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STATE OF MICHIGAN
IN THE SUPREME COURT

KERAN ERNEST, Individually and as Personal Representative of the Estate of Maurice Ernest, Deceased,

Plaintiff-Appellant,

v.

PAUL W. BROWN, JR., M.D., ELMAHDI M. SAEED, CYPRESS CARDIOLOGY, PLLC, and MCLAREN HEALTH CARE CORPORATION,

Defendants-Appellees,

and

DR. FAROUK M. BELAL,

Defendant.

Supreme Court Case No. 168462

Court of Appeals Case No. 368566

Genesee County Circuit Court
Case No. 23-119425-NH

AMICI CURIAE BRIEF OF MICHIGAN STATE MEDICAL SOCIETY, MICHIGAN HEALTH AND HOSPITAL ASSOCIATION, MICHIGAN OSTEOPATHIC ASSOCIATION, AND AMERICAN MEDICAL ASSOCIATION

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

Amicus Curiae Michigan State Medical Society (MSMS) is a professional association which represents the interests of over 14,000 physicians in the State of Michigan. Organized to promote and protect the public health and to preserve the interests of its members, MSMS is frequently called upon to express its views with respect to legal issues of significance to the medical profession.

Amicus Curiae Michigan Health & Hospital Association (MHA) is a statewide advocacy organization representing numerous hospitals, health systems, and other health care providers, such as rehabilitation facilities, throughout Michigan. Established in 1919, the MHA represents the interests of its member hospitals and health systems on key issues and supports their efforts to provide quality, cost-effective and accessible care. The mission of the MHA is to advance the health of individuals and communities. Through its leadership and support of hospitals, health systems and the full care continuum, the MHA is committed to achieving better care for individuals, better health for populations and lower per-capital costs. In addition, the association provides members with essential information and analysis of health care policy and offers relevant education to keep hospital administrators and their staff current on statewide issues affecting their facilities. Using its collective voice, the MHA advocates for its members before the legislature, government agencies, the media and the public.

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[1] Pursuant to MCR 7.312(H)(4), amici curiae Michigan State Medical Society, Michigan Health and Hospital Association, Michigan Osteopathic Association, and American Medical Association state that neither appellant's counsel nor appellee's counsel authored this brief in whole or in part, or contributed money that was intended to fund the preparation or submission of the brief. Further, no person other than the amici curiae have contributed money intended to fund the preparation and submission of this brief.

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Amicus Curiae Michigan Osteopathic Association (MOA) is the largest statewide osteopathic organization representing osteopathic physicians, interns, residents, and medical students in Michigan. Since 1898, the MOA has been dedicated to the promotion of quality patient care and to the educational, informational, and legislative needs of its members.

Amicus Curiae American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice and reside in all states, including Michigan. Through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents and medical students in the United States are represented in the AMA's policy-making process.

MSMS and the AMA join this brief on their own and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

In granting leave to appeal in *Ernest v Brown*, this Court directed the parties to address "(1) whether *Waltz v Wyse*, 469 Mich 642 (2004), correctly held that MCL 600.5856(c) does not toll the additional period permitted for filing wrongful-death actions provided in MCL 600.5852; and (2) if *Waltz* was incorrectly decided, whether it should nonetheless be retained under principles of stare decisis, *Robinson v City of Detroit*, 462 Mich 439, 463-468 (2000)." Amici Curiae believe that *Waltz* was correctly decided and should not be overruled. *Waltz'* holding that a notice of intent tolls only the statute of limitations or repose, and not the saving provision in the Wrongful Death Act, effectuates the Legislature's intent as expressed by the unambiguous language of the statutes,

which the Legislature has not modified. This Court's holding in *Waltz* has been the law for over 20 years and has provided a functional, workable rule for computing filing deadlines in medical malpractice actions. This appeal is therefore of great importance to MSMS, MHA, MOA, AMA, and their members. Amici believe they can best assist this Court in understanding the issues from the physicians' perspective by presenting this Amici Curiae brief for the Court's consideration.

On September 26, 2025, this Court entered an order permitting MSMS and MHA to file an amicus curiae brief in this matter, and the MOA and AMA have joined in that effort. Amici now submit this brief to address several of the significant issues raised in the pending appeal.

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STATEMENT OF QUESTIONS ADDRESSED BY AMICI CURIAE

As identified by this Court, the questions presented are "(1) whether *Waltz v Wyse*, 469 Mich 642 (2004), correctly held that MCL 600.5856(c) does not toll the additional period permitted for filing wrongful-death actions provided in MCL 600.5852; and (2) if *Waltz* was incorrectly decided, whether it should nonetheless be retained under principles of stare decisis, *Robinson v City of Detroit*, 462 Mich 439, 463-468 (2000)."

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INTRODUCTION

Plaintiff seeks to reverse this Court's decision in *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004) as "unworkable, inequitable, and inconsistent with the language of the statutes it purports to interpret." This Court should reject that request. *Waltz* properly held that the notice-tolling provided in MCL 600.5856(c) applicable to statutes of limitation and statutes of repose does not apply to the wrongful death saving period afforded by MCL 600.5852(1) because the saving provision is neither a statute of limitations nor a statute of repose. This Court relied upon the plain language of these statutes. The holding in *Waltz* has been consistently applied by Michigan courts for over 20 years, and this Court has declined multiple requests to overturn it. The holding has provided a functional, workable rule for computing filing deadlines in medical malpractice actions. There is nothing "unworkable" or "inequitable" about the holding, as all plaintiffs are required to calculate any applicable deadlines for filing their cases. Further, a plaintiff in a wrongful death action has up to three years longer than other medical malpractice plaintiffs to file suit. Plaintiff is asking this Court to perform the role of the Legislature and rewrite the statute. The Legislature has chosen not to modify the pertinent language over these two decades, and there is simply no reason in the law to overrule the holding.

