

TODD B. GLASSMAN, As Executor of the
Estate of Jennifer K. COLLUM-
GLASSMAN, deceased,

Plaintiff

vs.

JUANITO'S INC.; KLE PROPERTIES,
LLC; STEVEN P. FRIEDEL, M.D.; LON
WEINER, M.D.; CHARLES W.
FARRELL, M.D.; NATACHA FIELD,
R.N.; TANYA GOODEN, R.N.;
CONSTANCE MACKAY, R.N.,
ANURADHA THALASILA, M.D.;
HACKENSACK MERIDIAN HEALTH
d/b/a RIVERVIEW MEDICAL CENTER;
JOHN DOE I, (a fictitious name); JOHN
DOE II, (a fictitious name); ABC
CORPORATION, (a fictitious name) and
ABC MAINTENANCE COMPANY, (a
fictitious name); JOHN DOES III-XV,
(fictitious names)

Defendants

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-002723-24

ON APPEAL FROM SUPERIOR
COURT, LAW DIVISION
MONMOUTH COUNTY

DOCKET NO.: MON-L-2383-18

Sat Below:
Hon. Kathleen A. Sheedy, J.S.C

Civil Action

AMENDED

BRIEF FOR DEFENDANT-APPELLANT, ANURADHA THALASILA, M.D.

RUPRECHT HART RICCIARDULLI & SHERMAN, LLP
Michael R. Ricciardulli, Esq./Attorney ID:002611995
Jessica J. Mahony, Esq./Attorney ID:040342008

Jessica J. Mahony, Esq. -On the Brief

mricciardulli@rhwlawfirm.com

jmahony@rhwlawfirm.com

53 Cardinal Drive, Suite 1

Westfield, NJ 07090

Michael R. Ricciardulli, Esq.-

Of Counsel and On the Brief

Tel: 908-232-4800/Fax: 908 232-4801

Attorneys for Defendant/Appellant, Anuradha Thalasila, MD

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RELEVANT PROCEDURAL HISTORY

The plaintiff filed a Second Amended Complaint naming Anuradha Thalasila, M.D. as a defendant on March 5, 2019. Da001. Dr. Thalasila filed an Answer on April 3, 2019 stating that she was board certified and practicing in internal medicine at the time she cared for plaintiff's decedent. Da021.

The court entered a total of ten (10) Case Management Orders extending discovery deadlines. Da031 – Da051. These orders were dated December 9, 2019; July 9, 2020; December 10, 2020; March 8, 2022; August 15, 2022; December 21, 2022; April 11, 2023; July 20, 2023; January 9, 2024; and April 2, 2024. In total, there were 2478 days of discovery, with the final discovery end date set at April 30, 2024. Da051.

The December 21, 2022 Order set a deadline of January 16, 2023 for service of plaintiff's expert reports. Da051. Plaintiff timely served the report of Craig Hofmeister, M.D. on January 16, 2023. Da053. However, Dr. Hofmeister was a hematologist, and Dr. Thalasila filed a motion to bar Dr. Hofmeister from opining as to the standard of care and for summary judgment on February 15, 2023. Da087. Dr. Hofmeister signed a Certification on March 17, 2023, confirming that he is a hematologist, which plaintiff served in opposition to Dr. Thalasila's motion. Da090. The motion was denied on June 2, 2023. Da092.

Dr. Hofmeister was deposed on February 5, 2024 and confirmed that he is a hematologist, not an internist. Da094. Dr. Thalasila refiled her motion to bar Dr. Hofmeister and for summary judgment on April 1, 2024. Da127. The court held oral argument on that motion on May 10, 2024. IT¹. An order was subsequently entered on May 14, 2024 and scheduled a Rule 104 hearing for June 27, 2024 to determine if Dr. Hofmeister qualifications. Da130. Dr. Hofmeister testified at that hearing that he was in fact a hematologist, not an internist. 2T² at 16:24- 17:2 and 18:17 - 19:8. On July 2, 2024, the court entered an Order allowing additional briefing following the Rule 104 hearing. Da140.

The court entered an Order on July 29, 2024 setting a trial date of February 10, 2025, and ordering that all *in limine* motions be filed by December 6, 2024. Da141. Dr. Thalasila filed a motion *in limine* to bar Dr. Hofmeister's testimony. The February 10, 2025 trial date was adjourned and rescheduled for May 27, 2025. On February 28, 2025, the trial court entered an order barring Dr. Hofmeister but permitting plaintiff 30 days to serve a new expert report, effectively denying summary judgment. Da149. Motion for leave to appeal follows.

¹ The transcript of oral argument will be referred to as "IT."

² The transcript of the Rule 104 hearing will be referred to as "2T."

STATEMENT OF FACTS

This case arises out of a slip-and-fall injury which brought the plaintiffs decedent to Riverview Medical Center for treatment of an ankle injury. The plaintiff alleges that the defendants, including Dr. Thalasila, negligently treated her at that facility. Da001. In her Answer, Dr. Thalasila states that she is board certified and was practicing the specialty of internal medicine at the time she cared for the plaintiffs decedent. Da021.

Discovery was extended ten times, with a total of 2,478 days of discovery. Plaintiffs expert reports were due January 16, 2023. Da051. The plaintiff served the report and *curriculum vitae* of Craig Hofmeister, M.D. on that date. Da053 and Da057. Dr. Hofmeister's *curriculum vitae* states he is "Associate Professor of Hematology" at Emory University. Da057. His prior positions involved hematology as well. Dr. Hofmeister's report clarified his specialty:

I spend 1.5 days per week in outpatient clinic seeing patients with plasma cell disorders. The remainder of my clinical focus is on the inpatient cellular therapy and lymphoma/myeloma services for approximately 12 weeks a year... The remainder of my time is spent on administrative work related to the electronic health record as the clinical informatics lead for hematology & medical oncology as well as quality improvement for the division of hematology. My research focuses on translational Phase One clinical trials for patients with multiple myeloma and AL Amyloidosis. I have over 100 peer-reviewed publications in the area of plasma cell disorders with the majority focused on multiple myeloma.

Ibid.

Dr. Thalasila filed a motion to bar Dr. Hofmeister for testifying as to the standard of care and for summary judgment on February 15, 2023. Da087. In opposition to this motion, the plaintiff served a Certification of Dr. Hofmeister which states, “Throughout those years, I provided internal medical care in addition to focused hematology care **to my hematology patients.**” (emphasis added). Da090. This Certification made it clear that Dr. Hofmeister only treated hematology patients, and not solely internal medicine patients. In other words, he only provided some adjunct internal medicine care to his patients who had hematologic conditions which he also treated. Thus, it was abundantly clear that he was a hematologist, not an internist. However, the trial court entered a June 2, 2023 order denying Dr. Thalasila’s motion. Da092.

Dr. Hofmeister appeared for deposition on February 5, 2024 and confirmed that he is a hematologist, **not** an internal medicine physician:

Q. And when you are asked your specialty, the answer that you would give to that would be you are a hematologist; is that correct?

A. Yes.

...

Q: Have you ever practiced as an internist; in other words, held yourself out as a general internist?

A: No.

Da097 at 12:20-13:3, 13:20-23.

Dr. Hofmeister further testified that he believes his testimony in this case involves hematology (as opposed to internal medicine):

Q. So this is the only case you have been involved in as an expert that does not involve the field of hematology?

...

A. First off, I apologize to both of you for interrupting. And I thought this does involve hematology. So I believe we are a little - - I'm a little confused. Can you be – because this involves coagulation and the blood, I think of this as hematology. So I must have miss-answered your previous question, because I have been involved in other cases with bleeding and clotting.

Id. at 7:10-23.

Dr. Thalasila refiled the motion to bar Dr. Hofmeister and for summary judgment on April 1, 2024. Dal27. The trial court denied that motion without prejudice on May 14, 2024 and ordered a Rule 104 hearing to determine the qualifications of Dr. Hofmeister. Dal30. At the June 27, 2024 hearing, Dr. Hofmeister again confirmed that he is a hematologist, not an internist:

Q: **Okay. Now, when you are asked by patients or otherwise about what your specialty is, the answer that you give them is that you are a hematologist, right?**

A: **Yes.**

...

Q: Well, am I correct that you're not practicing internal medicine, you're practicing in hematology, so you let your boards lapse in internal medicine, but you kept them current in hematology, true?

A: Yes, but I think if I could just clarify a bit. **I'm not practicing as an internist.**

Q: Right.

A: That's an easier – an easier phrase than internal medicine, So yea, **I'm not a general internist.**

Q: Right. And, in fact, Doctor, you've never worked on a hospital floor in internal medicine as an internal medicine doctor where there are orthopedic patients, correct?

A: **As a general internist I have not worked on a hospital floor, yes.**

2T at 16:24- 17:2 and 18:17 - 19:8.

Dr. Hofmeister further testified that all of his teaching was confined to medical oncology and hematology (not internal medicine). 2T at 14:16 – 16:3.

Counsel was permitted to file supplemental briefs following the hearing pursuant to the court's July 2, 2024 order. Da140. It was not until the plaintiff submitted their supplemental brief on September 6, 2024 that plaintiff made a passing request for the first time that they be permitted to serve a new expert report (effectively reopening discovery) if Dr. Hofmeister's testimony was barred. Da142. No formal motion to reopen discovery was ever filed.

On July 29, 2024, the trial court scheduled a February 10, 2025 trial date and entered an Order setting deadlines for service of pretrial memorandum and motions *in limine*. Da141. Dr. Thalasila filed a motion *in limine* to bar Dr. Hofmeister. A pretrial conference and argument of motions *in limine* occurred on January 10, 2025 but Dr. Thalasila's motion *in limine* was not decided.

On February 28, 2025, the trial court entered an order properly barring Dr. Hofmeister as he was not qualified to offer expert testimony against Dr.

Thalasila but also reopened discovery to permit plaintiff to serve a new expert report, which effectively denied summary judgment. Dal49.

LEGAL ARGUMENT

POINT I

LEAVE TO TAKE AN INTERLOCUTORY APPEAL SHOULD BE GRANTED IN THE INTERESTS OF JUSTICE (not argued below)

“[T]he Appellate Division may grant leave to appeal, in the interest of justice ... ” Rule 2:2-4. Leave to appeal is appropriately granted “where there is some showing of merit and justice calls for [appellate] interference in the cause.” Romano v. Maglio, 41 N.J.Super. 561, 568 (App. Div. 1956), certif. den., 22 N.J. 574 (1956), cert dem., 353 U.S. 923 (1957). The Court will grant leave if “there is the possibility [that] ‘some grave damage or injustice’ [will] result[] from the trial court’s order.” Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008) (quoting Romano, *supra*). Our courts have also explained that leave for an appeal may be appropriate if it will resolve a fundamental procedural issue and prevent the parties from embarking on improper or unnecessary litigation. Dinizo v. Butler, 315 N.J. Super. 317, 319 (App. Div. 1998).

Dr. Thalasila submits that the interest of justice requires this Court to grant leave to appeal, and to reverse the Order of the court below. The trial court’s decision was in error because the trial judge failed to apply the applicable

precedents and Court Rules. An interlocutory appeal and reversal of the decision below is the only way to avoid an improper course of litigation by means of additional expert discovery and a trial. Dr. Thalasila has been unduly and substantially prejudiced by the Court's decision to permit the plaintiff to retain a new expert on the eve of trial, when the plaintiff should have known that his expert was not properly qualified and was on notice of Dr. Thalasila's objection to Dr. Hofmeister for two years. Summary judgment should have been granted in favor of Dr. Thalasila. Consideration of the appeal now would save the parties the time and expense trial. Thus, in the interests of justice and to "prevent the parties from embarking on improper or unnecessary litigation," an interlocutory appeal should be granted. See Dinizo, supra.

If leave is granted, the standard of review regarding the trial court's order is *de novo* as the order was one which implicitly denied summary judgment. Thus, the Appellate Division should apply the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). Summary judgment should be granted "if the discovery and any affidavits 'show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'⁵ ⁹⁵ Perez v. Professionally Green, LLC, 215 N.J. 388, 405 (quoting R. 4:46-2(cf)). When "only a question of law remains, this Court affords no special deference to the legal determinations of the trial

court.” Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh,
224 N.J. 189, 199 (2016).

POINT II

SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED IN FAVOR OF DR. THALASILA (IT, Dal30, Dal49).

The trial court properly barred Dr. Hofmeister’s testimony against Dr. Thalasila and held that Dr. Hofmeister was not qualified to author an expert report as to her. Dal49. However, the trial court erred by reopening discovery on the eve of trial after five years of discovery to permit the plaintiff to retain a properly qualified expert who specializes in internal medicine. The re-opening of discovery effectively denies summary judgment. The proper remedy would have been dismissal of the claims against Dr. Thalasila. Thus, that portion of the February 28, 2025 Order must be reversed.

A. Dr. Hofmeister was properly barred from offering standard of care testimony against Dr. Thalasila

Dr. Thalasila is an internal medicine physician and she treated the plaintiff within this specialty. Dr. Hofmeister is a hematologist as evidenced by his *curriculum vitae*, report, Certification, deposition testimony and testimony at Rule 104 hearing. Thus, Dr. Hofmeister is not qualified to render an opinion as to the standard of care of an internist.

Under the plain wording of N.J.S.A. 2A:53A-41, Dr. Hofmeister is not qualified to render standard of care opinions against Dr. Thalasila. N.J.S.A. 2A:53A-41 provides, in relevant part:

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:53-26, 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 sub-specialist recognized by the American Board of Medical Specialties or the American Osteopathic Association in the care or treatment at issue involves that specialty or sub-specialty recognized by the American Board of Medical Specialties of 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 sub-specialty, 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...

In Nicholas v. Mynster, the New Jersey Supreme Court affirmed the importance of the requirement under N.J.S.A. 2A:53A-41 that a standard of care expert in a medical malpractice action must be equivalently qualified to the physician against whom the testimony offered. Nicholas v. Mynster, 213 N.J. 463, 487 (2013). In that case, the plaintiff was taken to the hospital after operating a gas-powered saw and becoming ill. Id. at 468-69. Dr. Mynster, board certified in

emergency medicine, found that plaintiff was suffering from carbon monoxide poisoning. Id. at 469. The plaintiff then saw Dr. Sehgal, board certified in family medicine. Id. The plaintiff’s expert was board certified in internal medicine, pulmonary diseases, critical care medicine, and undersea and hyperbaric medicine. Id. at 472. The Court noted that plaintiff’s expert was unquestionably an expert in the treatment of carbon monoxide poisoning, but N.J.S.A. 2A:53A-41 “does not permit (her) to testify about the standard of care exercised by a physician practicing in a different specialty.” Id. at 487. Due to the plaintiff’s failure to obtain a properly qualified expert, defendants’ motion for summary judgment was granted. Ibid. Importantly, the court did not reopen discovery to permit the plaintiff time to serve a report from an expert who was appropriately qualified. The New Jersey Supreme Court affirmed summary judgment holding:

A medical expert must be a specialist in the same field in which the defendant physician specializes; there are no exceptions to that requirement other than the waiver provision of N.J.S.A. 2A:53A-41(c) which is inapplicable in this case.

Id. at 483.

