actually performed the environmental investigation work that was the subject of plaintiffs' claims worked for the firm that plaintiffs sought to hold liable under a respondeat superior theory, and an affidavit of merit was required because expert testimony was necessary to prove plaintiffs' claims. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

16. Plaintiff's medical malpractice complaint will not be dismissed if the plaintiff can show he has substantially

complied with the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 to -29. Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 836 A.2d 779, 2003 N.J. LEXIS 1536 (2003).

17. Medical malpractice complaints will be dismissed without prejudice if there are extraordinary circumstances to explain noncompliance with the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 to -29. Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 836 A.2d 779, 2003 N.J. LEXIS 1536 (2003).

18. Doctrine of substantial compliance with the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 to 2A:53A-29*, invoked to avoid dismissal of a medical malpractice action with prejudice, requires the moving party to show: (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim; and (5) a reasonable explanation why there was not strict compliance with the statute. *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 836 A.2d 779, 2003 N.J. LEXIS 1536 (2003).

19. Attorney inadvertence is not a circumstance entitling a plaintiff to a remedy of dismissal of a complaint without prejudice under the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 to -29. Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 836 A.2d 779, 2003 N.J. LEXIS 1536 (2003).

20. With regard to medical malpractice actions and the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 to 2A:53A-29*, in a case where the plaintiff has in hand an affidavit within the 120-day statutory period and serves the affidavit on defense counsel outside that time frame but before defense counsel files a motion to dismiss, the defendant shall not be permitted to file such a motion based on the late arrival of the affidavit; if defense counsel files a motion to dismiss after the 120-day deadline and before plaintiff has forwarded the affidavit, the plaintiff should expect that the complaint will be dismissed with prejudice provided the doctrines of substantial compliance and extraordinary circumstances do not apply. *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 836 A.2d 779, 2003 N.J. LEXIS 1536 (2003).

21. Federal district court's dismissal of a patient's medical malpractice action with prejudice as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*, was proper at least with respect to the negligent acts that were alleged to have occurred after the effective date of the affidavit of merit statute because the patient failed to provide an adequate excuse for her failure to comply with the statute, the most reasonable inference from the record was that the patient's counsel was simply unaware of the affidavit of merit requirement, and the circumstances thus fell short of "exceptional and compelling." *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

22. Federal district court erred in dismissing a patient's entire medical malpractice complaint as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*, where there was competent evidence that acts of malpractice occurred before the effective date of the affidavit of merit statute. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

23. Neighbor sued property owners for trespass; they filed a third-party complaint against their surveyor for indemnification and contribution. The owners' third-party complaint was improperly dismissed for their failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 29*; as the neighbor had not yet shown any error in the survey, no claim for professional negligence had accrued. *Highland Lakes Country Club and Community Ass'n v. Nicastro*, 406 N.J. Super. 145, 966 A.2d 1102, 2009 N.J. Super. LEXIS 63 (App.Div. 2009), affirmed by 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

24. Failure to conduct a case management conference pursuant to case law within 90 days of the service of an answer in a malpractice action does not toll the timeframes set forth in the Affidavit of Merit statute, *N.J. Stat. Ann. §§*

2A:53A-26 to 2A:53A-29. *Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn*, 410 N.J. Super. 510, 983 A.2d 604, 2009 N.J. Super. LEXIS 242 (App.Div. 2009).

25. Superior Court of New Jersey, Appellate Division, rejects the argument that the trial court's failure to schedule the case management conference required by *Ferreira v. Rancocas Orthopedic Associates*, 178 N.J. 144 (2003) tolled the time to file or otherwise excused the malpractice claimant's failure to timely file an affidavit of merit. In so holding, the Court expressed its disagreement with that part of the decision of another panel, *Saunders v. Capital Health System*, 398 N.J. Super. 500, 510 (App. Div. 2008), which held to the contrary. *Paragon Contractors, Inc. v. Peachtree Condominium Ass'n*, 406 N.J. Super. 568, 968 A.2d 752, 2009 N.J. Super. LEXIS 91 (App.Div. 2009), reversed by, remanded by 202 N.J. 415, 997 A.2d 982, 2010 N.J. LEXIS 538 (2010).

26. New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., applied to the count of a patient's medical malpractice complaint alleging lack of informed consent because a plaintiff could not prevail on a lack of informed consent claim under New Jersey law without expert testimony that the relevant risk was recognized by the professional community even if an expert was not required to establish a standard for disclosure or to prove that a physician failed to meet the standard. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

27. In a medical malpractice suit, the appellate court erred by reversing a trial court's ruling that a patient had satisfied the waiver provision under *N.J. Stat. Ann. § 2A:53A-41(c)*, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care, because based on the plain language of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, the patient's counsel made a good faith effort to identify an expert in the same specialty as the doctor being sued but was unsuccessful. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

28. In light of the reference to *N.J. Stat. Ann. § 2A:53A-27* in the text of *N.J. Stat. Ann. § 2A:53A-28* and the obvious connection between the sections, it would have been illogical to read *§ 2A:53A-28* as permitting an injury claimant's statement to be filed outside the initial 60 day time period. Moreover, the practical result of allowing the filing of a statement in place of an affidavit outside the 60 day window provided in *N.J. Stat. Ann. § 2A:53A-27* was that plaintiffs could file such statements in response to a defense motion to dismiss, thereby potentially defeating such motions, so such an absurd result as suggested by the injury claimant that the statement was not subject to the same time limit as the affidavit was "manifestly repugnant" to the legislative intent of the statute, which was to identify groundless malpractice lawsuits in the early stages of litigation. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

29. To be a "licensed person" entitled to the protections of New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, one must do more than practice one of the enumerated professions--one must also hold a valid license as a practitioner of one of those professions. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

30. Environmental engineering is a sub-field and/or specialty of engineering and clearly falls within the purview of the engineering licensing statute, *N.J. Stat. Ann. § 45:8-28*; as such, an environmental engineer is a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)*, and professional negligence claims asserted against a licensed environmental engineer, either individually or under the respondeat superior doctrine, are subject to the affidavit of merit requirements imposed by *N.J. Stat. Ann. § 2A:53A-27*. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

31. Although the State Board of Bar Examiners was not one of the boards listed in *N.J. Stat. Ann. § 45:1-15*, a

federal district court's examination of the categories of professions listed in *N.J. Stat. Ann. § 2A:53A-26* revealed that behind the use of the term "licensed" was a fairly clear legislative intent to reach those who could lawfully practice their professions in *New Jersey. RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

32. Trial court erred by dismissing a mother's professional negligence claim against a health care system and a licensed midwife for failing to file an Affidavit of Merit, pursuant to the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, as the midwife was not a licensed person under *N.J. Stat. Ann. § 2A:53A-26*, for whom an Affidavit of Merit was required, and the trial court erred by failing to hold a required accelerated case management conference in the action, at which time the dismissal issue could have been addressed and avoided. *Saunders ex rel. Saunders v. Capital Health System at Mercer*, 398 N.J. Super. 500, 942 A.2d 142, 2008 N.J. Super. LEXIS 50 (App.Div. 2008).

33. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

34. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

35. Although the State Board of Bar Examiners was not one of the boards listed in *N.J. Stat. Ann. § 45:1-15*, a federal district court's examination of the categories of professions listed in *N.J. Stat. Ann. § 2A:53A-26* revealed that behind the use of the term "licensed" was a fairly clear legislative intent to reach those who could lawfully practice their professions in *New Jersey. RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

36. To be a "licensed person" entitled to the protections of New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, one must do more than practice one of the enumerated professions--one must also hold a valid license as a practitioner of one of those professions. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

37. Failure to conduct a case management conference pursuant to case law within 90 days of the service of an answer in a malpractice action does not toll the timeframes set forth in the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*. *Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn*, 410 N.J. Super. 510, 983 A.2d 604, 2009 N.J. Super. LEXIS 242 (App.Div. 2009).

38. Superior Court of New Jersey, Appellate Division, rejects the argument that the trial court's failure to schedule the case management conference required by *Ferreira v. Rancocas Orthopedic Associates*, 178 N.J. 144 (2003) tolled the time to file or otherwise excused the malpractice claimant's failure to timely file an affidavit of merit. In so holding,

the Court expressed its disagreement with that part of the decision of another panel, *Saunders v. Capital Health System*, 398 N.J. Super. 500, 510 (App. Div. 2008), which held to the contrary. *Paragon Contractors, Inc. v. Peachtree Condominium Ass'n*, 406 N.J. Super. 568, 968 A.2d 752, 2009 N.J. Super. LEXIS 91 (App. Div. 2009), reversed by, remanded by 202 N.J. 415, 997 A.2d 982, 2010 N.J. LEXIS 538 (2010).

39. As to tort claims brought by undocumented aliens against a contractor that operated an allegedly abusive detention facility, the contractor's employees were not within the definition of licensed persons in *N.J. Stat. Ann. § 2A:53A-26* for purposes of the affidavit of merit requirement of *N.J. Stat. Ann. § 2A:53A-27*. *Hawa Abdi Jama v. INS*, 334 F. Supp. 2d 662, 2004 U.S. Dist. LEXIS 18388 (D.N.J. 2004).

40. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

41. In a legal malpractice action brought by a former patent holder against two Pennsylvania-based law firms, who had bona fide offices in New Jersey, arising out of the alleged negligence by a patent attorney employed successively by those law firms and who represented the former patent holder before the United States Patent and Trademark Office, the trial court correctly held that an affidavit of merit, pursuant to *N.J. Stat. Ann. §§ 2A:53A-26* to *2A:53A-29*, was necessary arising out of alleged negligence by the patent attorney in letting the patent expire since the firms were "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26(c)*. However, the dismissal of the action for the failure to submit an affidavit of merit was vacated on equitable grounds since the case law in New Jersey was unsettled as to whether an affidavit of merit was required in such circumstances and federal decisions had taken divergent approaches on the issue with regard to firms as opposed to individually licensed persons. *Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Eilers, LLP*, 416 N.J. Super. 1, 3 A.3d 518, 2010 N.J. Super. LEXIS 101, 99 U.S.P.Q.2d (BNA) 1339 (App. Div. 2010).

42. Motion pursuant to *Fed. R. Civ. P. 12(b)(6)* for dismissal with prejudice under *N.J. Stat. Ann. § 2A:53A-26* against one law firm was denied because a client satisfied the sworn statement alternative, pursuant to *N.J. Stat. Ann. § 2A:53A-28*, to the sworn affidavit pleading requirement under *N.J. Stat. Ann. § 2A:53A-27* for filing a malpractice case, where the firm failed to turn over records as requested by the client, but the motion was granted as to two other law firms because the client failed to satisfy the sworn statement alternative where he did not request records from the other firms. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1 2003).

43. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

44. As an amendment to her civil rights suit against defendant department store and others, proceeding pro se, the injury claimant filed malpractice claims including breach of fiduciary duty against her former attorney; the malpractice claims were subject to the Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26* to *2A:53A-29* even though the original complaint was filed before the statute took effect. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

45. Under the plain language of the New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, an injury claimant was required to file an affidavit of merit within 60 days of the filing of the defending attorney's answer on the malpractice claims, or file a statement in lieu of the affidavit in accordance with *N.J. Stat. Ann. §§ 2A:53A-28*; for the reason that the injury claimant filed an untimely statement in opposition to the attorney's motion to dismiss based upon her failure to comply with the Affidavit of Merit Statute the claim was dismissed. *Greig v. Macy's Northeast, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998)*.

46. In light of the reference to *N.J. Stat. Ann. § 2A:53A-27* in the text of *N.J. Stat. Ann. § 2A:53A-28* and the obvious connection between the sections, it would have been illogical to read § 2A:53A-28 as permitting an injury claimant's statement to be filed outside the initial 60 day time period. Moreover, the practical result of allowing the filing of a statement in place of an affidavit outside the 60 day window provided in *N.J. Stat. Ann. § 2A:53A-27* was that plaintiffs could file such statements in response to a defense motion to dismiss, thereby potentially defeating such motions, so such an absurd result as suggested by the injury claimant that the statement was not subject to the same time limit as the affidavit was "manifestly repugnant" to the legislative intent of the statute, which was to identify groundless malpractice lawsuits in the early stages of litigation. *Greig v. Macy's Northeast, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998)*.

47. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co., 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997)*.

48. As a company under contract with the New Jersey Department of Corrections to treat prisoners did not provide evidence that it was a licensed health care facility under *N.J. Stat. Ann. § 2A:53A-26(j)*, it did not show that New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, applied to it; therefore, the trial court erred in dismissing an inmate's malpractice suit for his failure to provide the company with an affidavit of merit. *Albrecht v. Corr. Med. Servs., 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011)*.

49. As defendant, which did not establish that it was a licensed health care facility, also failed to establish that it was a professional corporation whose shareholders were all licensed professionals, it was not entitled to the protections of New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*. *Albrecht v. Corr. Med. Servs., 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011)*.

50. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011)*.

51. Supreme Court of New Jersey holds that, in the future, a physician defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was involved when rendering treatment to the plaintiff. *Buck v. Henry, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011)*.

52. In a medical malpractice suit, the appellate court erred by reversing a trial court's ruling that a patient had satisfied the waiver provision under *N.J. Stat. Ann. § 2A:53A-41(c)*, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care, because based on the plain language of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, the patient's counsel made

a good faith effort to identify an expert in the same specialty as the doctor being sued but was unsuccessful. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

53. Trial court erred by dismissing a mother's professional negligence claim against a health care system and a licensed midwife for failing to file an Affidavit of Merit, pursuant to the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, as the midwife was not a licensed person under *N.J. Stat. Ann. § 2A:53A-26*, for whom an Affidavit of Merit was required, and the trial court erred by failing to hold a required accelerated case management conference in the action, at which time the dismissal issue could have been addressed and avoided. *Saunders ex rel. Saunders v. Capital Health System at Mercer*, 398 N.J. Super. 500, 942 A.2d 142, 2008 N.J. Super. LEXIS 50 (App.Div. 2008).

54. New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., applied to a medical malpractice complaint filed in the United States District Court of New Jersey on the ground of diversity of citizenship because there was no direct conflict between the New Jersey statute and *Fed. R. Civ. P. 8* and *Fed. R. Civ. P. 9*, the New Jersey statute was substantive law that was outcome determinative on its face, failure to apply it would encourage forum shopping and lead to the inequitable administration of the law, and there was no overriding federal interest that would have prevented application of the state law by the federal courts. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

55. New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., applied to the count of a patient's medical malpractice complaint alleging lack of informed consent because a plaintiff could not prevail on a lack of informed consent claim under New Jersey law without expert testimony that the relevant risk was recognized by the professional community even if an expert was not required to establish a standard for disclosure or to prove that a physician failed to meet the standard. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

56. Federal district court's dismissal of a patient's medical malpractice action with prejudice as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., was proper at least with respect to the negligent acts that were alleged to have occurred after the effective date of the affidavit of merit statute because the patient failed to provide an adequate excuse for her failure to comply with the statute, the most reasonable inference from the record was that the patient's counsel was simply unaware of the affidavit of merit requirement, and the circumstances thus fell short of "exceptional and compelling." *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

57. Federal district court erred in dismissing a patient's entire medical malpractice complaint as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., where there was competent evidence that acts of malpractice occurred before the effective date of the affidavit of merit statute. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

58. Neighbor sued property owners for trespass; they filed a third-party complaint against their surveyor for indemnification and contribution. The owners' third-party complaint was improperly dismissed for their failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26* to 29; as the neighbor had not yet shown any error in the survey, no claim for professional negligence had accrued. *Highland Lakes Country Club and Community Ass'n v. Nicastro*, 406 N.J. Super. 145, 966 A.2d 1102, 2009 N.J. Super. LEXIS 63 (App.Div. 2009), affirmed by 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

59. Environmental engineering is a sub-field and/or specialty of engineering and clearly falls within the purview of the engineering licensing statute, *N.J. Stat. Ann. § 45:8-28*; as such, an environmental engineer is a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)*, and professional negligence claims asserted against a licensed environmental engineer, either individually or under the respondeat superior doctrine, are subject to the affidavit of

merit requirements imposed by *N.J. Stat. Ann. § 2A:53A-27. Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).*

60. Plaintiffs' failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* resulted in the dismissal of the professional malpractice claims asserted against an environmental consulting firm; the firm was a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)* because it was an engineering firm licensed pursuant to *N.J. Stat. Ann. § 45:8-28*, the unlicensed scientists who actually performed the environmental investigation work that was the subject of plaintiffs' claims worked for the firm that plaintiffs sought to hold liable under a respondeat superior theory, and an affidavit of merit was required because expert testimony was necessary to prove plaintiffs' claims. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).*

61. Despite the statutory prohibition against licensing engineering firms, *N.J. Stat. Ann. § 45:8-27*, and the definition of "licensed person" under the Affidavit of Merit Statute (AMS), *N.J. Stat. Ann. § 2A:53A-26(e)*, the AMS would be significantly thwarted if plaintiffs could avoid the requirements of the statute by simply alleging professional negligence on the part of a firm of licensed professionals, without naming any such individual professional specifically; thus, the AMS applies to a defendant that is an engineering firm authorized to perform engineering services in New Jersey, and a person bringing an action against such a defendant is required to file a timely affidavit pursuant to *N.J. Stat. Ann. § 2A:53A-27* or face dismissal. *Nagim v. New Jersey Transit, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).*

62. Business organization whose leadership is composed of "licensed persons" within the meaning of *N.J. Stat. Ann. § 2A:53A-26* is also considered a "licensed person" for purposes of the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-27. Martin v. Perinni Corp., 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).*

63. Architectural firm was considered a "licensed person" under *N.J. Stat. Ann. § 2A:53A-27* because defendant architectural firm's leadership was comprised of licensed individuals under *N.J. Stat. Ann. § 2A:53A-26. Martin v. Perinni Corp., 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).*

64. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).*

65. As an amendment to her civil rights suit against defendant department store and others, proceeding pro se, the injury claimant filed malpractice claims including breach of fiduciary duty against her former attorney; the malpractice claims were subject to the Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29* even though the original complaint was filed before the statute took effect. *Greig v. Macy's Northeast, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).*

66. Under the plain language of the New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, an injury claimant was required to file an affidavit of merit within 60 days of the filing of the defending attorney's answer on the malpractice claims, or file a statement in lieu of the affidavit in accordance with *N.J. Stat. Ann. §§ 2A:53A-28*; for the reason that the injury claimant filed an untimely statement in opposition to the attorney's motion to dismiss based upon her failure to comply with the Affidavit of Merit Statute the claim was dismissed. *Greig v. Macy's Northeast, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).*

67. In light of the reference to *N.J. Stat. Ann. § 2A:53A-27* in the text of *N.J. Stat. Ann. § 2A:53A-28* and the obvious connection between the sections, it would have been illogical to read § 2A:53A-28 as permitting an injury

claimant's statement to be filed outside the initial 60 day time period. Moreover, the practical result of allowing the filing of a statement in place of an affidavit outside the 60 day window provided in *N.J. Stat. Ann. § 2A:53A-27* was that plaintiffs could file such statements in response to a defense motion to dismiss, thereby potentially defeating such motions, so such an absurd result as suggested by the injury claimant that the statement was not subject to the same time limit as the affidavit was "manifestly repugnant" to the legislative intent of the statute, which was to identify groundless malpractice lawsuits in the early stages of litigation. *Greig v. Macy's Northeast, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998)*.

68. New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., applied to a medical malpractice complaint filed in the United States District Court of New Jersey on the ground of diversity of citizenship because there was no direct conflict between the New Jersey statute and *Fed. R. Civ. P. 8* and *Fed. R. Civ. P. 9*, the New Jersey statute was substantive law that was outcome determinative on its face, failure to apply it would encourage forum shopping and lead to the inequitable administration of the law, and there was no overriding federal interest that would have prevented application of the state law by the federal courts. *Chamberlain v. Giampapa, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000)*.