CONCISE STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Amici Curiae MSMS, MHA, MOA, and AMA refer this Court to the facts asserted in the answers and supplemental briefs of Defendants-Appellees.

ARGUMENT

I. *Waltz* Was Correctly Decided and Should Not be Disturbed.

When reviewing statutory matters, a court's primary purpose "is to discern and give effect to the Legislature's intent." *Robertson v DaimlerChrysler,* 465 Mich 732, 748; 641 NW2d 567 (2002). In the first instance, the legislative intent is to be derived from the specific language of

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the statute inasmuch as the Legislature "is presumed to have intended the meaning it has plainly expressed." *Id*. The words used are "not to be ignored, treated as surplusage, or rendered nugatory." *Id*. When the language is clear and unambiguous, judicial construction is not permitted and the statute must be enforced as written. *Id*. As this Court explained in *In re Certified Question, Henes Special Projects Procurement, Marketing and Consulting Corp v Continental Biomass Industries, Inc,* 468 Mich 109, 113; 659 NW2d 597 (2003):

> A fundamental principle of statutory construction is that "a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Coleman v Gurwin,* 443 Mich 59, 65; 503 NW2d 435 (1993). The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. *Sun Valley Foods Co v Ward,* 460 Mich 230; 596 NW2d 119 (1999). When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case. *Turner v Auto Club Ins Ass'n,* 448 Mich 22, 27; 528 NW2d 681 (1995).

See also, *Eggleston v Bio-Medical Applications of Detroit Inc,* 468 Mich 29, 32; 658 NW2d 139 (2003) ("If the language of a statute is clear, no further analysis is necessary or allowed"); *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (the court's primary task of discerning and giving effect to the Legislative intent "begins by examining the language of the statute itself"); *People v Herron,* 464 Mich 593, 611; 628 NW2d 528 (2001) ("We must give the words of a statute their plain and ordinary meaning . . . ."), quoting *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999); *Storey v Meijer Inc*, 431 Mich 368, 376; 429 NW2d 169 (1988) ("Legislative intent is to be derived from the actual language of the statute, and when the language is clear and unambiguous, no further interpretation is necessary").

"A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Nickola v MIC Gen Ins Co*, 500 Mich 115, 123; 894 NW2d 552 (2017).

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In *Nickola*, this Court referred to Scalia & Garner, *Reading Law*: *The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), pp 57-58, stating:

> "[T]he limitations of a text—what a text chooses *not* to do—are as much a part of its 'purpose' as its affirmative dispositions. These exceptions or limitations must be respected, and the only way to accord them their due is to reject the replacement or supplementation of text with purpose." [*Nickola,* 500 Mich at 125, n 25.]

This Court understands that when a particular object is mentioned, objects that are not mentioned cannot be implied because "[t]he express mention of one thing in a statute implies the exclusion of other similar things." *In re MCI Telecom Complaint,* 460 Mich 396, 415; 596 NW2d 164 (1999). See also *Kaufman v Carter,* 952 F Supp 520, 529 (WD Mich, 1996) ("Where '[e]xceptions to [a statute's] sweeping language are carefully enumerated…[t]he express enumeration indicates that other exceptions should not be implied.'"). A court may not second-guess the wisdom of the statute and use rules of construction as a means of imposing its own policy preferences. As this Court has explained: "Our judicial role precludes imposing different policy choices than those selected by the Legislature.…" *Robertson,* 465 Mich at 752, quoting *People v Sobczak-Obetts,* 463 Mich 687, 694-695; 625 NW2d 764 (2001).

A. The Holding in *Waltz* Constitutes a Proper Interpretation of the Statutory Language.

In general, a plaintiff must bring a claim of medical malpractice within two years of the accrual of the claim. MCL 600.5805(8); *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 219; 561 NW2d 843 (1997). A medical malpractice claim "accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1). A medical malpractice action is barred if it is not commenced within the statutorily prescribed time limits. MCL 600.5838a(2).

In addition, MCL 600.2912b(1) requires a medical malpractice plaintiff to provide a notice of intent (NOI) to file suit:

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> Except as otherwise provided in this section, a person shall not commence an action alleging medical malpractice against a health professional or health facility unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced.

Compliance with the notice of intent requirement tolls the statute of limitations or repose:

> At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given. [MCL 600.5856(c) (formerly MCL 600.5856(d)).]

At issue here is the wrongful death saving provision, MCL 600.5852(1), which gives an estate additional time to file suit:

> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.

However, the date of filing can be no longer than three years after the statute of limitations expired. MCL 600.5852(4).

In *Waltz*, this Court held that the NOI tolling period does not extend the two-year wrongful death saving provision because the saving provision is not a statute of limitations or a statute of repose. As this Court explained:

> Section 5852 is a *saving* provision designed "to preserve actions that survive death in order that the representative of the estate may have a reasonable time to pursue such actions." *Lindsey* [*v Harper Hosp*, 455 Mich. 56], at 66, 564 N.W.2d 861 [(1997)]. It is not a "statute of limitations" or a "statute of repose." Thus, the notice tolling provision, § 5856(d)—which explicitly applies only to "the statute of limitations or repose"—does not operate to toll the additional period permitted under § 5852 for filing wrongful death actions. [*Waltz*, 469 Mich at 655 (emphasis in original).]

See also, *Miller v Mercy Mem Hosp*, 466 Mich 196, 202; 644 NW2d 730 (2002) ("Section 5852 is a saving statute, not a statute of limitations."); *Lindsey v Harper Hosp*, 455 Mich 56, 61, 65; 564 NW2d 861 (1997) (explaining that Section 5852, is an "exception to the statute of limitations" and

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operates "to suspend the running of the statute until a personal representative is appointed to represent the interests of the estate").

