

## Certificate of Merit Q & A

The Iowa Medical Society believes Iowa lawmakers should pass a Certificate of Merit (COM) law to ensure that only cases with merit move through the court system.

### How does a Certificate of Merit work?

The plaintiff's (or patient's) attorney is required to find a medical expert to state how the standard of care was violated in a case. The expert files an affidavit or Certificate of Merit which allows an early examination of the facts of a case prior to the filing of a lawsuit.

### Do other states have COM laws?

Yes! To date, 24 states have adopted Certificate of Merit laws.

### How would a Certificate of Merit benefit patients?

Patients who are injured need a process that gives them a reasonable expectation about the outcome of their case. A COM helps ensure that a case has merit before it moves on to a potentially lengthy and costly trial.

### Is a Certificate of Merit good, common sense public policy?

Yes! It saves valuable time and money for all parties involved, and most importantly, it leads to a quicker resolution and settlement for the patient.

## Iowa Medical Society

The Iowa Medical Society is the professional association representing nearly 5,300 Iowa MDs and DOs.

Our Core Purpose is to assure the highest quality health care through our role as physician and patient advocate.

If you have questions about Certificate of Merit, please call the **Iowa Medical Society at 800-747-3070**.

The logo for the Iowa Medical Society, featuring the letters "IMS" in a large, serif font. The letter "I" is stylized with a caduceus (a staff with two snakes entwined around it) integrated into its vertical stroke.

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## Certificate of Merit:

Common sense legislation for Iowa

A Certificate of Merit (COM) is a **procedural tool** that helps eliminate lawsuits without merit before they go to trial.

States with COM laws require a **medical expert** to review the facts of a case before a lawsuit is filed. The expert then states how the care provided by a physician failed to meet the appropriate standards of care.

Such an early examination of the facts **improves the litigation climate** by making sure that only cases where there is a reasonable expectation that the standard of care was not followed are taken to trial.

Most importantly, a **Certificate of Merit is good public policy**.

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IOWA MEDICAL SOCIETY

## Certificate of Merit makes a difference

### COM HELPS KEEP PHYSICIANS WITH PATIENTS:

A northwest Iowa physician saw a patient with cancer of the jaw and referred him to a specialist. The patient failed to show up for his appointment. Both physicians attempted to make another appointment, but the patient never rescheduled. Six months later, the patient went back to his original physician and learned the cancer had spread.

*Over 100 patients had their appointments rescheduled so that their physicians could prepare for trial.*

The patient then sued the physician and the specialist for failure to diagnose and treat the cancer. Both doctors hired attorneys and spent hours away from their patients because of the litigation. Three months before trial, the lawsuit was dropped.

The physicians had to reschedule appointments with over 100 patients so they could prepare for trial. A COM would have stopped the litigation at an earlier stage.

### COM PREVENTS MERITLESS LITIGATION:

A central Iowa internist was sued along with a colleague and two hospitals for malpractice. The patient claimed a dirty needle was used to inject a contrast fluid in his vein before a CT scan. The claim had no merit because the machine that injected the fluid would not allow a needle to be re-used.

The plaintiff also claimed that an infection in his vein was overlooked and his life was impaired by chronic pain. Analysis showed no sign of infection, and his own physicians were on record saying that he did not suffer from any pain.

After two years of stressful litigation, the case went to trial and the jury found for the defendant physician and her colleagues. The internist's insurance carrier spent over \$40,000 on her defense, and even though she was found not liable, her insurance premiums increased. More importantly, she spent nearly 12 days out of the office, and 250 patient visits had to be rescheduled.

*The claim had no merit because the machine that injected the fluid would not allow a needle to be re-used.*

A Certificate of Merit would have prevented this meritless lawsuit from going to court.

### COM HELPS KEEP PHYSICIANS IN IOWA:

A north central Iowa neurologist with over 25 years of experience was sued for malpractice. During an ER visit, providers discovered that the plaintiff had a stroke. The ER contacted the neurologist, but unfortunately, three hours had passed and it was too late for a certain medication to be given. The patient sued all of the health care providers involved because he didn't receive this medication.

*Approximately 150 patients were unable to see him during this time. At the trial's conclusion, the neurologist was found not liable for any damages.*

The neurologist spent many hours meeting with attorneys and was in court for an entire week.

Approximately 150 patients were unable to see him during this time. At the trial's conclusion, the neurologist was found not liable for any damages. The stress of this trial was a factor in the neurologist's decision to retire early. His clinic has been trying to replace him for three years. The office now has a three-month wait to see a neurologist.

A Certificate of Merit would have eliminated the neurologist from the lawsuit.

### COM FOCUSES LITIGATION:

A southwest Iowa family physician was included in a lawsuit against her colleague. The patient, a woman in her 90s, had experienced declining health and did not speak or acknowledge anyone around her. Her prognosis was not good. Three of her four children asked that she be removed from life support, and the physician's colleague, as well as other staff, agreed. The fourth child sued the colleague and anyone who had written notes on the woman's chart.

The family physician never saw the patient and only provided an ethical consultation to her colleague (and noted that in the patient's chart). After extensive discussions between her medical liability carrier and the patient's attorney, she eventually was dropped from the lawsuit.

A Certificate of Merit would have allowed only the lawsuit against the physician's colleague (who actually saw the patient) to move forward.

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