NO. 337189

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION III

VERDA CROSSWHITE

Appellant

v.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Respondent

APPELLANT'S OPENING BRIEF

Elizabeth Tutsch
WSBA #27301
Co-Counsel for Appellant

Northwest Justice Project
311 N. 4th Street, Suite 201
Yakima, WA 98901
(509) 574-4234

Jacquelyn High-Edward
WSBA #37065
Co-Counsel for Appellant

Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages Cited

WASHINGTON CASES

STATUTES AND REGULATIONS

ADMINISTRATIVE CODE

COURT RULES

OTHER AUTHORITIES

I. INTRODUCTION

Appellant, Verda Lee Crosswhite, is a kind and generous caregiver. She is naturally open and deeply concerned about the best interests of her clients. This appeal asks whether her concern about the health and well-being of a person, expressed loudly and in a public place, meets the statutory definition of mental abuse.[1] The Department of Social and Health Services (the Department or DSHS) found that Ms. Crosswhite mentally abused her client, through a single verbal expression of concern about the client's health, absent any intent to injure or actual injury. This finding resulted in Ms. Crosswhite being barred from working as a paid caregiver, a job she has done without incident for more than 25 years.

The issue in this appeal is whether the Department acted outside its statutory authority and erroneously interpreted and applied the statutory definition of mental abuse to require no more than a purposeful, improper action that caused a negative outcome when the statutory standard requires both an intent to cause injury and a showing of injury, unreasonable confinement, intimidation, or

[1] The statutory definition of mental abuse changed in 2015. This case examines whether Ms. Crosswhite's actions constitute mental abuse under the statue in effect in 2013 (attached in Appendix).

punishment. In addition, the whole record before the court in this case, when viewed in its entirety, does not contain substantial evidence to support the Board of Appeals (BOA) Review Judge's findings and conclusions that Ms. Crosswhite mentally abused her client.

Ms. Crosswhite asks this Court to reverse the BOA order pursuant to RCW 34.05.570(3) for these reasons. Ms. Crosswhite also requests that this court award attorney fees and costs under RCW 4.84.350 and RAP 18.1.

II. ASSIGNMENTS OF ERROR

A. The order is outside the Department's statutory authority where it impermissibly expands the statutory definition of mental abuse. (BOA Review Decision and Final Order Conclusions of Law 8, 9, 10, 11, 12, 13, 14, 16, 17).

B. The Department erroneously interpreted and applied the definition of mental abuse. (BOA Review Decision and Final Order Conclusions of Law 9, 10, 11, 12, 13, 14, 16, 17).

C. The record does not contain substantial evidence to support the finding that Ms. Crosswhite's conduct met the statutory definition of mental abuse. (BOA Review Decision and Final

Order, Conclusions of Law Nos. 8, 9, 10, 11, 12, 16,17; Findings of Fact Nos. 5, 6, 8, 9, 10, 12, 13, 14, 16).

D. Ms. Crosswhite is entitled to attorney fees and costs pursuant to RCW 4.84.350 and RAP 18.1.

III. STATEMENT OF THE CASE

Ms. Crosswhite worked as an in-home Medicaid caregiver for over 25 years. CP 81. She cared for very ill elderly people in their homes, assisting with medication management, housekeeping, personal hygiene and companionship. CP 81. Her former clients and their families were happy with her services. CP 179, 182, 192. They found her to be responsible, detail-oriented and committed to the wellbeing of her clients. CP 190. They appreciated that Ms. Crosswhite was aware of her clients' health concerns and proactive in addressing them. CP 183, 192. The DSHS case manager who worked with her was similarly impressed, and found Ms. Crosswhite to be a part of an elite group of caregivers who go over and beyond for their clients. CP 136-137.

Ms. Crosswhite worked for Jodi for six to eight weeks in the summer of 2013. CP 97. Unlike Ms. Crosswhite's other clients, who were quite elderly, Jodi was Ms. Crosswhite's age. CP 94.

Jodi suffered from diabetes, obesity, psychological problems and arthritis. CP 68, 213. Jodi needed a wheelchair when she left the house as well as assistance with transportation, medication management, housekeeping and personal hygiene. CP 68, 140. When Jodi interviewed Ms. Crosswhite, Jodi told Ms. Crosswhite that she wanted to take better care of her health so that she could feel better and be more active. CP 94. Ms. Crosswhite enthusiastically committed to helping Jodi meet her goals. CP 143.