The linchpin of *Waltz* is the express language of MCL 600.5852 and MCL 600.5856(c). That the grace period permitted by MCL 600.5852(1) is a saving provision and not a statute of limitations is apparent from its plain language, which recognizes that the saving period may be invoked "although the period of limitations has run." This Court analyzed this language in *Waltz*, explaining:

> The plain language of § 5852 wholly supports our conclusion that it is not itself a "statute of limitations." Again, § 5852 provides:
>
> > If a person dies before *the period of limitations* has run or within 30 days after *the period of limitations* has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued *although the period of limitations has run*. But an action shall not be brought under this provision unless the personal representative commences it within 3 years *after the period of limitations* has run.
>
> By its own terms, § 5852 is operational only within the context of the separate "period of limitations" that would otherwise bar an action. Section 5852 clearly provides that it is an exception to the limitation period, allowing the commencement of a wrongful death action as many as three years after the applicable statute of limitations has expired. [469 Mich at 651 (emphasis supplied in *Waltz*).]

If, as Plaintiff argues, that through this provision the Legislature intended to "extend[] the period of limitations…," the Legislature would have used language that explicitly extended or tolled the "period of limitations" rather than refer to "the period of limitations" as having "run." To effectuate the meaning Plaintiff gives to the statute, Section 5852 would have to read (with additions in *italics*):

> (1) If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued, *which will have the effect of extending the period of limitations* although the period of limitations has *otherwise* run.

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* * *

> (4) Notwithstanding subsections (1) to (3), an action shall not be commenced under this section later than 3 years after the period of limitations *applicable to the underlying claim* has run.

Further, by direction of the Legislature, only the statute of limitations and repose are affected by notice-tolling. Saving provisions, which already afford additional time, are not included. The notice-tolling statute, MCL 600.5856(c), provides:

> The *statutes of limitations or repose* are tolled in any of the following circumstances:
>
> (a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
>
> (b) At the time jurisdiction over the defendant is otherwise acquired.
>
> (c) At the time notice is given in compliance with the applicable notice period under section 2912b,1 *if during that period a claim would be barred by the statute of limitations or repose*; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given. [(Emphasis added).]

This Court cannot simply read "saving period" into this statute. To express the meaning that Plaintiff advocates, the words "or saving period" would have to be added to the statute in several places, such that the statute would read (with italicized language added):

> The statutes of limitations or repose *or saving period* are tolled in any of the following circumstances:
>
> (a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
>
> (b) At the time jurisdiction over the defendant is otherwise acquired.
>
> (c) At the time notice is given in compliance with the applicable notice period under section 2912b,1 if during that period a claim would be barred by the statute of limitations or repose *or saving period*; but in this case, the statute *or saving period* is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given.

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The rule Plaintiff urges this Court to adopt would require this Court to disregard the rules of statutory construction and to give the language chosen by the Legislature a meaning it does not express. In essence, this Court would have to rewrite the statute. A court may not second-guess the wisdom of the statute and use rules of construction as a means of imposing its own policy preferences. *Robertson*, 465 Mich at 751.

1. The Term "Saving Provision" is Not a Novel Concept, and MCL 600.5852 is Clearly a Saving Provision.

The different types of timing statutes at issue have different purposes and definitions. The term "statute of limitations" is defined as "[a] law that bars claims after a specified period; specif., a statute establishing a time limit for suing in a civil case, *based on the date when the claim accrued (as when the injury occurred or was discovered)*." *Black's Law Dictionary* (12th ed); *McLain v Roman Catholic Diocese of Lansing*, 514 Mich 1, 17; 22 NW3d 284 (2024) (emphasis added). A "statute of repose" is "[a] statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." *Black's Law Dictionary* (12th ed); *Frank v Linkner*, 500 Mich 133, 142; 894 NW2d 574 (2017). "Tolling statute" is defined as "[a] law that interrupts the running of a statute of limitations in certain situations, as when the defendant cannot be served with process in the forum jurisdiction." *Black's Law Dictionary* (12th ed); *Carter v DTN Mgt Co*, 515 Mich 61, 86; 28 NW3d 291 (2024).

On the other hand, a "saving provision" or "saving clause" is defined as "[a] statutory provision exempting from coverage something that would otherwise be included. • A saving clause is generally used in a repealing act to preserve rights and claims that would otherwise be lost." *Black's Law Dictionary* (12th ed). Prior to *Waltz*, this Court referred to Section 5852 as a "saving statute, not a statute of limitations," *Miller*, 466 Mich at 202, or a "statute of limitations saving

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provision that operates to suspend the running of the statute [of limitations]," *Lindsey*, 455 Mich at 61. This concept not only pre-dates *Waltz*, it is recognized by Michigan courts in other statutes as well. See, e.g., *Hanlin v Saugatuck Twp*, 299 Mich App 233, 242; 829 NW2d 335 (2013) ("MCL 168.861 is a saving clause: it preserves the remedy of quo warranto in certain situations."); *Rambin v Allstate Ins Co*, 297 Mich App 679, 683; 825 NW2d 95 (2012), rev'd in part on other grds, 495 Mich 316 (2014) (referring to the second part of MCL 500.3113(a) as a "saving clause" where it preserves a right to personal protection insurance benefits that would otherwise be lost); *Amwake v Mercy-Mem Hosp*, 92 Mich App 546, 553; 285 NW2d 369 (1979) (referring to MCL 600.5851(1) as a "savings provision" that "provides those who are minors, insane or imprisoned at the time their claim accrues with a one-year grace period after their disability is removed in order to bring their action, although the period of limitations has run").

