

## Michigan Court of Appeals held ‘bare bones’ affidavit of merit is sufficient

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In the recent unpublished decision of *James v W.A. Foote Memorial Hospital, et al*, the Michigan Court of Appeals effectively held that a “bare bones” affidavit of merit, which contains very minimal information, is sufficient under MCL 600.2912d. The practical effect of this case allows plaintiffs to be very vague in their affidavits of merit, thus giving their experts more room to change their opinions as the case develops.

In *James*, the plaintiff was arguing the trial court improperly granted dismissal of his claim on the basis that his affidavits of merit were too vague to comply with MCL 600.2912d. The appellate court reversed the dismissal of the case, holding that the plaintiff’s affidavits complied with the statute’s requirements.

In the plaintiff’s affidavits of merit, his experts affirmed that the standard of care required the defendants to perform various functions specifically related to their treatment of the decedent. For example, the affidavits charged that the defendants failed to “monitor wound size and appearance,” “perform diagnostic tests” and “provide treatment to prevent exacerbation of the disease.” The appellate court held that, given the early stages of litigation, these declarations were specific enough to explain the significance of the plaintiff’s claim and to lend professional credence to its legitimacy.

The affidavits also stated that the defendants breached the standard of care by failing to perform the above-mentioned tasks, and further stated that if the defendants had performed same, then they would have satisfied the standard of care. The affidavits concluded by stating if the decedent had been provided with prompt, aggressive and appropriate medical care in compliance with the allegations listed, she would have had a greater than 50 percent chance of recovery.

The court held the above-mentioned language was sufficient to establish the necessary statutory elements. The court specifically declined to read any additional requirements or limitations into the statute to aid its rational application or workability.

In reaching its conclusion, the court also focused on the different purposes behind a Notice of Intent (NOI) and an affidavit of merit. The court stated a NOI must alert a defendant of the basis for the claim, so it makes sense to require a high degree of specificity. Conversely, the court stated an affidavit of merit accomplishes its purpose when it demonstrates that the plaintiff's claim has received the support of similarly situated professionals. Thus, the court held that as long as an affidavit of merit demonstrates the required support, it is valid.

For a complete copy of the Michigan Court of Appeals unpublished decision on *James v W.A. Foote Memorial Hospital, et al.*, (No. 262622, rel'd 1/19/02), [click here](#).

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