Similarly, the Appellate Division has addressed the very issue before this court and determined that a hematologist/oncologist cannot offer standard of care opinions against an internist. In Carr v. Lady of Lourdes Medical Center,

2014 WL 9910476 (App. Div. June 19, 2015)³, the defendants were internal medicine physicians. See Id. at 1. The expert criticizing the defendants was board certified in internal medicine and medical oncology, and board eligible in hematology. See Id. at 2. The Appellate Division determined that the expert was more specialized in both credentials and in practice than the defendants. See Id. at 6. Although the proposed expert was board certified in internal medicine, “[the expert] has completed additional training in subspecialties beyond that of the defendant doctors.” Id. at 7. The Appellate Division concluded that “[the expert] practiced in the subspecialties of hematology and oncology **rather than the more generalized specialty of internal medicine.**” Id. (emphasis added). The Appellate Division determined that the plaintiff’s expert was not qualified to offer opinions as to the defendant, and dismissed the Complaint, holding:

The fact that [the expert] is board certified in internal medicine and is credentialed by a hospital to treat the condition at issue **does not establish him as equivalently credentialed** to the defendant doctors. ... We reject plaintiff’s contention that this requirement may be satisfied by practice in a subspecialty falling within the penumbra of internal medicine. By definition, a physician who is board certified in hematology or oncology has received additional training in the subspecialty. It would undermine the policy underlying the kind-for-kind rule for a physician with such specialized training to opine regarding the

³A true copy is attached hereto as Da165 and I certify I am unaware of any contrary unpublished decision.

standard of care applicable to a physician practicing in the more generalized specialty.

Id. at 8 (emphasis added).

Importantly, the Appellate Division did not hold that the proper remedy was to afford plaintiff more time to obtain an appropriately qualified expert to avoid the dismissal of the case. Rather, the Court affirmed dismissal.

The Appellate Division again recently considered the precise issue of whether a hematologist is qualified to provide expert testimony against an internal medicine physician and rendered a published decision. In Pfannenstien v. Surrey, 475 N.J.Super. 83 (App. Div. 2023), the Appellate Division held that a hematologist cannot opine as to the standard of care of an internal medicine physician. The defendant physicians were specialists in internal medicine, and the plaintiff produced an Affidavit of Merit executed by a specialist in hematology. The inquiry of a physician's specialty is separate and distinct from the inquiry of board certification, but in this case, the issue involved the specialty inquiry. The court stated:

Although hematology is a subspecialty of internal medicine, it is likewise undisputed that [the plaintiff's expert] did not practice internal medicine at the time of the alleged malpractice. Accordingly, pursuant to the plain terms of the PFA, as explained by the Court in Nicholas, plaintiffs proffered AOM expert failed to satisfy the statute's kind-for-kind mandate for both defendant doctors.

We therefore hold the PFA's requirement **is not satisfied where the affiant's practice falls within a subspecialty of a defendant doctor's specialty, when the subspecialist no longer specializes**, nor is board certified, in the specialty. In such circumstances, the policy underlying the equivalency requirement would be undermined if a physician with such specialized training were permitted to opine regarding the standard of care applicable to a physician practicing in the more generalized specialty because the subspecialist no longer practices in the specialty. Indeed, “[t]he apparent objective of N.J.S.A. 2A:53A-41 is to ensure that, when a defendant physician is subject to a medical-malpractice action for treating a patient's condition falling within his [or her] ABMS specialty, a challenging plaintiffs expert, who is expounding on the standard of care, **must practice in the same specialty.**” Nicholas, 213 N.J. at 486, 64 A.3d 536 (emphasis added).

Id. at 102-103 (emphasis added).

Thus, the Pfannenstein court reversed and remanded for dismissal of plaintiff's Complaint. Again, it is important to point out that the Appellate Division did not hold that the proper remedy was for the plaintiff to be able to retain an expert who is appropriately qualified.

Contrary to plaintiff's assertions, the New Jersey Supreme Court's decision in Wiggins v. Hackensack, 259 N.J. 562 (Jan. 22, 2025) did not provide a controlling holding applicable to this case. In that case, the New Jersey Supreme Court addressed what types of experts can opine as to the standard of care of a defendant who holds more than one area of specialty. That situation is not present in this case. Rather, Dr. Thalasila only has one area of specialty, which is internal medicine. Plaintiff's counsel has attempted to obfuscate this

issue by referring to Dr. Hofmeister's (the expert's) two areas of board certification in an attempt to argue that he is properly qualified. However, the Wiggins case did not interpret how to handle a situation where an expert has two board certifications; it only addressed what expert can opine against a defendant who states in his Answer that he has two areas of specialty. Thus, the trial court in this case properly stated, "The Court notes that while the decision in Wiggins v. Hackensack Meridian Health __ N.J. __ (2025) is instruction, it is not dispositive of this issue." Dal 63.

Turning to this case, the court properly held that Dr. Hofmeister is not qualified to offer opinions as to the standard of care applicable to defendant, Dr. Thalasila. Dal 49. It is clear that determining a physician's specialty versus his board certification are two separate and distinct inquiries. It is without question that Dr. Hofmeister is a specialist in hematology, and not internal medicine. An initial review of Dr. Hofmeister's *curriculum vitae* shows that his current position is "Associate Professor of Hematology" at Emory University, and his prior positions involved hematology. Da 057. In his report, he explains that he spends his clinical time seeing patients with hematologic issues (plasma cell disorder, cellular therapy and lymphoma/myeloma services), and his administrative work focuses on hematology and medical oncology. Da 053. The March 17, 2023 Certification states that he only sees hematology patients by

explaining “throughout those years, I provided internal medical care in addition to focused hematology care **to my hematology patients.**” (emphasis added). Da090. Thus, this document again shows that Dr. Hofmeister is a hematologist, not an internist.

Dr. Hofmeister similarly testified that he is a hematologist. At his deposition he testified as follows:

Q. And when you are asked your specialty, the answer that you would give to that would be you are a hematologist; is that correct?

A. Yes.

...

Q: Have you ever practiced as an internist; in other words, held yourself out as a general internist?

A: No.

Da097 at 12:20-13:3 and 13:20-23.

Interestingly, Dr. Hofmeister further testified that he believed his testimony in this case involved hematology, not internal medicine. Da096 at 7:10-23. It should be noted that Dr. Hofmeister was readily willing to state that he was a hematologist and the plaintiff’s counsel could easily have obtained this information from him at any point had he asked.

At the Rule 104 hearing, Dr. Hofmeister again confirmed that he is a hematologist, not an internist:

Q: Okay. **Now, when you are asked by patients or otherwise about what your specialty is, the answer that you give them is that you are a hematologist, right?**

A: Yes.

...

Q: Well, am I correct that you're not practicing internal medicine, you're practicing in hematology, so you let your boards lapse in internal medicine, but you kept them current in hematology, true?

A: Yes, but I think if I could just clarify a bit. **I'm not practicing as an internist.**

Q: Right.

A: That's an easier – an easier phrase than internal medicine, So yea, **I'm not a general internist.**

Q: Right. And, in fact, Doctor, you've never worked on a hospital floor in internal medicine as an internal medicine doctor where there are orthopedic patients, correct?

A: **As a general internist I have not worked on a hospital floor, yes.**

2T at 16:24- 17:2 and 18:17 - 19:8.

Given the facts of this case, there can be no dispute that Dr. Hofmeister is simply not a specialist in internal medicine and does not hold himself out as an internal medicine specialist. The fact that he had a board certification in internal medicine is of no consequence; simply having a board certification does not make one a specialist in that area. Moreover, in order to be appropriately qualified, the doctor must specialize in the same specialty before the board-certification prong of N.J.S.A. 2A:53A-41 is even reached. Rather, Dr.

Hofmeister himself admits that he is a specialist in hematology and not a specialist in internal medicine. 2T at 16:24-17:2 and 18:17-19:8. This testimony shows that Dr. Hofmeister's specialty unquestionably is hematology. He only sees patients who have hematologic issues. While he may provide some type of internal medicine care to those patients, he would never provide internal medicine care to a patient who had no hematologic issue either at the present time or in the past. Thus, he does not identify as a specialist in internal medicine, but rather as a specialist in hematology. Therefore, Dr. Hofmeister was properly barred from offering standard of care opinions as to Dr. Thalasila.

B. Since the court held that Dr. Hofmeister was not qualified to offer opinions as to Dr. Thalasila, summary judgment as to Dr. Thalasila should have been granted.

It is firmly established that, ordinarily, negligence must be proved and will never be presumed. Buckelew v. Grossbard, 87 N.J. 512, 525 (1981); Hansen v. Eagle-Picher Lead Co., 8 N.J. 133, 139 (1951). Consequently, there is a presumption against finding negligence, and thus, the burden of proving negligence is on the plaintiff or party asserting that claim. Buckelew v. Grossbard, 87 N.J. 512, 525 (1981).

In a typical negligence case, the jury is able to provide the applicable standard of care from its collective knowledge. Sanzari v. Rosenfeld, 34 N.J. 128, 135 (1961). However, in medical malpractice cases, the standard of care

must be established by expert testimony, as that a jury generally lacks the "requisite special knowledge, technical training and background to be able to determine the applicable standard of care without the assistance of an expert." Rosenberg by Rosenberg v. Cahill, 99 N.J. 318, 325 (1985) quoting Sanzari, 34 N.J. at 134-135. Expert testimony must be produced to show that the provider's conduct was not the product of "honest mistake in diagnosis or in judgment as to course of treatment taken." Walck v. Johns-Manville Products Corp., 56 N.J. 533, 562 (1970); Schueler, 43 N.J. at 345; Clark, 72 N.J. Super. at 495 (App. Div. 1962)(because a doctor is not an insurer of his or her patient's recovery, nor a warrantor of cures, he or she is not liable for honest mistakes of judgment).

Moreover, expert testimony is required because a physician is allowed a wide range of judgment in treatment. Schueler, 43 N.J. at 345. Thus, "evidence of a deviation of accepted medical standards must be provided by competent and qualified physicians." Ibid. Absent an expert report as to a particular defendant, the plaintiff fails to establish an actionable claim of medical malpractice. Clark v. Wichman, 72 N.J. Super. 486 (App. Div. 1962). This deficiency is fatal to the claim, and thus, dismissal of the Complaint and any crossclaims and counterclaims are warranted. Germann v. Matriss, 55 N.J. 193, 208 (1970).

The Appellate Division has held that when a plaintiff fails to retain a qualified expert against a defendant in a medical malpractice case, that expert is

properly barred and summary judgment is properly granted. See e.g., Medina v. Pitta, 442 N.J.Super. 1, (App.Div. 2016). In Medina, the defendant physicians were ophthalmologists, and while the plaintiff did retain an expert ophthalmologist, that expert testified at deposition that he was retired at the time of the alleged malpractice. Id. at 11-13. The defendants filed for summary judgment and the trial court granted the motions. The Appellate Division affirmed, finding that plaintiff’s expert “was not statutorily authorized to testify” against the defendants. Id. at 20. The court summarized the analysis as follows:

The summary judgment motions here were filed well after the exchange of interrogatories and expert reports and the deadline set in the case management order for the production of plaintiffs expert reports. The motions followed the deposition of plaintiffs sole expert as to the standard of care and alleged deviations in care. There was no motion filed by plaintiff to extend discovery or to seek an alternative expert. It cannot be disputed that the record was ripe for summary judgment. Similarly, there is no question that expert testimony was required for plaintiffs claims to succeed.

...

Without testimony from a statutorily authorized expert, plaintiff cannot establish the applicable standard of care. Therefore, summary judgment was appropriate.

Id. at 23-24 (emphasis added).

The facts of this case are almost identical to Medina and Nicholas. In both cases, the reviewing court found that summary judgment was the necessary

outcome when a plaintiff fails to produce an appropriate expert against a defendant. The New Jersey Supreme Court in Nicholas stated very simply:

Under a plain textual reading of the Act, plaintiffs cannot establish the standard of care through an expert who does not practice in the same medical specialties as defendant physicians. For that reason, plaintiffs' medical expert is barred from testifying to the standard of care governing defendants. **Because plaintiffs cannot establish the applicable standard of care, summary judgment must be granted in favor of defendants.**

Nicholas, 213 N.J. at 468 (emphasis added).

This is the precise issue before this court. Dr. Hofmeister is not statutorily authorized to opine as to the standard of care applicable to Dr. Thalasila. Thus, he is properly barred from testifying and summary judgment must be granted.

It must be pointed out that in the instant case, there were 2,478 days of discovery, with 10 discovery extensions. Da031 to Da051. On February 15, 2023, 441 days prior to the discovery end date, Dr. Thalasila filed a motion to bar Dr. Hofmeister and for summary judgment based upon Dr. Hofmeister's *curriculum vitae* and his report which explained his clinical practice involves hematology. Da087. On April 1, 2024, still 29 days prior to the discovery end date, Dr. Thalasila refiled a motion to bar Dr. Hofmeister and for summary judgment based upon Dr. Hofmeister's deposition testimony which unquestionably explained that he was a hematologist, not an internal medicine physician. Dal27. Despite having ample time within the discovery period, to

serve a report of an internal medicine physician, plaintiff failed to do. The effect of this should be dismissal of plaintiff's claims as the New Jersey Supreme Court affirmed in Nicholas, and the Appellate Division affirmed in Medina.

Further, at no point did the plaintiff ever file a motion to extend or reopen discovery. Even had such a motion been filed, Rule 4:24-1(c) states explicitly that “[n]o extension of the discovery period may be permitted after an arbitration or trial date is fixed, unless exceptional circumstances are shown.” As the Appellate Division has explained:

In order to extend discovery based upon “exceptional circumstances,” the moving party must satisfy four inquiries: (1) why discovery has not been completed within time and counsel's diligence in pursuing discovery during that time; (2) the additional discovery or disclosure sought is essential; (3) an explanation for counsel's failure to request an extension of the time for discovery within the original time period; and (4) the circumstances presented were clearly beyond the control of the attorney and litigant seeking the extension of time.

Rivers v. LSC P'ship, 378 N.J. Super. 68, 78–79 (App. Div. 2005) (citing Vitti v. Brown, 359 N.J. Super. 40, 51 (Law. Div. 2003)).

Even if the plaintiff had filed a motion, he would not have met the standard for reopening discovery. Our Appellate Division has held that “a failure to pursue discovery promptly, within the time permitted, would normally be fatal to such a request.” Rivers v. LSC P'ship, 378 N.J. Super. at 79 (citation omitted).

Courts have routinely and consistently held that “exceptional circumstances” are only found rarely, even if the denial of a discovery extension results in dismissal of the case. For example, in Rivers, *supra*, the Appellate Division affirmed summary judgment for the defendant. The trial court declined to find exceptional circumstances where the plaintiff sought a second extension of discovery where no effort had been made to obtain an expert report during the extended discovery period. The Appellate Division affirmed and held that the trial court properly granted summary judgment.

Similarly, in Quail v. Shop-Rite Supermarkets, 455 N.J. Super. 118, 133-134 (App. Div. 2018), certif. den. 236 N.J. 242 (2019), the Appellate Division affirmed summary judgment for the defendant because the plaintiff did not serve an expert report. The plaintiff in that case attempted to use a Certificate of Death to prove causation but the trial court barred the report as a net opinion. The trial court declined to find exceptional circumstances to reopen discovery, and the Appellate Division affirmed, finding that summary judgment was the appropriate remedy as plaintiff could not prove causation. See also Huszar v. Greate Bay Hotel, 375 N.J. Super. 463, 472 (App. Div.), certif. granted and summarily remanded 185 N.J. 290 (2005) (plaintiff, failing to show good cause or exceptional circumstances, made no effort to obtain consensual or court

ordered extension of discovery until five months after the discovery end date and the Appellate Division upheld dismissal).