The concept of a saving provision is well-established in other jurisdictions as well. See *Mock v St David's Healthcare Partnership, LP, LLP*, No. 03-22-00708-CV, 2025 WL 3114017, at *9 (Tex App, November 7, 2025) (referring to statute that suspends the applicable limitations period for the time between the filing of two actions if the first action is dismissed because of lack of jurisdiction as a "savings clause"); *Puma Biotechnology, Inc v Hedrick Gardner Kincheloe & Garofalo, LLP*, 921 SE2d 562, 570 (NC Ct App, 2025) (referring to rule allowing a new action based on the same claim as a voluntarily dismissed complaint to be commenced within one year and relate back to the date of the original complaint as a "savings provision"); *Cyr v Fellows*, No. CV166033814S, 2017 WL 2622490, at *2 (Conn Super Ct, May 11, 2017) (referring to statute allowing service on a defendant beyond the statute of limitations if process is delivered to state marshal within such time and served within 30 days of such delivery as a "savings provision"); *McClellan v Haddock*, 204 Vt 252, 254; 166 A3d 579 (2017) (referring to statute allowing

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automatic 90–day extension of the statute of limitations for medical malpractice claims that may expire before the plaintiff acquires the necessary expert opinion as a "savings clause"); *McConico v Patterson*, 204 So 3d 409, 419 (Ala Civ App, 2016) (referring to statute allowing equitable tolling of the statute of limitations for tort claims where the defendant fraudulently concealed the cause of action as a "savings clause"); *Counts Co v Praters, Inc*, 392 SW3d 80, 83 (Tenn Ct App, 2012) (referring to statute allowing an action for wrongful death to be brought within one year of date of injury if such injury occurred during the fourth year after substantial completion of project as a "savings clause"); *Anderson v R & D Foods, Inc*, 913 So 2d 394, 397 (Miss Ct App, 2005) (referring to statute allowing filing of action after the disability of infancy is removed as "the minor's savings statute"); *Steele v Motor Vehicle Acc Indemnification Corp*, 39 AD3d 78, 81; 829 NYS2d 467 (2007) (referring to statute allowing three-month extension to statute of limitations to sue Motor Vehicle Accident Indemnification Corporation where a plaintiff cannot establish owner or operator of hit and run vehicle as a "savings clause").

In *US Fire Ins Co v Swyden*, 175 Okla 475; 53 P2d 284, 285 (1935), the plaintiff filed and voluntarily dismissed without prejudice the same action on a fire insurance policy three times, and subsequently filed a fourth action. A state statute, referred to as a "saving clause," allowed commencement of a new action within one year of the failure of a previous action other than on the merits, if the time limit had expired. *Id*. The court described the general purpose of such statutes:

> Statutes permitting filing of new actions after the original period of limitation are not ordinarily considered statutes of limitation with the same meaning and dignity of original statutes of limitation. Their essence is not that the original period is added to, or extended, for an additional year, so that the cause is for all purposes alive during that period, but the real nature and effect of such a statute is that it is simply a saving clause to prevent the bar which otherwise would be applicable. [*Id*. at 286 (citations omitted).]

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The court found that the saving clause, "in extending litigants the privilege of filing actions out of time," did not intend that plaintiffs could files as many new actions as they wanted within the year and ordered dismissal of the case. *Id*. at 288.

Thus, the terms "saving provision" or "saving clause" are widely recognized as statutes that save a claim that would otherwise be lost to the running of the statute of limitations. This is not an idea created by *Waltz* to shorten a plaintiff's time to file suit. Rather, it enlarges such time under qualifying circumstances.

2. Reading the Saving Provision *in Pari Materia* with Other Medical Malpractice Statutes Does Not Change the Interpretation.

Plaintiff argues that when all relevant statutes are read *in pari materia*, Section 5852 must be construed as a statute of limitations rather than a savings provision. "Statutes that address the same subject or share a common purpose are *in pari materia* and must be read together as a whole." *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007). As the Court explained:

> Statutes *in pari materia* are those sharing a common purpose or those that relate to the same subject. *State Treasurer v. Schuster*, 456 Mich. 408, 417, 572 N.W.2d 628 (1998); *Crawford Co. v. Secretary of State*, 160 Mich.App. 88, 95, 408 N.W.2d 112 (1987). Statutes *in pari materia* are to be read and construed together as one law even if they were enacted at different times and without specific reference to each other. *Schuster*, supra at 417, 572 N.W.2d 628. "[T]hey must be construed to preserve the intent of each and, if possible, interpreted in such a way that neither denies the effectiveness of the other." *Crawford Co*, *supra* at 95, 408 N.W.2d 112. If statutory provisions can be construed in a manner that avoids conflict, then that construction should control the analysis. *People v. Webb*, 458 Mich. 265, 274, 580 N.W.2d 884 (1998). [*Sinicropi v Mazurek*, 273 Mich App 149, 157; 729 NW2d 256 (2006)]

"The object of the *in pari materia* rule is to give effect to the legislative intent expressed in harmonious statutes. *Walters v Leech*, 279 Mich App 707, 710; 761 NW2d 143 (2008) (citation omitted). "If statutes lend themselves to a construction that avoids conflict, that construction should control." *Id*.

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Invoking the principle of *in pari materia* does not assist Plaintiff's argument. Reading the NOI tolling statute together with the wrongful death saving provision does not change the language of those statutes or the meaning of that language. The *Waltz* interpretation allows a harmonious reading of these statutes together without conflict. The Legislature is certainly capable of distinguishing between a saving provision and a statute of limitations or statute of repose. Had the Legislature intended to apply notice tolling to the savings provision, it would have included language in the statutes expressing that intent. This Court is not empowered to adopt a rule that contradicts the statutes as written, which is what Plaintiff is asking.