During her interview with Jodi, Ms. Crosswhite noticed that Jodi's home was unkempt and needed sprucing up. CP 141. On her own time and initiative, Ms. Crosswhite arranged for professional carpet cleaning, painting the interior of Jodi's home and substantial yard work, all at no cost to Jodi. CP 142-143. Ms. Crosswhite also used her own money to purchase clothes to make Jodi feel more attractive, and improved grocery shopping and menus to encourage diabetes management and weight loss. CP 144-145. Ms. Crosswhite was hopeful that all of these improvements would help Jodi feel better and want to take better care of herself. CP 143.

Ms. Crosswhite became increasingly concerned about the amount of medication Jodi was taking, especially narcotic pain

medication. CP 92, 147. She became so concerned that on two occasions, Ms. Crosswhite talked to the medical assistant at Jodi's medical clinic, Guillermina Gonzalez. CP 121. Ms. Gonzalez felt that Ms. Crosswhite's intervention was "valuable" information for Jodi's doctor, and that Ms. Crosswhite had Jodi's best interest in mind when she reported her concerns. CP 123.

Despite Ms. Crosswhite's efforts, Jodi's health did not improve. She seldom left her bed because she frequently dosed herself with pain medication that left her lethargic. CP 146. Jodi continued to have dangerous blood sugar levels. One morning, Jodi's blood sugar was so low that Ms. Crosswhite had to run to the store to buy orange juice. CP 85. Jodi then directed Ms. Crosswhite to mix sugar in the juice in an effort to get her blood sugar increased. CP 85. This event scared Ms. Crosswhite, and she feared that she would arrive to work one day to find Jodi in a diabetic coma, or dead. CP 85.

As she had done with her previous clients, Ms. Crosswhite not only transported Jodi to her doctor appointments, but also accompanied Jodi into the examination room. CP 84. Jodi became uncomfortable with this arrangement but did not raise her concerns directly with Ms. Crosswhite. CP 68, 93. Instead, Jodi called her

DSHS case manager who suggested that Jodi simply ask Ms. Crosswhite to wait in the lobby. CP 68, 131. There is no evidence that the DSHS case manager ever raised these issues with Ms. Crosswhite. CP 67-74, 99-115.

At a medical appointment on August 1, 2013, Jodi asked Ms. Crosswhite to stay in the lobby. CP 68. Ms. Crosswhite abided by Jodi's request and settled in the waiting room. CP 84. When the appointment was over, Ms. Crosswhite rejoined Jodi at the reception desk to schedule the next appointment. CP 67. Ms. Crosswhite asked Jodi whether she told her doctor about the junk food she kept on her window sill in her bedroom. CP 84. When Jodi answered in the negative and began to cry, Ms. Crosswhite became upset and said that she was tired of being the only one to care for her health and felt like leaving her there. CP 84, 86, 119.

Guillermina Gonzalez, the medical assistant, told Ms. Crosswhite that she was being inappropriate, and Ms. Crosswhite said no more. CP 67, 119. She wheeled Jodi outside and waited while Jodi smoked a couple of cigarettes. CP 95. Jodi was upset, and Ms. Crosswhite tried to calm Jodi down. CP 69. Ms. Crosswhite told Jodi that she cared about Jodi and her health. CP 69, 86.

Ms. Crosswhite and Jodi sat outside the doctor's office for about 20 more minutes while Jodi smoked. CP 95. Ms. Gonzalez and another medical assistant, Melanie Probasco, came out to check on Jodi as it was a hot day. CP 105. When Ms. Gonzalez approached them, Ms. Crosswhite looked at her and said "oh, Jodi is just having a cigarette" in a nice voice. CP 70. Jodi was crying, but she told Ms. Gonzalez that she was okay. CP 69.

When Jodi finished her cigarettes, Ms. Crosswhite took her home. CP 69. The medical visit upset both women. CP 68. Ms. Crosswhite called the DSHS case manager and began to cry while recounting the incident. CP 68. She told the case manager that she was upset that Jodi was not telling her doctor the truth about her self-care and eating habits, and that her health was in danger. CP 68.

Jodi also called the DSHS case manager upset and tearful, and described what had happened in the medical clinic. CP 68. Jodi wanted to terminate Ms. Crosswhite, but after discussing it with her case manager, she decided to think it over for a few days. CP 69.