69. New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., applied to the count of a patient's medical malpractice complaint alleging lack of informed consent because a plaintiff could not prevail on a lack of informed consent claim under New Jersey law without expert testimony that the relevant risk was recognized by the professional community even if an expert was not required to establish a standard for disclosure or to prove that a physician failed to meet the standard. *Chamberlain v. Giampapa, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000)*.

70. Federal district court's dismissal of a patient's medical malpractice action with prejudice as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., was proper at least with respect to the negligent acts that were alleged to have occurred after the effective date of the affidavit of merit statute because the patient failed to provide an adequate excuse for her failure to comply with the statute, the most reasonable inference from the record was that the patient's counsel was simply unaware of the affidavit of merit requirement, and the circumstances thus fell short of "exceptional and compelling." *Chamberlain v. Giampapa, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000)*.

71. Federal district court erred in dismissing a patient's entire medical malpractice complaint as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., where there was competent evidence that acts of malpractice occurred before the effective date of the affidavit of merit statute. *Chamberlain v. Giampapa, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000)*.

PRACTICE GUIDES & TREATISES

1. *LexisNexis Practice Guide NJ Personal Injury § 4.07* Understanding when Affidavit of Merit Must Be Filed and Served in Professional Liability Actions

PRACTICE CHECKLISTS

1. *LexisNexis Practice Guide NJ Personal Injury § 4.06* CHECKLIST: Complying with Affidavit of Merit Statute in Professional Liability Actions

PRACTICE FORMS

1. *New Jersey Civil Procedure LexisNexis Forms 1447-CLI 4.406.01* Affidavit of Merit for Professional Liability

LAW REVIEWS & JOURNALS

1. *34 Rutgers L. J. 279*, NOTE: THE UNFORESEEN CREATION OF A PROCEDURAL MINEFIELD--NEW JERSEY'S AFFIDAVIT OF MERIT STATUTE SPURS LITIGATION AND EXPENSE IN ITS INTERPRETATION AND APPLICATION.

2. *20 Seton Hall Legis. J. 563*, NOTE: TORT REFORM NEW JERSEY STYLE: AN ANALYSIS OF THE NEW LAWS AND HOW THEY BECAME LAW.

LexisNexis 50 State Surveys, Legislation & Regulations

Medical Malpractice Actions



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LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 214th Legislature ***
 2nd Annual Session (P.L. 2011 Chapter 148 and JR 8)
 State Constitution current through the November, 2011 Election
 Annotations current through November 14, 2011

TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
 SUBTITLE 6. SPECIFIC CIVIL ACTIONS
 CHAPTER 53A. TORTS

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 2A:53A-27 (2012)

§ 2A:53A-27. Affidavit of lack of care in action for professional, medical malpractice or negligence; requirements

In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause.

In the case of an action for medical malpractice, the person executing the affidavit shall meet the requirements of a person who provides expert testimony or executes an affidavit as set forth in section 7 of P.L. 2004, c. 17 (C. 2A:53A-41). In all other cases, the person executing the affidavit shall be licensed in this or any other state; have particular expertise in the general area or specialty involved in the action, as evidenced by board certification or by devotion of the person's practice substantially to the general area or specialty involved in the action for a period of at least five years. The person shall have no financial interest in the outcome of the case under review, but this prohibition shall not exclude the person from being an expert witness in the case.

HISTORY: L. 1995, c. 139, § 2; amended 2004, c. 17, § 8, eff. July 7, 2004.

NOTES:

Effective Dates:

Section 33 of L. 2004, c. 17 provides: "This act shall take effect on the 30th day after enactment and shall apply to causes of action for medical malpractice that accrue on or after that effective date; except that section 9 shall take effect

upon action by the court, sections 14 through 16 and section 22 shall take effect on the 180th day after the date of enactment, sections 17 and 19 shall take effect on the 90th day after the date of enactment, and the amendatory provisions of sections 3 and 4 shall apply to injuries sustained at birth on or after the effective date of this act. Section 29 shall expire three years after the effective date." Chapter 17, L. 2004, was approved on June 7, 2004.

LexisNexis (R) Notes:

CASE NOTES

1. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of a the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

2. In a legal malpractice action brought by a former patent holder against two Pennsylvania-based law firms, who had bona fide offices in New Jersey, arising out of the alleged negligence by a patent attorney employed successively by those law firms and who represented the former patent holder before the United States Patent and Trademark Office, the trial court correctly held that an affidavit of merit, pursuant to *N.J. Stat. Ann. §§ 2A:53A-26 to -- 2A:53A-29*, was necessary arising out of alleged negligence by the patent attorney in letting the patent expire since the firms were "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26(c)*. However, the dismissal of the action for the failure to submit an affidavit of merit was vacated on equitable grounds since the case law in New Jersey was unsettled as to whether an affidavit of merit was required in such circumstances and federal decisions had taken divergent approaches on the issue with regard to firms as opposed to individually licensed persons. *Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP*, 416 N.J. Super. 1, 3 A.3d 518, 2010 N.J. Super. LEXIS 101, 99 U.S.P.Q.2d (BNA) 1339 (App.Div. 2010).

3. Summary judgment entered in favor of the United States was improperly granted where it was determined that the relevant state affidavit of merit, or equivalent, statutes at issue, *N.J. Stat. Ann. § 2A:53A-27*, *Mo. Rev. Stat. § 538.225*, were sufficiently distinct that they may have produced differing results when applied to the facts of the case in plaintiff's action filed against the United States under the Federal Torts Claims Act, 28 U.S.C.S. § 2674 et seq. *Maye-El v. United States*, 59 Fed. Appx. 488, 2003 U.S. App. LEXIS 4240 (3d Cir. N.J. 2003).

4. Just as plaintiffs are required to file a timely affidavit under *N.J. Stat. Ann. § 2A:53A-27*, defendants must act timely too and cannot sleep on their rights; thus, where a doctor let the deadline for receipt of an affidavit pass without filing a dismissal motion and where the doctor, instead, engaged in the exchange of interrogatories, deposed the patient and her husband and submitted to a deposition, obtained the patient's expert report, and had the patient physically examined, the doctor's fourteen-month delay barred his ability to file a motion to dismiss under the doctrines of equitable estoppel and laches. *Knorr v. Smeal*, 178 N.J. 169, 836 A.2d 794, 2003 N.J. LEXIS 1538 (2003).

5. Summary judgment for engineering firm in municipality's negligence action on ground that municipality failed to comply with the affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, was reversed because municipality's submission of an affidavit by a professional hydrologist constituted substantial compliance with § 2A:53A-27; affidavit by a

hydrologist licensed in other states and recognized as a qualified ground water professional within the state was sufficient. *Borough of Berlin v. Remington & Vernick Eng'rs*, 337 N.J. Super. 590, 767 A.2d 1030, 2001 N.J. Super. LEXIS 91 (App.Div. 2001).

6. Motion pursuant to *Fed. R. Civ. P. 12(b)(6)* for dismissal with prejudice under *N.J. Stat. Ann. § 2A:53A-26* against one law firm was denied because a client satisfied the sworn statement alternative pursuant to *N.J. Stat. Ann. § 2A:53A-28* to the sworn affidavit pleading requirement under *N.J. Stat. Ann. § 2A:53A-27* for filing a malpractice case where the firm failed to turn over records as requested by the client, but the motion was granted as to two other law firms because the client failed to satisfy the sworn statement alternative where he did not request records from the other firms. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1 2003).

7. Doctor's motion to dismiss an administrator's wrongful death and survival claims for failure to provide an affidavit of merit was dismissed as untimely under *N.J. Stat. Ann. § 2A:53A-27* because the doctor's answer to the second amended complaint, which was presently the answer to the final amended complaint, was filed on May 30, 2008, and the administrator had at least 120 days from that date to file an appropriate affidavit of merit before the court could consider any motion to dismiss. *Costa v. County of Burlington*, 566 F. Supp. 2d 360, 2008 U.S. Dist. LEXIS 55713 (D.N.J. 2008).

8. Motion of an attorney and a law firm to dismiss a businessman's complaint against them for fraud, due to the businessman's failure to file an affidavit of merit, was denied, as the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, was not applicable in the case as the underlying factual allegations of fraud did not require proof of a deviation from the professional standard of care. *Fink v. Ritner*, 318 F. Supp. 2d 225, 2004 U.S. Dist. LEXIS 9210 (D.N.J. 2004).

9. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

10. Doctor's motion to dismiss an administrator's wrongful death and survival claims for failure to provide an affidavit of merit was dismissed as untimely under *N.J. Stat. Ann. § 2A:53A-27* because the doctor's answer to the second amended complaint, which was presently the answer to the final amended complaint, was filed on May 30, 2008, and the administrator had at least 120 days from that date to file an appropriate affidavit of merit before the court could consider any motion to dismiss. *Costa v. County of Burlington*, 566 F. Supp. 2d 360, 2008 U.S. Dist. LEXIS 55713 (D.N.J. 2008).

11. *N.J. Stat. Ann. § 2A:53A-27* speaks of granting no more than one additional period, rather than in terms of no more than one additional extension and appellate courts take the language "one additional period" to indicate that the concern of the legislature was to set an outer time limit of 120 days, beyond which no extension could be granted, rather than to limit the number of times an extension could be sought. *Familia v. Univ. Hosp. of the Univ. of Med. & Dentistry of N.J.*, 350 N.J. Super. 563, 796 A.2d 302, 2002 N.J. Super. LEXIS 225 (App.Div. 2002).

12. When medical records requested by a guardian ad prosequendum presumptively had a substantial bearing on the ability to prepare an affidavit of merit, a treating facility did not establish a basis for a contrary finding, and the guardian timely complied with *N.J. Stat. Ann. § 2A:53A-28* after the relation back doctrine was applied, the guardian

was entitled to the medical records and the trial court erred in dismissing the action. *Aster v. Shoreline Behavioral Health*, 346 N.J. Super. 536, 788 A.2d 821, 2002 N.J. Super. LEXIS 30 (App.Div. 2002).

13. As a company under contract with the New Jersey Department of Corrections to treat prisoners did not provide evidence that it was a licensed health care facility under *N.J. Stat. Ann. § 2A:53A-26(j)*, it did not show that New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, applied to it; therefore, the trial court erred in dismissing an inmate's malpractice suit for his failure to provide the company with an affidavit of merit. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

14. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

15. Supreme Court of New Jersey holds that, in the future, a physician defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was involved when rendering treatment to the plaintiff. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

16. In a seller's suit against a real estate agent, an attorney, the purchasers, and others, the trial court correctly dismissed the seller's legal malpractice claim with prejudice against the attorney because the seller failed to serve an affidavit of merit within the time required by *N.J. Stat. Ann. § 2A:53A-27* and did not establish that: her failure to comply with the statute was due to exceptional circumstances; she substantially complied with the statute; or the attorney should be estopped from seeking dismissal of the claim. The seller's failure to comply with the affidavit of merit statute did not, however, bar her from asserting a claim against the attorney for fraud because that claim did not require proof that the attorney deviated from the standard of care applicable to the legal profession. *Stoecker v. Echevarria*, 408 N.J. Super. 597, 975 A.2d 975, 2009 N.J. Super. LEXIS 188 (App.Div. 2009).

17. A trial court erred by dismissing a mother's professional negligence claim against a health care system and a licensed midwife for failing to file an Affidavit of Merit, pursuant to the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, as the midwife was not a licensed person under *N.J. Stat. Ann. § 2A:53A-26*, for whom an Affidavit of Merit was required, and the trial court erred by failing to hold a required accelerated case management conference in the action, at which time the dismissal issue could have been addressed and avoided. *Saunders ex rel. Saunders v. Capital Health System at Mercer*, 398 N.J. Super. 500, 942 A.2d 142, 2008 N.J. Super. LEXIS 50 (App.Div. 2008).

18. Cross-claims asserted against an environmental consulting firm were not subject to dismissal merely because plaintiffs failed to file an affidavit of merit in their professional negligence suit as required by *N.J. Stat. Ann. § 2A:53A-27*; while plaintiffs' claims were dismissed due to their failure to comply with the statute, their conduct had no bearing on the cross-claims asserted against the firm by two of its co-defendants. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

19. Based upon the language of the statute itself, and the legislative purposes it serves, the Affidavit of Merit Statute applies to the filing of a third-party complaint when the cause of action pled requires proof of malpractice or professional negligence, and the obligation rests upon the third-party plaintiff to meet the requirements of the statute by filing a timely affidavit of merit. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

20. In a neighbor's trespass and boundary suit against property owners, the owners' failure to comply with the New

Jersey Affidavit of Merit Statute, *N.J. Stat. Ann.* §§ 2A:53A-26 to 29, did not require dismissal of their third-party complaint against a surveyor. As the neighbor had not yet produced evidence to establish the surveyor's error, no independent claim by the owners of professional negligence, indemnity, or contribution had accrued. *Highland Lakes Country Club & Cmty. Ass'n v. Nicastro*, 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

21. There were factual issues regarding: (1) the extent to which an inspecting architect's acts did or did not require an architect license; (2) causation; and (3) general negligence versus malpractice, therefore, summary judgment dismissal of all claims based on an injured roofer not providing a *N.J. Stat. Ann.* §§ 2A:53A-26 to 2A:53-29 certificate of merit, was reversed. *Murphy v. New Road Const.*, 378 N.J. Super. 238, 875 A.2d 955, 2005 N.J. Super. LEXIS 179 (App.Div. 2005).

22. Where health service providers timely provided medical records in response to an inmate's medical malpractice suit, but the inmate failed to timely serve an Affidavit of Merit as required by the Affidavit of Merit Statute, *N.J. Stat. Ann.* § 2A:53A-27 et seq., the inmate's medical malpractice claims were dismissed with prejudice; the inmate's arguments regarding substantial compliance, equitable estoppel, laches, and the sworn statement alternative were rejected. *Bryan v. Shah*, 2004 U.S. Dist. LEXIS 20502 (D.N.J. Oct. 12 2004), vacated by 351 F. Supp. 2d 295, 2005 U.S. Dist. LEXIS 258 (D.N.J. 2005).

23. Patient's malpractice suit against a doctor was properly dismissed for failure to comply with the certificate of merit statute, *N.J. Stat. Ann.* § 2A:53A-27, as neither of the two documents submitted by the patient contained the language necessary to be considered a certification under *N.J. Ct. R. 1:4-4(b)*, and neither of the declarants was placed under oath when executing the documents; the failure to place a declarant under oath was not a technical deficiency for which the doctrine of substantial compliance could be invoked, but went to the very nature of an affidavit. *Tunia v. St. Francis Hosp.*, 363 N.J. Super. 301, 832 A.2d 936, 2003 N.J. Super. LEXIS 304 (App.Div. 2003).

24. Motion pursuant to *Fed. R. Civ. P. 12(b)(6)* for dismissal with prejudice under *N.J. Stat. Ann.* § 2A:53A-26 against one law firm was denied because a client satisfied the sworn statement alternative pursuant to *N.J. Stat. Ann.* § 2A:53A-28 to the sworn affidavit pleading requirement under *N.J. Stat. Ann.* § 2A:53A-27 for filing a malpractice case where the firm failed to turn over records as requested by the client, but the motion was granted as to two other law firms because the client failed to satisfy the sworn statement alternative where he did not request records from the other firms. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1 2003).

25. *N.J. Stat. Ann.* § 2A:53A-27 requires the plaintiff in a malpractice action to provide the affidavit of merit to the defendant. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

26. Under *N.J. Stat. Ann.* § 2A:53A-27, the content of the expert's affidavit is summary in nature. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

27. Under *N.J. Stat. Ann.* § 2A:53A-27, the required statement of opinion that the defendant's work or treatment fell outside acceptable professional standards need not be accompanied by the same detailed explanation and analysis that ordinarily would be contained in an expert's report required to be furnished pursuant to *N.J. Ct. R. 4:17-4(e)*. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

28. *N.J. Stat. Ann.* § 2A:53A-27 requires only that the expert, whose affidavit is filed, certify that a reasonable probability exists that the defendant in question deviated from professional standards. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

29. Under *N.J. Stat. Ann.* § 2A:53A-27, an affidavit satisfied the requirements for an affidavit of merit when it stated that the affiant reviewed the complaint and other evidence related to the action, and that there was a fair chance that the practice that was the subject of the action fell outside usual professional standards. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

30. Where a medical center that was sued for medical malpractice unjustifiably withheld the relevant patient's medical records, the records presumptively had a substantial bearing on the ability to prepare an affidavit of merit, and, since the presumption was not rebutted and plaintiffs timely complied with *N.J. Stat. Ann. § 2A:53A-28* of the Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, by requesting to file a sworn statement regarding the withheld records in lieu of an affidavit of merit, the failure to file an affidavit of merit pursuant to *N.J. Stat. Ann. § 2A:53A-27* was excused. *Aster v. Shoreline Behavioral Health*, 346 N.J. Super. 536, 788 A.2d 821, 2002 N.J. Super. LEXIS 30 (App.Div. 2002).

31. Administratrix substantially complied with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, by retaining expert before filing her medical malpractice complaint and attaching his report to her interrogatory answers within the statutory period, followed by affidavit of merit; the doctor was not prejudiced. *Hefferon v. Gitler*, 346 N.J. Super. 141, 787 A.2d 222, 2001 N.J. Super. LEXIS 464 (App.Div. 2001).

32. When defendant sewer authority responded to an engineer's action for damages by filing a malpractice counterclaim, the sewer authority became in effect the plaintiff on the malpractice counterclaim; therefore, it had an obligation to file an affidavit of merit. *Charles A. Manganaro Consulting Eng'rs v. Carneys Point Twp.*, 344 N.J. Super. 343, 781 A.2d 1116, 2001 N.J. Super. LEXIS 378 (App.Div. 2001).

33. Where defendant physician acknowledged misreading lab results and had misdiagnosed an ectopic pregnancy, performing unnecessary surgery on a non-pregnant plaintiff, plaintiff was not required pursuant to *N.J. Stat. Ann. § 2A:53A-27* to file an affidavit of merit because the common knowledge exception recognized that meritorious claims could move forward without the added and unnecessary cost of hiring an expert to execute an affidavit when that expert was not going to testify at trial. *Palanque v. Lambert-Woolley*, 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

34. Where mother sued dentist for malpractice after dentist's associate extracted the wrong tooth from child's mouth, mother's suit was improperly dismissed for failure to comply with affidavit of merit requirement because there was a common knowledge exception to the statutory requirement where expert testimony was not required to establish that dentist's care fell below acceptable professional standards. *Hubbard v. Reed*, 168 N.J. 387, 774 A.2d 495, 2001 N.J. LEXIS 778 (2001).

35. Dismissal of husband's malpractice case for the death of his wife was reversed where husband substantially complied with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, doctor was not prejudiced by lapse in strict compliance, and husband offered a reasonable explanation for the lapse. *Fink v. Thompson*, 167 N.J. 551, 772 A.2d 386, 2001 N.J. LEXIS 654 (2001).

36. Court reversed lower court's order dismissing a medical malpractice claim against defendant medical center and individuals for claimant's failure to file an affidavit of merit or to seek an extension therefrom within 60 days of answers filed by defendants, pursuant to *N.J. Stat. Ann. § 2A:53A-27*; claimant substantially complied with the statute's provisions where claimant served two expert reports on insurance carriers before filing the complaint, no evidence showed that any defendant was prejudiced by filing of unsworn and uncertified expert's report, and claimant took a series of steps to comply with the statute and generally met its purpose. *Galik v. Clara Maass Med. Ctr.*, 167 N.J. 341, 771 A.2d 1141, 2001 N.J. LEXIS 506 (2001).

