No. 31760 – Charlotte Hinchman, as Personal Representative of the Estate of Paul Z. Hinchman; Charlotte Hinchman, individually v. Julie M. Gillette, R.N., C.R.N.A., individually, and as the agent, servant and/or employee of Medical Doctor Associates, Inc., and as the agent, servant, and/or employee of Stonewall Jackson Memorial Hospital Company; Medical Doctor Associates, Inc., a foreign corporation doing business within the State of West Virginia; Roger K. Pons, M.D., individually and as the agent, servant and/or employee of Stonewall Jackson Memorial Hospital; Stonewall Jackson Memorial Hospital Company, a West Virginia Corporation; John Doe and Jane Doe

FILED

July 11, 2005

released at 10:00 a.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Maynard, Justice, concurring, in part, and dissenting, in part:

The majority opinion may result in the complete gutting of a portion of the 2001 medical malpractice reforms.

I agree with the new law crafted in the majority opinion, which mandates that challenges to the sufficiency of a pre-filing certificate of merit must give the plaintiff an opportunity to address and correct alleged defects in the certificate prior to the filing of the complaint, to the extent that this law is applied only to alleged defects in the four corners of the certificate of merit. Specifically, a defendant should be required to challenge an alleged defect in the *content* of a certificate prior to the filing of the complaint. If, however, a plaintiff fails to provide a certificate of merit in the manner clearly set forth in the statute, the circuit court should dismiss the case immediately. This is because the statute is absolutely clear as to what exactly is required of a medical malpractice plaintiff.

For this reason, I must dissent to reversing and remanding this case to give the appellants another bite at the apple. The fact is that the appellants' certificate was so deficient under the statute, that an immediate dismissal was warranted. According to W.Va. Code § 55-7B-6, "[a] *separate* screening certificate of merit must be provided for *each* health care provider against whom a claim is asserted." (Emphasis added). In the instant case, the *same* certificate was sent to each defendant. If the Legislature intended to mandate only that each health care provider be provided the same certificate, it would have omitted the word *separate* which in this context obviously means *individual or particular*. Under our rules of construction, this Court is to give each word of a statute meaning. When we give meaning to each word of W.Va. Code § 55-7B-6, it is clear that each health care provider is to be provided with a certificate of merit particular to that health care provider. This was not done here. Because the certificate was so fundamentally flawed, dismissal was proper and should be affirmed.

The majority's reversal and remand indicates to me that the statute requiring pre-certificates of merit may be rendered essentially meaningless. Plaintiffs may now fail to provide a certificate or provide a cursory one to see whether they can get by with it. If the defendant does object, the plaintiff can then proceed to do what he or she should have done at the outset – simply comply with the clear requirements of the statute.

I believe also that the certificate at issue was flawed in that it does not state

with sufficient detail the expert's opinion as to how the breach of the applicable standard of care resulted in injury or death. Instead, it merely concludes that "[t]he above deviations resulted in prolonged hypoxia, and subsequent respiratory and cardiac arrest." The statute explains, in part, that a certificate of merit

> shall state with particularity: (1) The expert's familiarity with the applicable standard of care in issue; (2) the expert's qualifications; (3) the expert's opinion as to how the applicable standard of care was breached; and (4) the expert's opinion as to how the breach of the applicable standard of care resulted in injury or death. A separate screening certificate of merit must be provided for each health care provider against whom a claim is asserted.

The appellant's certificate does not explain in any way how the respiratory and cardiac arrest that occurred in the surgical room ultimately caused the decedent's death.

Finally, I wish to make clear my firm conviction that W.Va. Code § 55-7B-6 is constitutional. The statute does not infringe upon the rule-making power of this Court because it does not conflict with any of this Court's rules. Our Rules of Civil Procedure "govern the procedure in all trial courts of record in all actions, suits, or other judicial proceedings of a civil nature. W.Va.R.Civ.Pro. 1. According to Rule of Civil Procedure 3(a), "[a] civil action is commenced by filing a complaint with the court." Thus, this Court's Rules of Civil Procedure do not govern a pre-filing certificate of merit because such a certificate is filed prior to the commencing of a civil action. Hence, W.Va. Code § 55-7B-6 is a legitimate addition to the substantive law of this State.

In sum, I would affirm the dismissal of the appellant's action below for failure to provide each of the appellees with a *separate* certificate of merit, and so I dissent to the majority's ultimate disposition of this case. However, I concur with the new law crafted by the majority to the extent that it applies only to alleged defects within the four corners of a certificate of merit. Accordingly, I concur, in part, and dissent, in part.