Given the circumstances of this case, the plaintiff clearly cannot meet the criteria to reopen discovery after a trial date has been fixed. Since 2019, he was aware that this was the specialty of Dr. Thalasila. Da021. Further, as plaintiff's counsel is an experienced medical malpractice attorney, he knew or should have known that under N.J.S.A. 2A:53A-41 and Nicholas v. Mynster, 213 N.J. 463 (2013) that he needed a specialist in internal medicine. There is no compelling explanation, let alone one that would rise to the level of exceptional circumstances, for why the plaintiff's counsel did not pursue such a specialist during the lengthy 2,478-day discovery period, or seek an extension to obtain one during discovery. Moreover, internal medicine is a specialty where there a large number of internal medicine experts whom the plaintiff could have retained.

Given the numerous objections and motions by Dr. Thalasila of Dr. Hofmeister's lack of specialty in internal medicine, the plaintiff is incapable of providing any legitimate explanation for why a discovery extension was not sought. Finally, these facts also show that there were no circumstances presented that were outside the control of the plaintiff's counsel. The plaintiff's counsel

knew or should have known that the only expert properly qualified to offer an opinion against her must similarly be specialized in internal medicine.

In plaintiff's weak attempt at informally requesting that the court reopen discovery in their Rule 104 summation brief, counsel relied upon Castello v. Wohler, 446 N.J.Super. 1 (App.Div. 2016). However, reliance on Castello is misplaced. That case is easily distinguishable as there was a genuine misrepresentation by the plaintiff's expert in that case about his current status and qualifications. Plaintiff's expert's *curriculum vitae* and Affidavit of Merit states that he had been in practice for 35 years, but at his deposition, he testified that he had been retired for approximately 5 years. Id. at 6. Thus, given the surprise at the expert's deposition, the Appellate Division held that plaintiff's motion to reopen discovery should have been granted. Id. at 27. However, in the case before the Court, as explained above, Dr. Hofmeister was explicit in his representations that he was a hematologist, and he never tried to conceal that fact. Upon receipt of Dr. Hofmeister's *curriculum vitae*, plaintiff's counsel should have known that he was a specialist in hematology, not internal medicine. A simple question regarding his practice or what type of specialist he calls himself would have elicited the fact that he is a hematologist, not an internal medicine physician, as he is quite forthright about this. Further, the plaintiff never filed a motion to extend or reopen discovery. Therefore, the exceptional

circumstances found in Castello are not found in the case before this Court. Thus, the rule that no discovery extensions should be granted after a trial date has been set, applies.

The facts of this case show clearly that exceptional circumstances are not present in this case. Thus, under IC 4:24-1(c), no extension of the discovery period should have been permitted after the trial date was set, and summary judgment should have been granted in favor of Dr. Thalasila as was done by the New Jersey Supreme Court in Nicholas, supra, and by the Appellate Division in Medina, supra.

CONCLUSION

It is therefore respectfully requested that, for all of the foregoing reasons, the Law Division's decision below reopening discovery and denying summary judgment should be reversed. Thus, summary judgment should be granted in favor of Dr. Thalasila.

Respectfully submitted,
RUPRECHT HART RICCIARDULLI & SHERMAN, LLP
Attorneys for Defendant/Appellant-Anuradha Thalasila, MD

/s/ Michael R. Ricciardulli
mricciardulli@rhwlawfirm.com
Of Counsel and on the Brief

/s/ Jessica J. Mahony
jmahony@rhwlawfirm.com
On the Brief

Dated: June 17, 2025

TODD B. GLASSMAN, As Executor of the Estate of JENNIFER K. COLLUM-GLASSMAN, deceased;

Plaintiff,

v.

JUANITO'S, INC.; KLE PROPERTIES, LLC; STEVEN P. FRIEDEL, M.D.; LON WEINER, M.D.; CHARLES W. FARRELL, M.D.; NATACHA FIELD, R.N.; TANYA GOODEN, R.N.; CONSTANCE MACKAY, R.N.; ANURADHA THALASILA, M.D.; HACKENSACK MERIDIAN HEALTH d/b/a RIVERVIEW MEDICAL CENTER; JOHN DOE I, (a fictitious name); JOHN DOE II, (a fictitious name); ABC CORPORATION, (a fictitious name) and ABC MAINTENANCE COMPANY, (a fictitious name); JOHN DOES III-XV, (fictitious names);

Defendants.

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

Docket No. A-2723-24

On Appeal from SUPERIOR COURT OF NEW JERSEY, MONMOUTH COUNTY, LAW DIVISION

Docket No. Below: MON-L-2383-18

Civil Action

Sat Below: Hon. Kathleen A. Sheedy, J.S.C.

PLAINTIFF'S BRIEF IN SUPPORT OF APPEAL

LOMURRO MUNSON, LLC
Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, New Jersey 07728
Telephone 732-414-0300; Fax 732-431-4043
Attorneys for Plaintiff, Todd B. Glassman, As Executor of the Estate of Jennifer K. Glassman, deceased

Christina Vassiliou Harvey, Esq., NJ Attorney ID:
023642004, charvey@lomurrolaw.com
Of Counsel and On the Brief

Date Submitted: July 14, 2025

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PRELIMINARY STATEMENT

Three times, Defendant Anuradha Thalasila, M.D., asked the trial court to bar Plaintiff Todd B. Glassman, as Executor of the Estate of Jennifer K. Collum-Glassman's standard of care expert, Craig Hofmeister, M.D., who is a board-certified internist with a sub-certification in hematology, on the basis that Dr. Thalasila is only board-certified in internal medicine. Although the trial court denied two earlier applications, on the eve of trial and after the close of discovery, the trial court granted Dr. Thalasila's application. The trial court erred in precluding Dr. Hofmeister because there is no statute, precedent, or prior ruling precluding a board-certified internist who also practices within a sub-certification from offering a standard of care opinion within his specialty.

The trial court's construction of the New Jersey Medical Care Access and Responsibility and Patients First Act ("Patients First Act" or "Act"), N.J.S.A. 2A:53A-37 to -41, violated not only the plain language but also the New Jersey Supreme Court's recent construction of the Act in Wiggins v. Hackensack, 259 N.J. 562, 574 (Jan. 22, 2025), where the Court held a board-certified internist could offer an Affidavit of Merit against a defendant whose answer stated he was practicing in the field of internal medicine and gastroenterology at the time of the malpractice. Plaintiff seeks to reverse the trial court's erroneous exclusion of Dr. Hofmeister's testimony as it violated the plain statutory language of the Patients First Act.

Moreover, Plaintiff opposes Dr. Thalasila's appeal seeking to preclude the equitable relief permitting Plaintiff to obtain a new expert. The trial court was within its discretion to extend discovery for good cause to permit Plaintiff to obtain a new expert given Plaintiff relied upon the prior rulings finding Dr. Hofmeister was properly credentialed to offer his opinion, and there was no change in his credentials during the intervening time. Because the trial court's decision was well-supported by the procedural posture that included the two prior denials of the same request to bar Dr. Hofmeister, Dr. Thalasila's appeal should be denied.

STATEMENT OF FACTS

At the age of 45, Jennifer Collum-Glassman, a mother of two and a special education teacher, was a patron of Juanito's Restaurant in Red Bank. Glassman v. Friedel, 249 N.J. 199, 210 (2021). As she left, she tripped over a defect at the restaurant causing a trimalleolar fracture of her left ankle requiring her to be admitted to Riverview Medical Center. (Da54.¹) Five days later while still in patient, she had an open reduction and internal fixation to repair the fracture. (Da54.) During that procedure, Ms. Glassman suffered drop foot on her right

¹ The term "Da" refers to Thalasila's Appendix in support of appeal; "Db" refers to Thalasila's Appellate Brief; "Pa" refers to Plaintiff's Appendix in support of appeal and in opposition to Thalasila's appeal; "1T" refers to the oral argument on the motion for summary judgment, dated May 10, 2024; "2T" refers to the Transcript of 104 Hearing, dated June 27, 2024.

side leading to her complete immobilization. (Da54.) While completely immobilized, her hospital attending physician, Dr. Thalasila, failed to treat her for the risk of venous thromboembolism. (Da54.) Unfortunately, this failure, among others, was a substantial factor leading to Ms. Glassman’s premature death. (Da54.) In summary, Ms. Glassman suffered a dropped right foot when she was in surgery for a fracture of her left foot – and then she died.

While Dr. Thalasila is board-certified in internal medicine, she describes her medical practice to the public as a “hospitalist.” (Pa7 at ¶¶ 14-16, Pa18.) At her deposition, she testified under oath that she has been a hospitalist for the seventeen years before her deposition. (Pa7 at ¶ 17, Pa16 at 31:8-11.) Neither the American Board of Medical Specialties nor the American Osteopathic Association recognize “hospitalist” as a specialty, a point conceded by defense counsel. (Pa8 at ¶ 24, Pa37-45, Pa57 at ¶ 4, Pa64-65, Pa67-73, 1T10:24-11:1.)

PROCEDURAL HISTORY

Ms. Glassman’s husband, Plaintiff, sought to hold both the Juanito’s defendants and the medical professionals who treated Ms. Glassman responsible for his wife’s untimely death in an action filed in the Law Division. (Da1.) Anuradha Thalasila, M.D.’s April 3, 2019 Answer to the Complaint stated she “is board certified in internal medicine and practiced in this field at the time of her care and treatment of the plaintiff in this matter.” (Da28.)

Plaintiff submitted the Affidavit of Merit of Clinton F. Merrill, Jr., MD who was board certified in internal medicine, oncology and hematology. (Pa57 at ¶ 9.) Dr. Thalasila objected at the Ferreira conference, but the trial court found the Affidavit of Merit was sufficient as Dr. Thalasila was and is board certified in internal medicine. (Pa57 at ¶ 7-8, Pa75.) Dr. Thalasila then filed a formal motion arguing the practices of Dr. Merrill and Dr. Thalasila did not match. (Pa57 at ¶ 9.) Correctly applying the Patients First Act that equates a physician’s “specialty” only with a board certification or sub-certification recognized by the American Board of Medical Specialties or the American Osteopathic Association, the Honorable Joseph P. Quinn, P.J.Civ., denied the motion on September 13, 2019. (Pa58 at ¶ 11, Pa81-82.) Discovery then progressed.

Plaintiff timely served an expert report from Craig Hofmeister, M.D., in which he stated he is “currently board certified with the American Board of Internal Medicine in the subspecialty of Hematology.” (Da53, Da58, Pa4 at ¶¶ 4-5.) Dr. Hofmeister opined that due to Ms. Glassman’s risk factors for venous thromboembolism (“VTE”), prophylaxis should have been ordered. (Da54-55.) “Since prophylaxis was not ordered or provided and the non-operative leg suffered a compression injury, Ms. Glassman became high risk for the VTE.” (Da055.) He further opined the compression injury caused the immobilization of Ms. Glassman’s non-surgical leg. (Da55.) He concluded, “Combining the

compression immobility with the surgical immobility caused the resulting VTE and her eventual death. Dr. Thalasila's deviation was failing to order prophylaxis, and thereby denying the patient of potential protections against the VTE." (Da55.) The report was timely served on January 16, 2023. (Pa52 at ¶ 5.)

On February 15, 2023, Dr. Thalasila moved to bar Dr. Hofmeister's standard of care opinions. (Da87.) In opposition to the motion, Dr. Hofmeister certified that he has been board certified in internal medicine since 2002, and that he was re-certified in 2012. (Da90 at ¶¶2-3.) He further certified that at the time of Ms. Glassman's treatment that forms the basis for the claim, he was board certified in internal medicine. (Da90 at ¶ 4.) Dr. Hofmeister certified that "[i]n the course of my treating patients in 2016 and 2017, the majority of my professional time was spent as an internist diagnosing and treating my patients across the spectrum of internal medicine diseases including hypertension, diabetes, infectious diseases, skin problems, pain and others." (Da91 at ¶ 5.) He further clarified that hematology is a "subspecialty within the field of internal medicine." (Da91 at ¶ 6.) The Honorable Kathleen A. Sheedy, J.S.C. denied Dr. Thalasila's motion to bar Dr. Hofmeister on June 2, 2023. (Da92.) As Dr. Thalasila's counsel explained, the denial was based upon the finding that "Dr. Hofmeister did practice internal medicine." (Pa48 at ¶ 7.)

Thereafter, discovery progressed. In his deposition, Dr. Hofmeister responded to a question by declining to state he ever held himself out “as a general internist.” (Da97 at 13:19-23.) He testified that he never “worked as an internist on a floor with orthopedic patients.” (Da98 at 17:19-22.) Dr. Hofmeister testified that he had taken the internal medicine board exam after his residency and again when he was recertified. (Da100-01 at 25:25 to 26:17.) He did not re-certify in internal medicine in 2022, but he was certified in 2017 and for the year prior to Ms. Glassman’s medical treatment. (Id.) At deposition, Dr. Hofmeister explained that Ms. Glassman had several points that caused her to be at increased risk for embolism including: her age, being on birth control, that immobilized, surgically operated leg fracture, the fact that the surgery was over forty-five minutes, the fact that she was confined to bedrest for over seventy-two hours, her BMI, and her past medical history for ulcerative colitis. (Pa103 at 34:1-39:24.)

Following this deposition, in 2024, Dr. Thalasila again moved for summary judgment seeking to bar Dr. Hofmeister’s standard of care opinions. (Da127.) Although the motion was denied, the trial court indicated that it “shall conduct a Rule 104 hearing to determine if the expert qualification are (sic) sufficient.” (Da131.) In opposing the motion, Plaintiff argued,

[w]hile it may be true that his practice is now more oriented towards the Internal Medicine subspecialty of

Hematology, according to N.J.S.A. 2A:53A-41, it is his practice “during the year immediately preceding the date of the occurrence that is the basis for the claim or action” that governs whether or not he is qualified to opine as to Standard of Care of a reasonable internist in April of 2017.

(Da133-34.) The trial court found that Dr. Thalasila was a hospitalist at the time and that a “hospitalist is not listed as any form of specialty or sub-specialty under either the American Board of Medical Specialties, or the American Osteopathic Association.” (Da139.) The trial court found Dr. Hofmeister “was and remains to this day a Board-Certified Internist.” (Da139.) However, the trial court found a genuine dispute of material fact such that it would set the matter for a N.J.R.E. 104 hearing. (Da139.)

During the 104 hearing, Dr. Hofmeister testified to his education. He indicated that he completed “an internal medicine residency,” which “is the general pathway of becoming an internist and, after completing your internal medicine residency, you become an internist as an attending.” (2T8:18-9:7.) He further testified that he passed the initial board exams for certification as internist and then again the recertification of those boards. (2T9:8-14.) He testified that his internal medicine board certification was current throughout 2017. (2T9:15-18.) Dr. Hofmeister further testified that he was an associate professor of clinical internal medicine in the Division of Hematology at Ohio State University from 2014 to 2018. (2T9:19-22.)