Plaintiff claims that the Legislature identified Section 5852 as a period of limitations for medical malpractice actions in the discovery rule statute, MCL 600.5838a(2), which provides, in part:

> Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. However, except as otherwise provided in section 5851(7) or (8), the claim shall not be commenced later than 6 years after the date of the act or omission that is the basis for the claim. . . .

Once again, Plaintiff's interpretation would require this Court to add language to the statute, specifically the words "of limitations" after the word "period." The absence of such words is significant. The fact that each of these statutes contains a "period" of time for their respective purposes does not convert all of these provisions into statutes of limitations.

The group of statutes listed in MCL 600.5838a(2) contains various saving and tolling provisions, including the two provisions at issue in this case, MCL 600.5852 and MCL 600.5856. For example, MCL 600.5851(1) is a saving provision that applies to plaintiffs who have the disability of infancy or insanity at the time their claim accrues. *Vega v Lakeland Hosps at Niles*

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& St Joseph, Inc, 479 Mich 243, 247; 736 NW2d 561 (2007). MCL 600.5853 operates as a tolling provision to delay the running of the statute of limitations if a person is outside the state when a claim accrues. *McFarlane v McFarlane*, 223 Mich App 119, 122; 566 NW2d 297 (1997). Similarly, MCL 600.5854 tolls the statute of limitations under certain circumstances involving the United States being at war. MCL 600.5855 has been referred to as a tolling provision that delays commencement of the limitations period where a defendant fraudulently conceals the existence of the claim or the person's identity. *Frank v Linkner*, 500 Mich 133, 148; 894 NW2d 574 (2017). These provisions do not constitute statutes of limitations in and of themselves.

MCL 600.5838a(2) has two distinct phrases separated by both a comma and the disjunctive "or": (1) "at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856," and (2) "within 6 months after the plaintiff discovers or should have discovered the existence of the claim." Section 5805 provides periods of limitation for different types of actions, and sections 5851 to 5856 provide various tolling/savings provisions applicable to the periods in section 5805. MCL 600.5805(8) provides, "*Except as otherwise provided in this chapter*, the period of limitations is 2 years for an action charging malpractice." (Emphasis added). The tolling provision in MCL 600.5856 is one of those exceptions to the two-year period (i.e., "section 5805") provided in this chapter. The discovery rule, on the other hand, provides a separate accrual date if the claim was discovered later than when the wrong occurred. Accordingly, this statute allows a plaintiff to file suit within the two-year period as extended by any tolling or saving provisions, or six months after discovery of the claim, whichever is later. The statute does not say that the 182-day tolling provision is added to each saving or tolling statute in Sections 5851 to 5855.

B. *Waltz* is Consistent With Prior Law and Properly Overruled Contrary *Dicta*.

Waltz is also consistent with prior decisions of this Court, such as *Miller*, 466 Mich at 202, a unanimous decision in which this Court explained that "Section 5852 is a saving statute, not a

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statute of limitations." *Miller* further noted that this Court in *Lindsey*, 455 Mich at 56, said that MCL 600.5852 "is to be narrowly construed as an exception to the statute of limitations…" *Miller*, 466 Mich at 203.

Nor did the holding in *Waltz* conflict with *Hardy v Maxheimer*, 429 Mich 422; 416 NW2d 299 (1987). The issue in *Hardy* was whether MCL 600.5852 applied to both instantaneous and non-instantaneous death actions. *Hardy* did not address a medical malpractice claim and did not address the NOI tolling provision. MCL 600.2912b (the notice requirement) and MCL 600.5856(c) (the notice-tolling provision) were not enacted until six years after *Hardy* was decided. See P.A. 1993, No. 78, §1, Eff April 1, 1994. Additionally, the plaintiffs in *Hardy* filed claims within two years of being appointed as personal representatives. *Hardy*, 429 Mich at 426. While *Hardy* noted the savings period "operates to toll the statute of limitations," the *Hardy* court never found that MCL 600.5852 was itself a statute of limitations, and it repeatedly referred to MCL 600.5852 as a "saving" provision. Further, *Miller* was decided years after *Hardy*. This Court is "obligated to follow the most recent pronouncement of the Supreme Court on a principle of law." *Wash Mut Bank, FA v Shorebank Corp*, 267 Mich App 111, 119; 703 NW2d 486 (2005). Thus, *Hardy* does not change the result. See also *Waltz*, 469 Mich at 650 n 12 (rejecting the dissent's contentions which relied on *Hardy*).

Plaintiff's reliance on *Omelenchuck v City of Warren*, 461 Mich 567; 609 NW2d 177 (2000), is also misplaced. The Court in *Waltz* was unequivocal: "To the limited extent that . . . *Omelenchuk* might be viewed as sanctioning application of the notice tolling provision to the wrongful death saving provision, it is hereby overruled." *Waltz*, 469 Mich at 655. Hence, to the extent *Omelenchuk* characterized MCL 600.5852 as creating a limitations period, it was overruled in *Waltz*.

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C. The Holding in *Waltz* has Become Embedded in this State's Caselaw and Consistently Applied.

Courts applying *Waltz* have uniformly dismissed claims where the personal representative failed to file a complaint before the savings period expired. In addition, this Court has relied on *Waltz* in subsequent decisions. For example, in *Ligons v Crittenton Hosp*, 490 Mich 61, 74-75; 803 NW2d 271 (2011), this Court explained:

> In *Waltz*, this Court clarified that MCL 600.5856, by its terms, tolls only periods of limitations or statutes of repose. A saving statute is neither a statute of limitations providing a limitations period nor a statute of repose; rather, it is "an 'exception to the statute of limitations'" that allows "commencement of a wrongful death action as many as three years after the applicable statute of limitations has expired." In other words, once the limitations period has run, tolling is no longer available, even if a saving statute would still allow commencement of the action. [footnotes omitted].