37. Trial court properly dismissed plaintiff's medical malpractice action for failure to comply with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, because interrogatories lacked proper affidavit. *Kritzberg v. Tarsny*, 338 N.J. Super. 254, 768 A.2d 810, 2001 N.J. Super. LEXIS 112 (App.Div. 2001).

38. Summary judgment for engineering firm in municipality's negligence action on ground that municipality failed to comply with the affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, was reversed because municipality's submission of an affidavit by a professional hydrologist constituted substantial compliance with § 2A:53A-27; affidavit

by a hydrologist licensed in other states and recognized as a qualified ground water professional within the state was sufficient. *Borough of Berlin v. Remington & Vernick Eng'rs*, 337 N.J. Super. 590, 767 A.2d 1030, 2001 N.J. Super. LEXIS 91 (App.Div. 2001).

39. Dismissal of medical negligence and lack of informed consent claims was proper because no affidavit of merit signed by a physician was filed under N.J. Stat. Ann. § 2A:53A-27, therefore the causes of action had not existed and no exception for common knowledge was provided for in the statute; however, where a doctor implanted a dangerous drug in a patient's arm without informing the patient of the danger or the fact that the procedure was invasive, no affidavit was needed for claims of assault and battery, breach of contract, or product liability, and a trial court's dismissal for failure to file an affidavit of merit was reversed. *Darwin v. Goberman*, 339 N.J. Super. 467, 772 A.2d 399, 2001 N.J. Super. LEXIS 77 (App.Div. 2001).

40. In a medical malpractice action, where plaintiffs filed an affidavit within the 60-day statutory extension period as provided by N.J. Stat. Ann. § 2A-53A-27 and where plaintiffs counsel's inadvertent delay in filing the affidavit constituted good cause, the affidavit was timely filed. *Burns v. Belafsky*, 166 N.J. 466, 766 A.2d 1095, 2001 N.J. LEXIS 173 (2001).

41. Affidavit of merit pursuant to N.J. Stat. Ann. § 2A:53A-27 was required in a malpractice action against a dentist where plaintiff intended to rely on either common knowledge or res ipsa loquitur rather than upon expert testimony. *Hubbard v. Reed*, 331 N.J. Super. 283, 751 A.2d 1055, 2000 N.J. Super. LEXIS 194 (App.Div. 2000), reversed by 168 N.J. 387, 774 A.2d 495, 2001 N.J. LEXIS 778 (2001).

42. Dismissal of medical malpractice action, with prejudice, for failure to present an affidavit of merit within 120 days as required by N.J. Stat. Ann. § 2A:53A-27 was affirmed because plaintiff did not demonstrate extraordinary circumstances; the fact that plaintiff had an expert report in her possession prior to filing suit did not satisfy the statutory requirement. *Palanque v. Lambert-Woolley*, 327 N.J. Super. 158, 742 A.2d 1002, 2000 N.J. Super. LEXIS 3 (App.Div. 2000), reversed by, remanded by 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

43. In an injured patient's medical malpractice claim, counsel's neglect qualified as good cause and thereby established the right to an extension to file the Affidavit of Merit pursuant to N.J. Stat. Ann. § 2A:53A-27 because the affidavit filed set forth a "threshold showing" of malpractice and was filed within the extension time period permitted by the statute, notwithstanding the failure of counsel to have moved for an extension during the initial 60 day period; to have held otherwise would have been contrary to the stated purpose of the statute and would have unfairly punished the injured patient for the mistake of counsel. *Burns v. Belafsky*, 326 N.J. Super. 462, 741 A.2d 649, 1999 N.J. Super. LEXIS 416 (App.Div. 1999), affirmed by 166 N.J. 466, 766 A.2d 1095, 2001 N.J. LEXIS 173 (2001).

44. Plaintiff client's action against defendant lawyers for professional negligence and fraud was properly dismissed for failure to comply with the Affidavit of Merit statute, N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29, which required plaintiff to obtain an affidavit from an appropriate licensed person that indicated that there existed a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards. *Levinson v. D'Alfonso & Stein*, 320 N.J. Super. 312, 727 A.2d 87, 1999 N.J. Super. LEXIS 131 (App.Div. 1999).

45. Dismissal with prejudice of a medical malpractice action for failure to comply with the Affidavit of Merit Statute, where claimant's son died after being treated by hospital and doctors, was vacated because of defendant hospital's and doctors' extraordinary delay in providing decipherable records. *Barreiro v. Morais*, 318 N.J. Super. 461, 723 A.2d 1244, 1999 N.J. Super. LEXIS 48 (App.Div. 1999).

46. Affidavit of merit statute, N.J. Stat. Ann. § 2A:53A-27, with an effective date of June 25, 1995, which applied to malpractice cases against licensed persons where the underlying legally significant facts happened, arose, or took place on or after the effective date of § 2A:53A-27, did not apply to a malpractice action against defendant law firm where the

malpractice of missing the statute of limitations for the ex-client's personal injury action for a workplace accident occurred before the effective date of § 2A:53A-27. *Diver v. Gross, Hanlon, Truss & Messer, P.C.*, 317 N.J. Super. 547, 722 A.2d 623, 1998 N.J. Super. LEXIS 527 (Law Div. 1998).

47. Because a mediation order and an agreement of the parties appeared to stay the proceedings, the trial court erred in dismissing appellants' claims with prejudice for failure to timely file affidavits of merit in legal malpractice actions. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

48. Affidavit of Merit Bill, N.J. Stat. Ann. ((2A:53A-26 to 2A:53A-29, does not apply to malpractice actions filed on or after the effective date of the statute if the facts giving rise to the malpractice complaint occurred before that date. *Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

49. For the purposes of N.J. Stat. Ann. § 2A:53A-27, N.J. Ct. R. 1:4-4(b) itself does not authorize a malpractice plaintiff to submit a certification instead of an affidavit. *Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

50. Upon a showing of timely filing, just cause and excusable neglect, lack of prejudice and proper notice to the opponent, followed by prompt measures to comply fully with the statute, a certification could meet the requirement for an affidavit of merit set forth in N.J. Stat. Ann. § 2A:53A-27, under the doctrine of substantial compliance. *Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

51. N.J. Stat. Ann. § 2A:53A-27 requires a threshold showing that the conduct at issue constitutes malpractice and thus is not meritless; this requirement can be met without the inclusion of the affiant's qualifications in the affidavit itself if they are provided in conjunction with the affidavit. *Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

52. Dismissal for failure to comply with the Affidavit of Merit Bill, N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29, should be with prejudice in all but exceptional circumstances. *Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

53. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of a the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

54. Certificate of an attorney who did not specialize in the area of matrimonial law that formed the basis of a legal malpractice claim did not constitute an affidavit of merit sufficient to maintain a cause of action against a licensed attorney for malpractice or negligence. *Cornblatt v. Barow*, 303 N.J. Super. 81, 696 A.2d 65, 1997 N.J. Super. LEXIS 315 (App.Div. 1997), reversed by 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

55. N.J. Stat. Ann. § 2A:53A-27 speaks of granting no more than one additional period, rather than in terms of no more than one additional extension. The statute's reference to "one additional period" indicates that the concern of the legislature was to set an outer time limit of 120 days, beyond which no extension could be granted, rather than to limit the number of times an extension could be sought. *Familia v. Univ. Hosp. of the Univ. of Med. & Dentistry of N.J.*, 350 N.J. Super. 563, 796 A.2d 302, 2002 N.J. Super. LEXIS 225 (App.Div. 2002).

56. Trial court's decision to limit a plaintiff to a 30-day extension to file an affidavit of merit, as opposed to the statutorily-authorized 60 days under N.J. Stat. Ann. § 2A:53A-27, was arbitrary in that the trial court failed to state any

reason or justification for the shortened time period. *Familia v. Univ. Hosp. of the Univ. of Med. & Dentistry of N.J.*, 350 N.J. Super. 563, 796 A.2d 302, 2002 N.J. Super. LEXIS 225 (App.Div. 2002).

57. Orders dismissing plaintiff's complaint with prejudice were erroneously entered where the filing delay was due to counsel's error, and the trial court's decision imposing a shortened filing extension under N.J. Stat. Ann. § 2A:53A-27 was arbitrary. *Familia v. Univ. Hosp. of the Univ. of Med. & Dentistry of N.J.*, 350 N.J. Super. 563, 796 A.2d 302, 2002 N.J. Super. LEXIS 225 (App.Div. 2002).

58. Summary judgment for chiropractor in medical malpractice action was not proper, despite the fact that the patient and his spouse failed to file an affidavit of merit within 60 days after the filing of the answer as required by N.J. Stat. Ann. § 2A:53A-27, because plaintiffs did not intend to rely upon expert testimony but rather upon common knowledge and *res ipsa loquitor* and easily met the threshold showing of merit without submitting an affidavit. *Janelli v. Keeper*, 317 N.J. Super. 309, 721 A.2d 1036, 1998 N.J. Super. LEXIS 513 (Law Div. 1998), overruled by *Hubbard v. Reed*, 331 N.J. Super. 283, 751 A.2d 1055, 2000 N.J. Super. LEXIS 194 (App.Div. 2000).

59. Dismissal of a legal malpractice claim for failure to timely file an affidavit of merit pursuant to N.J. Stat. Ann. § 2A:53A-27 should be with prejudice unless there are "extraordinary circumstances": carelessness, lack of circumspection, lack of diligence on the part of counsel, ignorance of the law, or failure to seek legal advice are not extraordinary circumstances that will excuse missing a filing deadline, although an incapacitating physical condition will constitute an extraordinary circumstance. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

60. Courts are required to enter into a fact-sensitive inquiry in order to determine whether "extraordinary circumstances" exist so as to relax the filing requirement for an affidavit of merit under N.J. Stat. Ann. § 2A:53A-27. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

61. Legislative intent in enacting affidavit of merit statute was to curtail the filing of frivolous malpractice actions and to require all plaintiffs in malpractice cases to make a threshold showing that their claim was meritorious in order that meritless lawsuits could be readily identified at an early stage of litigation; the failure to file a timely affidavit of merit under N.J. Stat. Ann. § 2A:53A-27 did not warrant a dismissal with prejudice where the parties did not evince a knowing intent to disregard and thereby thwart the sound purpose of the statute. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

62. Where a case had been referred to mediation pursuant to N.J. Ct. R. 1:40-4(a) and a mediation standstill order was in effect when an affidavit of merit would have been due pursuant to N.J. Stat. Ann. § 2A:53A-27 from the parties raising malpractice claims, the failure to timely file affidavits of merit did not warrant a dismissal with prejudice. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

63. Patient's counsel's intentional delay in serving the summonses and complaint in order to avoid application of the Affidavit of Merit statute, N.J. Stat. Ann. § 2A:53A-26 et seq., warranted dismissal of the medical malpractice complaint. *Czepas v. Schenk*, 362 N.J. Super. 216, 827 A.2d 1080, 2003 N.J. Super. LEXIS 240 (App.Div. 2003).

64. In a pre-suit application in a medical malpractice action, the court held that N.J. R. Governing Civ. Practice 4:11-1 was not intended to authorize pre-suit discovery for the sole purpose of assisting a prospective plaintiff in acquiring facts necessary to frame a complaint; thus the application of N.J. R. Governing Civ. Practice 4:11-1 to facilitate the plaintiff's compliance with the Merit Statute, N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29, was inconsistent with the rule's intended use. *In re Hall by and Through Hall*, 147 N.J. 379, 688 A.2d 81, 1997 N.J. LEXIS 39 (1997).

65. Environmental engineering is a sub-field and/or specialty of engineering and clearly falls within the purview of the engineering licensing statute, *N.J. Stat. Ann. § 45:8-28*; as such, an environmental engineer is a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)*, and professional negligence claims asserted against such a licensed environmental engineer, either individually or under the respondeat superior doctrine, are subject to the affidavit of merit requirements imposed pursuant to *N.J. Stat. Ann. § 2A:53A-27*. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

66. Plaintiffs' failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* resulted in dismissal of the professional malpractice claims asserted against an environmental consulting firm; the firm was a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)* because it was an engineering firm licensed pursuant to *N.J. Stat. Ann. § 45:8-28*, the unlicensed scientists who actually performed the environmental investigation work that was the subject of plaintiffs' claims worked for the firm that plaintiffs sought to hold liable under a respondeat superior theory, and an affidavit of merit was required because expert testimony was necessary to prove plaintiffs' claims. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

67. In a pre-suit application in a medical malpractice action, the court held that N.J. R. Governing Civ. Practice 4:11-1 was not intended to authorize pre-suit discovery for the sole purpose of assisting a prospective plaintiff in acquiring facts necessary to frame a complaint; thus the application of N.J. R. Governing Civ. Practice 4:11-1 to facilitate the plaintiff's compliance with the Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, was inconsistent with the rule's intended use. *In re Hall by and Through Hall*, 147 N.J. 379, 688 A.2d 81, 1997 N.J. LEXIS 39 (1997).

68. Dismissal with prejudice of a medical malpractice action for failure to comply with the Affidavit of Merit Statute, where claimant's son died after being treated by hospital and doctors, was vacated because hospital's and doctors' delay in providing decipherable records, were so extraordinary that a dismissal without prejudice before the statute of limitations ran would have been necessary, because no opportunity to present evidence on the issue of such extraordinary circumstances was provided. *Barreiro v. Morais*, 318 N.J. Super. 461, 723 A.2d 1244, 1999 N.J. Super. LEXIS 48 (App.Div. 1999).

69. Plaintiffs' failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* resulted in dismissal of the professional malpractice claims asserted against an environmental consulting firm; the firm was a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)* because it was an engineering firm licensed pursuant to *N.J. Stat. Ann. § 45:8-28*, the unlicensed scientists who actually performed the environmental investigation work that was the subject of plaintiffs' claims worked for the firm that plaintiffs sought to hold liable under a respondeat superior theory, and an affidavit of merit was required because expert testimony was necessary to prove plaintiffs' claims. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

70. *N.J. Stat. Ann. § 2A:53A-27* imposes a set of procedural requirements in order for a plaintiff to maintain a professional malpractice action: (1) the plaintiff must show that the complaint is meritorious by obtaining an affidavit from an appropriate, licensed expert attesting to the "reasonable probability" of professional negligence; (2) the affidavit must be provided to the defendant within 60 days of the filing of the answer or, for good cause shown, within an additional 60-day period; and (3) the plaintiff's failure to serve the affidavit within 120 days of the filing of the answer is considered tantamount to the failure to state a cause of action, subjecting the complaint to dismissal with prejudice. *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 836 A.2d 779, 2003 N.J. LEXIS 1536 (2003).

71. Trial court erred in dismissing with prejudice the malpractice case on the basis of the expert witness's faulty affidavit of merit that was filed pursuant to the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*; extraordinary circumstances were present in the case requiring that the action be dismissed without prejudice, as the injured party's attorney could have discovered and rectified the deficiencies in the expert's affidavit within 120 days as provided under *N.J. Stat. Ann. § 2A:53A-27* had the attorney not been undergoing aggressive cancer treatments.

Tischler v. Watts, 177 N.J. 243, 827 A.2d 1036, 2003 N.J. LEXIS 858 (2003).

72. Orders dismissing plaintiff's complaint with prejudice were erroneously entered where the filing delay was due to counsel's error, and the trial court's decision imposing a shortened filing extension under *N.J. Stat. Ann. § 2A:53A-27* was arbitrary. *Familia v. Univ. Hosp. of the Univ. of Med. & Dentistry of N.J.*, 350 N.J. Super. 563, 796 A.2d 302, 2002 N.J. Super. LEXIS 225 (App.Div. 2002).

73. Federal district court's dismissal of a patient's medical malpractice action with prejudice as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 et seq.*, was proper at least with respect to the negligent acts that were alleged to have occurred after the effective date of the affidavit of merit statute because the patient failed to provide an adequate excuse for her failure to comply with the statute, the most reasonable inference from the record was that the patient's counsel was simply unaware of the affidavit of merit requirement, and the circumstances thus fell short of "exceptional and compelling." *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

74. Federal district court erred in dismissing a patient's entire medical malpractice complaint as a result of her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* of the New Jersey affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*, where there was competent evidence that acts of malpractice occurred before the effective date of the affidavit of merit statute. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

75. Trial court properly dismissed a complaint filed by plaintiffs with prejudice for failure to file a timely affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* in their malpractice suit against defendant physicians and medical centers because plaintiffs did not request an extension of time to file the required affidavit of merit and because plaintiffs did not file their affidavit that they were unable to do so due to defendants' lack of cooperation. *Davies v. Imbesi*, 328 N.J. Super. 372, 746 A.2d 40, 2000 N.J. Super. LEXIS 74 (App.Div. 2000).

76. Because a mediation order and an agreement of the parties appeared to stay the proceedings, the trial court erred in dismissing appellants' claims with prejudice for failure to timely file affidavits of merit in legal malpractice actions. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

77. Dismissal of a legal malpractice claim for failure to timely file an affidavit of merit pursuant to *N.J. Stat. Ann. § 2A:53A-27* should be with prejudice unless there are "extraordinary circumstances": carelessness, lack of circumspection, lack of diligence on the part of counsel, ignorance of the law, or failure to seek legal advice are not extraordinary circumstances that will excuse missing a filing deadline, although an incapacitating physical condition will constitute an extraordinary circumstance. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

78. Courts are required to enter into a fact-sensitive inquiry in order to determine whether "extraordinary circumstances" exist so as to relax the filing requirement for an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

79. Legislative intent in enacting affidavit of merit statute was to curtail the filing of frivolous malpractice actions and to require all plaintiffs in malpractice cases to make a threshold showing that their claim was meritorious in order that meritless lawsuits could be readily identified at an early stage of litigation; the failure to file a timely affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* did not warrant a dismissal with prejudice where the parties did not evince a knowing intent to disregard and thereby thwart the sound purpose of the statute. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

80. Where a case had been referred to mediation pursuant to *N.J. Ct. R. 1:40-4(a)* and a mediation standstill order

was in effect when an affidavit of merit would have been due pursuant to *N.J. Stat. Ann. § 2A:53A-27* from the parties raising malpractice claims, the failure to timely file affidavits of merit did not warrant a dismissal with prejudice. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

81. Neighbor sued property owners for trespass; they filed a third-party complaint against their surveyor for indemnification and contribution. The owners' third-party complaint was improperly dismissed for their failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 29*; as the neighbor had not yet shown any error in the survey, no claim for professional negligence had accrued. *Highland Lakes Country Club and Community Ass'n v. Nicaastro*, 406 N.J. Super. 145, 966 A.2d 1102, 2009 N.J. Super. LEXIS 63 (App.Div. 2009), affirmed by 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

82. Summary judgment entered in favor of the United States was improperly granted where it was determined that the relevant state affidavit of merit, or equivalent, statutes at issue, *N.J. Stat. Ann. § 2A:53A-27*, *Mo. Rev. Stat. § 538.225*, were sufficiently distinct that they may have produced differing results when applied to the facts of the case in plaintiff's action filed against the United States under the Federal Torts Claims Act, 28 U.S.C.S. § 2674 et seq. *Maye-El v. United States*, 59 Fed. Appx. 488, 2003 U.S. App. LEXIS 4240 (3d Cir. N.J. 2003).

83. Summary judgment was granted to prison officials on an inmate's state law claims for medical malpractice and negligence because the inmate failed to file an affidavit-of-merit, nor substantially complied with *N.J. Stat. Ann. § 2A:53A-27*, where he did not make an effort to secure an expert report until well after the 60-day deadline, the inmate did not provide any certification or information in lieu of the affidavit, and he did not explain his failure to comply. *Nash v. Brown*, 2005 U.S. Dist. LEXIS 21421 (D.N.J. Sept. 20 2005).

84. Failure to conduct a case management conference pursuant to case law within 90 days of the service of an answer in a malpractice action does not toll the timeframes set forth in the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 -- 29*. *Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn*, 410 N.J. Super. 510, 983 A.2d 604, 2009 N.J. Super. LEXIS 242 (App.Div. 2009).