The next day, on August 2, 2013, Jodi had another medical appointment to review her pain medication at the pain clinic.

CP 89. This time, Jodi invited Ms. Crosswhite to accompany her into the examination room. CP 89. Jodi became angry when Ms. Crosswhite disagreed with Jodi's representation of how active she had been. CP 69. Ms. Crosswhite believed that Jodi was angry because she thought her pain medication would be reduced. CP 90.

Ms. Crosswhite continued working for Jodi until August 7, 2013. CP 155-156. During this period things went back to normal, and Jodi got out of bed and visited with Ms. Crosswhite over coffee. CP 156. It was a typical work week. CP 156.

On August 7, 2013, when Ms. Crosswhite reported for work, Jodi was still sleeping. CP 72. Ms. Crosswhite was concerned and asked Jodi's husband why Jodi was still asleep in an effort to determine if there was a logical explanation for Jodi sleeping so late. CP 72. Jodi heard Ms. Crosswhite talking to her husband and became upset. CP 69, 72.

After finishing her shift, Ms. Crosswhite received a voicemail from Jodi telling her that she was fired. CP 156. She told Ms. Crosswhite, "I will ruin you." CP 191. Ms. Crosswhite believed Jodi was upset that her prescription pain medication could be at risk of reduction. CP 155.

The DSHS case manager referred the matter to Adult Protective Services (APS). CP 110. APS conducted an investigation, and spoke with Jodi, Ms. Crosswhite, the DSHS case manager and three staff members from the medical clinic, Ms. Gonzalez, Ms. Probasco and Debra Madill. CP 101.

Jodi told the APS investigator that Ms. Crosswhite's actions in the two medical clinics upset her greatly and that an abusive past made it harder for her to deal with it. CP 69. She stated that her husband could not understand why she was so upset, and told her to "forget about it." CP 69. In regard to the August 1, 2013, incident, Jodi reported that after they left the doctor's office, Ms. Crosswhite tried to calm her down, said that she cared about Jodi and was worried about her health and poor eating habits. CP 69. Jodi stated that the medical staff came out to the parking lot to check on her and she told them that she was okay. CP 69.

The APS investigator spoke to two of the medical clinic staff, Ms. Gonzalez and Ms. Probasco, about the August 1, 2013, incident. CP 101. Ms. Gonzalez and Ms. Probasco stated that they checked on Jodi when she was in the parking lot because it was a hot day, and Jodi and Ms. Crosswhite had been sitting there for a while. CP 70. They reported that when they checked on Ms.

Crosswhite and Jodi that Ms. Crosswhite spoke to them in a nice voice. CP 70. Neither reported any yelling by Ms. Crosswhite while she was in the parking lot, and neither reported the incident to APS. CP 70, 110.

Ms. Madill provided a written declaration to APS that contained a similar account of the incident in the medical clinic, and stated that she asked Ms. Gonzalez to check on Jodi in the parking lot because she had been sitting out there for a long time. CP 74.

The APS investigator concluded that Ms. Crosswhite's actions in the medical clinic on August 1, 2013, amounted to mental abuse based on that single incident. CP 60-61. Ms. Crosswhite appealed. CP 65.

At the hearing, Ms. Madill testified that she observed Ms. Crosswhite yelling at Jodi through the window after they left the medical clinic. CP 126. Specifically she stated "they went out to the car, and I noticed they were still out there. She was really yelling at the patient." CP 126. However, on cross examination, Ms. Madill admitted that she could not tell what was being said when Ms. Crosswhite and Jodi were in the parking lot. CP 128. Ms. Gonzalez testified that she did not know what was being said in the parking lot. CP 120. She further stated that she asked "Verda

[Crosswhite] if everything was okay or if they needed anything else. And she [Ms. Crosswhite] said "no" we're just having a conversation . . . ." CP 120.

The Administrative Law Judge (ALJ) found that the Department had failed to produce substantial evidence that Ms. Crosswhite's actions met the statutory definition of mental abuse. CP 41. The ALJ found that Ms. Crosswhite's actions were not intended to inflict injury but rather were in response to her frustration at Jodi's lack of truthfulness with her doctor and the consequences. CP 41. The ALJ found that "the Department failed to establish . . . that the Appellant's actions were done in a willful manner intended to harm, injure, or cause negative outcome to Jodi." CP 41. The ALJ concluded that "the action itself is not sufficient to meet the definition of abuse but rather the action must be intended to cause injury." CP 41.