Dr. Hofmeister confirmed under oath at the 104 hearing that “[i]n the course of the year prior to the events in issue in this matter, [he was] practicing internal medicine.” (2T10:8-11.) He explained that while he treats hematologic patients, he becomes these patients’ primary care doctor so he treats “diseases such as hypertension, diabetes, infectious diseases, skin problems, pain.” (2T10:12-20.) He testified, “These are all problems for my patients with hematologic diseases. We become their primary care doc, basically. So we treat all of those problems in all of my patients.” (*Id.*) Importantly, Dr. Hofmeister re-affirmed his prior certification testifying under oath that “the majority of [his] professional time in the years 2016 through 2017 was spent as an internist diagnosing and treating patients across the spectrum of internal medicine diseases.” (2T10:21-11:2.)

Given the Supreme Court had certified the question of whether an internist may opine when the defendant is both an internist and gastroenterologist, the trial court waited to issue the decision on whether Dr. Hofmeister could testify. In the meantime while awaiting the decision, the discovery-end date ran. Following the Supreme Court issuing its decision in Wiggins, on February 28, 2025, the trial court barred Dr. Hofmeister’s standard of care opinions. (Da149-50.) However, the trial court reopened discovery, and gave Plaintiff the opportunity to find a new standard of care expert. (Da150.) The trial court found,

“Dr. Hofmeister is a specialist in hematology and not internal medicine.” (Da161.) The Court noted that Dr. Hofmeister “believed this case was one dealing with bleeding and clotting.” (Da161.) The trial court found, “[t]here is no doubt that the Defendant, Dr. Thalasila is a general internist. There is also no doubt that Plaintiff’s expert, Dr. Hofmeister does not hold himself out as an internist.” (Da162.)

The trial court noted that it “recognizes that Dr. Hofmeister remained Board Certified in internal medicine which is an important distinction between this case and Pfannenstein [v. Surrey], 475 N.J. Super. 83, 102-03 (App. Div.), certif. den., 254 N.J. 512 (2023).” (Da163.) Despite this finding, “the Court remains concerned that Dr. Hofmeister’s training in the area of hematology would undermine the policy underlying the like-for-like rule for a physician with such specialized training to opine regarding the standard of care applicable to a physician practicing in the more generalized specialty.” (Da163.) Due to this finding, the trial court precluded the testimony of Dr. Hofmeister. (Da163.) Without any analysis, the trial court stated, “while the decision in Wiggins v. Hackensack Meridian Health, [259] N.J. [562] (2025) is instructive, it is not dispositive of this issue.” (Da163.)

The trial court found even though Dr. Hofmeister could not testify, it permitted Plaintiff the opportunity to find a new expert because “[t]he prejudice

to the Plaintiff by excluding an expert to testify against an allegedly liable defendant doctor is too severe a penalty to be imposed upon a plaintiff who with good reason believed that their Board-Certified expert in internal medicine was qualified to render an opinion against the defendant.” (Da163-64.)

The trial court stayed the matter so interlocutory appellate review could be requested by the parties. (Pa106.) This Court granted both Dr. Thalasila’s motion seeking leave to appeal and Plaintiff’s cross-motion. This brief now follows in opposition to Dr. Thalasila’s appeal and in support of the cross-appeal.

LEGAL ARGUMENT
STANDARD OF REVIEW

This Court must review a question of law de novo. Moschella v. Hackensack Meridian Jersey Shore Univ. Med. Ctr., 258 N.J. 110, 125 (2024). The trial court’s interpretation of N.J.S.A. 2A:53A-41(a) is not entitled to deference and should be rejected because it overlooks the plain language. The Legislature defined “specialty” in accordance with the American Board of Medical Specialties, and thus, because Dr. Hofmeister practiced internal medicine for the year before Ms. Glassman’s treatment, there was no basis to statutorily bar his testimony. See N.J.S.A. 2A:53A-41; Da91 at ¶ 5; 2T10:21-11:12. The trial court incorrectly found practicing within a subspecialty somehow means the doctor no longer practices within the overall specialty itself,

but that would be like saying a medical malpractice attorney no longer practices civil law; not only does the statute not say that, but it specifically says the opposite as the Court recently explained in Wiggins, supra. But here, the trial court overlooked the plain statutory language and the Court’s interpretation of that statute that led to an absurd result. As further explained in Point One, this erroneous legal determination should be reversed.

On the other hand, though, Dr. Thalasila’s appeal is not entitled to a de novo review. Instead, the trial judge’s decision whether to permit Plaintiff to obtain a new expert is protected by an abuse of discretion standard. DiFiore v. Pezic, 254 N.J. 212, 228 (2023). “A trial court’s resolution of a discovery issue is entitled to substantial deference and will not be overturned absent an abuse of discretion.” Id. (citing State v. Stein, 225 N.J. 582, 593 (2016)). This court affirms unless the appellant shows a “manifest denial of justice,” or “a mistaken understanding of the applicable law” – neither of which occurred here. See id. (quoting Rowe v. Bell & Gossett Co., 239 N.J. 531, 551-52 (2019) (alteration in original) (quoting Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)) and State in Int. of A.B., 219 N.J. 542, 554 (2014) (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011))).

Because the trial judge was not so wide off the mark as to permit Plaintiff an opportunity to replace the expert when throughout years of discovery,

Plaintiff successfully overcame two prior motions by Dr. Thalasila to bar the expert. (Pa82; Da93.) It would be unfair when the discovery end date only ran because the trial judge held the matter in abeyance while the Wiggins decision was pending and the law of the case had been that a physician board certified in internal medicine with a sub-certification in hematology is qualified to offer a standard of care opinion against a physician boarded in internal medicine. (Da131; Pa81-82; Da93.) Dr. Thalasila has not met her burden to show the trial judge abused her discretion, and thus, her appeal should be denied.

Dr. Thalasila attempts to undermine the trial court's discretion to give an additional thirty days for Plaintiff to find a new expert. (Db3.) However, Dr. Thalasila's calculation of 2,478 days is incorrect; Dr. Thalasila was only involved in the discovery aspect of the case for a total of 1,695 days given the appellate delays where the trial court's case management order stayed discovery. (Da21; Da32.) Moreover, it is simply a red herring given it was not until after the close of discovery that the trial court first issued a determination that Dr. Hofmeister could not testify. (Cf. Da131 with Pa90.) It would be unfair to permit this much discovery and then at the very end bar a Plaintiff's expert after withstanding two prior, successful challenges on the same grounds and the Supreme Court's analysis in Wiggins finding a doctor board certified in internal medicine practices within that specialty. (Pa82; Da93.) For these reasons, this

Court should deny Dr. Thalasila's appeal because she did not show an abuse of discretion.

POINT ONE

This Court Should Reverse the Trial Court's Incorrect Interpretation of the Patients First Act and the Supreme Court's Precedent. (Pa98-103.)

This court reviews a trial court's construction of a statute de novo. Wiggins, 259 N.J. at 574 (citing Libertarians for Transparent Gov't v. Cumberland County, 250 N.J. 46, 55 (2022)). The Supreme Court recently explained under the Patients First Act, the Legislature recognized

three categories of credentialed physicians embodying the kind-for-kind rule: (1) those who are specialists in a field recognized by the American Board of Medical Specialties (ABMS) but who are not board certified in that specialty; (2) those who are specialists in a field recognized by the ABMS and who are board certified in that specialty; and (3) those who are "general practitioners."

Wiggins, 259 N.J. at 576 (citing N.J.S.A. 2A:53A-41).

The Patients First Act provides in relevant part:

[i]n an action alleging medical malpractice, a person shall not ... execute an affidavit pursuant to the provisions of [the AOM statute] on the appropriate standard of practice or care unless the person is licensed as a physician ... and meets the following criteria:

a. If the party against whom or on whose behalf the testimony is offered is a specialist or subspecialist ... and the care or treatment at issue involves that specialty or subspecialty ..., 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, ..., 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 ..., 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 ... who is board certified in the same specialty or subspecialty, ..., 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 ..., the active clinical practice of that specialty or subspecialty ...; or

(b) the instruction of students ... in the same health care profession in which the defendant is licensed ... and, if that party is a specialist or subspecialist ..., in the same specialty or subspecialty ...; or

(c) both.

N.J.S.A. 2A:53A-41. Thus, a practitioner is only entitled to demand the opinion be from a same credentialed physician when the specialty is “recognized by the ABMS.” Wiggins, 259 N.J. at 576 (quoting N.J.S.A. 2A:53A-41(a)).

In order to prevent the harshness of a dismissal with prejudice, since 2011, the Court has required a defending physician “include in his answer the field of

medicine in which he specialized, if any, and whether his treatment of the plaintiff involved that specialty.” Wiggins, 259 N.J. at 578 (quoting Buck v. Henry, 207 N.J. 377, 396 (2011)). The Court Rule was formally amended effective September 4, 2012 to require this statement. R. 4:5-3.

In Wiggins, a defendant’s Answer indicated that the treatment provided to the plaintiff involved both of his specialties of “internist and gastroenterologist.” 259 N.J. at 580. As a result, because the plaintiff provided an Affidavit of Merit from an internist, the Court held the Affidavit of Merit complied with the statute. Id. at 581. The Supreme Court further re-affirmed its holding in Buck that “[a] physician may practice in more than one specialty, and the treatment involved may fall within that physician’s multiple specialty areas. In that case, an affidavit of merit from a physician specializing in either area will suffice.” Id. at 578 (quoting Buck, 207 N.J. at 391).

Here, Dr. Thalasila’s Answer indicated she was board certified in internal medicine, which matches Dr. Hofmeister’s credentialing in 2017 in internal medicine. (Cf. Da28 with 2T10:12-11:12.) During the year before the negligence that killed Ms. Glassman, Dr. Hofmeister spent the majority of his professional time treating and diagnosing patients as an internal medicine specialist “across the spectrum of internal medicine diseases.” (2T10:12-11:12.)

This Court's decision in Nicholas v. Hackensack University Medical Center, 456 N.J. Super. 110, 120 (App. Div. 2018) is instructive to the issue. The Appellate Division in Nicholas reversed the trial court's barring of a board certified pediatric physician and sub-certified in pediatric critical care based upon testimony that the expert only clinically treated patients 25% of the time. Id. at 116. The Appellate Division held that the trial court erred because even though the expert's hospital administrative work "consumed a substantial amount of his professional time in [the year preceding the negligence], [the expert's] clinical practice was devoted exclusively to the practice of pediatrics and pediatric critical care. Id. at 120 (citing Buck, 207 N.J. at 391). Like the Court recently explained in Wiggins, this Court also explained in Nicholas, that "[a] physician may practice in more than one specialty." Id. at 120 (quoting Buck, 207 N.J. at 391. Similarly, here, Dr. Hofmeister testified that in the year preceding Ms. Glassman's untimely death, he had spent the majority of his time treating internal medicine disorders; as this Court explained in Nicholas and the Supreme Court held in both Wiggins and Buck, it does not matter that he simultaneously practiced hematology. (2T10:12-11:12.) Since he was board certified in the year preceding the malpractice and a majority of his time was spent treating patients within the specialty of internal medicine, he is qualified under N.J.S.A. 2A:53A-41(a), and the trial court's decision should be reversed.

Dr. Thalasila relied upon Pfannenstein, 475 N.J. Super. at 102-03, below to argue that an internist is not a hematologist; but the argument takes the Appellate Division’s decision out of context. The issue in Pfannenstein was whether an AOM from a hematologist, who was no longer board certified in internal medicine, could be used against a doctor who was only board certified in internal medicine. Id. at 102. The Appellate Division held it could not because the hematologist was no longer board certified in internal medicine, and thus, did not meet the requirements of N.J.S.A. 2A:53A-41(a)(2). Id. at 102. Here, Dr. Hofmeister made clear at the 104 Hearing that in the year preceding Ms. Glassman’s treatment, he was board certified in internal medicine, and that he treated patients for hematological issues as well as “across the spectrum of internal medicine diseases.” (2T10:12-11:12; see also Da91 at ¶ 5.)

Dr. Thalasila argues Dr. Hofmeister’s certification “made it clear that Dr. Hofmeister only treated hematology patients, and not solely internal medicine patients,” but this overlooks Dr. Hofmeister certifying that “[i]n the course of treating patients in 2016 through 2017, the majority of my professional time was spent as an internist diagnosing and treating my patients across the spectrum of internal medicine diseases including hypertension, diabetes, infectious diseases, skin problems, pain and others.” (Db4; Da91 at ¶ 5.) At all relevant times, Dr. Hofmeister was board certified in internal medicine and practiced within that

specialty by treating hematology patients, which is a wholly contained subspecialty within the general specialty of internal medicine, for both hematological conditions as well as internal medicine diseases. (2T10:12-11:12.)

Dr. Thalasila quotes Dr. Hofmeister's deposition where the attorney asked the expert if he ever "held yourself out as a general internist" to which Dr. Hofmeister responded "no." (Db4 (emphasis added).) But nowhere in the statute does it state that when a physician's specialty includes a subspecialty, it means the physician is not practicing within the specialty itself. By comparison, Dr. Thalasila's counsel is a certified civil trial attorney, but under Dr. Thalasila's argument adopted by the trial court, when certified civil trial counsel practices medical malpractice law, he would somehow not be practicing civil law. This Court should reverse the trial court's faulty logic, particularly when the Supreme Court's precedent in Wiggins, 259 N.J. at 102-03, is contrary to this logic.

It is unclear what defense counsel's question of holding oneself out as a "general internist" even means given the statute – which controls – defines the specialty as the ABMS definition. This means internal medicine includes the subspecialty of hematology because that is how the ABMS defines internal medicine:

An internist is a personal physician who provides long-term, comprehensive care in the office and in the

hospital, managing both common and complex illnesses of adolescents, adults and the elderly. Internists are trained in the diagnosis and treatment of cancer, infections and diseases affecting the heart, blood, kidneys, joints and the digestive, respiratory and vascular systems. They are also trained in the essentials of primary care internal medicine, which incorporates an understanding of disease prevention, wellness, substance abuse, mental health and effective treatment of common problems of the eyes, ears, skin, nervous system and reproductive organs.

(Pa84.) Nowhere in the ABMS' definition does it limit the practice to "general internal medicine." Practicing within the subspecialty is one way of practicing the specialty of internal medicine. The Legislature did not state that if a physician is board certified in a specialty that practicing within the subspecialty somehow precludes practice within the specialty. See N.J.S.A. 2A:53A-41(a). The Court has stated repeatedly that it will not add new requirements to the statute's plain language. Moschella v. Hackensack Meridian Jersey Shore Univ. Med. Ctr., 258 N.J. 110, 127 (2024) (explaining "[w]hen a statute is susceptible of an interpretation true to its purpose and that permits plaintiffs to proceed with meritorious claims, we will not add requirements not explicitly set forth that deny plaintiffs their day in court")(quoting Burns v. Belafsky, 166 N.J. 466, 470 (2001)). Here, the trial court finding that a board-certified internist who practices hematology is somehow not practicing internal medicine creates a new

requirement not found in the Patients First Act; this Court should not permit that construction of the Act to stand.