85. In a malpractice case, a hospital was not entitled to dismissal of the case based on the patient's failure to provide an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* because the hospital waited more than 20 months after it filed its answer to move for dismissal and the parties had already engaged in extensive discovery. *Mottola v. City of Union City*, 2008 U.S. Dist. LEXIS 21605 (D.N.J. Mar. 14 2008).

86. Third party plaintiffs failed to meet requirements for filing an interlocutory appeal challenging dismissal of their third party complaint, as: (1) even their legal malpractice claim did not fail as a matter of law because they had not complied with the New Jersey Affidavit of Merit statute, that finding did not involve a controlling question of law; (2) two allegedly contradictory opinions on the Affidavit of Merit issue was insufficient to show that there were substantial grounds for a difference of opinion as to the operation and application of the Affidavit of Merit statute; and (3) the speculative assertion that certifying an interlocutory appeal would allow all parties to engage in more meaningful settlement negotiations was insufficient to establish that an immediate appeal would materially advance the ultimate termination of the litigation, and permitting an interlocutory appeal would likely result in a delay of the already protracted litigation. *Acosta v. Pace Local I-300 Health Fund*, 2007 U.S. Dist. LEXIS 26054 (D.N.J. Apr. 9 2007).

87. Inmate's appeal was dismissed pursuant to 28 U.S.C.S. § 1915(e)(2)(B) because, inter alia: (1) the extent of the United States' liability under the Federal Tort Claims Act was determined by state law; (2) the inmate failed to provide

the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*, which was triggered because he complained of the medical care he received in the prison's health care facility; (3) pursuant to *N.J. Stat. Ann. § 2A:53A-29*, the inmate's failure to provide the affidavit constituted a failure to state a cause of action; and (4) the inmate's claims against an orthopedic surgeon were also properly dismissed because the inmate failed to obtain the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-29*. *Horne v. United States*, 223 Fed. Appx. 154, 2007 U.S. App. LEXIS 5482 (3d Cir. N.J. 2007).

88. Inmate's unfettered right to seek relief for an alleged Eighth Amendment violation or a violation of his civil rights under 42 U.S.C.S. § 1983 may not be conditioned on compliance with the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*. *Seeward v. Integrity, Inc.*, 357 N.J. Super. 474, 815 A.2d 1005, 2003 N.J. Super. LEXIS 58 (App.Div. 2003).

89. Inmate's unfettered right to seek relief for an alleged Eighth Amendment violation or a violation of his civil rights under 42 U.S.C.S. § 1983 may not be conditioned on compliance with the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*. *Seeward v. Integrity, Inc.*, 357 N.J. Super. 474, 815 A.2d 1005, 2003 N.J. Super. LEXIS 58 (App.Div. 2003).

90. New Jersey township's claims against an environmental engineering firm were dismissed because the township failed to file an affidavit of merit to support its claims, as required by *N.J. Stat. Ann. § 2A:53A-27*; an affidavit of merit was required because the township could not prevail without showing that the firm had deviated from applicable environmental engineering standards, expert testimony was necessary to make that showing, and neither the "common knowledge" nor any other exception applied. *Montville Twp. v. Woodmont Builders, LLC*, 2006 U.S. Dist. LEXIS 514 (D.N.J. Jan. 5 2006).

91. Although the absence of a Ferreira conference did not toll the filing period provided in *N.J. Stat. Ann. § 2A:53A-27* of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*, due to the confusion in scheduling such a conference and the effect of its omission, dismissal of a condominium association's third-party complaint was not justified. *Paragon Contrs., Inc. v. Peachtree Condo. Ass'n*, 202 N.J. 415, 997 A.2d 982, 2010 N.J. LEXIS 538 (2010).

92. Where defendant physician acknowledged misreading lab results and had misdiagnosed an ectopic pregnancy, performing unnecessary surgery on a non-pregnant plaintiff, plaintiff was not required pursuant to *N.J. Stat. Ann. § 2A:53A-27* to file an affidavit of merit because the common knowledge exception recognized that meritorious claims could move forward without the added and unnecessary cost of hiring an expert to execute an affidavit when that expert was not going to testify at trial. *Palanque v. Lambert-Woolley*, 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

93. Affidavit of merit pursuant to *N.J. Stat. Ann. § 2A:53A-27* was required in a malpractice action against a dentist where plaintiff intended to rely on either common knowledge or res ipsa loquitur rather than upon expert testimony. *Hubbard v. Reed*, 331 N.J. Super. 283, 751 A.2d 1055, 2000 N.J. Super. LEXIS 194 (App.Div. 2000), reversed by 168 N.J. 387, 774 A.2d 495, 2001 N.J. LEXIS 778 (2001).

94. Even though a patient's medical expert in a medical malpractice claim against a radiologist was not board certified in radiology and had not devoted his practice to the specialty of radiology, his affidavit of merit complied with *N.J. Stat. Ann. § 2A:53A-27* because his specialty of shoulder and elbow surgery necessarily overlapped with the practice of diagnostic radiology of those areas of the body. *Wacht v. Farooqui*, 312 N.J. Super. 184, 711 A.2d 405, 1998 N.J. Super. LEXIS 269 (App.Div. 1998).

95. There are overlaps in practice between and among the various medical professions and specialties and therefore, for purposes of *N.J. Stat. Ann. § 2A:53A-27*, a doctor in one field is qualified to render an opinion as to the performance of a doctor in another with respect to their common areas of practice. *Wacht v. Farooqui*, 312 N.J. Super. 184, 711 A.2d 405, 1998 N.J. Super. LEXIS 269 (App.Div. 1998).

96. In a medical malpractice suit, the appellate court erred by reversing a trial court's ruling that a patient had satisfied the waiver provision under *N.J. Stat. Ann. § 2A:53A-41(c)*, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care, because based on the plain language of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, the patient's counsel made a good faith effort to identify an expert in the same specialty as the doctor being sued but was unsuccessful. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

97. Waiver provision of *N.J. Stat. Ann. § 2A:53A-41* prescribes that where a plaintiff has made a good faith showing of inability to identify an expert in the same specialty or subspecialty as the defendant, his proposed expert must possess sufficient training, experience and knowledge to provide the testimony as a result of active involvement in, or full-time teaching of, medicine in the applicable area of practice or a related field of medicine, and the Supreme Court of New Jersey interprets that language as a broad grant of discretion to the trial judge that does not bear with it a temporal requirement that the proposed expert be engaged in performing the medical procedure at issue on the date of the occurrence giving rise to the claim. Rather, the expert may have derived his training, experience, and knowledge as a result of prior practice in the field; but that is not to suggest that a lapse of time may not bear on a judge's assessment of an expert's training, experience, and knowledge, only that it is not an automatic disqualifier. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

98. As the trial court erred in allowing plaintiff to submit an Affidavit of Merit under *N.J. Stat. Ann. § 2A:53A-27* authored by a doctor who, unlike defendant, was not a board-certified gastroenterologist, plaintiff's case had to be dismissed for failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*. *Ryan v. Renny*, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009).

99. Court reversed trial court's order dismissing claimant's complaint against attorney for legal malpractice where claimant failed to provide an affidavit of merit pursuant to the Affidavit of Merit Statute ("AMS"), *N.J. Stat. Ann. § 2A:53A-27*; the law division incorrectly concluded that the date of accrual was whether the AMS applied to claims that accrued after the effective date of the statute, where the legislature intended to make the applicability of the AMS turn on the material facts and conduct underlying the cause of action. *Christie v. Jeney*, 167 N.J. 509, 772 A.2d 361, 2001 N.J. LEXIS 509 (2001).

100. While *N.J. Stat. Ann. § 2A:53A-27* spoke to the time limitation that must be placed upon an extension of the time to file an affidavit, i.e., not to exceed 60 days, it did not specifically state that the additional 60-day period had to commence upon the expiration of the initial 60-day period after the answer was filed. But, where an injury claimant made the request for an extension after the 120 days representing the original time limit and an extension had already run, the request for a 60 day extension had to be denied as untimely, as the period for which an extension could have been granted had since expired. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

101. In a medical malpractice claim for failure to diagnose breast cancer, claimants action was not barred by failure to file an affidavit of merit as required by the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, where the claimants did not discover the malpractice until after the statute was passed, but the cause of action had accrued before passage of the statute. *Fernandez v. Jersey City Med. Ctr.*, 336 N.J. Super. 594, 765 A.2d 1073, 2001 N.J. Super. LEXIS 21 (App.Div. 2001).

102. Plaintiff in medical malpractice action who did not comply with *N.J. Stat. Ann. § 2A:53A-27*, the affidavit of merit statute, that required filing within 120 days of defendant's answer, did not demonstrate extraordinary circumstances for her failure to timely file where her attorney explained it was simple inadvertence on his part because carelessness, lack of circumspection, or lack of diligence by counsel were not extraordinary circumstances that excused missing a filing deadline. *Palanque v. Lambert-Woolley*, 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

103. Although the absence of a Ferreira conference did not toll the filing period provided in *N.J. Stat. Ann. § 2A:53A-27* of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*, due to the confusion in scheduling such a conference and the effect of its omission, dismissal of a condominium association's third-party complaint was not justified. *Paragon Contrs., Inc. v. Peachtree Condo. Ass'n*, 202 N.J. 415, 997 A.2d 982, 2010 N.J. LEXIS 538 (2010).

104. Environmental engineering is a sub-field and/or specialty of engineering and clearly falls within the purview of the engineering licensing statute, *N.J. Stat. Ann. § 45:8-28*; as such, an environmental engineer is a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)*, and professional negligence claims asserted against such a licensed environmental engineer, either individually or under the respondeat superior doctrine, are subject to the affidavit of merit requirements imposed pursuant to *N.J. Stat. Ann. § 2A:53A-27*. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

105. Dismissal with prejudice of a medical malpractice action for failure to comply with the Affidavit of Merit Statute, where claimant's son died after being treated by hospital and doctors, was vacated because hospital's and doctors' delay in providing decipherable records, were so extraordinary that a dismissal without prejudice before the statute of limitations ran would have been necessary, because no opportunity to present evidence on the issue of such extraordinary circumstances was provided. *Barreiro v. Morais*, 318 N.J. Super. 461, 723 A.2d 1244, 1999 N.J. Super. LEXIS 48 (App.Div. 1999).

106. Pharmacist's breach of duty by filling a prescription with the wrong drug falls within the common knowledge exception to the affidavit of merit statute recognized in *Hubbard ex rel. Hubbard v. Reed*, 168 N.J. 387 (2001), so the filing of a certificate of merit under *N.J. Stat. Ann. § 2A:53A-27* is not required in such a case. *Bender v. Walgreen Eastern Co., Inc.*, 399 N.J. Super. 584, 945 A.2d 120, 2008 N.J. Super. LEXIS 104 (App.Div. 2008).

107. In a medical malpractice action against a medical facility and doctors, patient's affidavit of merit signed by a doctor and filed substantially complied with the requirements of the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, even though the affidavit was filed but was inadvertently not served on the medical facility and doctors; an unsworn and uncertified expert's report provided to the medical facility and doctors also substantially corresponded with the requirements of § 2A:53A-27 where the doctor expert had committed his professional reputation to it in submitting it on his professional letterhead. *Mayfield v. Community Med. Assocs., P.A.*, 335 N.J. Super. 198, 762 A.2d 237, 2000 N.J. Super. LEXIS 413 (App.Div. 2000).

108. Dismissal with prejudice of a medical malpractice action for failure to comply with the Affidavit of Merit Statute, where claimant's son died after being treated by hospital and doctors, was vacated because hospital's and doctors' delay in providing decipherable records, were so extraordinary that a dismissal without prejudice before the statute of limitations ran would have been necessary, because no opportunity to present evidence on the issue of such extraordinary circumstances was provided. *Barreiro v. Morais*, 318 N.J. Super. 461, 723 A.2d 1244, 1999 N.J. Super. LEXIS 48 (App.Div. 1999).

109. When an inmate failed to produce the required affidavit of an expert pursuant to *N.J. Stat. Ann. § 2A:53A-27*, the inmate did not establish a claim for medical malpractice under New Jersey law; the inmate lacked the experience

and understanding required to assess the standard of care for a colostomy patient who, like the inmate, sought reversal of a colostomy or medication for his medical condition. *Ayala v. Terhune*, 195 Fed. Appx. 87, 2006 U.S. App. LEXIS 20908 (3d Cir. N.J. 2006).

110. When an inmate failed to produce the required affidavit of an expert pursuant to *N.J. Stat. Ann. § 2A:53A-27*, the inmate did not establish a claim for medical malpractice under New Jersey law; the inmate lacked the experience and understanding required to assess the standard of care for a colostomy patient who, like the inmate, sought reversal of a colostomy or medication for his medical condition. *Ayala v. Terhune*, 195 Fed. Appx. 87, 2006 U.S. App. LEXIS 20908 (3d Cir. N.J. 2006).

111. Defendant's answer was not effective until plaintiff's filing of second amended complaint; therefore affidavit filed within 120 days of second amended complaint was in accordance with the statute's requirements. *Snyder v. Pascack Valley Hosp.*, 303 F.3d 271, 2002 U.S. App. LEXIS 17411 (3d Cir. N.J. 2002).

112. When medical records requested by a guardian ad prosequendum presumptively had a substantial bearing on the ability to prepare an affidavit of merit, a treating facility did not establish a basis for a contrary finding, and the guardian timely complied with *N.J. Stat. Ann. § 2A:53A-28* after the relation back doctrine was applied, the guardian was entitled to the medical records and the trial court erred in dismissing the action. *Aster v. Shoreline Behavioral Health*, 346 N.J. Super. 536, 788 A.2d 821, 2002 N.J. Super. LEXIS 30 (App.Div. 2002).

113. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

114. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

115. Nature of the injury alleged in any plaintiff's complaint must be an action for damages for personal injuries, wrongful death or property damage in order for the *Affidavit of Merit Statute* to apply. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

116. "Property damage" language of the Affidavit of Merit Statute (AMS) includes a claim for money damages; thus, where a property owner filed a third party claim against an engineering firm, hired to perform work on the property, pursuant to an indemnity clause in a contract, the AMS applied because the owner was seeking the recoupment of defense costs incurred in the underlying action that was undetermined. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

117. By its terms, the Affidavit of Merit Statute applies to causes of action for "malpractice or negligence." Thus, regardless of the label applied to the cause of action in the pleading, if the underlying factual allegations of the claim require proof of a deviation from the professional standard of care for that specific profession, then an affidavit of merit is necessary. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

118. In regard to the timing of the filing of a statement in lieu of an affidavit, Fla. Stat. ch. 53A-28 2A: 53A-28 of the New Jersey's Affidavit of Merit Statute, N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29 was found to be clear. The sworn statement was meant to replace the affidavit of merit required by N.J. Stat. Ann. § 2A:53A-27, and in that regard, N.J. Stat. Ann. § 2A:53A-28 specifically referred back to N.J. Stat. Ann. § 2A:53A-27, which clearly required the affidavit of merit to be filed within 60 days of the filing of the answer to the complaint. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

119. In a suit regarding coverage, an insured's third-party negligence claim against his insurance broker and the broker's employer was dismissed because the insured did not serve an affidavit of merit prior to filing suit, as required by the Affidavit of Merit Statute, N.J. Stat. Ann. § 2A:53A-27, but since the third-party defendants' motion was not filed until the summary judgment stage of proceedings, the dismissal was without prejudice to refile the claims after service of the required affidavits of merit. *N.H. Ins. Co. v. Diller*, 678 F. Supp. 2d 288, 2009 U.S. Dist. LEXIS 120836, 2010 A.M.C. 968 (D.N.J. 2009).

120. Failure to conduct a case management conference pursuant to case law within 90 days of the service of an answer in a malpractice action does not toll the timeframes set forth in the Affidavit of Merit statute, N.J. Stat. Ann. §§ 2A:53A-26 -- 29. *Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn*, 410 N.J. Super. 510, 983 A.2d 604, 2009 N.J. Super. LEXIS 242 (App.Div. 2009).

121. As to tort claims brought by undocumented aliens against a contractor that operated an allegedly abusive detention facility, the contractor's employees were not within the definition of licensed persons in N.J. Stat. Ann. § 2A:53A-26 for purposes of the affidavit of merit requirement of N.J. Stat. Ann. § 2A:53A-27. *Hawa Abdi Jama v. INS*, 334 F. Supp. 2d 662, 2004 U.S. Dist. LEXIS 18388 (D.N.J. 2004).

122. Attorneys are "licensed persons" under N.J. Stat. Ann. § 2A:53A-26. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under N.J. Stat. Ann. § 2A:53A-27 and failure to provide such an affidavit could result in dismissal under N.J. Stat. Ann. § 2A:53A-29; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

123. In contrast to the affidavit of merit statute, N.J. Stat. Ann. §§ 2A:53A-27 to 53A-29, which makes the affidavit an element essential to the establishment of a cause of action for professional negligence, the certification requirement of N.J. Stat. Ann. § 39:6A-8a of the New Jersey Automobile Insurance Cost Reduction Act is procedural in nature and is related to the sufficiency of the pleadings, i.e. the statement of the claim; it is not intended to go to the establishment of a cause of action. *Konopka v. Foster*, 356 N.J. Super. 223, 812 A.2d 363, 2002 N.J. Super. LEXIS 424 (App.Div. 2002).

124. When defendant sewer authority responded to an engineer's action for damages by filing a malpractice counterclaim, the sewer authority became in effect the plaintiff on the malpractice counterclaim; therefore, it had an obligation to file an affidavit of merit. *Charles A. Manganaro Consulting Eng'rs v. Carneys Point Twp.*, 344 N.J. Super. 343, 781 A.2d 1116, 2001 N.J. Super. LEXIS 378 (App.Div. 2001).

125. Where mother sued dentist for malpractice after dentist's associate extracted the wrong tooth from child's

mouth, mother's suit was improperly dismissed for failure to comply with affidavit of merit requirement because there was a common knowledge exception to the statutory requirement where expert testimony was not required to establish that dentist's care fell below acceptable professional standards. *Hubbard v. Reed*, 168 N.J. 387, 774 A.2d 495, 2001 N.J. LEXIS 778 (2001).

126. Legislative intent in enacting affidavit of merit statute was to curtail the filing of frivolous malpractice actions and to require all plaintiffs in malpractice cases to make a threshold showing that their claim was meritorious in order that meritless lawsuits could be readily identified at an early stage of litigation; the failure to file a timely affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* did not warrant a dismissal with prejudice where the parties did not evince a knowing intent to disregard and thereby thwart the sound purpose of the statute. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

127. Where a case had been referred to mediation pursuant to *N.J. Ct. R. 1:40-4(a)* and a mediation standstill order was in effect when an affidavit of merit would have been due pursuant to *N.J. Stat. Ann. § 2A:53A-27* from the parties raising malpractice claims, the failure to timely file affidavits of merit did not warrant a dismissal with prejudice. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

128. Former client's malpractice claim against a law firm was barred for failure to produce an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27*; an unsworn statement did not satisfy the requirements under *N.J. Stat. Ann. § 2A:53A-28* for relief from the affidavit of merit obligation, nor did the matter fall within the "common knowledge" exception. *Kant v. Seton Hall Univ.*, 422 Fed. Appx. 186, 2011 U.S. App. LEXIS 7276 (3d Cir. N.J. 2011).

129. District court did not have to decide an attorney's claim that a former client's malpractice action had to be dismissed under New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, because the client did not file an affidavit of merit after the attorney filed a motion to dismiss the client's action. Facts the client learned when he declared bankruptcy in 1994 gave him reasonable notice that the attorney may have committed malpractice when he represented the client in an earlier bankruptcy case he filed in 1988, and the malpractice action the client filed against the attorney in 2009 was filed well after the six-year statute of limitations contained in *N.J. Stat. Ann. § 2A:14-1* expired. *Ricca v. Anastasio*, 2010 U.S. Dist. LEXIS 78401 (D.N.J. Aug. 2 2010).