The Department appealed, and the BOA Review Judge reversed. CP 14. Ms. Crosswhite petitioned for judicial review, and the Yakima Superior Court upheld the BOA Order. CP 211. Ms. Crosswhite timely appealed.

IV. ARGUMENT

Under the Administrative Procedure Act (APA), an individual who is substantially prejudiced by a state agency adjudicative order may seek judicial review and relief from the order. RCW 34.05.570(3). The reviewing court may set aside the agency's final adjudicative order based on a determination that the order: (1) is outside the agency's statutory authority; (2) erroneously interpreted or applied the law; and (3) is not supported by substantial evidence. RCW 34.05.570(3).

Ms. Crosswhite is substantially prejudiced by the Department's finding of mental abuse against her because it prohibits her from working or volunteering in her customary and preferred employment caring for the elderly and ill. *Ryan v. Dep't of Soc. & Health Serv.*, 171 Wn. App. 454, 632, 287 P.3d 629 (2013); WAC 388-70-01280. People with APS findings are listed on a publicly-available registry. *Id.* The findings are reported on background checks and there is no mechanism available to have the finding removed from the registry. WAC 388-71-01275(4). Thus, individuals with an APS finding are stigmatized as abusers and permanently barred from any work position that may involve unsupervised access to children or vulnerable adults. *Ryan*, 171

Wn. App. at 632. Registry listing, and the consequent disqualification from employment, is automatic, irrefutable, and permanent. *Ryan*, 171 Wn. App. at 632; WAC 388-71-01275(4).

The devastating and permanent effects of a finding of mental abuse demands that the statutory definition be strictly construed, narrowly applied only to those instances in which it is warranted, and based on the harm caused and not on the subjective response. The BOA's finding, contrary to the decision of the ALJ, that Ms. Crosswhite committed mental abuse of her client, is inconsistent with the statutory definition and must be reversed.

A. THE STANDARD OF REVIEW IS DE NOVO.

An appellate court applies the standards in RCW 34.05.570 "directly to the record before the agency, sitting in the same position as the superior court." *Utter v. State, Dep't of Soc. & Health Serv.*, 140 Wn. App. 293, 299, 165 P.3d 399 (2007), quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998). Questions of statutory or regulatory interpretation are reviewed *de novo*. *Tesoro Ref. & Mktg Co. v Dep't of Revenue,* 164 Wn.2d 310, 322, 190 P.3d 28 (2008). While the facts underlying the finding must be supported by substantial evidence when viewed in light of the

record as a whole, the legal finding of mental abuse in this case is also reviewed *de novo.* *Port of Seattle v. Pollution Control Hearings Bd.,* 151 Wn.2d 568, 589, 90 P.3d 659 (2014).

B. THE ORDER IS OUTSIDE THE DEPARTMENT'S AUTHORITY WHERE IT IMPERMISSIBLY EXPANDED THE STATUTORY DEFINITION OF MENTAL ABUSE.

The Department acted outside its authority when it expanded the definition of mental abuse by defining "willful" to include no more than a purposeful, improper action and by including "negative outcome" as a type of harm under the statute. This definition is more expansive than, and inconsistent with, the statutory definition.

The consequences of a mental abuse finding are severe – permanent listing on a public registry and a lifetime bar from a huge range of employment. If an agency rule extends the punitive power of a statute, it is an invalid exercise of agency power. *Marcum v. Dept. of Soc. & Health Serv.,* 172 Wn. App. 546, 558, 290 P.3d 1045 (2012). The Department may not adopt rules in a manner that fundamentally changes the standard set out in the statute. *Brown v. Dep't. of Soc. & Health Serv.,* ___ Wn. App. ___, 360 P.3d 875 (2015).

RCW 74.34.020(2) defines "abuse," which includes mental abuse, of a vulnerable adult as:

> "the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment . . . ."

Subsection (c) describes the kind of behavior that can be "mental abuse", including "any willful action or inaction of mental or verbal abuse . . . [and] includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing." RCW 74.34.020(c) (2013). Both provisions must be read together. Thus, "mental abuse" has three specific elements: (1) willful action or inaction; (2) that constitutes mental abuse (i.e. verbal assault), and that (3) inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. RCW 74.34.020(2)(c). The definition of mental abuse cannot be read in isolation and must be read with the definition of abuse. To be mental abuse, there must be both the willful action to inflicting harm and actual injury, unreasonable confinement, abandonment, or punishment on the vulnerable adult. RCW 74.34.020(2)(c); *Brown v. Dep't of Soc. & Health Serv.*, 145 Wn. App. 177, 183, 185 P.3d 1210 (2008).