This Court should reject Dr. Thalasila's argument that even though a doctor is board-certified in internal medicine, if the doctor personally states he is not a "general internist," it means the doctor is not practicing within the specialty of internal medicine. (Db9-18.) Dr. Thalasila's argument ignores how the Legislature defined specialist, and instead asks this Court to use the expert's personal standard rather than the legal standard that N.J.S.A. 2A:53A-41(a) requires. It is important to note that only physicians fall within the scope of the Patients First Act. Meehan v. Antonellis, 226 N.J. 216, 240 (2016). A standard personal to the expert is an inadmissible net opinion. Satec, Inc. v. Hanover Ins. Grp., Inc., 450 N.J. Super. 319 (App. Div.), cert. denied, 230 N.J. 595 (2017). Dr. Thalasila's argument is actually asking this Court to impose on the expert his personal standard of what he personally believes to be a "general internist." But that question is irrelevant because the question is not whether the doctor meets what the expert believes is the specialty as a "general internist," but rather what ABMS deems the specialty of "internal medicine," of which Dr. Hofmeister's practice is wholly contained within that specialty. See N.J.S.A. 2A:53A-41(a). The plain language of the statute does not contain an exclusion

that if an internist has a sub-certification, the internist is no longer an internist. Id. As a result, this Court should reject Dr. Thalasila's position.

Dr. Thalasila's brief relies upon this Court's non-precedential decision in Carr v. Lady of Lourdes Medical Center, 2014 WL 9910476 (App. Div. June 19, 2015)(Db11-12, Da165). However, the Supreme Court's 2025 decision in Wiggins is at odds with the Appellate Division's non-precedential construction of the Patients First Act in Carr ten years earlier. In Carr, the Appellate Division held that practice within hematology and oncology would mean the expert was more specialized than the defendant-doctors, and so the expert was not "equivalently credentialed" to offer criticism of the defendant-doctors. But the Supreme Court recently found that as long as the plaintiff's expert's board certification matches the board certification that defendant includes in his answer, the credentials match under the statute. Wiggins, 259 N.J. at 102-03. Thus, here, the trial court erred in the construction of the Patients First Act such that the trial court's decision should be reversed.

POINT TWO

Dr. Thalasila's Appeal Should Be Denied Because the Trial Court Correctly Found the Interests of Justice Permitted Plaintiff Obtaining a New Expert Once His Expert Was Barred. (Pa103-04.)

Dr. Thalasila fails to show an abuse of discretion sufficient to reverse the trial court's decision to permit Plaintiff to obtain a new expert. Defendant

entirely overlooks that the trial court had rejected Dr. Thalasila's argument and found on three prior occasions that a board certified internal medicine doctor with a sub-certification in hematology could provide a standard of care opinion against an internal medicine doctor. (Pa75, Pa82, Da93.) Defendant argues that Plaintiff did not show exceptional circumstances to reopen discovery, but at the time that the initial motion to bar Dr. Hofmeister's standard of care opinions was filed, the discovery was not yet over. (Da131.) Defendant spends many pages arguing that the motion in limine was heard after the close of discovery, but Dr. Thalasila's fourth attempt at barring a board certified internal medicine doctor with a sub-certification in hematology was filed during discovery. (Pa51.) The trial court then held the renewed issue in abeyance for 333 days both for the 104 hearing and then awaiting the decision in Wiggins. (Da82, Da93, Da131, Da51, Da127, Da140.) Under these facts, it would have been an abuse of discretion not to grant leave to find a new expert given had Plaintiff been given a decision earlier, the time for discovery would have still been open.

Defendant fails to state the standard of review that applies to a trial judge's decision to permit a party to obtain a new expert, which is an abuse of discretion. Castello v. Wohler, 446 N.J. Super. 1, 24 (App. Div. 2016). As long as the trial judge's decision was not wide of the mark, this Court should affirm. DiFiore v. Pezic, 254 N.J. 212, 228 (2023)(quoting Rowe v. Bell & Gossett Co., 239 N.J.

531, 551-52 (2019) (alteration in original) (quoting Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)).

Here, as explained above, permitting Plaintiff the ability to obtain a new expert is supported by the fact that Dr. Hofmeister is board-certified in internal medicine and practices within that specialty – even if he primarily treats hematology patients, which is a subspecialty of internal medicine. (2T10:12-11:12; see Da133-34.) In addition, there was consideration that this case had been case-managed, and the trial court had denied Thalasila’s request on two prior occasions where Dr. Hofmeister’s credentials were found to be proper. (Da93, Da131.)

Moreover, the trial court’s decision to permit Plaintiff an opportunity to serve a new expert report is well within the court’s decision. For instance, this Court affirmed a trial judge’s decision to permit a Plaintiff to serve an AOM out of time due to exceptional circumstances. Gonzalez v. Ibrahim, 477 N.J. Super. 647, 660 (App. Div.), leave to appeal den., 257 N.J. 244 (2024). In that case, Plaintiff moved for an Order to deem that the common knowledge exception applied as to the employer-medical facility and no AOM was required, which was granted. Id. at 653. Plaintiff then amended to name the employer’s agent, a doctor, but the trial court failed to hold a Ferreira conference. Id. at 653-54. Plaintiff did not serve an AOM relying upon the fact that the Order finding the

common knowledge exception applied identified the new defendant by name. Id. at 659-60. Following motion practice, the trial court granted Plaintiff the ability to serve a late AOM, which was served within the extension permitted by the trial court. Id. at 660. In reviewing a motion seeking leave to appeal, this Court affirmed finding exceptional circumstances supported the trial court's decision to extend the strict time limit in the AOM Statute. Id. at 659.

This Court explained, the

AOM waiver order definitively states that plaintiff's complaint, which mentions defendant's conduct and the vicarious liability of his employers, fell within the common knowledge doctrine. It was reasonable for plaintiff to believe an AOM was not needed as to defendant. And when the motion judge entered an order requiring plaintiff to submit an AOM pertaining to defendant within twenty-two days, one was supplied in nine days.

Id. at 660. Similarly here, because the trial court had twice previously permitted Dr. Hofmeister to opine as to the standard of care, there was no reason for Plaintiff to need a new expert. Plaintiff relied upon the trial court's rulings, and thus, there was good cause to permit Plaintiff limited time to obtain a new expert.

The cases cited by Defendant in support of dismissal without the opportunity to obtain a new expert are distinguishable because in this case Dr. Thalasila's initial motion was denied. (Da93.) Therefore, as in Gonzalez, 477

N.J. Super. at 659-60, Plaintiff operated upon the reasonable belief that the trial court found Dr. Hofmeister's credentials sufficient to support the case.

Moreover, Dr. Thalasila argues that the Supreme Court did not permit Plaintiff leave to obtain a new expert in Nicholas v. Mynster, 213 N.J. 463, 488 (2013), but that issue was not addressed in the opinion. In fact, even though the Supreme Court reversed in order to grant summary judgment, it "remand[ed] to the trial court for proceedings consistent with this opinion." Presumably, Plaintiff could have asked for that relief on remand given it was not addressed earlier. See Lawson v. Dewar, 468 N.J. Super. 128, 137 (App. Div. 2021)(holding reconsideration in "the interest of justice" is always available until entry of final judgment) (citing R. 4:42-2 and Lombardi v. Masso, 207 N.J. 517, 539 (2011)).

Discovery should be reopened when a plaintiff's expert's credentials end up being contrary to the credentials that the expert had set forth. Castello v. Wohler, 446 N.J. Super. 1 (App. Div 2016). In Castello, the plaintiff's attorney did not learn that the expert had retired until after the expiration of the 120 day time period to serve the AOM. Id. at 7. Writing for this Court, the Honorable Douglas Fasciale held,

in medical negligence cases, where a plaintiff's counsel timely serves an AOM and reasonably relies on the AOM and expert's CV, which erroneously reflects that the witness is actively practicing medicine, and, through no fault of the plaintiff's counsel, the error is first discovered after the expiration of the 120-day

deadline imposed under the AMS, exceptional circumstances exist requiring the judge to allow a plaintiff sufficient time to retain a different expert witness who is qualified under the PFA, issue a new AOM, and serve a corresponding expert report.

Id. at 7. This Court further granted the trial judge broad discretion in fashioning a remedy: “If warranted, the judge may include other procedures or requests for relief related to the extension of discovery and service of a new AOM and expert report.” Id. at 7-8. This Court noted that exceptional circumstances existed because “this is not a situation that amounted to carelessness or inadvertence by plaintiff’s counsel in using the original CV, because the contents of the AOM and updated and supplemental CVs also suggest that Dr. Edoga was actively practicing medicine.” Id. at 20-21.

While Dr. Thalasila argues that Plaintiff’s counsel was not similarly situated as the attorney in Castello, counsel was in a comparable position: Dr. Hofmeister indicated both in his report, CV, and in a certification that he practiced within the specialty of internal medicine in the year preceeding the negligently caused death of Ms. Glassman. (Da54; Da57; Da90.) The only arguable basis for a contrary conclusion came from Dr. Hofmeister’s testimony at the 104 hearing where he testified he practiced within the wholly contained subspecialty of internal medicine, hematology. (2T16:12-17:2.) And as

explained above, even that basis is incorrect as a matter of law. See supra, Point One.

No precedent holds that practicing within the wholly contained subspecialty means the physician is no longer practicing within the specialty. No statute precludes a physician who practices a subspecialty that is a subset of the general specialty means the physician is no longer practicing within the specialty itself. The trial court had already denied the motion on June 2, 2023 finding Dr. Hofmeister was qualified. (Da92-93.) Accordingly, when the trial court came to a different conclusion, the interests of justice were served by granting Plaintiff an opportunity to find a new expert.

Defendant Thalasila argues that the matter should have been dismissed with prejudice because that was the result in Medina v. Pitta, 442 N.J. Super. 1 (App. Div.), certif. denied, 223 N.J. 555 (2015). (See Db20.) But the case is distinguishable because there the plaintiff knew the expert had retired but proceeded with the expert anyway who could not testify due to the plain language of the Patients First Act. Id. at 17. The Appellate Division in Medina noted that plaintiff failed to either extend discovery or find a new expert, which factually, is completely different than what occurred in this case. Cf. id. at 23-24 with Pa93 and Da131.

Further, the Appellate Division's explanation in Medina as to why the plaintiff could not rely upon the exceptional circumstances exception was because the plaintiff's error meant the AOM was deficient, but here, the issue was as to whether the expert could testify at trial and did not involve the AOM. A deficient AOM means a plaintiff has failed to state a claim under N.J.S.A. 2A:53A-27, while here the issue is a discovery dispute where the trial court has discretion to extend time for good cause under R. 4:24-1(c).

Defendant argues that Plaintiff did not show exceptional circumstances to justify obtaining a new expert, but this argument is disingenuous. First, the good cause standard applied to the trial court's decision and not exceptional circumstances because at the time of the motion, discovery was still ongoing and Plaintiff requested the relief in the event the expert was barred. (Da51, Da127.) This request was made before the setting of any trial date in a case where the trial court was actively managing the case through case management orders. (Da140.)

Moreover, even if the exceptional circumstances standard applied, Plaintiff met that standard. As of June 2, 2023, Plaintiff believed as a matter of law her expert was sufficient to provide a breach of the standard of care opinion against Dr. Thalasila. (Da92-93.) This fact alone demonstrates all four of the exceptional circumstances factors:

(1) why discovery has not been completed within time and counsel's diligence in pursuing discovery during that time; (2) the additional discovery or disclosure sought is essential; (3) an explanation for counsel's failure to request an extension of the time for discovery within the original time period; and (4) the circumstances presented were clearly beyond the control of the attorney and litigant seeking the extension of time.

Castello, 446 N.J. Super. at 25 (quoting Rivers v. LSC P'ship, 378 N.J. Super. 68, 79 (App. Div.), certif. denied, 185 N.J. 296 (2005)). Here all four factors are satisfied because Plaintiff in relying upon the 2023 decision that Dr. Hofmeister was qualified, there was no need to obtain a new expert until the trial court changed the law of the case after the end of discovery. See State v. Hale, 127 N.J. Super. 407, 410 (App. Div. 1974)(holding “law of the case” resolves question of law or fact “for all subsequent stages of litigation” until a reversal).

Further, the trial court’s decision to permit Plaintiff to obtain a new expert is supported by the Court’s favoring dismissals on the merits rather than a procedural dismissal. Castello, 446 N.J. Super. at 26. As then Judge Fasciale wrote, “dismissal with prejudice is the ultimate sanction, it will normally be ordered only when no lesser sanction will erase the prejudice suffered by the non-delinquent party.” Id. (quoting Irani v. K-Mart Corp., 281 N.J. Super. 383, 387 (App.Div.1995) (quoting Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 345 (1984)).

Without citation to any comparable case, Dr. Thalasila argues that because discovery was set to expire on April 29, 2024, Plaintiff would have to meet the exceptional circumstances standard to obtain leave to serve a new expert report. (Db22.) Instead, the Appellate Division has made clear that the good cause standard applies when a trial or arbitration date is set before the close of discovery. Hollywood Cafe Diner, Inc. v. Jaffee, 473 N.J. Super. 210, 220 (App. Div. 2022). This Court explained the discovery extension rule should be interpreted to favor “the general policy of adjudicating litigation on its merits.” Id. (explaining purposes and interpretation of R. 4:24-1). Dr. Thalasila faults Plaintiff for not moving to extend discovery during the time for discovery, but as of the time that discovery closed, Plaintiff had provided a sufficient expert report that the trial court had deemed proper. (Pa93.) After finding the expert had the right credentials, the trial court then reconsidered and set the matter for a 104 hearing. (Da131.) It was only after that hearing – and the close of discovery – that Plaintiff’s expert, who is required for Plaintiff to meet his burden to show a breach of the standard of care, was barred. (Pa91-92.) Thus, as of the time that discovery closed, the matter had been adjudicated with a resolution that Plaintiff’s expert was sufficient. To then reverse the decision after the close of discovery does show exceptional circumstances similar to this Court’s analysis in Gonzalez.

Plaintiff is entitled to rely upon the past Orders of the Court as in Gonzalez. To remedy the matter, within the trial court's discretion, the judge provided Plaintiff with a short window to serve a report from another expert. Dr. Thalasila relies upon Rivers v. LSC Partnership, 378 N.J. Super. 68, 77 (App. Div. 2005), but that case is inapposite because there, the trial court denied an extension of discovery because "very little, if anything, was done," including the lack of a necessary expert; Plaintiff here has proceeded with diligence and resisted three prior demands by Dr. Thalasila seeking to exclude a board certified internist with a sub-certification in hematology. (Pa74, Pa82, Da93.)

The exceptional circumstances factors were met because discovery had been completed on time but for the suppression of the expert after the same expert's same credentials had previously been found to be sufficient; the discovery is essential to Plaintiff proving his case; the trial court's delay in rendering her decision led to the decision being given on the eve of trial, which was then adjourned; and the circumstances were beyond Plaintiff's control. See id. at 79. Recognizing the draconian result if Plaintiff's once-sufficient expert were now barred after the close of discovery, the trial judge within her discretion remedied the harm by giving Plaintiff a short window to obtain a new expert. (Pa103-04.) Because Dr. Thalasila has not demonstrated any material issue that the trial court overlooked, Dr. Thalasila cannot meet the burden necessary to

show the trial judge abused her discretion. See id. at 80 (explaining this Court “generally defer[s] to a trial court's disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law”) (citing Payton v. New Jersey Tpk. Auth., 148 N.J. 524, 559 (1997)).