130. In a legal malpractice action brought by a former patent holder against two Pennsylvania-based law firms, who had bona fide offices in New Jersey, arising out of the alleged negligence by a patent attorney employed successively by those law firms and who represented the former patent holder before the United States Patent and Trademark Office, the trial court correctly held that an affidavit of merit, pursuant to *N.J. Stat. Ann. §§ 2A:53A-26 to -- 2A:53A-29*, was necessary arising out of alleged negligence by the patent attorney in letting the patent expire since the firms were "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26(c)*. However, the dismissal of the action for the failure to submit an affidavit of merit was vacated on equitable grounds since the case law in New Jersey was unsettled as to whether an affidavit of merit was required in such circumstances and federal decisions had taken divergent approaches on the issue with regard to firms as opposed to individually licensed persons. *Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP*, 416 N.J. Super. 1, 3 A.3d 518, 2010 N.J. Super. LEXIS 101, 99 U.S.P.Q.2d (BNA) 1339 (App.Div. 2010).

131. Client's legal malpractice claim was properly dismissed because the client failed to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27*. The claim was not exempt from the affidavit of merit requirement, as it did not turn on common knowledge; the client alleged a failure to file a suit within the statute of limitations, and the claim therefore depended on an industry standard of care. *Thakar v. Tan*, 372 Fed. Appx. 325, 2010 U.S. App. LEXIS 6218 (3d Cir. N.J. 2010).

132. In a seller's suit against a real estate agent, an attorney, the purchasers, and others, the trial court correctly

dismissed the seller's legal malpractice claim with prejudice against the attorney because the seller failed to serve an affidavit of merit within the time required by *N.J. Stat. Ann. § 2A:53A-27* and did not establish that: her failure to comply with the statute was due to exceptional circumstances; she substantially complied with the statute; or the attorney should be estopped from seeking dismissal of the claim. The seller's failure to comply with the affidavit of merit statute did not, however, bar her from asserting a claim against the attorney for fraud because that claim did not require proof that the attorney deviated from the standard of care applicable to the legal profession. *Stoecker v. Echevarria*, 408 N.J. Super. 597, 975 A.2d 975, 2009 N.J. Super. LEXIS 188 (App.Div. 2009).

133. Third party plaintiffs failed to meet requirements for filing an interlocutory appeal challenging dismissal of their third party complaint, as: (1) even their legal malpractice claim did not fail as a matter of law because they had not complied with the New Jersey Affidavit of Merit statute, that finding did not involve a controlling question of law; (2) two allegedly contradictory opinions on the Affidavit of Merit issue was insufficient to show that there were substantial grounds for a difference of opinion as to the operation and application of the Affidavit of Merit statute; and (3) the speculative assertion that certifying an interlocutory appeal would allow all parties to engage in more meaningful settlement negotiations was insufficient to establish that an immediate appeal would materially advance the ultimate termination of the litigation, and permitting an interlocutory appeal would likely result in a delay of the already protracted litigation. *Acosta v. Pace Local I-300 Health Fund*, 2007 U.S. Dist. LEXIS 26054 (D.N.J. Apr. 9 2007).

134. Motion pursuant to *Fed. R. Civ. P. 12(b)(6)* for dismissal with prejudice under *N.J. Stat. Ann. § 2A:53A-26* against one law firm was denied because a client satisfied the sworn statement alternative pursuant to *N.J. Stat. Ann. § 2A:53A-28* to the sworn affidavit pleading requirement under *N.J. Stat. Ann. § 2A:53A-27* for filing a malpractice case where the firm failed to turn over records as requested by the client, but the motion was granted as to two other law firms because the client failed to satisfy the sworn statement alternative where he did not request records from the other firms. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1 2003).

135. In an action for legal malpractice, the client would need eventually to provide an affidavit of merit under *N.J. Stat. Ann. 2A:53A-27* to continue, but the client's complaint against the attorneys and their law firm was not subject to dismissal under *Fed. R. Civ. P. 12(b)(6)*. *Manley v. Maran*, 2003 U.S. Dist. LEXIS 19696 (D.N.J. June 20 2003), dismissed in part by 2003 U.S. Dist. LEXIS 19645 (D.N.J. Aug. 1, 2003).

136. Though the client proffered no explanation for her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27*, as her allegations did not require the testimony of an expert in order to permit the jury to determine the issue of negligence, the affidavit was not required and dismissal was denied. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

137. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

138. Plaintiff client's action against defendant lawyers for professional negligence and fraud was properly dismissed for failure to comply with the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, which required plaintiff to obtain an affidavit from an appropriate licensed person that indicated that there existed a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards. *Levinson v. D'Alfonso & Stein*, 320 N.J. Super. 312, 727 A.2d 87, 1999 N.J. Super. LEXIS 131 (App.Div. 1999).

139. Affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, with an effective date of June 25, 1995, which applied

to malpractice cases against licensed persons where the underlying legally significant facts happened, arose, or took place on or after the effective date of § 2A:53A-27, did not apply to a malpractice action against defendant law firm where the malpractice of missing the statute of limitations for the ex-client's personal injury action for a workplace accident occurred before the effective date of § 2A:53A-27. *Diver v. Gross, Hanlon, Truss & Messer, P.C.*, 317 N.J. Super. 547, 722 A.2d 623, 1998 N.J. Super. LEXIS 527 (Law Div. 1998).

140. While *N.J. Stat. Ann. § 2A:53A-27* spoke to the time limitation that must be placed upon an extension of the time to file an affidavit, i.e., not to exceed 60 days, it did not specifically state that the additional 60-day period had to commence upon the expiration of the initial 60-day period after the answer was filed. But, where an injury claimant made the request for an extension after the 120 days representing the original time limit and an extension had already run, the request for a 60 day extension had to be denied as untimely, as the period for which an extension could have been granted had since expired. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

141. Dismissal of a legal malpractice claim for failure to timely file an affidavit of merit pursuant to *N.J. Stat. Ann. § 2A:53A-27* should be with prejudice unless there are "extraordinary circumstances": carelessness, lack of circumspection, lack of diligence on the part of counsel, ignorance of the law, or failure to seek legal advice are not extraordinary circumstances that will excuse missing a filing deadline, although an incapacitating physical condition will constitute an extraordinary circumstance. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

142. Courts are required to enter into a fact-sensitive inquiry in order to determine whether "extraordinary circumstances" exist so as to relax the filing requirement for an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*. *Hyman Zamft & Manard, L.L.C. v. Cornell*, 309 N.J. Super. 586, 707 A.2d 1068, 1998 N.J. Super. LEXIS 157 (App.Div. 1998).

143. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of a the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

144. Certificate of an attorney who did not specialize in the area of matrimonial law that formed the basis of a legal malpractice claim did not constitute an affidavit of merit sufficient to maintain a cause of action against a licensed attorney for malpractice or negligence. *Cornblatt v. Barow*, 303 N.J. Super. 81, 696 A.2d 65, 1997 N.J. Super. LEXIS 315 (App.Div. 1997), reversed by 153 N.J. 218, 708 A.2d 401, 1998 N.J. LEXIS 235 (1998).

145. As a company under contract with the New Jersey Department of Corrections to treat prisoners did not provide evidence that it was a licensed health care facility under *N.J. Stat. Ann. § 2A:53A-26(j)*, it did not show that New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, applied to it; therefore, the trial court erred in dismissing an inmate's malpractice suit for his failure to provide the company with an affidavit of merit. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

146. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

147. Supreme Court of New Jersey holds that, in the future, a physician defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was

involved when rendering treatment to the plaintiff. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

148. Professional negligence claims asserted against a doctor who identified and treated an involuntarily committed patient's ankle injury and a doctor who allegedly failed to respond to the ankle injury with appropriate haste were dismissed because the patient did not submit affidavits of merit; however, under the common knowledge exception, the patient's failure to submit an affidavit of merit did not require dismissal of a negligence claim asserted against a doctor who allegedly failed to observe and diagnose the ankle injury because the patient alleged that his ankle fracture was obvious. *Bullock v. Ancora Psychiatric Hosp.*, 2011 U.S. Dist. LEXIS 92307 (D.N.J. Aug. 18 2011).

149. Prisoner's medical malpractice claims failed because the prisoner failed to tender the affidavit required by *N.J. Stat. Ann. § 2A:53A-27* within the time permitted, and his medical problems (and the injuries flowing therefrom), were complex, and the medical negligence described was not of the sort that would have been easily resolved without expert reference to a standard of care. *Olivares v. United States*, 2011 U.S. App. LEXIS 16507 (3d Cir. N.J. Aug. 10 2011).

150. In a medical malpractice suit, the appellate court erred by reversing a trial court's ruling that a patient had satisfied the waiver provision under *N.J. Stat. Ann. § 2A:53A-41(c)*, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care, because based on the plain language of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, the patient's counsel made a good faith effort to identify an expert in the same specialty as the doctor being sued but was unsuccessful. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

151. Waiver provision of *N.J. Stat. Ann. § 2A:53A-41* prescribes that where a plaintiff has made a good faith showing of inability to identify an expert in the same specialty or subspecialty as the defendant, his proposed expert must possess sufficient training, experience and knowledge to provide the testimony as a result of active involvement in, or full-time teaching of, medicine in the applicable area of practice or a related field of medicine, and the Supreme Court of New Jersey interprets that language as a broad grant of discretion to the trial judge that does not bear with it a temporal requirement that the proposed expert be engaged in performing the medical procedure at issue on the date of the occurrence giving rise to the claim. Rather, the expert may have derived his training, experience, and knowledge as a result of prior practice in the field; but that is not to suggest that a lapse of time may not bear on a judge's assessment of an expert's training, experience, and knowledge, only that it is not an automatic disqualifier. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

152. As the trial court erred in allowing plaintiff to submit an Affidavit of Merit under *N.J. Stat. Ann. § 2A:53A-27* authored by a doctor who, unlike defendant, was not a board-certified gastroenterologist, plaintiff's case had to be dismissed for failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*. *Ryan v. Renny*, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009).

153. Inmate could not assert a medical malpractice claim arising from alleged failures to administer tests and medication for the inmate's liver condition; the inmate failed to state a claim pursuant to *N.J. Stat. Ann. § 2A:53A-29* because there was no evidence that the inmate complied with the affidavit of merit requirement under *N.J. Stat. Ann. § 2A:53A-27*. *Ali v. D.O.C.*, 2008 U.S. Dist. LEXIS 96061 (D.N.J. Nov. 19 2008), dismissed without prejudice by 2010 U.S. Dist. LEXIS 90546 (D.N.J. Aug. 31, 2010).

154. Pharmacist's breach of duty by filling a prescription with the wrong drug falls within the common knowledge exception to the affidavit of merit statute recognized in *Hubbard ex rel. Hubbard v. Reed*, 168 N.J. 387 (2001), so the filing of a certificate of merit under *N.J. Stat. Ann. § 2A:53A-27* is not required in such a case. *Bender v. Walgreen Eastern Co., Inc.*, 399 N.J. Super. 584, 945 A.2d 120, 2008 N.J. Super. LEXIS 104 (App.Div. 2008).

155. In a malpractice case, a hospital was not entitled to dismissal of the case based on the patient's failure to provide an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* because the hospital waited more than 20

months after it filed its answer to move for dismissal and the parties had already engaged in extensive discovery. *Mottola v. City of Union City*, 2008 U.S. Dist. LEXIS 21605 (D.N.J. Mar. 14 2008).

156. A trial court erred by dismissing a mother's professional negligence claim against a health care system and a licensed midwife for failing to file an Affidavit of Merit, pursuant to the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, as the midwife was not a licensed person under *N.J. Stat. Ann. § 2A:53A-26*, for whom an Affidavit of Merit was required, and the trial court erred by failing to hold a required accelerated case management conference in the action, at which time the dismissal issue could have been addressed and avoided. *Saunders ex rel. Saunders v. Capital Health System at Mercer*, 398 N.J. Super. 500, 942 A.2d 142, 2008 N.J. Super. LEXIS 50 (App.Div. 2008).

157. Inmate's Federal Tort Claims Act claim for medical malpractice against prison doctors was properly dismissed because the inmate failed to serve an affidavit of merit as required by *N.J. Stat. Ann. §§ 2A:53A-27, 2A:53A-29*, which applied pursuant to 28 U.S.C.S. § 1346(b)(1); the inmate's certification was deficient as it merely opined that medical malpractice was committed without mentioning any of the defendants, let alone specifying what each did or opining that any particular defendant's conduct fell outside acceptable professional standards. *Bramson v. Sulayman*, 251 Fed. Appx. 84, 2007 U.S. App. LEXIS 24390 (3d Cir. N.J. 2007), writ of certiorari denied by 552 U.S. 1265, 128 S. Ct. 1666, 170 L. Ed. 2d 369, 2008 U.S. LEXIS 2382, 76 U.S.L.W. 3497 (2008).

158. Inmate's appeal was dismissed pursuant to 28 U.S.C.S. § 1915(e)(2)(B) because, inter alia: (1) the extent of the United States' liability under the Federal Tort Claims Act was determined by state law; (2) the inmate failed to provide the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*, which was triggered because he complained of the medical care he received in the prison's health care facility; (3) pursuant to *N.J. Stat. Ann. § 2A:53A-29*, the inmate's failure to provide the affidavit constituted a failure to state a cause of action; and (4) the inmate's claims against an orthopedic surgeon were also properly dismissed because the inmate failed to obtain the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-29*. *Horne v. United States*, 223 Fed. Appx. 154, 2007 U.S. App. LEXIS 5482 (3d Cir. N.J. 2007).

159. Summary judgment was granted to prison officials on an inmate's state law claims for medical malpractice and negligence because the inmate failed to file an affidavit-of-merit, nor substantially complied with *N.J. Stat. Ann. § 2A:53A-27*, where he did not make an effort to secure an expert report until well after the 60-day deadline, the inmate did not provide any certification or information in lieu of the affidavit, and he did not explain his failure to comply. *Nash v. Brown*, 2005 U.S. Dist. LEXIS 21421 (D.N.J. Sept. 20 2005).

160. Plaintiff's malpractice action was dismissed pursuant to *N.J. Stat. Ann. § 2A:53A-29* because the doctor provided plaintiff with the requested medical records within 45 days of plaintiff's notice that the records were needed to prepare an affidavit of merit, but plaintiff failed to file a timely affidavit of merit, which was required by *N.J. Stat. Ann. § 2A:53A-27*; because the doctor had provided the requested records within the 45-day period, plaintiff could not invoke *N.J. Stat. Ann. § 2A:53A-28* to excuse her failure to file a timely affidavit of merit. *Rhoads v. Masciarelli*, 2005 U.S. Dist. LEXIS 36428 (D.N.J. Aug. 26 2005).

161. Inmate's state law medical malpractice claims against a doctor and prison health care providers were erroneously dismissed for failure to serve a required affidavit because the common knowledge exception applied, and a timely affidavit was not required, as the professional negligence from twice failing to obtain blood tests that were ordered by a doctor was obvious to a layperson and expert testimony as to a deviation from the standard of care was not required. *Bryan v. Shah*, 351 F. Supp. 2d 295, 2005 U.S. Dist. LEXIS 258 (D.N.J. 2005).

162. Patient's malpractice suit against a doctor was properly dismissed for failure to comply with the certificate of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, as neither of the two documents submitted by the patient contained the language necessary to be considered a certification under *N.J. Ct. R. 1:4-4(b)*, and neither of the declarants was placed under oath when executing the documents; the failure to place a declarant under oath was not a technical deficiency for which the doctrine of substantial compliance could be invoked, but went to the very nature of an affidavit. *Tunia v. St.*

Francis Hosp., 363 N.J. Super. 301, 832 A.2d 936, 2003 N.J. Super. LEXIS 304 (App.Div. 2003).

163. Patient's counsel's intentional delay in serving the summonses and complaint in order to avoid application of the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*, warranted dismissal of the medical malpractice complaint. *Czepas v. Schenk*, 362 N.J. Super. 216, 827 A.2d 1080, 2003 N.J. Super. LEXIS 240 (App.Div. 2003).

164. Where a medical center that was sued for medical malpractice unjustifiably withheld the relevant patient's medical records, the records presumptively had a substantial bearing on the ability to prepare an affidavit of merit, and, since the presumption was not rebutted and plaintiffs timely complied with *N.J. Stat. Ann. § 2A:53A-28* of the Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, by requesting to file a sworn statement regarding the withheld records in lieu of an affidavit of merit, the failure to file an affidavit of merit pursuant to *N.J. Stat. Ann. § 2A:53A-27* was excused. *Aster v. Shoreline Behavioral Health*, 346 N.J. Super. 536, 788 A.2d 821, 2002 N.J. Super. LEXIS 30 (App.Div. 2002).

165. Administratrix substantially complied with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, by retaining expert before filing her medical malpractice complaint and attaching his report to her interrogatory answers within the statutory period, followed by affidavit of merit; the doctor was not prejudiced. *Hefferon v. Gitler*, 346 N.J. Super. 141, 787 A.2d 222, 2001 N.J. Super. LEXIS 464 (App.Div. 2001).

166. Where defendant physician acknowledged misreading lab results and had misdiagnosed an ectopic pregnancy, performing unnecessary surgery on a non-pregnant plaintiff, plaintiff was not required pursuant to *N.J. Stat. Ann. § 2A:53A-27* to file an affidavit of merit because the common knowledge exception recognized that meritorious claims could move forward without the added and unnecessary cost of hiring an expert to execute an affidavit when that expert was not going to testify at trial. *Palanque v. Lambert-Woolley*, 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

167. Plaintiff in medical malpractice action who did not comply with *N.J. Stat. Ann. § 2A:53A-27*, the affidavit of merit statute, that required filing within 120 days of defendant's answer, did not demonstrate extraordinary circumstances for her failure to timely file where her attorney explained it was simple inadvertence on his part because carelessness, lack of circumspection, or lack of diligence by counsel were not extraordinary circumstances that excused missing a filing deadline. *Palanque v. Lambert-Woolley*, 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

168. Dismissal of husband's malpractice case for the death of his wife was reversed where husband substantially complied with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, doctor was not prejudiced by lapse in strict compliance, and husband offered a reasonable explanation for the lapse. *Fink v. Thompson*, 167 N.J. 551, 772 A.2d 386, 2001 N.J. LEXIS 654 (2001).

169. Defendant hospital in a medical malpractice and nursing negligence action could assert the negligence of defendant anesthesiologists in causing plaintiff's injuries even though defendant anesthesiologists were no longer a party to the action as plaintiff failed to file an affidavit of merit against the anesthesiologists under *N.J. Stat. Ann. § 2A:53A-27* because a contrary result was inconsistent with joint tortfeasor contribution and comparative negligence law. *Burt v. W. Jersey Health Sys.*, 339 N.J. Super. 296, 771 A.2d 683, 2001 N.J. Super. LEXIS 163 (App.Div. 2001).

170. Trial court properly dismissed plaintiff's medical malpractice action for failure to comply with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-27*, because interrogatories lacked proper affidavit. *Kritzberg v. Tarsny*, 338 N.J. Super. 254, 768 A.2d 810, 2001 N.J. Super. LEXIS 112 (App.Div. 2001).

171. Dismissal of medical negligence and lack of informed consent claims was proper because no affidavit of merit signed by a physician was filed under *N.J. Stat. Ann. § 2A:53A-27*, therefore the causes of action had not existed and no exception for common knowledge was provided for in the statute; however, where a doctor implanted a dangerous drug in a patient's arm without informing the patient of the danger or the fact that the procedure was invasive, no affidavit was needed for claims of assault and battery, breach of contract, or product liability, and a trial court's dismissal for

failure to file an affidavit of merit was reversed. *Darwin v. Gooberman*, 339 N.J. Super. 467, 772 A.2d 399, 2001 N.J. Super. LEXIS 77 (App.Div. 2001).