In contrast to the statutory definition, the Department defined "willful" as "the nonaccidental action or inaction by an alleged

perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome." WAC 388-71-0105. The Department exceeded its statutory authority by expanding the definition of mental abuse to include "nonaccidental action or inaction" the alleged perpetrator "knew or should have known" would cause "harm, injury, or a negative outcome." The Department's expanded definition includes actions that were not intended to inflict injury as well as a type of "harm" that was not intended to be punished.

1. Changing "willful" to "nonaccidental" changes the statutory definition of mental abuse and punishes actions not intended to injure.

The plain and ordinary meaning of willful is "said or done deliberately or intentionally." WEBSTER'S NEW WORLD DICTIONARY, 3rd Ed., p. 1528. Therefore, a finding of abuse can only be made when actions or inactions are done deliberately and intentionally to inflict injury. *Brown,* 145 Wn. App. at 183 (2003) (an abuse finding "requires willful action to inflict injury").

Defining "willful" as any nonaccidental action expands the definition to include actions that were purposeful but not intended to inflict injury. The statutory definition requires that the actions were

intended to inflict injury, unreasonable confinement, intimidation, or punishment. RCW 74.34.020(2).

2. Including "should have known" as part of the definition of "willful" fundamentally changes the statutory definition of mental abuse.

Including the phrase "should have known" in the regulatory definition of "willful" fundamentally changes the statutory definition of mental abuse by supplanting the statutory requirement that an act is a willful action to inflict injury and changes it to a negligence standard based on what the perpetrator "knew or should have known."

"Willful" requires more evidence than hindsight analysis. It requires an examination of the alleged perpetrator's intent at the time the words were said. *Brown*, 145 Wn. App. at 183 (2008). The action must have been intended to inflict injury. *Id.*

After the fact, it is easy to see the effect of one's actions. After the fact, it is easy to see how Ms. Crosswhite's attempt to bring attention to Jodi's health and behavior impacted Jodi. After the fact, and after it was known that Jodi had an abusive past that made it difficult to get over the situation, it is easier to see how Ms. Crosswhite's words impacted Jodi. CP 69. However, Ms. Crosswhite had only worked for Jodi for a month, and there is no

evidence that she knew about Jodi's past. Nor was she told that Jodi was uncomfortable with input or presence at doctor visits. CP 69. On August 1, 2013, Ms. Crosswhite did not know that her actions in the medical clinic would have caused the outcome Jodi experienced. Regardless, it is not what Ms. Crosswhite knew or should have known at the time that is relevant. Rather, it is whether, at the time, Ms. Crosswhite intended to inflict injury on Jodi.

Applying a hindsight analysis instead of the statutory definition expands the scope of activities that can be punished as abuse. As such, the Department erred when it concluded that Ms. Crosswhite's actions were willful because she "should have known" what the impact of her words would be.

3. Including "negative outcome" impermissibly expands the definition of mental abuse.

Negative outcome is a broader form of harm than the definition of abuse in the statute. RCW 74.34.020(2); *Goldsmith v. Dep't of Soc. & Health Serv.,* 169 Wn. App. 173, 585 (fn.1), 280 P.3d 1173 (2012). In order to be abuse, the willful action must cause injury, unreasonable confinement, intimidation, or

punishment. RCW 74.34.020(2). Those terms are clear and unambiguous.

A "negative outcome," as demonstrated in this case, is a much broader and vaguer definition of abuse. It can include any event that causes tears or sadness, including common arguments with friends and family members. It can also include crying during a movie, saying good-bye to loved ones, listening to music, or participating in life.

The Department's use of "negative outcome" in place of the statutory requirement that a willful act cause injury, unreasonable confinement, intimidation or punishment means any human interaction with a vulnerable adult can be scrutinized, with the benefit of hindsight, to determine whether the action caused the vulnerable adult to cry or experience discomfort. This is not the intent of the statue, and such an expansive definition punishes unintended behaviors and is outside of the Department's statutory authority.