In *LaJoice v Northern Michigan Hosp, Inc*, 493 Mich 965, 965; 829 NW2d 194 (2013), the plaintiff did not file a proper notice of intent until after the period of limitations had expired. This Court quoted *Ligons* for the proposition that "once the limitations period has run, tolling is no longer available, even if a saving statute would still allow commencement of the action" and concluded that "[b]ecause the plaintiff's complaint did not toll the saving period, and because the saving period has now expired, the plaintiff's action is time barred." Also see, *Vega v Lakeland Hosp at Niles and St. Joseph, Inc*, 479 Mich 243, 248; 736 NW2d 561 (2007) (citing *Waltz* and stating that "a saving provision is not a period of limitations."); *Lentini v Urbancic*, 472 Mich 885; 695 NW2d 66 (2005) (vacating judgment of Court of Appeals and remanding for reconsideration in light of *Waltz*); *Mullins v St Joseph Mercy Hosp*, 480 Mich 948; 741 NW2d 300 (2007) (identifying the filing dates of cases to which *Waltz* does not apply and stating "[a]ll other causes of action are controlled by *Waltz*.").

As another example, in *Farley v Advanced Cardiovascular Health Specialists PC*, 266 Mich App 566, 576; 703 NW2d 115 (2005), the Court of Appeals ruled that the plaintiff's medical

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malpractice claim was barred where the complaint was filed more than two years after the personal representative received letters of authority. Both in that case and here, the plaintiff failed to file an NOI "within the statutory two-year malpractice limitations period (M.C.L. § 600.5805)," and as a result notice-tolling under MCL 600.5856(c) did not apply. *Id*. at 573, citing *Waltz*, 469 Mich at 655. Because the plaintiff failed to commence the action before the two-year savings period expired, the statute of limitations barred the claims. *Id*. at 573-574. The present situation is indistinguishable from cases like *Waltz* and *Farley*.

This Court has denied applications and/or opportunities to reconsider *Waltz*. See e.g., *Wilson v Plyler*, 480 Mich 855; 737 NW2d 698 (2007 Mem); *King v Briggs*, 474 Mich 1113; 712 NW2d 164 (2006 Mem); *Farley*, 266 Mich App 566, lv den 474 Mich 1020 (2006); *Dallaire v Treatment Works, Inc*, unpublished per curiam opinion of the Court of Appeals, issued Dec. 21, 2010 (Docket No. 292971) lv den 489 Mich 973 (2011). The holding in *Waltz* was recently challenged before the Supreme Court once again, and the Court declined to overturn it. *Poniewierski v William Beaumont Hosp Royal Oak*, 513 Mich 859; 995 NW2d 353 (2023). There is nothing to warrant a change of course in this case.

D. The Holding in *Waltz* Does Not Shorten the Estate's Time to File Suit, and Reversal Would Allow Impermissible Tacking of Tolling Periods.

Plaintiff argues that the need to give notice notwithstanding the inapplicability of notice-tolling to the wrongful death savings period shortens the two-year savings period by the length of the notice period. According to Plaintiff, the decision in *Waltz* contravenes the MCL 600.2912b notice requirement. The *Waltz* Court rejected this argument:

> We disagree with the dissent's assertion that our reading of the applicable statutes "effectively reduce[s]" by 182 days the two- and three-year periods provided for in § 5852. See post at 828. *Plaintiff had a full two years after letters of authority were issued to commence her claim, as long as the claim was commenced within three years after the expiration of the two-year limitation period for medical malpractice actions.* Additionally, plaintiff was entitled to a 182–day tolling period under §

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> 5856(d), *provided that she filed her notice of intent at some point before the expiration of that two-year limitation period*. Potentially, then, under §§ 5805(5), 5852, and 5856(d), plaintiff had five years plus 182 days to commence her lawsuit following the accrual of her cause of action. However, because plaintiff waited until nearly five years had passed after her infant's death to file her notice of intent, there was simply no unexpired "statute of limitations" to toll. This analysis in no way shortens either the two-year extension period or the three-year ceiling provided for in § 5852. [*Waltz*, 469 Mich at 652 n 14 (emphasis added).]

In *Waltz*, the plaintiff waited nearly five years after the claim accrued before filing an NOI. Here, Plaintiff waited nearly two and half years after the claim accrued to file the NOI. Plaintiff should have served an NOI before the two-year statute of limitations lapsed on July 16, 2022 to take advantage of NOI tolling under MCL 600.5856(c). As noted in *Waltz*, "there was simply no unexpired 'statute of limitations' to toll." *Id*. Had she taken full advantage of all tolling and saving period privileges granted by the Legislature, Plaintiff could have had 5 years, 182 days to file suit. If she had served the NOI before the end of the limitations period, it would have been extended 182 days to January 16, 2023. The three-year ceiling from that date would be January 16, 2026, so if Plaintiff had opened the estate and obtained her letters of authority on or after January 16, 2024, she would have both the benefits of NOI tolling and the wrongful death savings provision to have a total of 5 years and 182 days to file suit. This Court's admonishment in *McLean v McElhaney*, 269 Mich App 196, 201-202; 711 NW2d 775 (2005), rev'd on other grounds, 480 Mich 978 (2007), is equally applicable here: an estate's "own negligence in calculating the proper time for filing the complaint" does not change the fact that being "afforded the full two years permitted under the wrongful death savings statute" is all the Legislature allows.

To reverse the holding in *Waltz* would allow an extra 182-day tolling period. MCL 600.2912b(6) prohibits the tacking of notice tolling periods:

> After the initial notice is given to a health professional or health facility under this section, the tacking or addition of successive 182-day periods is not allowed,

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> irrespective of how many additional notices are subsequently filed for that claim and irrespective of the number of health professionals or health facilities notified.