172. In a medical malpractice action, where plaintiffs filed an affidavit within the 60-day statutory extension period as provided by N.J. Stat. Ann. § 2A:53A-27 and where plaintiffs counsel's inadvertent delay in filing the affidavit constituted good cause, the affidavit was timely filed. *Burns v. Belafsky*, 166 N.J. 466, 766 A.2d 1095, 2001 N.J. LEXIS 173 (2001).

173. In a medical malpractice action against a medical facility and doctors, patient's affidavit of merit signed by a doctor and filed substantially complied with the requirements of the affidavit of merit statute, N.J. Stat. Ann. § 2A:53A-27, even though the affidavit was filed but was inadvertently not served on the medical facility and doctors; an unsworn and uncertified expert's report provided to the medical facility and doctors also substantially corresponded with the requirements of § 2A:53A-27 where the doctor expert had committed his professional reputation to it in submitting it on his professional letterhead. *Mayfield v. Community Med. Assocs., P.A.*, 335 N.J. Super. 198, 762 A.2d 237, 2000 N.J. Super. LEXIS 413 (App.Div. 2000).

174. Trial court correctly dismissed plaintiffs' medical malpractice lawsuit under the Affidavit of Merit Statute, N.J. Stat. Ann. § 2A:53A-27, after they failed to provide a timely affidavit of merit, and plaintiff failed to show extraordinary circumstances for failing to comply. *Kubiak v. Robert Wood Johnson Univ. Hosp.*, 332 N.J. Super. 230, 753 A.2d 166, 2000 N.J. Super. LEXIS 256 (App.Div. 2000).

175. Affidavit of merit pursuant to N.J. Stat. Ann. § 2A:53A-27 was required in a malpractice action against a dentist where plaintiff intended to rely on either common knowledge or *res ipsa loquitur* rather than upon expert testimony. *Hubbard v. Reed*, 331 N.J. Super. 283, 751 A.2d 1055, 2000 N.J. Super. LEXIS 194 (App.Div. 2000), reversed by 168 N.J. 387, 774 A.2d 495, 2001 N.J. LEXIS 778 (2001).

176. Federal district court's dismissal of a patient's medical malpractice action with prejudice as a result of her failure to file an affidavit of merit as required by N.J. Stat. Ann. § 2A:53A-27 of the New Jersey affidavit of merit statute, N.J. Stat. Ann. §§ 2A:53A-26 et seq., was proper at least with respect to the negligent acts that were alleged to have occurred after the effective date of the affidavit of merit statute because the patient failed to provide an adequate excuse for her failure to comply with the statute, the most reasonable inference from the record was that the patient's counsel was simply unaware of the affidavit of merit requirement, and the circumstances thus fell short of "exceptional and compelling." *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

177. Federal district court erred in dismissing a patient's entire medical malpractice complaint as a result of her failure to file an affidavit of merit as required by N.J. Stat. Ann. § 2A:53A-27 of the New Jersey affidavit of merit statute, N.J. Stat. Ann. § 2A:53A-26 et seq., where there was competent evidence that acts of malpractice occurred before the effective date of the affidavit of merit statute. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

178. Dismissal of medical malpractice action, with prejudice, for failure to present an affidavit of merit within 120 days as required by N.J. Stat. Ann. § 2A:53A-27 was affirmed because plaintiff did not demonstrate extraordinary circumstances; the fact that plaintiff had an expert report in her possession prior to filing suit did not satisfy the statutory requirement. *Palanque v. Lambert-Woolley*, 327 N.J. Super. 158, 742 A.2d 1002, 2000 N.J. Super. LEXIS 3 (App.Div. 2000), reversed by, remanded by 168 N.J. 398, 774 A.2d 501, 2001 N.J. LEXIS 777 (2001).

179. Dismissal with prejudice of a medical malpractice action for failure to comply with the Affidavit of Merit Statute, where claimant's son died after being treated by hospital and doctors, was vacated because of defendant hospital's and doctors' extraordinary delay in providing decipherable records. *Barreiro v. Morais*, 318 N.J. Super. 461, 723 A.2d 1244, 1999 N.J. Super. LEXIS 48 (App.Div. 1999).

180. Affidavit of merit filed with a complaint pursuant to N.J. Stat. Ann. § 2A:53A-27 in a medical malpractice

action against radiologist for failure to interpret x-rays and diagnose a dislocated shoulder met the requirements of § 2A:53A-27 despite affiant doctor's lack of board certification in diagnostic radiology because it was clear that affiant's specialty of shoulder and elbow surgery necessarily overlapped with the practice of diagnostic radiology of the areas of the body at issue; the affidavit, properly supplemented by affiant's curriculum vitae, demonstrated that affiant was qualified to supply the required basis for the complaint. *Wacht v. Farooqui*, 312 N.J. Super. 184, 711 A.2d 405, 1998 N.J. Super. LEXIS 269 (App.Div. 1998).

181. Even though a patient's medical expert in a medical malpractice claim against a radiologist was not board certified in radiology and had not devoted his practice to the specialty of radiology, his affidavit of merit complied with N.J. Stat. Ann. § 2A:53A-27 because his specialty of shoulder and elbow surgery necessarily overlapped with the practice of diagnostic radiology of those areas of the body. *Wacht v. Farooqui*, 312 N.J. Super. 184, 711 A.2d 405, 1998 N.J. Super. LEXIS 269 (App.Div. 1998).

182. There are overlaps in practice between and among the various medical professions and specialties and therefore, for purposes of N.J. Stat. Ann. § 2A:53A-27, a doctor in one field is qualified to render an opinion as to the performance of a doctor in another with respect to their common areas of practice. *Wacht v. Farooqui*, 312 N.J. Super. 184, 711 A.2d 405, 1998 N.J. Super. LEXIS 269 (App.Div. 1998).

183. Summary judgment for chiropractor in medical malpractice action was improper, despite the fact that the patient and his spouse failed to file an affidavit of merit within 60 days after the filing of the answer, as required by N.J. Stat. Ann. § 2A:53A-27, because the threshold showing of merit could be established without the affidavit, as contemplated by N.J. Stat. Ann. § 2A:53A-29. *Janelli v. Keeper*, 317 N.J. Super. 309, 721 A.2d 1036, 1998 N.J. Super. LEXIS 513 (Law Div. 1998), overruled by *Hubbard v. Reed*, 331 N.J. Super. 283, 751 A.2d 1055, 2000 N.J. Super. LEXIS 194 (App.Div. 2000).

184. Plaintiff bankruptcy trustee's action against defendant insurer was one for professional negligence, and due to the complexity of the matter, the court concluded that an expert was needed to opine on whether defendant violated its duty; thus, the common knowledge exception to New Jersey's Affidavit of Merit Statute, N.J. Stat. Ann. § 2A:53A-27, did not apply, and since the trustee had not obtained an expert and complied with the statute's requirements, the action was barred and the complaint was dismissed. *Forman v. Wachovia Ins. Servs., Inc.*, 2010 U.S. Dist. LEXIS 95911 (D.N.J. Sept. 13 2010).

185. In a neighbor's trespass and boundary suit against property owners, the owners' failure to comply with the New Jersey Affidavit of Merit Statute, N.J. Stat. Ann. §§ 2A:53A-26 to 29, did not require dismissal of their third-party complaint against a surveyor. As the neighbor had not yet produced evidence to establish the surveyor's error, no independent claim by the owners of professional negligence, indemnity, or contribution had accrued. *Highland Lakes Country Club & Cmty. Ass'n v. Nicastro*, 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

186. Neighbor sued property owners for trespass; they filed a third-party complaint against their surveyor for indemnification and contribution. The owners' third-party complaint was improperly dismissed for their failure to comply with the New Jersey Affidavit of Merit Statute, N.J. Stat. Ann. §§ 2A:53A-26 to 29; as the neighbor had not yet shown any error in the survey, no claim for professional negligence had accrued. *Highland Lakes Country Club and Community Ass'n v. Nicastro*, 406 N.J. Super. 145, 966 A.2d 1102, 2009 N.J. Super. LEXIS 63 (App.Div. 2009), affirmed by 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

187. New Jersey township's claims against an environmental engineering firm were dismissed because the township failed to file an affidavit of merit to support its claims, as required by N.J. Stat. Ann. § 2A:53A-27; an affidavit of merit was required because the township could not prevail without showing that the firm had deviated from applicable environmental engineering standards, expert testimony was necessary to make that showing, and neither the "common knowledge" nor any other exception applied. *Montville Twp. v. Woodmont Builders, LLC*, 2006 U.S. Dist. LEXIS 514

(D.N.J. Jan. 5 2006).

188. Plaintiffs' negligence claims against two engineering firms arising from environmental inspections of property were dismissed because plaintiffs did not file an affidavit of merit as required under New Jersey law; the firms were "licensed persons" under *N.J. Stat. Ann. §§ 2A:53A-27 and 45:8-28*, and plaintiffs alleged a breach of professional responsibility by experts in the field of environmental consulting. Plaintiffs' reliance on an affidavit of merit submitted in connection with another party's cross-claim did not constitute substantial compliance with the *Affidavit of Merit Statute*. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 29255 (D.N.J. Nov. 22 2005).

189. *N.J. Stat. Ann. § 2A:53A-27* did not apply to an insured's claims against insurance agency and its agent because the insured's claims that the agent failed to obtain insurance in the amount insured requested were "common knowledge" claims that did not require expert testimony on the standard of care for insurance agents. *Boerger v. Commerce Ins. Servs.*, 2005 U.S. Dist. LEXIS 26350 (D.N.J. Nov. 1 2005).

190. Environmental engineering is a sub-field and/or specialty of engineering and clearly falls within the purview of the engineering licensing statute, *N.J. Stat. Ann. § 45:8-28*; as such, an environmental engineer is a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)*, and professional negligence claims asserted against such a licensed environmental engineer, either individually or under the respondeat superior doctrine, are subject to the affidavit of merit requirements imposed pursuant to *N.J. Stat. Ann. § 2A:53A-27*. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

191. Plaintiffs' failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27* resulted in dismissal of the professional malpractice claims asserted against an environmental consulting firm; the firm was a "licensed person" for purposes of *N.J. Stat. Ann. § 2A:53A-26(e)* because it was an engineering firm licensed pursuant to *N.J. Stat. Ann. § 45:8-28*, the unlicensed scientists who actually performed the environmental investigation work that was the subject of plaintiffs' claims worked for the firm that plaintiffs sought to hold liable under a respondeat superior theory, and an affidavit of merit was required because expert testimony was necessary to prove plaintiffs' claims. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

192. Cross-claims asserted against an environmental consulting firm were not subject to dismissal merely because plaintiffs failed to file an affidavit of merit in their professional negligence suit as required by *N.J. Stat. Ann. § 2A:53A-27*; while plaintiffs' claims were dismissed due to their failure to comply with the statute, their conduct had no bearing on the cross-claims asserted against the firm by two of its co-defendants. *Bonnieview Homeowners Ass'n, LLC v. Woodmont Builders, LLC*, 2005 U.S. Dist. LEXIS 23566 (D.N.J. Oct. 6 2005).

193. Where an architectural firm was the only named defendant in a suit by a property owner based on problems in a construction project, including allegations of professional negligence for which the owner had filed an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*, and where the architects had filed a third-party complaint seeking indemnification and contribution from an engineering firm that the architects used as consultants and designers on the project, the architects were not required to file an affidavit of merit on the engineers. Since the architects were merely passing the owner's professional negligence claims through to the engineers on allegations that the engineers were the true responsible party, the architects' third-party complaint did not assert a new affirmative professional negligence claim that would necessitate an affidavit of merit. *Diocese of Metuchen v. Prisco & Edwards, AIA*, 374 N.J. Super. 409, 864 A.2d 1168, 2005 N.J. Super. LEXIS 29 (App.Div. 2005).

194. Despite the statutory prohibition against licensing engineering firms, *N.J. Stat. Ann. § 45:8-27*, and the definition of "licensed person" under the Affidavit of Merit Statute (AMS), *N.J. Stat. Ann. § 2A:53A-26(e)*, the AMS would be significantly thwarted if plaintiffs could avoid the requirements of the statute by simply alleging professional negligence on the part of a firm of licensed professionals, without naming any such individual professional specifically; thus, the AMS applies to a defendant that is an engineering firm authorized to perform engineering services in New

Jersey, and a person bringing an action against such a defendant is required to file a timely affidavit pursuant to *N.J. Stat. Ann. § 2A:53A-27* or face dismissal. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

195. Expert's affidavit included language necessary to meet the requirements of *N.J. Stat. Ann. § 2A:53A-27* where it stated that he had reviewed the complaint and certain other documents and photographs related to the civil action and that he believed there existed a reasonable probability that the practice or work that was the subject of the complaint, fell outside the acceptable professional or occupational standards or practices of those in the engineering profession. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

196. In a malpractice action, *N.J. Stat. Ann. § 2A:53A-27* requires that an appropriate licensed professional attest that there exists a reasonable probability that there was a deviation in the standard of care in the activity, which is the subject of the complaint. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

197. *N.J. Stat. Ann. § 2A:53A-27* requires the plaintiff in a malpractice action to provide the affidavit of merit to the defendant. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

198. Under *N.J. Stat. Ann. § 2A:53A-27*, the content of the expert's affidavit is summary in nature. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

199. Under *N.J. Stat. Ann. § 2A:53A-27*, the required statement of opinion that the defendant's work or treatment fell outside acceptable professional standards need not be accompanied by the same detailed explanation and analysis that ordinarily would be contained in an expert's report required to be furnished pursuant to *N.J. Ct. R. 4:17-4(e)*. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

200. *N.J. Stat. Ann. § 2A:53A-27* requires only that the expert, whose affidavit is filed, certify that a reasonable probability exists that the defendant in question deviated from professional standards. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

201. Under *N.J. Stat. Ann. § 2A:53A-27*, an affidavit satisfied the requirements for an affidavit of merit when it stated that the affiant reviewed the complaint and other evidence related to the action, and that there was a fair chance that the practice that was the subject of the action fell outside usual professional standards. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

202. *N.J. Stat. Ann. § 2A:53A-27* requires that a plaintiff who sues a licensed person for negligence committed within his profession provide such a defendant with an affidavit indicating the suit's merit within 60 days from the date the defendant files an answer to the plaintiff's complaint. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

203. Claims for willful or wanton misconduct constitute causes of action under New Jersey law which are separate and distinct from a cause of action for negligence, and *N.J. Stat. Ann. § 2A:53A-27*, only applies to claims of negligence, not claims of willful or wanton misconduct. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

204. Because of the doctrine of respondeat superior, an affidavit must be provided under *N.J. Stat. Ann. § 2A:53A-27* where a negligent act committed by an unlicensed person in the course of his employment may be imputed to a licensed person. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

205. Business organization whose leadership is composed of "licensed persons" within the meaning of *N.J. Stat. Ann. § 2A:53A-26* is also considered a "licensed person" for purposes of the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-27*. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

206. Architectural firm was considered a "licensed person" under *N.J. Stat. Ann. § 2A:53A-27* because defendant architectural firm's leadership was comprised of licensed individuals under *N.J. Stat. Ann. § 2A:53A-26*. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

207. Claims for willful or wanton misconduct constitute causes of action under New Jersey law which are separate and distinct from a cause of action for negligence, and *N.J. Stat. Ann. § 2A:53A-27*, only applies to claims of negligence, not claims of willful or wanton misconduct. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

208. Defendant hospital in a medical malpractice and nursing negligence action could assert the negligence of defendant anesthesiologists in causing plaintiff's injuries even though defendant anesthesiologists were no longer a party to the action as plaintiff failed to file an affidavit of merit against the anesthesiologists under *N.J. Stat. Ann. § 2A:53A-27* because a contrary result was inconsistent with joint tortfeasor contribution and comparative negligence law. *Burt v. W. Jersey Health Sys.*, 339 N.J. Super. 296, 771 A.2d 683, 2001 N.J. Super. LEXIS 163 (App.Div. 2001).

209. Professional negligence claims asserted against a doctor who identified and treated an involuntarily committed patient's ankle injury and a doctor who allegedly failed to respond to the ankle injury with appropriate haste were dismissed because the patient did not submit affidavits of merit; however, under the common knowledge exception, the patient's failure to submit an affidavit of merit did not require dismissal of a negligence claim asserted against a doctor who allegedly failed to observe and diagnose the ankle injury because the patient alleged that his ankle fracture was obvious. *Bullock v. Ancora Psychiatric Hosp.*, 2011 U.S. Dist. LEXIS 92307 (D.N.J. Aug. 18 2011).

210. In a malpractice action, *N.J. Stat. Ann. § 2A:53A-27* requires that an appropriate licensed professional attest that there exists a reasonable probability that there was a deviation in the standard of care in the activity, which is the subject of the complaint. *Medeiros v. O'Donnell & Naccarato Inc.*, 347 N.J. Super. 536, 790 A.2d 969, 2002 N.J. Super. LEXIS 81 (App.Div. 2002).

211. Patient's medical malpractice claims were properly dismissed because the patient took no steps to comply with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., or its purpose by assuring defendants, five doctors and others, that there was merit to the patient's malpractice action until after the 120-day statutory period had run; the patient neither served an expert's report, nor an affidavit demonstrating compliance with *N.J. Stat. Ann. § 2A:53A-28* and explaining why such service was not possible. *Balthazar v. Atl. City Med. Ctr.*, 358 N.J. Super. 13, 816 A.2d 1059, 2003 N.J. Super. LEXIS 75 (App.Div. 2003).

212. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

213. In a medical malpractice action, where plaintiffs filed an affidavit within the 60-day statutory extension period

as provided by N.J. Stat. Ann. § 2A:53A-27 and where plaintiffs counsel's inadvertent delay in filing the affidavit constituted good cause, the affidavit was timely filed. *Burns v. Belafsky*, 166 N.J. 466, 766 A.2d 1095, 2001 N.J. LEXIS 173 (2001).

214. While *N.J. Stat. Ann. § 2A:53A-27* spoke to the time limitation that must be placed upon an extension of the time to file an affidavit, i.e., not to exceed 60 days, it did not specifically state that the additional 60-day period had to commence upon the expiration of the initial 60-day period after the answer was filed. But, where an injury claimant made the request for an extension after the 120 days representing the original time limit and an extension had already run, the request for a 60 day extension had to be denied as untimely, as the period for which an extension could have been granted had since expired. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

215. In regard to the timing of the filing of a statement in lieu of an affidavit, Fla. Stat. ch. 53A-28 2A: 53A-28 of the New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29* was found to be clear. The sworn statement was meant to replace the affidavit of merit required by *N.J. Stat. Ann. § 2A:53A-27*, and in that regard, *N.J. Stat. Ann. § 2A:53A-28* specifically referred back to *N.J. Stat. Ann. § 2A:53A-27*, which clearly required the affidavit of merit to be filed within 60 days of the filing of the answer to the complaint. *Greig v. Macy's Northeast*, 1998 U.S. Dist. LEXIS 12770 (D.N.J. May 13 1998).

216. Former client's malpractice claim against a law firm was barred for failure to produce an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27*; an unsworn statement did not satisfy the requirements under *N.J. Stat. Ann. § 2A:53A-28* for relief from the affidavit of merit obligation, nor did the matter fall within the "common knowledge" exception. *Kant v. Seton Hall Univ.*, 422 Fed. Appx. 186, 2011 U.S. App. LEXIS 7276 (3d Cir. N.J. 2011).

