

NO. 93816-4

SUPREME COURT OF THE STATE OF WASHINGTON

PEACEHEALTH MEDICAL GROUP,

Petitioner,

v.

LORIANN HULL and DEPARTMENT
OF LABOR AND INDUSTRIES,

Respondents.

DEPARTMENT'S
MOTION TO STRIKE
REPLY

I. IDENTITY OF MOVING PARTY

The moving party is Respondent Department of Labor and Industries (Department).

II. STATEMENT OF RELIEF SOUGHT

The Department asks the Court to strike the reply or in the alternative all sections but part IV.3 as failing to comply with RAP 13.4(d).

III. FACTS RELEVANT TO MOTION

Petitioner PeaceHealth has petitioned for review. The Department answered arguing that review was not warranted, but raised two arguments for the Court to consider if it took review. In reply, PeaceHealth has reiterated or expanded upon its petition for review in several parts of its reply.

The only section that solely responds to the new arguments raised in the Department's answer is part IV.3.

IV. GROUNDS FOR RELIEF

RAP 13.4(d) does not allow a petitioner to reargue its petition for review in a reply; instead it allows it to respond to the respondent's request to raise additional arguments in its answer. RAP 13.4(d) ("A reply to an answer should be limited to addressing only the new arguments in the answer.")

Throughout the reply, except at part IV.3, are arguments that reiterate or expand upon PeaceHealth's petition. For example, PeaceHealth argues it "raised meritorious justification for review," and reiterates its argument that the Court of Appeals created "a false legal framework." Reply 3, 4. It then goes on to name specific subparts under RAP 13.4(b) to support review that it did not name in its petition. Reply 5.

Even in a section where it could respond to the Department's argument, it chose to reargue its petition. Reply 7. All of this violates RAP 13.4(d).

The Court should strike the whole brief because it is prejudicial to the Department that an improper brief be before the Court even if part of it contains proper argument. It was PeaceHealth's strategy to intermix improper argument with proper argument, and it should not be rewarded

for its deliberate disregard to the rules. In the alternative, the Court should strike all but part IV.3 of the brief.

V. CONCLUSION

For the reasons stated above, the Department asks the Court to strike the reply brief in its entirety, or all but part IV.3.

DATED this 31st day of January, 2017.

Respectfully submitted,

ROBERT W. FERGUSON
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CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department's Motion to Strike Reply and this Certificate of Service in the below-described manner:

Via Email filing to:

Susan L. Carlson
Supreme Court Clerk
Supreme Court
supreme@courts.wa.gov

Via First Class United States Mail, Postage Prepaid to:

James Gress
Michael Godfrey
Law Office of Gress & Clark LLC
9020 SW Washington Square Road, Suite 560
Portland, OR 97223

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LoriAnn Hull
9478 Delta Line Road
Blaine, WA 98230

DATED this 31st day of January, 2017.

A handwritten signature in black ink that reads "Shana Pacarro-Muller". The signature is written in a cursive style with a large initial 'S'.

SHANA PACARRO-MULLER
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