This prohibition "precludes a plaintiff from enjoying the benefit of multiple tolling periods." *Mayberry v Gen Orthopedics, PC*, 474 Mich 1, 7; 704 NW2d 69 (2005). Plaintiffs already benefit from one tolling period if the NOI is timely served before expiration of the limitations period. To allow the 182-day tolling period to apply to extend both the period of limitations and the saving period would violate the Legislature's clear mandate against tacking multiple periods and would allow a maximum period of 5 years, 364 days to file suit.

The Legislature has determined that two years after issuance of the letters of authority is a reasonable amount of time for a personal representative to file a wrongful death action. Of note, the personal representative is not precluded from taking full advantage of the initial limitations period, its tolling period, and the additional year to prepare the case. A person does not have to be formally appointed as the personal representative to serve an NOI or request records under MCL 600.2912b(1), (5). In fact, although MCL 600.2922(2) requires a wrongful death action to be brought in the name of the personal representative of the estate, the Court of Appeals has allowed a plaintiff to file this type of action prior to actual appointment and apply the relation-back statute, MCL 700.3701, to preserve the claim. *Eversole v Nash*, ___ Mich App ___, ___ NW3d ___ (2024) (Docket No. 366556). Thus, plaintiffs are given a multitude of benefits and extra time in wrongful death actions based on medical malpractice. There is no reason to defy the Legislature's clear intent to not allow additional 182-day periods to expand these privileges.

II. The Rule of Stare Decisis Opposes the Reversal of *Waltz*.

"Under the doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction become precedent which should not be lightly departed." *People v Jamieson*, 436 Mich 61, 79 n 8; 461 NW2d 884 (1990), citing *Kirby v Larson*, 400 Mich

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585, 618; 256 NW2d 400 (1977) ("Alterations are not usually made in a doctrine which is serving well, and with which the bench, bar and public are satisfied."). As Justice McCormack expressed in an order implicitly reflecting this Court's refusal to overturn precedent established by *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354; 320 NW2d 836 (1982), "There are times when courts must overturn precedent. But, in my view, those occasions should be rare and the case for doing so compelling. This is plainly not one of those cases." *N Am Brokers, LLC v Howell Pub Sch*, 502 Mich 882; 913 NW2d 638, 641 (2018) (McCormack, C.J. concurring).

This Court has recognized the importance of stare decisis, the purpose of which is to establish "uniformity, certainty and stability in the law." *Parker v Port Huron Hosp*, 361 Mich 1, 10; 105 NW2d 1 (1960). Stare decisis is generally "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Robinson v City of Detroit*, 462 Mich 439, 463; 613 NW2d 307 (2000), quoting *Hohn v United States*, 524 US 236, 251; 118 S Ct 1969 (1998). A compelling justification must exist to overrule precedent. *Peterson v Magna Corp*, 484 Mich 300, 317; 773 NW2d 564 (2009).

In *Robinson,* this Court held that the first question is to ask whether the decision was wrongly decided. *Robinson*, 462 Mich at 464. A decision is wrongly decided if it misunderstood or misconstrued a plainly worded statute, or if a decision "has fallen victim to a subsequent change in the law." *Id*. at 465. However, the Court will not overrule a decision solely because the decision was wrongly decided. *McEvoy v City of Sault Ste Marie*, 136 Mich 172, 178; 98 NW 1006 (1904); *People v Tanner*, 496 Mich 199, 250; 853 NW2d 653 (2014). Instead, the Court will only overrule an erroneous decision if overruling the case results in less injury than leaving it in place. *Id.*

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Robinson acknowledges that "the mere fact that an earlier case was wrongly decided does not mean overruling it is invariably appropriate." *Robinson*, 462 Mich at 465.

As a result, the *Robinson* analysis requires a second inquiry which requires the Court to examine the effects of overruling the decision. *Id.* at 466. This second step invokes a three-part test: (i) whether the questioned decision defies practical workability; (ii) whether changes in the law or facts no longer justify the decision; and (iii) whether reliance interests would work an undue hardship if the decision were overturned. *Id*. at 464. In weighing this last factor, *Robinson* instructs the Court to ask whether the questioned decision "has become so embedded, so accepted, so fundamental, to expectations that to change it would produce not only readjustments but practical real-world dislocations." *Id*. at 466. Simply put, "the longer a rule has continued, the more thoroughly has it inevitably become interwoven with the business and property interests of the community at large; and, therefore, the more disastrous must be a change, especially a sudden change." *N Am Brokers*, 502 Mich 882 at 913 (McCormack, C.J. concurring) (quoting Wells, A Treatise on the Doctrines of Res Judicata and Stare Decisis (1878), pp 544–545)**.**

This Court took the drastic step of overruling prior precedent in *In re Ferranti*, 504 Mich 1, 25; 934 NW2d 610 (2019). There, this Court determined *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993), was wrongly decided. There were strong reasons for this conclusion: "the number of exceptions to *Hatcher* is good evidence that its rule defies simple application, especially when a respondent's due-process rights are violated in the adjudication." *Ferranti*, 504 Mich at 26. Overruling *Hatcher* would not work an undue hardship because the case "has scant application[.]" *Id*. at 27. Furthermore,

> Our growing list of *Hatcher* cutouts favors overruling it. Continuing *Hatcher's* death by a thousand cuts would leave litigants and courts unsure of whether they can appeal an adjudicative error in an appeal from an order terminating parental

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> rights. The erosion of the rule by its exceptions has created uncertainty; we should be providing clarity. [*Id*.]