217. Plaintiff bankruptcy trustee's action against defendant insurer was one for professional negligence, and due to the complexity of the matter, the court concluded that an expert was needed to opine on whether defendant violated its duty; thus, the common knowledge exception to New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, did not apply, and since the trustee had not obtained an expert and complied with the statute's requirements, the action was barred and the complaint was dismissed. *Forman v. Wachovia Ins. Servs., Inc.*, 2010 U.S. Dist. LEXIS 95911 (D.N.J. Sept. 13 2010).

218. Client's legal malpractice claim was properly dismissed because the client failed to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27*. The claim was not exempt from the affidavit of merit requirement, as it did not turn on common knowledge; the client alleged a failure to file a suit within the statute of limitations, and the claim therefore depended on an industry standard of care. *Thakar v. Tan*, 372 Fed. Appx. 325, 2010 U.S. App. LEXIS 6218 (3d Cir. N.J. 2010).

219. In a suit regarding coverage, an insured's third-party negligence claim against his insurance broker and the broker's employer was dismissed because the insured did not serve an affidavit of merit prior to filing suit, as required by the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-27*, but since the third-party defendants' motion was not filed until the summary judgment stage of proceedings, the dismissal was without prejudice to refile the claims after service of the required affidavits of merit. *N.H. Ins. Co. v. Diller*, 678 F. Supp. 2d 288, 2009 U.S. Dist. LEXIS 120836, 2010 A.M.C. 968 (D.N.J. 2009).

220. Inmate could not assert a medical malpractice claim arising from alleged failures to administer tests and medication for the inmate's liver condition; the inmate failed to state a claim pursuant to *N.J. Stat. Ann. § 2A:53A-29* because there was no evidence that the inmate complied with the affidavit of merit requirement under *N.J. Stat. Ann. § 2A:53A-27*. *Ali v. D.O.C.*, 2008 U.S. Dist. LEXIS 96061 (D.N.J. Nov. 19 2008), dismissed without prejudice by 2010 U.S. Dist. LEXIS 90546 (D.N.J. Aug. 31, 2010).

221. In contrast to the affidavit of merit statute, *N.J. Stat. Ann. §§ 2A:53A-27 to 53A-29*, which makes the affidavit an element essential to the establishment of a cause of action for professional negligence, the certification requirement

of N.J. Stat. Ann. § 39:6A-8a of the New Jersey Automobile Insurance Cost Reduction Act is procedural in nature and is related to the sufficiency of the pleadings, i.e. the statement of the claim; it is not intended to go to the establishment of a cause of action. *Konopka v. Foster*, 356 N.J. Super. 223, 812 A.2d 363, 2002 N.J. Super. LEXIS 424 (App.Div. 2002).

222. Where a medical center that was sued for medical malpractice unjustifiably withheld the relevant patient's medical records, the records presumptively had a substantial bearing on the ability to prepare an affidavit of merit, and, since the presumption was not rebutted and plaintiffs timely complied with N.J. Stat. Ann. § 2A:53A-28 of the Affidavit of Merit Statute, N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29, by requesting to file a sworn statement regarding the withheld records in lieu of an affidavit of merit, the failure to file an affidavit of merit pursuant to N.J. Stat. Ann. § 2A:53A-27 was excused. *Aster v. Shoreline Behavioral Health*, 346 N.J. Super. 536, 788 A.2d 821, 2002 N.J. Super. LEXIS 30 (App.Div. 2002).

223. Federal district court's dismissal of a patient's medical malpractice action with prejudice as a result of her failure to file an affidavit of merit as required by N.J. Stat. Ann. § 2A:53A-27 of the New Jersey affidavit of merit statute, N.J. Stat. Ann. §§ 2A:53A-26 et seq., was proper at least with respect to the negligent acts that were alleged to have occurred after the effective date of the affidavit of merit statute because the patient failed to provide an adequate excuse for her failure to comply with the statute, the most reasonable inference from the record was that the patient's counsel was simply unaware of the affidavit of merit requirement, and the circumstances thus fell short of "exceptional and compelling." *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

224. Federal district court erred in dismissing a patient's entire medical malpractice complaint as a result of her failure to file an affidavit of merit as required by N.J. Stat. Ann. § 2A:53A-27 of the New Jersey affidavit of merit statute, N.J. Stat. Ann. § 2A:53A-26 et seq., where there was competent evidence that acts of malpractice occurred before the effective date of the affidavit of merit statute. *Chamberlain v. Giampapa*, 210 F.3d 154, 2000 U.S. App. LEXIS 5187 (3d Cir. N.J. 2000).

225. Although a property owner's third-party claim for contractual indemnification against an engineering firm was dismissed because the owner failed to comply with the Affidavit of Merit Statute, the owner was still entitled to have the firm listed on any jury verdict sheet in the plaintiff's underlying action against the owner because the owner, as a public entity, could only be liable for its share of negligence among all adjudicated joint tortfeasors pursuant to N.J. Stat. Ann. § 59:9-3.1. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

226. Where a defendant subject to the Affidavit of Merit statute, N.J. Stat. Ann. § 2A:53A-27, asserts a third-party claim in the nature of contribution or joint tortfeasor liability against another professional who is also subject to the statute, the defendant who is already subject to an affidavit of merit does not have to file another affidavit of merit for the third-party professional. *Diocese of Metuchen v. Prisco & Edwards, AIA*, 374 N.J. Super. 409, 864 A.2d 1168, 2005 N.J. Super. LEXIS 29 (App.Div. 2005).

227. Claim for contractual indemnification that relies upon proof of professional negligence or malpractice by a licensed professional is subject to the requirements of the Affidavit of Merit Statute when it is first alleged in a third-party complaint. *Nagim v. New Jersey Transit*, 369 N.J. Super. 103, 848 A.2d 61, 2003 N.J. Super. LEXIS 420 (Law Div. 2003).

228. District court did not have to decide an attorney's claim that a former client's malpractice action had to be dismissed under New Jersey's Affidavit of Merit Statute, N.J. Stat. Ann. § 2A:53A-27, because the client did not file an affidavit of merit after the attorney filed a motion to dismiss the client's action. Facts the client learned when he declared bankruptcy in 1994 gave him reasonable notice that the attorney may have committed malpractice when he

represented the client in an earlier bankruptcy case he filed in 1988, and the malpractice action the client filed against the attorney in 2009 was filed well after the six-year statute of limitations contained in *N.J. Stat. Ann. § 2A:14-1* expired. *Ricca v. Anastasio*, 2010 U.S. Dist. LEXIS 78401 (D.N.J. Aug. 2 2010).

229. In contrast to the affidavit of merit statute, *N.J. Stat. Ann. §§ 2A:53A-27 to 53A-29*, which makes the affidavit an element essential to the establishment of a cause of action for professional negligence, the certification requirement of *N.J. Stat. Ann. § 39:6A-8a* of the New Jersey Automobile Insurance Cost Reduction Act is procedural in nature and is related to the sufficiency of the pleadings, i.e. the statement of the claim; it is not intended to go to the establishment of a cause of action. *Konopka v. Foster*, 356 N.J. Super. 223, 812 A.2d 363, 2002 N.J. Super. LEXIS 424 (App.Div. 2002).

230. Because of the doctrine of respondeat superior, an affidavit must be provided under *N.J. Stat. Ann. § 2A:53A-27* where a negligent act committed by an unlicensed person in the course of his employment may be imputed to a licensed person. *Martin v. Perinni Corp.*, 37 F. Supp. 2d 362, 1999 U.S. Dist. LEXIS 1831 (D.N.J. 1999).

PRACTICE GUIDES & TREATISES

1. *LexisNexis Practice Guide NJ Personal Injury § 7.04* Conducting Client Interviews
2. *LexisNexis Practice Guide NJ Personal Injury § 7.24* Filing Affidavit of Merit in Medical Malpractice Action

PRACTICE CHECKLISTS

1. *LexisNexis Practice Guide NJ Personal Injury § 7.03* CHECKLIST: Investigating and Evaluating Medical Malpractice Cases
2. *LexisNexis Practice Guide NJ Personal Injury § 7.21* CHECKLIST: Pleading Medical Malpractice Actions

NJ ICLE

1. NEW JERSEY FAMILY PRACTICE § 8.3 (COUNSEL FEE AWARDS FROM OTHER PARTIES)

PRACTICE FORMS

1. *New Jersey Civil Procedure LexisNexis Forms 1447-CLI 7.703.01* Affidavit of Merit for Medical Malpractice

JURY INSTRUCTIONS

1. *NJ Civil JI 5.50A*, Duty And Negligence ?

2. *NJ Civil JI 5.50E*, Pre-Existing Condition-Increased Risk/ Loss Of Chance-Proximate Cause
3. *NJ Civil JI 5.51A*, Legal Malpractice (A) General Duty Owing (B) Specialist, Duty Of (C) Expert Testimony to Prove Standard Of Care (D) Common Knowledge May Furnish Standard Of Care
4. *NJ Civil JI 5.52*, Professional Liability Of An Architect/ Engineer
5. *NJ Civil JI 5.50B*, Common Knowledge May Furnish Standard Of Care ?
6. *NJ Civil JI 5.51B*, Proximate Cause in Legal Malpractice Involving Inadequate or Incomplete Legal Advice

LAW REVIEWS & JOURNALS

1. 29 *Rutgers L. J.* 799, ARTICLE: ASSERTION AND SELF-RESTRAINT: THE EXERCISE OF GOVERNMENTAL POWERS DISTRIBUTED UNDER THE 1947 NEW JERSEY CONSTITUTION.
2. 34 *Rutgers L. J.* 279, NOTE: THE UNFORESEEN CREATION OF A PROCEDURAL MINEFIELD--NEW JERSEY'S AFFIDAVIT OF MERIT STATUTE SPURS LITIGATION AND EXPENSE IN ITS INTERPRETATION AND APPLICATION.
3. 30 *Seton Hall L. Rev.* 1331, SURVEYS OF RECENT DEVELOPMENTS IN NEW JERSEY LAW: TORTS -- Medical Malpractice -- Statute of Limitations -- The Discovery Rule -- When a Patient Has Relied in Good Faith on a Competent Expert Opinion That One of Her Treating Physicians Is Not at Fault and Does Not Name That Physician in Her Complaint, a Subsequent Assertion to the Contrary by a Defendant Doctor's Expert Witness Provides the Basis for a Claim Against the Originally Omitted Physician and the Statute of Limitations Is Tolloed Until the Subsequent Assertion -- *Mancuso v. Neckles*, 163 N.J. 26, 747 A.2d 255 (2000).
4. 20 *Seton Hall Legis. J.* 563, NOTE: TORT REFORM NEW JERSEY STYLE: AN ANALYSIS OF THE NEW LAWS AND HOW THEY BECAME LAW.

LexisNexis 50 State Surveys, Legislation & Regulations

Medical Malpractice Actions



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LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 214th Legislature ***
 2nd Annual Session (P.L. 2011 Chapter 148 and JR 8)
 State Constitution current through the November, 2011 Election
 Annotations current through November 14, 2011

TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
 SUBTITLE 6. SPECIFIC CIVIL ACTIONS
 CHAPTER 53A. TORTS

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 2A:53A-29 (2012)

§ 2A:53A-29. Noncompliance deemed failure to state cause of action

If the plaintiff fails to provide an affidavit or a statement in lieu thereof, pursuant to section 2 or 3 of this act, it shall be deemed a failure to state a cause of action.

HISTORY: L. 1995, c. 139, § 4.

LexisNexis (R) Notes:

CASE NOTES

1. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of a the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

2. In a legal malpractice action brought by a former patent holder against two Pennsylvania-based law firms, who had bona fide offices in New Jersey, arising out of the alleged negligence by a patent attorney employed successively by those law firms and who represented the former patent holder before the United States Patent and Trademark Office, the trial court correctly held that an affidavit of merit, pursuant to *N.J. Stat. Ann. §§ 2A:53A-26 to -- 2A:53A-29*, was

necessary arising out of alleged negligence by the patent attorney in letting the patent expire since the firms were "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26(c)*. However, the dismissal of the action for the failure to submit an affidavit of merit was vacated on equitable grounds since the case law in New Jersey was unsettled as to whether an affidavit of merit was required in such circumstances and federal decisions had taken divergent approaches on the issue with regard to firms as opposed to individually licensed persons. *Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP*, 416 N.J. Super. 1, 3 A.3d 518, 2010 N.J. Super. LEXIS 101, 99 U.S.P.Q.2d (BNA) 1339 (App.Div. 2010).

3. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

4. As a company under contract with the New Jersey Department of Corrections to treat prisoners did not provide evidence that it was a licensed health care facility under *N.J. Stat. Ann. § 2A:53A-26(j)*, it did not show that New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, applied to it; therefore, the trial court erred in dismissing an inmate's malpractice suit for his failure to provide the company with an affidavit of merit. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

5. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

6. Trial court was found to have properly dismissed a medical malpractice complaint that had been filed by the administrator of a deceased's estate against several doctors and a hospital upon the allegation that the doctors and the hospital had been negligent in applying their medical knowledge in the operative procedures performed on the administrator's deceased wife because the administrator failed to file an affidavit of merit with the complaint as required under *N.J. Stat. Ann. § 2A:53A-29* and because neither the *N.J. Stat. Ann. § 2A:53A-28* nor common knowledge exceptions applied. *Risko v. Ciocca*, 356 N.J. Super. 406, 812 A.2d 1138, 2003 N.J. Super. LEXIS 8 (App.Div. 2003).

7. Patient that filed a medical malpractice action for adverse consequences to prescription medication did not satisfy the affidavit requirement of *N.J. Stat. Ann. § 2A:53A-29* when the patient submitted an unsworn and uncertified expert's report in response to the doctor's request for the affidavit of merit from a licensed physician to support plaintiff's claims. *Ricra v. Barbera*, 328 N.J. Super. 424, 746 A.2d 68, 2000 N.J. Super. LEXIS 87 (App.Div. 2000).

8. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of a the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

9. Patient's counsel's intentional delay in serving the summonses and complaint in order to avoid application of the

Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26* et seq., warranted dismissal of the medical malpractice complaint. *Czepas v. Schenk*, 362 N.J. Super. 216, 827 A.2d 1080, 2003 N.J. Super. LEXIS 240 (App.Div. 2003).

10. Neighbor sued property owners for trespass; they filed a third-party complaint against their surveyor for indemnification and contribution. The owners' third-party complaint was improperly dismissed for their failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 29*; as the neighbor had not yet shown any error in the survey, no claim for professional negligence had accrued. *Highland Lakes Country Club and Community Ass'n v. Nicaastro*, 406 N.J. Super. 145, 966 A.2d 1102, 2009 N.J. Super. LEXIS 63 (App.Div. 2009), affirmed by 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

11. Inmate's appeal was dismissed pursuant to 28 U.S.C.S. § 1915(e)(2)(B) because, inter alia: (1) the extent of the United States' liability under the Federal Tort Claims Act was determined by state law; (2) the inmate failed to provide the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*, which was triggered because he complained of the medical care he received in the prison's health care facility; (3) pursuant to *N.J. Stat. Ann. § 2A:53A-29*, the inmate's failure to provide the affidavit constituted a failure to state a cause of action; and (4) the inmate's claims against an orthopedic surgeon were also properly dismissed because the inmate failed to obtain the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-29*. *Horne v. United States*, 223 Fed. Appx. 154, 2007 U.S. App. LEXIS 5482 (3d Cir. N.J. 2007).

12. As the trial court erred in allowing plaintiff to submit an Affidavit of Merit under *N.J. Stat. Ann. § 2A:53A-27* authored by a doctor who, unlike defendant, was not a board-certified gastroenterologist, plaintiff's case had to be dismissed for failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*. *Ryan v. Renny*, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009).

13. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

14. In contrasting the physician certification requirement in the Automobile Insurance Cost Reduction Act (AICRA) with the Affidavit of Merit Statute, the physician certification requirement in the AICRA focuses not on the heart of the cause of action, i.e., negligence and injury, but instead is limited to the nature and extent of plaintiff's injuries existing at the time that the certification is authored. Accordingly, the appropriate remedy for failure to provide a physician certification pursuant to *N.J. Stat. Ann. § 39:6A-8(a)* within the 120-day period is a dismissal without prejudice. *Casinelli v. Manglapus*, 357 N.J. Super. 398, 815 A.2d 524, 2003 N.J. Super. LEXIS 50 (App.Div. 2003), affirmed in part and reversed in part by, remanded by 181 N.J. 354, 858 A.2d 1113, 2004 N.J. LEXIS 1049 (2004).

15. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div.

2002).

16. In the context of a malpractice action, failure to provide an affidavit shall be deemed a failure to state a cause of action, *N.J. Stat. Ann. § 2A:53A-29*; absent a showing of extraordinary circumstances, a dismissal with prejudice would lie for failure to comply with the Affidavit of Merit Statute, *N.J. Stat. Ann. § 2A:53A-29*, because such a dismissal is a violation of a statute rather than a court-imposed rule or order, and the violation giving rise to the dismissal goes to the heart of the cause of action as defined by the legislature. *Watts v. Camaligan*, 344 N.J. Super. 453, 782 A.2d 479, 2001 N.J. Super. LEXIS 396 (App.Div. 2001).

17. In a legal malpractice action brought by a former patent holder against two Pennsylvania-based law firms, who had bona fide offices in New Jersey, arising out of the alleged negligence by a patent attorney employed successively by those law firms and who represented the former patent holder before the United States Patent and Trademark Office, the trial court correctly held that an affidavit of merit, pursuant to *N.J. Stat. Ann. §§ 2A:53A-26 to -- 2A:53A-29*, was necessary arising out of alleged negligence by the patent attorney in letting the patent expire since the firms were "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26(c)*. However, the dismissal of the action for the failure to submit an affidavit of merit was vacated on equitable grounds since the case law in New Jersey was unsettled as to whether an affidavit of merit was required in such circumstances and federal decisions had taken divergent approaches on the issue with regard to firms as opposed to individually licensed persons. *Shamrock Lacrosse, Inc. v. Klehr, Harrison, Harvey, Branzburg & Ellers, LLP*, 416 N.J. Super. 1, 3 A.3d 518, 2010 N.J. Super. LEXIS 101, 99 U.S.P.Q.2d (BNA) 1339 (App.Div. 2010).

18. Though the client proffered no explanation for her failure to file an affidavit of merit as required by *N.J. Stat. Ann. § 2A:53A-27*, as her allegations did not require the testimony of an expert in order to permit the jury to determine the issue of negligence, the affidavit was not required and dismissal was denied. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

19. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

20. In an action filed in New Jersey by plaintiff client against defendant, a Pennsylvania law firm, for breach of contract, negligence, and legal malpractice after a lienholder was discovered who was not located in a title search or disclosed in the law firm's opinion letter, provisions of the Affidavit of Merit statute could be applied in the law firm's motion to dismiss because requiring an affidavit to be filed in support of a the client's complaint did not conflict with federal rules or interests and thus would be applied in a diversity action. *RTC Mortg. Trust 1994 N-1 v. Fidelity Nat'l Title Ins. Co.*, 981 F. Supp. 334, 1997 U.S. Dist. LEXIS 16384 (D.N.J. 1997).

21. As a company under contract with the New Jersey Department of Corrections to treat prisoners did not provide evidence that it was a licensed health care facility under *N.J. Stat. Ann. § 2A:53A-26(j)*, it did not show that New Jersey's Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, applied to it; therefore, the trial court erred in dismissing an inmate's malpractice suit for his failure to provide the company with an affidavit of merit. *Albrecht v. Corr. Med. Servs.*, 422 N.J. Super. 265, 27 A.3d 1260, 2011 N.J. Super. LEXIS 179 (App.Div. 2011).

22. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted

as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

23. Professional negligence claims asserted against a doctor who identified and treated an involuntarily committed patient's ankle injury and a doctor who allegedly failed to respond to the ankle injury with appropriate haste were dismissed because the patient did not submit affidavits of merit; however, under the common knowledge exception, the patient's failure to submit an affidavit of merit did not require dismissal of a negligence claim asserted against a doctor who allegedly failed to observe and diagnose the ankle injury because the patient alleged that his ankle fracture was obvious. *Bullock v. Ancora Psychiatric Hosp.*, 2011 U.S. Dist. LEXIS 92307 (D.N.J. Aug. 18 2011).

24. As the trial court erred in allowing plaintiff to submit an Affidavit of Merit under *N.J. Stat. Ann. § 2A:53A-27* authored by a doctor who, unlike defendant, was not a board-certified gastroenterologist, plaintiff's case had to be dismissed for failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*. *Ryan v. Renny*, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009).

25. Inmate could not assert a medical malpractice claim arising from alleged failures to administer tests and medication for the inmate's liver condition; the inmate failed to state a claim pursuant to *N.J. Stat. Ann. § 2A:53A-29* because there was no evidence that the inmate complied with the affidavit of merit requirement under *N.J. Stat. Ann. § 2A:53A-27*. *Ali v. D.O.C.*, 2008 U.S. Dist. LEXIS 96061 (D.N.J. Nov. 19 2008), dismissed without prejudice by 2010 U.S. Dist. LEXIS 90546 (D.N.J. Aug. 31, 2010).

26. Inmate's Federal Tort Claims Act claim for medical malpractice against prison doctors was properly dismissed because the inmate failed to serve an affidavit of merit as required by *N.J. Stat. Ann. §§ 2A:53A-27, 2A:53A-29*, which applied pursuant to 28 U.S.C.S. § 1346(b)(1); the inmate's certification was deficient as it merely opined that medical malpractice was committed without mentioning any of the defendants, let alone specifying what each did or opining that any particular defendant's conduct fell outside acceptable professional standards. *Bramson v. Sulayman*, 251 Fed. Appx. 84, 2007 U.S. App. LEXIS 24390 (3d Cir. N.J. 2007), writ of certiorari denied by 552 U.S. 1265, 128 S. Ct. 1666, 170 L. Ed. 2d 369, 2008 U.S. LEXIS 2382, 76 U.S.L.W. 3497 (2008).

27. Inmate's appeal was dismissed pursuant to 28 U.S.C.S. § 1915(e)(2)(B) because, inter alia: (1) the extent of the United States' liability under the Federal Tort Claims Act was determined by state law; (2) the inmate failed to provide the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27*, which was triggered because he complained of the medical care he received in the prison's health care facility; (3) pursuant to *N.J. Stat. Ann. § 2A:53A-29*, the inmate's failure to provide the affidavit constituted a failure to state a cause of action; and (4) the inmate's claims against an orthopedic surgeon were also properly dismissed because the inmate failed to obtain the requisite affidavit of merit under *N.J. Stat. Ann. § 2A:53A-29*. *Horne v. United States*, 223 Fed. Appx. 154, 2007 U.S. App. LEXIS 5482 (3d Cir. N.J. 2007).

28. Plaintiff's malpractice action was dismissed pursuant to *N.J. Stat. Ann. § 2A:53A-29* because the doctor provided plaintiff with the requested medical records within 45 days of plaintiff's notice that the records were needed to prepare an affidavit of merit, but plaintiff failed to file a timely affidavit of merit, which was required by *N.J. Stat. Ann. § 2A:53A-27*; because the doctor had provided the requested records within the 45-day period, plaintiff could not invoke *N.J. Stat. Ann. § 2A:53A-28* to excuse her failure to file a timely affidavit of merit. *Rhoads v. Masciarelli*, 2005 U.S. Dist. LEXIS 36428 (D.N.J. Aug. 26 2005).

29. Patient's counsel's intentional delay in serving the summonses and complaint in order to avoid application of the Affidavit of Merit statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*, warranted dismissal of the medical malpractice complaint. *Czepas v. Schenk*, 362 N.J. Super. 216, 827 A.2d 1080, 2003 N.J. Super. LEXIS 240 (App.Div. 2003).

30. Affidavit of merit was required where a medical malpractice complaint alleged that defendants were negligent in applying their medical knowledge in the operative procedures performed on the deceased wife, which had nothing to

do with common knowledge. *Risko v. Ciocca*, 356 N.J. Super. 406, 812 A.2d 1138, 2003 N.J. Super. LEXIS 8 (App.Div. 2003).

31. Trial court was found to have properly dismissed a medical malpractice complaint that had been filed by the administrator of a deceased's estate against several doctors and a hospital upon the allegation that the doctors and the hospital had been negligent in applying their medical knowledge in the operative procedures performed on the administrator's deceased wife because the administrator failed to file an affidavit of merit with the complaint as required under *N.J. Stat. Ann. § 2A:53A-29* and because neither the *N.J. Stat. Ann. § 2A:53A-28* nor common knowledge exceptions applied. *Risko v. Ciocca*, 356 N.J. Super. 406, 812 A.2d 1138, 2003 N.J. Super. LEXIS 8 (App.Div. 2003).

32. Patient that filed a medical malpractice action for adverse consequences to prescription medication did not satisfy the affidavit requirement of *N.J. Stat. Ann. § 2A:53A-29* when the patient submitted an unsworn and uncertified expert's report in response to the doctor's request for the affidavit of merit from a licensed physician to support plaintiff's claims. *Ricra v. Barbera*, 328 N.J. Super. 424, 746 A.2d 68, 2000 N.J. Super. LEXIS 87 (App.Div. 2000).

33. Summary judgment for chiropractor in medical malpractice action was improper, despite the fact that the patient and his spouse failed to file an affidavit of merit within 60 days after the filing of the answer, as required by *N.J. Stat. Ann. § 2A:53A-27*, because the threshold showing of merit could be established without the affidavit, as contemplated by *N.J. Stat. Ann. § 2A:53A-29*. *Janelli v. Keeper*, 317 N.J. Super. 309, 721 A.2d 1036, 1998 N.J. Super. LEXIS 513 (Law Div. 1998), overruled by *Hubbard v. Reed*, 331 N.J. Super. 283, 751 A.2d 1055, 2000 N.J. Super. LEXIS 194 (App.Div. 2000).

34. Neighbor sued property owners for trespass; they filed a third-party complaint against their surveyor for indemnification and contribution. The owners' third-party complaint was improperly dismissed for their failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 29*; as the neighbor had not yet shown any error in the survey, no claim for professional negligence had accrued. *Highland Lakes Country Club and Community Ass'n v. Nicaastro*, 406 N.J. Super. 145, 966 A.2d 1102, 2009 N.J. Super. LEXIS 63 (App.Div. 2009), affirmed by 201 N.J. 123, 988 A.2d 90, 2009 N.J. LEXIS 1291 (2009).

35. Trial court was found to have properly dismissed a medical malpractice complaint that had been filed by the administrator of a deceased's estate against several doctors and a hospital upon the allegation that the doctors and the hospital had been negligent in applying their medical knowledge in the operative procedures performed on the administrator's deceased wife because the administrator failed to file an affidavit of merit with the complaint as required under *N.J. Stat. Ann. § 2A:53A-29* and because neither the *N.J. Stat. Ann. § 2A:53A-28* nor common knowledge exceptions applied. *Risko v. Ciocca*, 356 N.J. Super. 406, 812 A.2d 1138, 2003 N.J. Super. LEXIS 8 (App.Div. 2003).

36. Professional negligence claims asserted against a doctor who identified and treated an involuntarily committed patient's ankle injury and a doctor who allegedly failed to respond to the ankle injury with appropriate haste were dismissed because the patient did not submit affidavits of merit; however, under the common knowledge exception, the patient's failure to submit an affidavit of merit did not require dismissal of a negligence claim asserted against a doctor who allegedly failed to observe and diagnose the ankle injury because the patient alleged that his ankle fracture was obvious. *Bullock v. Ancora Psychiatric Hosp.*, 2011 U.S. Dist. LEXIS 92307 (D.N.J. Aug. 18 2011).

37. Patient's medical malpractice claims were properly dismissed because the patient took no steps to comply with the affidavit of merit statute, *N.J. Stat. Ann. § 2A:53A-26 et seq.*, or its purpose by assuring defendants, five doctors and others, that there was merit to the patient's malpractice action until after the 120-day statutory period had run; the patient neither served an expert's report, nor an affidavit demonstrating compliance with *N.J. Stat. Ann. § 2A:53A-28* and explaining why such service was not possible. *Balthazar v. Atl. City Med. Ctr.*, 358 N.J. Super. 13, 816 A.2d 1059, 2003

N.J. Super. LEXIS 75 (App.Div. 2003).

38. Attorneys are "licensed persons" under *N.J. Stat. Ann. § 2A:53A-26*. Generally, any action against a licensed professional rooted in malpractice or negligence has to be supported with an affidavit of merit under *N.J. Stat. Ann. § 2A:53A-27* and failure to provide such an affidavit could result in dismissal under *N.J. Stat. Ann. § 2A:53A-29*; however, an affidavit is not required in "common knowledge" cases when an expert will not be called, and is not necessary to establish that the actions of the profession fell outside acceptable professional standards or practices. *Popwell v. Law Offices of Broome and Horn*, 363 N.J. Super. 404, 833 A.2d 102, 2002 N.J. Super. LEXIS 546 (Law Div. 2002).

39. Inmate could not assert a medical malpractice claim arising from alleged failures to administer tests and medication for the inmate's liver condition; the inmate failed to state a claim pursuant to *N.J. Stat. Ann. § 2A:53A-29* because there was no evidence that the inmate complied with the affidavit of merit requirement under *N.J. Stat. Ann. § 2A:53A-27*. *Ali v. D.O.C.*, 2008 U.S. Dist. LEXIS 96061 (D.N.J. Nov. 19 2008), dismissed without prejudice by 2010 U.S. Dist. LEXIS 90546 (D.N.J. Aug. 31, 2010).

LAW REVIEWS & JOURNALS

1. 34 *Rutgers L. J.* 279, NOTE: THE UNFORESEEN CREATION OF A PROCEDURAL MINEFIELD--NEW JERSEY'S AFFIDAVIT OF MERIT STATUTE SPURS LITIGATION AND EXPENSE IN ITS INTERPRETATION AND APPLICATION.

LexisNexis 50 State Surveys, Legislation & Regulations

Medical Malpractice Actions



4 of 4 DOCUMENTS

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 214th Legislature ***
2nd Annual Session (P.L. 2011 Chapter 148 and JR 8)
State Constitution current through the November, 2011 Election
Annotations current through November 14, 2011

TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
SUBTITLE 6. SPECIFIC CIVIL ACTIONS
CHAPTER 53A. TORTS

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 2A:53A-41 (2012)

§ 2A:53A-41. Requirements for person giving expert testimony, executing affidavit

In an action alleging medical malpractice, a person shall not give expert testimony or execute an affidavit pursuant to the provisions of P.L. 1995, c. 139 (C. 2A:53A-26 et seq.) on the appropriate standard of practice or care unless the person is licensed as a physician or other health care professional in the United States and meets the following criteria:

a. If the party against whom or on whose behalf the testimony is offered is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association and the care or treatment at issue involves that specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the person providing the testimony shall have specialized at the time of the occurrence that is the basis for the action in the same specialty or subspecialty, recognized by the American Board of Medical Specialties or the American Osteopathic Association, as the party against whom or on whose behalf the testimony is offered, and if the person against whom or on whose behalf the testimony is being offered is board certified and the care or treatment at issue involves that board specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the expert witness shall be:

(1) a physician credentialed by a hospital to treat patients for the medical condition, or to perform the procedure, that is the basis for the claim or action; or

(2) a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association who is board certified in the same specialty or subspecialty, recognized by the American Board of Medical Specialties or the American Osteopathic Association, and during the year immediately preceding the date of the occurrence that is the basis for the claim or action, shall have devoted a majority of his professional time to either:

(a) the active clinical practice of the same health care profession in which the defendant is licensed, and, if the defendant is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American

Osteopathic Association, the active clinical practice of that specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(b) the instruction of students in an accredited medical school, other accredited health professional school or accredited residency or clinical research program in the same health care profession in which the defendant is licensed, and, if that party is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association, an accredited medical school, health professional school or accredited residency or clinical research program in the same specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) both.

b. If the party against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness, during the year immediately preceding the date of the occurrence that is the basis for the claim or action, shall have devoted a majority of his professional time to:

(1) active clinical practice as a general practitioner; or active clinical practice that encompasses the medical condition, or that includes performance of the procedure, that is the basis of the claim or action; or

(2) the instruction of students in an accredited medical school, health professional school, or accredited residency or clinical research program in the same health care profession in which the party against whom or on whose behalf the testimony is licensed; or

(3) both.

c. A court may waive the same specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association and board certification requirements of this section, upon motion by the party seeking a waiver, if, after the moving party has demonstrated to the satisfaction of the court that a good faith effort has been made to identify an expert in the same specialty or subspecialty, the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in, or full-time teaching of, medicine in the applicable area of practice or a related field of medicine.

d. Nothing in this section shall limit the power of the trial court to disqualify an expert witness on grounds other than the qualifications set forth in this section.

e. In an action alleging medical malpractice, an expert witness shall not testify on a contingency fee basis.

f. An individual or entity who threatens to take or takes adverse action against a person in retaliation for that person providing or agreeing to provide expert testimony, or for that person executing an affidavit pursuant to the provisions of P.L. 1995, c. 139 (C. 2A:53A-26 et seq.), which adverse action relates to that person's employment, accreditation, certification, credentialing or licensure, shall be liable to a civil penalty not to exceed \$ 10,000 and other damages incurred by the person and the party for whom the person was testifying as an expert.

HISTORY: L. 2004, c. 17, § 7, eff. July 7, 2004.

NOTES:

Effective Dates:

Section 33 of L. 2004, c. 17 provides: "This act shall take effect on the 30th day after enactment and shall apply to causes of action for medical malpractice that accrue on or after that effective date; except that section 9 shall take effect upon action by the court, sections 14 through 16 and section 22 shall take effect on the 180th day after the date of

enactment, sections 17 and 19 shall take effect on the 90th day after the date of enactment, and the amendatory provisions of sections 3 and 4 shall apply to injuries sustained at birth on or after the effective date of this act. Section 29 shall expire three years after the effective date." Chapter 17, L. 2004, was approved on June 7, 2004.

Cross References:

Affidavit of lack of care in action for professional, medical malpractice or negligence; requirements, see 2A:53A-27.

LexisNexis (R) Notes:

CASE NOTES

1. Appellate court erred by affirming the dismissal of a patient's medical malpractice suit because the trial court failed to conduct a Ferreira conference and the patient acted in good faith in filing affidavits of merit from two different medical specialists in an attempt to conform to *N.J. Stat. Ann. § 2A:53A-41*, and if the conference had been conducted as required and the trial court found deficiencies, the patient would have had additional time to submit an affidavit that conformed to the statute. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

2. Supreme Court of New Jersey holds that, in the future, a physician defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was involved when rendering treatment to the plaintiff. *Buck v. Henry*, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011).

3. In a medical malpractice suit, the appellate court erred by reversing a trial court's ruling that a patient had satisfied the waiver provision under *N.J. Stat. Ann. § 2A:53A-41(c)*, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care, because based on the plain language of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, the patient's counsel made a good faith effort to identify an expert in the same specialty as the doctor being sued but was unsuccessful. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

4. Waiver provision of *N.J. Stat. Ann. § 2A:53A-41* prescribes that where a plaintiff has made a good faith showing of inability to identify an expert in the same specialty or subspecialty as the defendant, his proposed expert must possess sufficient training, experience and knowledge to provide the testimony as a result of active involvement in, or full-time teaching of, medicine in the applicable area of practice or a related field of medicine, and the Supreme Court of New Jersey interprets that language as a broad grant of discretion to the trial judge that does not bear with it a temporal requirement that the proposed expert be engaged in performing the medical procedure at issue on the date of the occurrence giving rise to the claim. Rather, the expert may have derived his training, experience, and knowledge as a result of prior practice in the field; but that is not to suggest that a lapse of time may not bear on a judge's assessment of an expert's training, experience, and knowledge, only that it is not an automatic disqualifier. *Ryan v. Renny*, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010).

5. In a malpractice case, three experts in defendant's specialty of gastroenterology were identified, but all declined to author an Affidavit of Merit in favor of plaintiff. A waiver of the specialty requirements for expert witnesses under *N.J. Stat. Ann. § 2A:53A-41* should not have been granted, as there was no explanation as to why the experts declined to author the affidavit. *Ryan v. Renny*, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009).

6. In a medical malpractice case, in order to obtain a waiver of the specialty requirement for expert witnesses under *N.J. Stat. Ann. § 2A:53A-41*, there has to be an explanation for the unwillingness to sign an Affidavit of Merit on the part of the potential affiants. For instance, the physician has a conflict with the parties or counsel; does not testify in court or execute affidavits in connection with litigation; or has limited his activities to one geographical area. *Ryan v. Renny, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009)*.

7. Under *N.J. Stat. Ann. § 2A:53A-41(c)*, the court may waive the specialty criteria if the plaintiff shows that a good faith but unsuccessful effort has been made to identify an expert in the same specialty or subspecialty as the defendant. A good effort requires that more than one specialist be contacted. *Ryan v. Renny, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009)*.

8. As the trial court erred in allowing plaintiff to submit an Affidavit of Merit under *N.J. Stat. Ann. § 2A:53A-27* authored by a doctor who, unlike defendant, was not a board-certified gastroenterologist, plaintiff's case had to be dismissed for failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29. Ryan v. Renny, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009)*.

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10. Supreme Court of New Jersey holds that, in the future, a physician defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was involved when rendering treatment to the plaintiff. *Buck v. Henry, 207 N.J. 377, 25 A.3d 240, 2011 N.J. LEXIS 924 (2011)*.

11. In a medical malpractice suit, the appellate court erred by reversing a trial court's ruling that a patient had satisfied the waiver provision under *N.J. Stat. Ann. § 2A:53A-41(c)*, which permits a non-board-certified physician to certify that the actions of a board-certified specialist did not meet the required standard of care, because based on the plain language of the Affidavit of Merit statute, *N.J. Stat. Ann. §§ 2A:53A-26 to 2A:53A-29*, the patient's counsel made a good faith effort to identify an expert in the same specialty as the doctor being sued but was unsuccessful. *Ryan v. Renny, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010)*.

12. Waiver provision of *N.J. Stat. Ann. § 2A:53A-41* prescribes that where a plaintiff has made a good faith showing of inability to identify an expert in the same specialty or subspecialty as the defendant, his proposed expert must possess sufficient training, experience and knowledge to provide the testimony as a result of active involvement in, or full-time teaching of, medicine in the applicable area of practice or a related field of medicine, and the Supreme Court of New Jersey interprets that language as a broad grant of discretion to the trial judge that does not bear with it a temporal requirement that the proposed expert be engaged in performing the medical procedure at issue on the date of the occurrence giving rise to the claim. Rather, the expert may have derived his training, experience, and knowledge as a result of prior practice in the field; but that is not to suggest that a lapse of time may not bear on a judge's assessment of an expert's training, experience, and knowledge, only that it is not an automatic disqualifier. *Ryan v. Renny, 203 N.J. 37, 999 A.2d 427, 2010 N.J. LEXIS 693 (2010)*.

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16. As the trial court erred in allowing plaintiff to submit an Affidavit of Merit under *N.J. Stat. Ann. § 2A:53A-27* authored by a doctor who, unlike defendant, was not a board-certified gastroenterologist, plaintiff's case had to be dismissed for failure to comply with the New Jersey Affidavit of Merit Statute, *N.J. Stat. Ann. §§ 2A:53A-26 to -29*. *Ryan v. Renny*, 408 N.J. Super. 590, 975 A.2d 971, 2009 N.J. Super. LEXIS 182 (App.Div. 2009).

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Medical Malpractice Actions