Here, Plaintiff not only served a timely expert report, but the trial court previously found the expert had the right credentials. As the Court explained in Gonzalez, 477 N.J. Super. at 660, a Plaintiff can rely upon the trial court’s prior resolution of an issue falling under the Patient First Act, which in this case found the expert had the right qualifications. Because of that prior decision, Dr. Thalasila’s citation to Quail v. Shop-Rite Supermarkets, Inc., 455 N.J. Super. 118, 133 (App. Div. 2018), certif. den., 236 N.J. 242 (2019) is also inapposite because unlike here, the trial court found plaintiff’s reliance upon a hearsay death certificate to prove causation was unreasonable. The Appellate Division affirmed the denial of re-opening discovery finding there was precedent that barred plaintiff’s ability to prove causation through the death certification. Id. at 133. This conclusion is completely contrary to the procedural posture here where the trial court granted additional time to obtain a new expert after reconsidering a prior finding that the expert had the right credentials.

Dr. Thalasila further relies upon Huszar v. Greate Bay Hotel & Casino, Inc., 375 N.J. Super. 463, 475 (App. Div.), certif. gr., cause remanded, 185 N.J. 290 (2005), for the proposition that there was no good cause to extend discovery to find an expert five months after the close of discovery. However, in that case, the Supreme Court granted certification and remanded for the trial court to consider whether an expert was even needed in light of another decision. 185 N.J. at 290. Not only is the case distinguishable because here, the matter had been pending for months and Plaintiff did request leave to provide a new expert if the motion were granted. (1T9:6-16.) This Court should reject Dr. Thalasila's argument that Plaintiff was not diligent. Plaintiff's counsel has been diligently proceeding with this matter and counsel relied upon the trial court's prior rulings in the matter where it was found a board-certified internal medicine doctor with a sub-certification in hematology has the same specialty as Dr. Thalasila. (Pa75; Pa82; Pa93.)

The trial court exercised proper discretion in granting Plaintiff's request that if his expert were barred, leave to obtain a new expert be provided. Without an expert, Plaintiff cannot prove a breach by Dr. Thalasila. (1T10:6-16.) Since May 8, 2019, within months of Dr. Thalasila's Answer, Plaintiff proceeded upon the reasonable belief that the law of the case was that a board certified internal medicine doctor with a sub-certification in hematology could offer an opinion

against a board certified internal medicine physician. (Pa75.) Since that time, there has been no precedent holding contrary and no change in the Patients First Act. The only change is Wiggins, 259 N.J. at 574, which supports Plaintiff's reasonable belief because the Supreme Court held even if a defendant has two specialties, a board certified internal medicine physician may offer a standard of care opinion against an internal medicine physician. There is no difference in the case at bar. Nor has Dr. Thalasila produced any prejudice to permitting Plaintiff leave to get a new expert. There is simply no showing that the trial court's discretion constituted an abuse. As a result, this Court should deny Dr. Thalasila's appeal.

CONCLUSION

Plaintiff asks this Court to correct the trial court's incorrect construction of the Patient's First Act. A board certified internist is practicing within the specialty of internal medicine as a matter of law, even if the doctor practices within a subspecialty. Just like a certified civil trial attorney practicing medical malpractice law is still practicing as a civil attorney, the trial court erred without any statute to justify this improper logic. On the other hand, Defendant's appeal should be denied because the trial court was within its discretion to grant Plaintiff more time to obtain a new expert given this expert had previously been

found to be qualified, and there was no clear law indicating that this physician would be barred.

Respectfully submitted,
LOMURRO MUNSON, LLC
Attorneys for Plaintiff, Todd B.
Glassman, as Executor of the Estate
of Jennifer K. Collum-Glassman

By: 
CHRISTINA VASSILIOU HARVEY

Dated: July 14, 2025

<p>TODD B. GLASSMAN, As Executor of the Estate of JENNIFER K. COLLUM-GLASSMAN, deceased;</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>JUANITO'S, INC.; KLE PROPERTIES, LLC; STEVEN P. FRIEDEL, M.D.; LON WEINER, M.D.; CHARLES W. FARRELL, M.D.; NATACHA FIELD, R.N.; TANYA GOODEN, R.N.; CONSTANCE MACKAY, R.N.; ANURADHA THALASILA, M.D.; HACKENSACK MERIDIAN HEALTH d/b/a RIVERVIEW MEDICAL CENTER; JOHN DOE I, (a fictitious name); JOHN DOE II, (a fictitious name); ABC CORPORATION, (a fictitious name) and ABC MAINTENANCE COMPANY, (a fictitious name); JOHN DOES III-XV, (fictitious names);</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="text-align: center;">SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-2723-24</p> <p style="text-align: center;">On Appeal from:</p> <p style="text-align: center;">SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO.: MON-L-2383-18</p> <p style="text-align: center;">Sat Below: Hon. Kathleen A. Sheedy, J.S.C.</p> <p style="text-align: center;">CIVIL ACTION</p>
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**BRIEF ON BEHALF OF *AMICUS CURIAE*
NEW JERSEY ASSOCIATION FOR JUSTICE**

Of Counsel and on the Brief:
Ernest P. Fronzuto, Esq.
Attorney ID No.: 02835-1997
Efronzuto@fronzutolaw.com

On the Brief: Casey Anne Cordes, Esq.
Attorney ID No.: 03544-1998
Ccordes@fronzutolaw.com

FRONZUTO LAW GROUP
200 Browertown Road
Woodland Park, New Jersey 07424
(973) 345-6300
Attorneys for *Amicus Curiae*, NJAJ

Submitted on: August 20, 2025

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PRELIMINARY STATEMENT

New Jersey Association for Justice (“NJAJ”) seeks leave to appear as Amicus Curiae, because this case affects the rights of the injured and NJAJ’s membership. The Plaintiff’s expert was found to be qualified at the onset of this litigation. Then, ultimately, the trial court misconstrued the relevant statutes and case law, reconsidered two prior rulings declaring the medical expert qualified, and on the eve of trial, barred the expert from testifying. Because both the Defendant and medical expert were board certified internists at the time that the alleged medical malpractice occurred and the court had previously determined that the statutory qualification requirement was met, this Court should reverse the trial court’s decision.

If the motion is granted, NJAJ submits this brief in support of its position, and requests that the Court grant it leave to participate at oral argument.

INTEREST OF AMICUS CURIAE

NJAJ is a statewide association of attorneys, lawyers, professors, paraprofessionals, and law students dedicated to protecting the rights of injured persons. (Certification of Ernest P. Fronzuto, Esq. Cert. ¶1.) NJAJ advances the interests of the injured and the preservation of the constitutional right to a fair jury trial. (*Id.* at ¶3.) NJAJ is dedicated to protecting the jury trial system for the benefit of all litigants. (*Id.* at ¶3.)

NJAJ takes interest in this matter because the issues presented in this appeal affect the rights of litigants, impacts the rights of those injured by medical malpractice, and is important, as a matter of public policy, for the proper and efficient use of judicial resources vital to the administration of justice. (Id. at ¶¶4-5.)

BACKGROUND

NJAJ will rely on the Procedural History and Statement of Facts set forth in Plaintiff's brief submitted to this Court. Briefly, Plaintiff's decedent, Jennifer Collum-Glassman ("Ms. Glassman") was the victim of malpractice that led to her untimely death at the age of forty-five (45). (Pb2-3.)

Ms. Glassman's hospital attending physician, Defendant, Anuradha Thalasila, M.D. ("Dr. Thalasila" or "Defendant") failed to treat her for the risk of a blood clot after surgery. (Pa3.) Dr. Thalasila's failure was a substantial factor in causing Ms. Glassman's death. Ibid.

Dr. Thalasila's Answer states that she is board-certified in internal medicine and she practiced in that field at the time of Ms. Glassman's care and treatment. (Da28.) In addition, Dr. Thalasila describes herself as a "hospitalist" in practice. (Pa3.) Accordingly, Plaintiff submitted an Affidavit of Merit and expert report from Clinton F. Merrill, Jr., M.D. who was board certified in internal medicine at the time of the alleged malpractice. (Pa4.)

The trial court held a Ferreira conference and concluded that the Affidavit of Merit was statutorily satisfactory; however, Defendant filed a motion to bar the expert based on qualifications. (Pa4.) On May 18, 2021, this motion was denied. Ibid.

Plaintiff then served an expert report from Craig Hofmeister, M.D., who was also board certified in internal medicine at the time of the alleged malpractice. (Pa4-5.) Defendant filed a motion to bar the expert based on qualifications. (Pa5.) On June 2, 2023, this motion was denied. Ibid.

The trial court denied Defendant's multiple motions and challenges the Plaintiff's expert qualifications. (Pa4-6.) However, Defendant again moved for summary judgment seeking to bar this expert's standard of care opinions. (Pa6.) In May of 2024, the trial court denied the motion without prejudice and ordered a Rule 104 hearing. (Pa9-10.) On February 28, 2025, the court granted the motion to bar but allowed Plaintiff the opportunity to obtain a new expert. Ibid.

The trial court stayed the matter pending the filing of this interlocutory appeal. (Pa10.)

This Court then granted both Dr. Thalasila's motion seeking leave to appeal and Plaintiff's cross motion. NJAJ now seeks leave to file this merit brief and participate at oral argument as Amicus Curiae.

LEGAL ARGUMENT

ONCE AN EXPERT'S QUALIFICATIONS ARE ACCEPTED BY THE COURT IN THE EARLY STAGE OF LITIGATION, BARRING EXCEPTIONAL CIRCUMSTANCES, THOSE QUALIFICATIONS SHOULD NOT BE RECONSIDERED (Pa98-103.)

Under New Jersey law, the qualifications of an expert providing an affidavit of merit ("AOM") in a medical malpractice case are governed by the Affidavit of Merit statute (See N.J.R.E. 703; Castello v. Wohler, 446 N.J. Super. 1 (App. Div. 2016); N.J.S.A. 2A:53A-26 to -29) and the New Jersey Medical Care Access and Responsibility and Patients First Act ("PFA") (See Castello, *supra*; Buck v. Henry, 207 N.J. 377 (2011); N.J.S.A. 2A:53A-37 to -42). These statutes establish standards for determining whether an expert is qualified to provide an affidavit of merit, and the case law has emphasized the importance of addressing such qualifications early in the litigation process.

In 1995, the AOM statute was one of several bills passed as part of a tort reform package that balanced "a person's right to sue and controlling nuisance suits." Wiggins v. Hackensack Meridian Health, 259 N.J. 562, 574 (2025) citing Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 149 (2003). The AOM statute requires that, in actions alleging malpractice, the plaintiff must provide an affidavit from an appropriately licensed expert attesting to a reasonable probability that the defendant's conduct deviated from the applicable standard of care within sixty (60) days of the filing of the answer or, for good cause show, within an

additional sixty-day period. N.J.S.A. 2A:53A-26-29. Failure to serve the Affidavit within that time period is tantamount to the failure to state a cause of action subjecting the complaint to dismissal with prejudice. N.J.S.A. 2A:53A-29. Again, the AOM has a dual purpose: weed out frivolous suits early in the litigation but ensure that plaintiffs with meritorious claims have their day in court. Wiggins, 259 N.J. at 575 quoting Ferreira, 178 N.J. at 150.

The Legislature enacted the PFA in 2004, which supplemented the AOM statute by including additional requirements for a plaintiff's AOM in medical malpractice cases. The basic idea behind N.J.S.A. 2A:53A-41 is that the individual who executes the AOM is "equivalently qualified" as the defendant physician. Wiggins, 259 N.J. at 575. This "equivalently qualified" requirement is known as the "kind-for-kind" rule. See Nicholas v. Mynster, 213 N.J. 463 (2013).

The Supreme Court has clearly expressed that the intent of these statutes is to weed out frivolous claims and not to foster "hyper-technicalities" that would impact innocent victims with meritorious claims:

The core purpose underlying the [Affidavit of Merit] statute is 'to require plaintiffs . . . to make a threshold showing that their claim is meritorious,' so that lawsuits lacking substance can be dismissed "at an early stage of litigation." Ryan, supra, 203 N.J. at 51, 999 A.2d 427 (quotation omitted); accord Paragon Contractors, Inc. v. Peachtree Condo. Ass'n, 202 N.J. 415, 421, 997 A.2d 982 (2010). "[T]here is no legislative interest in barring meritorious claims brought in good faith[.]" Ferreira, supra, 178 N.J. at 150-51, 836 A.2d 779 (quoting Galik v. Clara Maas Med. Ctr., 167 N.J. 341, 359, 771 A.2d 1141 (2000)). Indeed, the Legislature did not intend "to 'create a minefield of

hyper-technicalities in order to doom innocent litigants possessing meritorious claims." *Ryan, supra*, 203 N.J. at 51, 999 A.2d 427 (quotation omitted). "The Affidavit of Merit statute was intended to flush out insubstantial and meritless claims that have created a burden on innocent litigants and detracted from the many legitimate claims that require the resources of our civil justice system." *Ferreira, supra*, 178 N.J. at 154, 836 A.2d 779.

Buck, 207 N.J. at 393-394.

The New Jersey Supreme Court has also continually emphasized the importance of addressing potential issues with an expert's qualifications early in the litigation process. In Buck, the Court reaffirmed the requirement for a Ferreira conference to be held within 90 days of the defendant's answer in all malpractice actions. The purpose of this conference is to resolve any disputes regarding the adequacy of the affidavit of merit and the qualifications of the expert before they escalate into more significant procedural issues.

The initial inquiry is whether the defending physician is a specialist or a general practitioner. Buck, 207 N.J. at 391. If the defending physician is a specialist, the next inquiry is whether or not the malpractice "involves" the physician's specialty. The Court has held that "[a] physician may practice in more than one specialty, and the treatment involved may fall within that physician's multiple specialty areas. In that case, an [AOM] from a physician specializing in either area will suffice." Ibid.

To ensure future and timely compliance with the AOM and PSA statutes, the Buck Court added another important “caveat” that requires a defending physician in a medical malpractice case to include in his or her answer his or her specialized field of medicine and whether the treatment of the plaintiff involved that specialty. After the Buck ruling, Court Rule 4:5-3 was amended to include a Specialty Statement, effective September 2012, which states that “[a] physician defending against a malpractice claim who admits to treating the plaintiff must include in his or her answer the field of medicine in which he or she specialized at the time, if any, and whether his or treatment of the plaintiff involved that specialty.” The Specialty Statement resolves the factual issues as to the specialty and whether or not the specialty was involved in the treatment of each case right at the onset. The Courts’ intent behind these procedural safeguards is to ensure that challenges to an expert’s qualifications are limited, are addressed promptly and do not disrupt the trial process for meritorious claims.

The Supreme Court has found that the AOM and PFA statutory qualification requirements are clear. In an action involving medical malpractice against a board-certified physician who is a “specialist or subspecialist” recognized by the ABMS, and when the “care or treatment at issue involves that specialty or subspecialty,” the expert must likewise be a board-certified “specialist or subspecialist” in the same “specialty or subspecialty” recognized by the ABMS as the defending physician.

N.J.S.A. 2A:53A-41(a). A majority of the expert's professional time "during the year immediately preceding the date of the occurrence that is the basis for the claim or action" must be devoted to the "active clinical practice" of the defending physician's "specialty or subspecialty." N.J.S.A. 2A:53A-41(a)(2)(a).