The factors required to overrule precedent are not satisfied here. *Waltz* is not *Hatcher*. *Waltz* has been applied consistently by this Court and the Court of Appeals for over 20 years. *Waltz* is based upon the plain language of the statutes it faithfully applies as well as prior case law. Further, this Court is not empowered to adopt the rule Plaintiff requests. To do so, it would have to rewrite the statute. The requirements for overturning *Waltz* cannot be satisfied.

A. *Waltz* Was Correctly Decided.

As addressed above, *Waltz* was correctly decided and properly relied upon by subsequent decisions of this Court. There have been no changes in the law that would justify overruling *Waltz*. In fact, this Court took great care to determine the retroactive effect of *Waltz*. See *Mullins*, 480 Mich at 948.

B. The Decision in *Waltz* Does Not Defy Practical Workability.

The decision in *Waltz* is workable with a calendar and simple math. The Court even provides a time calculator on its website to assist attorneys with computing deadlines. Lawyers are required to keep up with existing and developing technology. See Comments to MRPC 1.1. In a world where lawyers are expected to understand complicated ESI discovery protocols and constantly evolving artificial intelligence tools, requiring counsel to calculate deadlines does not defy practical workability.

C. *Waltz* Has Been Relied Upon by the Courts of This State for Over 20 Years.

Further, a consideration of reliance interests warns strongly against overruling *Waltz*. Many panels of the Court of Appeals (not to mention many trial courts) rely on *Waltz* when addressing the timeliness of a wrongful death medical malpractice action, as has this Court. Courts began applying *Waltz* right away and continue to rely upon it. See e.g., *Farley*, 266 Mich App at

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566 (ruling that the plaintiff's medical malpractice claim was barred where the complaint was filed more than two years after the personal representative received letters of authority). Subsequent panels of the Court of Appeals, noting *Waltz* and cases like *Farley*, have reiterated that an NOI does not toll the saving period.

As set forth above, *Waltz* is well-embedded in the law and provides for the faithful application of MCL 600.5852 and MCL 600.5856 in the manner intended by the Legislature. Given the continued and consistent application of *Waltz* by the Court of Appeals, and this Court's repeated denial of leave applications relating to *Waltz*, overruling *Waltz* now would cause widespread disruption to the well-settled statute of limitations analysis required by the Legislature to the prejudice of defendants in wrongful death medical malpractice cases.

D. The Statutory Language *Waltz* Relied Upon has not Changed.

Waltz was based upon the plain meaning of the notice-tolling statute and the wrongful death saving provision. *Waltz* was decided in 2004, and the pertinent language of MCL 600.5852 and MCL 600.5856 has not changed. Nor has Plaintiff identified any change in the law that requires the reversal of *Waltz*. "'A statute's history—the narrative of the statutes repealed or amended by the statute under consideration—properly form[s] part of [its] context. . . .'" *Daher v Prime Healthcare Servs-Garden City, LLC*, 515 Mich 254, 263; ___ NW3d ___ (2024), quoting *Dep't of Talent & Economic Dev't/Unemployment Ins Agency v Great Oaks Country Club, Inc*, 507 Mich 212, 227; 968 NW2d 336 (2021); *Ray v Swager*, 501 Mich 52, 80 n 68; 903 NW2d 366 (2017). "'[C]ourts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute.'" *Id*. at 263-264, citing *Ray*, 501 Mich at 80, quoting *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009).

At the time *Waltz* was decided, MCL 600.5852 provided:

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> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run.

In 2013, the Legislature amended the statute to have four subsections. PA 2012, No 609, Eff March 28, 2013. The first sentence in the prior version is now subsection (1), and the language remained exactly the same. The second sentence became subsection (4), with no substantive change to the language. The Legislature added subsection (2) to limit the saving period to one two-year period from the date letters of authority are issued to the first personal representative and preclude a plaintiff from claiming multiple saving periods by changing personal representatives. Subsection (3) was added to provide a one-year period for a successor representative in the event of death or legal incapacitation of a personal representative. Thus, in the 22 years since *Waltz* was decided, the Legislature has not only opted not to amend the statute to allow NOI tolling, it has placed restrictions on the saving period to prevent enlargement of the time period to file suit.

MCL 500.5856 was amended the same month as the decision in *Waltz* to eliminate a 90-day tolling period after placing a copy of the summons and complaint in the hands of an officer for service. PA 2004, No 87, Imd Eff April 22, 2004. There have been no amendments since.

Thus, there has been no change in the law or facts since 2004 to justify overruling *Waltz*. There have certainly been no changes in the last few years since this exact same question was raised and denied by this Court in *Poniewierski*, 513 Mich 859. Under the rules of stare decisis, *Waltz* should not be overruled.

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CONCLUSION AND RELIEF REQUESTED

To summarize, *Waltz* was correctly decided and should not be overruled. *Waltz*' holding that the NOI tolling statute, MCL 600.5856, only tolls the statute of limitations or repose and not the saving provision of MCL 600.5852 effectuates the Legislature's intent as expressed in the language of the statutes. The holding has provided a workable rule for calculating deadlines for over 20 years, during which time the Legislature has remained silent on the matter. There is no valid reason to overrule *Waltz*. For the reasons set forth above, as well as those expressed by Defendants-Appellees, Amici Curiae Michigan State Medical Society, Michigan Health and Hospital Association, Michigan Osteopathic Association, and the American Medical Association respectfully request that this Court uphold *Waltz* as correctly decided.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for Amici Curiae certifies pursuant to MCR 7.312(H) and MCR 7.212(B)(1) that this brief is printed in Times New Roman 12-point typeface utilizing Microsoft Word for Microsoft 365 and contains 8,084 words, including headings, footnotes, and quotations, but excluding the caption, tables, and signature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2026, I electronically filed the foregoing Amici Curiae Brief with the Clerk of the Court using the Court's electronic filing system which will electronically serve all parties of record.

/s/ Yvette E. Kotlarczyk
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