Here, it is undisputed that Dr. Thalasila was board certified in internal medicine at the time of the alleged malpractice. It is equally undisputed that the Plaintiff's expert, Dr. Hofmeister was board certified in internal medicine at the time of the alleged malpractice. Dr. Hofmeister holds a subspecialty of hematology. The case involves the Defendant's failure to provide preventive treatment of blood clots. The fact that Dr. Hofmeister holds an added sub certification in Hematology is irrelevant. See, e.g. Wiggins, supra, 259 N.J. 562 (holding that where the defendant is dual Board certified, plaintiff's expert needs only maintain board certification in one of the specialty areas involved in plaintiff's care and treatment to execute an AOM and provide expert testimony).

The trial court denied the Defendant's motion to bar Dr. Hofmeister on June 2, 2023, based upon the fact that the expert met the "kind-for-kind" requirement. The June 2023 denial should not have been reconsidered at the eleventh hour. Nothing changed after the June 2, 2023 decision except for the Defendant self-describing herself as a "hospitalist," and Dr. Hofmeister's testimony describing his practice as a "hematologist." These self-proclaimed labels

are irrelevant to the analysis required under the PFA. Whatever self-proclaimed area of expertise the Defendant and Dr. Hofmeister ascribe to themselves, it does not change the fact that Defendant and Dr. Hofmeister are “equivalently qualified,” as that term is defined by the PFA and Supreme Court decisional law. Any testimony perceived to draw a distinction between the two experts elicited at the time of depositions or other discovery, while potentially an avenue for cross-examination simply goes to the weight of the expert’s testimony, not its admissibility.

The Buck Court’s procedural safeguards were intended to avoid just what happened here: on the eve of trial, a Rule 104 “mini-trial” to determine expert qualifications that severely impact a meritorious claim. Allowing challenges to an expert's qualifications just prior to trial without a showing of changed or exceptional circumstances undermines the purpose of the AOM and PFA statutes and the procedural safeguards established by the New Jersey Supreme Court. This construct is intended to screen out meritless claims at an early stage, and the Ferreira conference ensures that any issues with the Specialty Statement, Affidavit or the expert's qualifications are resolved promptly. Revisiting these issues on the eve of trial creates unnecessary delays, increased litigation costs, and prejudice to the party that has relied on the court's earlier determinations.

Thus, as a matter of public policy, once a medical expert's qualifications are found to meet the requirements of the AOM and PFA statutes at the time of the

Ferriera conference, those qualifications can and should not be subject to further challenge. Absent the extraordinary circumstance of where an expert's board certification at the time of plaintiff's care and treatment was misrepresented or mistaken in some way – as in the expert's unknown retirement in Castello v. Wohler, 446 N.J. Super. 1, the expert's qualifications should not be revisited. This framework prioritizes the early resolution of the qualification of an expert as advanced by the Supreme Court in Ferriera, Buck and its progeny; rebukes the incessant motion practice that creates unnecessary delay and places a drain on valuable judicial resources; and, ultimately, promotes the fair resolution of a case on the merits.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the trial court's Order dated February 28, 2025, be reversed. It is also respectfully submitted that procedural construct advanced herein be adopted by this Court to protect the procedural safeguards already established by the Supreme Court and to avoid unnecessary motion practice and delay in the resolution of medical malpractice cases.

Respectfully submitted,
FRONZUTO LAW GROUP
Attorneys for proposed Amicus Curiae,
New Jersey Association for Justice

By: Casey Anne Cordes
CASEY ANNE CORDES, ESQ.

TODD B. GLASSMAN, As Executor of the
Estate of Jennifer K. COLLUM-
GLASSMAN, deceased,

Plaintiff

vs.

JUANITO'S INC.; KLE PROPERTIES,
LLC; STEVEN P. FRIEDEL, M.D.; LON
WEINER, M.D.; CHARLES W.
FARRELL, M.D.; NATACHA FIELD,
R.N.; TANYA GOODEN, R.N.;
CONSTANCE MACKAY, R.N.,
ANURADHA THALASILA, M.D.;
HACKENSACK MERIDIAN HEALTH
d/b/a RIVERVIEW MEDICAL CENTER;
JOHN DOE I, (a fictitious name); JOHN
DOE II, (a fictitious name); ABC
CORPORATION, (a fictitious name) and
ABC MAINTENANCE COMPANY, (a
fictitious name); JOHN DOES III-XV,
(fictitious names)

Defendants

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-002723-24

ON APPEAL FROM SUPERIOR
COURT, LAW DIVISION
MONMOUTH COUNTY

DOCKET NO.: MON-L-2383-18

Sat Below:
Hon. Kathleen A. Sheedy, J.S.C

Civil Action

LETTER REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT,
ANURADHA THALASILA, M.D.

RUPRECHT HART RICCIARDULLI & SHERMAN, LLP
Michael R. Ricciardulli, Esq./Attorney ID:002611995
Jessica J. Mahony, Esq./Attorney ID:040342008

Jessica J. Mahony, Esq. -On the Brief

mricciardulli@rhwlawfirm.com
jmahony@rhwlawfirm.com

53 Cardinal Drive, Suite 1
Westfield, NJ 07090

Michael R. Ricciardulli, Esq.-
Of Counsel and On the Brief

Tel: 908-232-4800/Fax: 908 232-4801

Attorneys for Defendant/Appellant, Anuradha Thalasila, MD

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RUPRECHT HART RICCIARDULLI & SHERMAN, LLP

COUNSELLORS AT LAW
53 Cardinal Drive- Suite 1
Westfield, New Jersey 07090
Telephone (908) 232-4800
Fax (908) 232-4801

LOUIS A. RUPRECHT*
THOMAS C. HART*
MICHAEL R. RICCIARDULLI*
RENEE J. SHERMAN*
JUDITH A. WAHRENBERGER*
BRION D. McGLINN
JOHN W. GREGOREK

**Certified by the Supreme Court of New Jersey as a Civil Trial Attorney*
OF COUNSEL:
JESSICA M. ANDERSON
DAVID PARKER WEEKS*

JESSICA J. MAHONY
KRISTIN J. BRUMMER
MATTHEW E. BLACKMAN
PATRICIA E. VOORHIS
MICHAEL J. DI LEO
ALEXANDER B. STOCKDALE
FRANCIS D. ENGRACIA
RICHARD M. FORZANI
LOUIS A. DI LEO
WENDY A. JENNINGS
ANDREW C. SMEDBERG

September 2, 2025

Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-0006

Re: Todd Glassman, et al v. Anuradha Thalasila, M.D., et al
Docket No.: AM-000370-24
Our File No.: 3943

Dear Sir/Madam:

Please accept this letter brief in lieu of a more formal cross-respondent/
reply brief on behalf of Anuradha Thalasila, M.D.

Procedural History and Statement of Facts

We will rely upon the procedural history and statement of facts listed in
our appellate brief.

Legal Argument

I. Plaintiff's appeal must be denied as the trial court correctly interpreted all controlling case law and statutes in ruling that Dr. Hofmeister may not opine as to the standard of care applicable to Dr. Thalasila. (Not argued below)

The plaintiff's cross-appeal is properly denied. The trial court properly granted Dr. Thalasila's motion to bar Dr. Hofmeister based upon N.J.S.A. 2A:53A-41 and the applicable case law. As will be explained below, the New Jersey Supreme Court's decision in Wiggins v. Hackensack, 259 N.J. 562 (Jan. 22, 2025) did not provide a controlling holding applicable to this case. Thus, the trial court was not able to apply the Wiggins holding. Rather, the trial court provided a thorough and proper analysis of the applicable case law and statutes, without adding any "new requirements" as asserted by plaintiff's counsel. The trial court correctly determined that Dr. Hofmeister was not qualified to opine as to the standard of care applicable to Dr. Thalasila. Any other decision would frustrate the purpose of the Affidavit of Merit Statute and the Patient's First Act, despite the timing in this case.

Under the plain wording of N.J.S.A. 2A:53A-41, Dr. Hofmeister is **not** qualified to render standard of care opinions against Dr. Thalasila. N.J.S.A. 2A:53A-41 provides, in relevant part:

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:53-26, 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 sub-specialist recognized by the American Board of Medical Specialties or the American Osteopathic Association in the care or treatment at issue involves that specialty or sub-specialty recognized by the American Board of Medical Specialties of 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 sub-specialty**, 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...

The New Jersey Supreme Court has explained that:

N.J.S.A. 2A:53A-41 recognizes three categories of credentialed physicians embodying the kind-for-kind rule:

(1) those who are specialists in a field recognized by the American Board of Medical Specialties (ABMS) but who are not board certified in that specialty; (2) those who are specialists in a field recognized by the ABMS and who are board certified in that specialty; and (3) those who are “general practitioners.”

Wiggins, 259 N.J. at 575-576 (citing Buck v. Henry, 207 N.J. 377, 389 (2011) and N.J.S.A. 2A:5A-41(a),(b)).

In the present case, we are dealing with the second category, where a physician is both a specialist and board certified. It is important to note that “specialty” and “board certification” are two separate requirements, and that being a specialist does not require board certification. This is because in some instances, a physician’s specialty and board certification may not be the same.

Thus, contrary to plaintiff's assertion, no physician is assumed to be a specialist in a particular area simply because he is board certified in that area. Further, medicine is unlike the practice of law and a simple review of the Affidavit of Merit statute will exemplify this, as the same specialty requirement applies only to physicians, not lawyers.

The New Jersey Supreme Court affirmed the importance of the requirement under N.J.S.A. 2A:53A-41 that a standard of care expert in a medical malpractice action must be equivalently qualified to the physician against whom the testimony offered in Nicholas v. Mynster, 213 N.J. 463, 487 (2013). The defendant physicians were board certified in internal medicine and emergency medicine, but the plaintiff's expert was board certified in internal medicine, pulmonary diseases, critical care medicine, and undersea and hyperbaric medicine. Id. at 468 -472. The New Jersey Supreme Court affirmed summary judgment dismissing the defendant physicians holding:

A medical expert must be a specialist in the same field in which the defendant physician specializes; there are no exceptions to that requirement other than the waiver provision of N.J.S.A. 2A:53A-41(c) which is inapplicable in this case.

Id. at 483.

In this case, Nicholas is the controlling case. The trial court's decision to bar Dr. Hofmeister was consistent with Nicholas. Dr. Hofmeister unquestionably was a specialist in hematology, not internal medicine. Again, his board certification is

not relevant to the inquiry of what specialties he practices within. Dr. Thalasila is a specialist in internal medicine only. As Dr. Thalasila only has one area of specialty, the only expert who may opine against her must be one who is a specialist in internal medicine. Thus, because Dr. Hofmeister was not a specialist in internal medicine, he was properly barred from offering standard of care testimony. This decision is very clearly consistent with N.J.S.A. 2A:53A-41 and Nicholas.

Plaintiff's reliance on Wiggins is woefully misplaced. The New Jersey Supreme Court addressed what types of experts can opine as to the standard of care of a defendant who holds more than one area of specialty. That situation is not present in this case. Rather, Dr. Thalasila only has one area of specialty, which is internal medicine. Plaintiff's counsel has attempted to obfuscate this issue by referring to Dr. Hofmeister's two areas of board certification in an attempt to argue that he is properly qualified. However, the Wiggins case did not interpret how to handle a situation where an expert has two board certifications; it only addressed what expert can opine against a defendant who states in his Answer that he has two areas of specialty. Thus, the trial court in this case properly stated, "The Court notes that while the decision in Wiggins v. Hackensack Meridian Health ___ N.J. ___ (2025) is instruction, it is not dispositive of this issue." Da158.

It is clear that determining a physician's specialty versus his board certification are two separate and distinct inquiries. In this case, plaintiff conflates

the two when discussing Dr. Hofmeister. It is undisputed that Dr. Hofmeister was board certified in internal medicine and hematology at the time of the alleged malpractice in this case. However, his board certifications were not the subject of the issue before the trial court. Rather, the trial court understood that the question was what specialty Dr. Hofmeister practiced. A physician's specialty does not always match his board certification. The trial court held a Rule 104 hearing specifically to determine what specialty Dr. Hofmeister practiced within, and Dr. Hofmeister made it explicitly clear at that time that he was a specialist in hematology, not internal medicine. He testified as follows:

Q: Okay. **Now, when you are asked by patients or otherwise about what your specialty is, the answer that you give them is that you are a hematologist, right?**

A: Yes.

...

Q: Well, am I correct that you're not practicing internal medicine, you're practicing in hematology, so you let your boards lapse in internal medicine, but you kept them current in hematology, true?

A: Yes, but I think if I could just clarify a bit. **I'm not practicing as an internist.**

Q: Right.

A: That's an easier – an easier phrase than internal medicine, So yea, **I'm not a general internist.**

Q: Right. And, in fact, Doctor, you've never worked on a hospital floor in internal medicine as an internal

medicine doctor where there are orthopedic patients, correct?

A: **As a general internist I have not worked on a hospital floor, yes.**

2T at 16:24- 17:2 and 18:17 - 19:8.

This testimony shows that Dr. Hofmeister's specialty unquestionably is hematology. He only sees patients who have hematologic issues. While he may provide some type of internal medicine care to those patients, he would never provide internal medicine care to a patient who had no hematologic issue either at the present time or in the past. Thus, he does not identify as a specialist in internal medicine, but rather as a specialist in hematology.

Dr. Thalasila is a specialist in internal medicine, meaning she treats all patients for all internal medicine issues. Unlike Dr. Hofmeister, a patient does not have to have an active hematologic issue, or history of hematologic issue, to come to be treated by Dr. Thalasila. In fact, if Dr. Hofmeister practiced at Riverview Medical Center, where the plaintiff's decedent had been hospitalized, Dr. Hofmeister would **never** have come to see the plaintiff's decedent because she **did not** have a hematologic issue. This exemplifies the difference in their specialties.

The New Jersey Supreme Court has explained that N.J.S.A. 2A:53A-41 requires that an expert in a medical malpractice case be "equivalently qualified," which is otherwise known of the "kind for kind rule." See Wiggins, 259 N.J. at 575

(citing Buck v. Henry, 207 N.J. at 392 (quoting (2010)); and Buck at 389). Thus, separate and apart from board certification, an expert first must practice within the same specialty as the defendant physician. The New Jersey Supreme Court has reiterated this requirement throughout its various holdings. Nothing in the Wiggins decision has altered this requirement. Thus, because Dr. Hofmeister's practice is that of a hematologist, rather than an internal medicine physician, he cannot meet the kind for kind rule. There is no caselaw that states that this analysis must be different based upon the timing of the court's decision. To hold that the court could not come to this conclusion because discovery was over would frustrate the purpose of the Patient's First Act and the Affidavit of Merit statute, as well as cause substantial prejudice to Dr. Thalasila. Rather, the only decision a court can properly come to in this case is that Dr. Hofmeister cannot opine as to the standard of care applicable to Dr. Thalasila.

The plaintiff further argues that Pfannenstein v. Surrey, 475 N.J. Super. 83 (App. Div. 2023) does not apply because the court's holding was based on the fact that the expert was not board certified. However, this is an incorrect interpretation of that case. The Appellate Division's reasoning in Pfannenstein in fact dealt with the same specialty requirement, not board certification. The court did not find that the expert was not board certified, but before the analysis gets to whether an expert is board certified, the first inquiry under N.J.S.A.

2A:53A-41 is whether an expert is a specialist in the same specialty of the defendant. Thus, the first issue the Appellate Division had to consider was whether the expert was a specialist in internal medicine. The court found that he was not and stated:

Although hematology is a subspecialty of internal medicine, it is likewise undisputed that [the plaintiff's expert] did not practice internal medicine at the time of the alleged malpractice. Accordingly, pursuant to the plain terms of the PFA, as explained by the Court in Nicholas, plaintiff's proffered AOM expert failed to satisfy the statute's kind-for-kind mandate for both defendant doctors.

We therefore hold the PFA's requirement **is not satisfied where the affiant's practice falls within a subspecialty of a defendant doctor's specialty, when the subspecialist no longer specializes**, nor is board certified, in the specialty. In such circumstances, the policy underlying the equivalency requirement would be undermined if a physician with such specialized training were permitted to opine regarding the standard of care applicable to a physician practicing in the more generalized specialty **because the subspecialist no longer practices in the specialty**. Indeed, “[t]he apparent objective of N.J.S.A. 2A:53A-41 is to ensure that, when a defendant physician is subject to a medical-malpractice action for treating a patient's condition falling within his [or her] ABMS specialty, a challenging plaintiff's expert, who is expounding on the standard of care, **must practice in the same specialty.**” Nicholas, 213 N.J. at 486, 64 A.3d 536 (emphasis added).

Id. at 102-103 (emphasis added).

The Appellate Division very clearly did not say that the expert was not qualified because he was not board certified in internal medicine; rather, they explained that the expert “no longer specializes, nor is board certified.” This

sentence highlights the important distinction between specialization and board certification. The court found that the expert was not a specialist, thus did not meet the first inquiry under N.J.S.A. 2A:53A-41. In addition, the court noted that he was not board certified, which is the second inquiry under N.J.S.A. 2A:53A-41. Thus, the holding in Pfannenstein was not predicated on lack of board certification, but rather, lack of specialty. This was precisely the issue that was before the trial court in this case, and the trial court correctly found that Dr. Hofmeister could not opine as to the standard of care applicable to Dr. Thalasila because he did not specialize in internal medicine.

The trial court came to a well-reasoned decision to bar Dr. Hofmeister which is consistent with the New Jersey Supreme Court's holding in Nicholas, supra and the plain language of N.J.S.A. 2A:53A-41. Given that Dr. Hofmeister is only a specialist in hematology, the trial court came to the only decision that it could in light of the controlling case law and statute – to bar his testimony against a specialist in internal medicine. There is no controlling case law that precluded the court from conducting the Rule 104 hearing at the time it did. Dr. Thalasila had been making the same argument about Dr. Hofmeister's lack of qualifications since the time of the Ferreira conference, and she cannot be punished by now being subjected to a trial with an expert who is not qualified as a specialist in internal medicine simply because plaintiff's counsel failed to do his due diligence to

determine if his expert was actually a specialist in internal medicine. Rather, the Affidavit of Merit statute, Patient First Act and the controlling case law all lead to the same conclusion – an expert who is not a specialist in internal medicine cannot opine as to the standard of care as to a defendant who specialized in internal medicine. To rule any other way would be improper.

The facts of this case show that plaintiff did not, at any time during discovery or thereafter, ever file a motion to extend or reopen discovery for purposes of serving a new expert report. At the close of the discovery period, plaintiff's counsel was aware that there was a pending motion to bar Dr. Hofmeister and for summary judgment. Despite having sat through Dr. Hofmeister's deposition, which made it clear that he was not a specialist in internal medicine, plaintiff's counsel chose not to file a motion to serve a new expert report from a properly qualified internal medicine specialist. The only reason service of a new report became an issue is because plaintiff would have faced summary judgment in favor of the defendant unless permitted to retain a new expert. The intent of summary judgment is clearly frustrated by such a ruling. Rather, the appropriate effect of failing to retain a properly qualified expert is dismissal pursuant to summary judgment, as seen by Nicholas, supra., and Medina v. Pitta, 442 N.J.Super. 1, (App.Div. 2016).

Contrary to respondent/cross-appellant's representation, if such a motion to extend discovery had been filed, exceptional circumstances unquestionably would

have been the standard used by the court in deciding such a motion. Further, the situation before the Court in this case is nothing like that of Gonzalez v. Ibrahim, 477 N.J.Super. 647 (App.Div.), leave to appeal den. 257 N.J. 244 (2024). Here, the plaintiff's counsel was on notice that the defense questioned whether Dr. Hofmeister was truly a specialist in internal medicine since the Ferreira conference. At any point in time, plaintiff's counsel could have gleaned that information from his own expert, but he failed to do so. It was readily apparent by questioning Dr. Hofmeister that he did not specialize in internal medicine, but rather specialized in hematology and only saw hematology patients. Certainly at the time of Dr. Hofmeister's deposition, it was clear that he did not specialize in internal medicine. Plaintiff's counsel did nothing to ensure that he would not be left without a standard of care expert. After Dr. Hofmeister's deposition, plaintiff's counsel had ample time to file a motion to extend discovery but chose not to do so. Exceptional circumstances do not exist simply because a Rule 104 hearing occurred after the discovery period expires. Rather, the rule that no discovery extension should be granted after a trial date has been set applies, and plaintiff should not have been permitted time to retain a new expert.

Plaintiff's assertion that the applicable standard of review of Dr. Thalasila's appeal is abuse of discretion is preposterous. The issue before the trial court was summary judgment. In decision the summary judgment motion, the court ruled that

Dr. Hofmeister was barred, and then, instead of granting summary judgment, decided to reopen discovery. This is not an instance where the Appellate Division is simply reviewing a discovery issue, but rather, it is reviewing a motion for summary judgment. Thus, the proper standard of de novo review pursuant to Samolyk v. Berthe, 251 N.J. 73, 78 (2022).

The issue of whether an expert who does not practice the same specialty of a defendant is permitted to opine as to the applicable standard of care is simple to resolve. The Affidavit of Merit Statute and Patient's First Act, as well as the applicable case law, hold that an expert must have the same specialty as a defendant physician in order to be qualified as an expert. Thus, in this case, Dr. Hofmeister unquestionably was not permitted to opine as to the standard of care of an internist because Dr. Hofmeister is not a specialist in internal medicine. The proper remedy in this situation is summary judgment, rather than reopening of discovery. The facts of this case do not allow plaintiff to reopen discovery to serve a new expert report. Thus, it is respectfully submitted that respondent/cross-appellant's appeal be denied.

Conclusion

For the foregoing reasons, it is respectfully submitted that plaintiff's appeal be denied, and that summary judgment be granted in favor of Dr. Thalasila.

Very truly yours,

Michael R. Ricciardulli

Michael R. Ricciardulli
mricciardulli@rhwlawfirm.com

Jessica J. Mahony

Jessica J. Mahony
jmahony@rhwlawfirm.com

JJM:rc



4 Paragon Way • Suite 100
Freehold NJ • 07728
(732) 414-0300 • Fax (732) 431-4043
WWW.LOMURROLAW.COM

Christina Vassiliou Harvey
Attorney ID 023642004

charvey@lomurrolaw.com
Direct Dial (732) 414-0314

September 15, 2025

VIA ELECTRONIC FILING

Honorable Judges of the
Superior Court of New Jersey
Appellate Division
25 Market Street
Trenton, NJ 08625-0006

RE: Glassman v. Juanito’s, et al.
Docket No.: A-2723-24

Dear Honorable Judge:

This letter brief is submitted on behalf of Respondent/Cross-Appellant Todd Glassman in further support of the cross-appeal seeking to reverse the trial court’s exclusion of his expert, Dr. Craig Hofmeister.

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LEGAL ARGUMENT

Dr. Hofmeister Met the Statutory Requirements to Serve as an Expert Such that the Trial Court’s Order Barring His Testimony Constitutes Reversible Error. (Pa98-103.¹)

Defendant Thalasila attempts to create a distinction that does not exist in the Patient’s First Act statute, codified in relevant part at N.J.S.A. 2A:53A-41. Dr. Thalasila’s argument rests upon the claim that a doctor board-certified in internal medicine is no longer practicing internal medicine when the doctor concentrates on a wholly contained subspecialty within the same board of internal medicine. Neither the statute nor the law create such a distinction.

Dr. Thalasila argues that the appropriate category at issue in this case is N.J.S.A. 2A:53A-41(a)(2), which states “those who are specialists in a field recognized by the ABMS and who are board certified in that specialty.” (Tb3.) Because not every specialist must be board-certified, Dr. Thalasila takes the unsupported leap that it necessarily means every board-certified doctor is not necessarily a specialist within that board-certification. (Tb4.) But no where did the Legislature seek to create this artificial distinction that is at odds with what board certification under the American Board of Medical Specialties (“ABMS”)

¹ “Pa” refers to Plaintiff-Cross-Appellant’s Appendix in Support of Cross-Appeal; “Tb” refers to Cross-Respondent’s Opposition Brief filed on September 2, 2025.

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means. Given the Patient Safety Act refers to the ABMS, what constitutes a specialist is limited to ABMS' definition. See Nicholas v. Mynster, 213 N.J. 463, 486 (2013) (explaining “[o]ur role is not to judge the merits or wisdom of the statute, but only to construe its meaning and to enforce it as intended by the Legislature.”)

Specifically, the ABMS states the American Board of Internal Medicine includes the specialty of internal medicine and the subspecialty of hematology. (Pa39.) This means by definition - not all internal medicine specialists are hematologists, but all hematologists are internal medicine specialists. (Pa39.) In fact, the American Board of Internal Medicine defines a hematologist as a type of “internist.” <https://www.abms.org/wp-content/uploads/2024/04/abms-guide-to-medical-specialties-2024-08-06.pdf> at p. 27 (last accessed Sept. 12, 2025). Thus, because the Legislature defined “specialty” to mean that “recognized by the American Board of Medical Specialties,” Defendant cannot re-write the definition to create an artificial distinction that an internist practicing within a subspecialty is no longer practicing within the specialty itself.

If the Legislature wanted to adopt Defendant's pitfall, it could have written N.J.S.A. 2A:53A-41(a) differently. Moschella v. Hackensack Meridian Jersey Shore Univ. Med. Ctr., 258 N.J. 110, 125 (2024) (explaining statute is

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interpreted in accordance with its plain language). But until the Legislature re-writes the Act, trial courts like the one at bar should not be re-writing the statute's plain language. See id. at 127 (explaining “[w]hen a statute is susceptible of an interpretation true to its purpose and that permits plaintiffs to proceed with meritorious claims, we will not add requirements not explicitly set forth that deny plaintiffs their day in court”) (quoting Burns v. Belafsky, 166 N.J. 466, 470 (2001)).

Furthermore, the Supreme Court was clear in Wiggins v. Hackensack Meridian Health, 259 N.J. 562, 582 (2025) that “[w]e disagree with the notion that this Court’s opinion in Nicholas and the Appellate Division’s decision in Pfannenstein [v. Surrey], 475 N.J. Super. 83 (App. Div. 2023) altered Buck [v. Henry], 207 N.J. 377 (2011).” Given Buck remains good law, then as long as the expert has the same board specialty as the defendant, the requirement in Section 41 is satisfied. N.J.S.A. 2A:53A-41(a).

Analysis of Nicholas further illustrates the point that practicing within the parameters of a physician’s board certification constitutes the practice of that specialty. 213 N.J. at 481-82. In explaining the distinction between N.J.S.A. 2A:53A-41(a)(1) and (2), the Court clarified the hospital credentialing provision in the Patients Safety Act was only a substitute for board certification. Id. at

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482. The Court utilized the ABMS definition in determining if the physician practiced within that specialty. Id. at 487.

A reviewing court must resort to the analysis of how the AMBS defines the specialty and not a personal standard of Defendant or the expert, which would constitute a net opinion. See Satec, Inc. v. Hanover Ins. Grp., Inc., 450 N.J. Super. 319, 331 (App. Div. 2017) (holding opinion formed from personal standard constitutes an inadmissible net opinion). In looking at the manner in which the ABMS defines the treatment that board-certified internal medicine specialists provide, it is important that Dr. Hofmeister is board certified in internal medicine, and practices within the scope of that Board's specialization by providing "long-term comprehensive care in the office and in the hospital managing both common and complex illnesses of adolescents and adults, and the elderly." (Cf. Pa84 with 2T10:12-20.)

Unlike in Pfannenstein, at all relevant times, Dr. Hofmeister was a board-certified internal medicine doctor which exactly matches Dr. Thalasila's board certification. Dr. Thalasila further argues that Pfannenstein stands for the proposition that a doctor board-certified in internal medicine no longer practices internal medicine when the physician also practices within the subspecialty of hematology. (Tb9.) However, the reason the Appellate Division said that the

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physician “no longer specializes” was because the doctor was no longer board certified and there was no indication that she treated any patients “as a primary care internal medicine physician in any setting.” Pfannenstein, 475 N.J. at 93.

But here, Dr. Hofmeister indicated at the relevant time, he was actively board certified in internal medicine and that he treats patients for internal medicine issues as their primary care provider. (2T10:12-20.) Unlike the expert in Pfannenstein whose practice was limited to sickle cell disease – a hematologic issue – here, Dr. Hofmeister testified that his practice included treating his patients for conditions within the specialty of internal medicine, including “hypertension, diabetes, infectious diseases, skin problems, [and] pain.” Cf. Pfannenstein, 475 N.J. Super. at 93 with 2T10:12-20. Dr. Hofmeister stated, those internal medicine conditions “are all problems for my patients with hematologic diseases. We become a primary care doctor, basically, so we treat all of those problems in all of my patients.” Id.

Dr. Thalasila incorrectly reads Pfannenstein to hold that when an internal medicine doctor also practices in hematology, the physician can no longer be practicing internal medicine. (Tb9-10.) To the extent this 2023 Appellate Division decision stands for this proposition that a board certified doctor in internal medicine is not practicing in internal medicine simply because he also

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practices hematology, it has been overruled by Wiggins where the Supreme Court explained earlier this year that “[a] physician may practice in more than one specialty, and the treatment involved may fall within that physician’s multiple specialty areas. In that case, an [AOM] from a physician specializing in either area will suffice.” Wiggins, 259 N.J. at 578 (quoting Buck, 207 N.J. at 391).

Because the Supreme Court held a defendant with board certification in a specialty and subspecialty practices within both, the same holds true for Dr. Hofmeister – he is both an internal medicine specialist and hematology subspecialist. This Court need look no further than his explanation that although he treats hematology patients, he treats all of those patients’ needs which necessarily includes internal medicine subjects: hypertension, diabetes, infectious disease, pain management, etc. (2T10:12-20.) This record is far different than in Pfannenstein, 475 N.J. Super. at 93, where the physician admitted he had not been board certified in internal medicine for over two decades and that his “concentration was in sickle cell disease which was unrelated to the medical issues and treatment” at issue in the case.

At all relevant times, Dr. Hofmeister was board certified in internal medicine, just like Dr. Thalasila. Dr. Hofmeister explained that he treats patients

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for internal medicine issues, and thus, his specialty matches his board certification. Moreover, the Supreme Court has held that physicians may practice in more than one specialty. Wiggins, 259 N.J. at 578; Buck, 207 N.J. at 391. There was no basis for the trial court to bar Dr. Hofmeister. As explained herein and in Plaintiff's opening brief, Plaintiff requests that this Court reverse the trial court's decision barring Dr. Hofmeister.

Very truly yours,

A handwritten signature in black ink that reads "Christina Vassiliou Harvey". The signature is written in a cursive, flowing style.

CHRISTINA VASSILIOU HARVEY

CVH/mc

cc: All counsel of record - via eCourts