C. THE DEPARTMENT MISINTERPRETED AND MISAPPLIED THE DEFINITION OF MENTAL ABUSE.

The BOA order illustrates how the impermissible expansion of the statutory definition results in the erroneous interpretation and

application of the elements necessary to support a finding of mental abuse. The elements utilized by the Review Judge differ substantially from the statute. In particular, the Review Judge found that mental abuse occurs when there is:

> (1) an improper or nonaccidental action; (2) of mental abuse including yelling; (3) that the alleged perpetrator knew or should have reasonably known would have caused harm, injury, or negative outcome; (4) inflicted a negative outcome; (5) on a vulnerable adult. CP 12.

In addition, the Review Judge also found that an action is willful when it is improper and purposeful. CP 13. In contrast, the statutory definition requires a finding of a (1) willful action or inaction; (2) that constitutes mental abuse (i.e. verbal assault); and (3) that inflicted injury, unreasonable confinement, punishment or abandonment on a vulnerable adult. RCW 74.34.020(2)(c). The Department's Review Judge had no authority to re-write an unambiguous statutory definition.

A statute is unambiguous when its meaning can be determined from its plain language and meaning alone. *Mader v. Health Care Auth.*, 149 Wn.2d 458, 473, 70 P.3d 931 (2003). An unambiguous statute is not subject to statutory interpretation and "the court may not add language to a clear statute even if it

believes the Legislature intended something else but failed to express it adequately." *Adams v. Dep't of Soc. & Health Serv.*, 38 Wn. App. 13, 16, 683 P.2d 1133 (1984). Further, "[i]f a statute is unambiguous, there is no need to look to administrative action as an aid to interpretation." *Id.*

The BOA test expanded the definition beyond the narrow, objective context of "willful action or inaction" into the broad, subjective context of "improper or nonaccidental action" that the alleged perpetrator "knew or should have reasonably known" would have caused harm, injury, or negative outcome, regardless of intent or lack of actual harm. CP 12. The terms "improper" and "purposeful" do not, necessarily, equate to a willful action to inflict injury. Taking an improper action that is purposeful or nonaccidental is not the same as taking willful action that inflicts injury. *Brown,* 145 Wn. App. at 183 (2003).

In *Brown,* a caregiver was found to have physically abused a patient when she tackled the patient to the ground. *Brown*, 145 Wn. App. at 183. Normally, tackling a patient to the ground is an improper and purposeful action. *Id.* However, the *Brown* court said that whether an action is determined to be improper turns on the caregiver's intent and whether she intended to cause injury. *Id.*

The *Brown* decision makes clear that whether an act is willful is determined by the actor's intent. *Id.*

By focusing on whether an action is proper or not, the Department has excised the actor's intent out of the analysis. The ordinary and plain meaning of improper is "not suitable for or consistent with the purpose or circumstances; poorly adapted; unfit." WEBSTER'S NEW WORLD DICTIONARY, 3rd Ed., p. 679. There is nothing in this definition that incorporates intent to inflict injury. Similarly, the ordinary meaning of purposeful is "resolutely aiming at a specific goal; directed toward a specific end; not meaningless." WEBSTER'S NEW WORLD DICTIONARY, 3rd Ed., p. 1092. Again, purposeful does not automatically include intent to harm.

The inherent flaw with the term "improper" is that it is subjective in nature. What one person considers improper based on his or her experiences, upbringing, education and socioeconomic status may be very different than what someone with a different background would consider improper. For instance, someone who wears jeans to church may be found to be improper by other church goers, but to that person, it was not improper and there was no intent to harm or be offensive. Likewise, a person

who is raised in a family that is boisterous and caring may see opining about a friend's health as a sign of affection, where a person who comes from a quiet and reserved home may find this invasive. In neither situation does the action, whether improper or not, indicate any intent to harm.

The BOA Review Decision supplants the element of "willful" with a showing of an improper (or inappropriate) without determining whether the actor intended to injure the vulnerable adult. Since the statutory definition of mental abuse is unambiguous, the Department had no authority to expand or change the definition to its own liking.

The Department erred by failing to focus on Ms. Crosswhite's intent and whether she intended harm to Jodi. Because the Department misapplied and misinterpreted the statutory definition of mental abuse, its decision should be reversed.

D. THE RECORD DOES NOT CONTAIN SUBSTANTIAL EVIDENCE THAT MS. CROSSWHITE'S ACTIONS CONSTITUTED MENTAL ABUSE.

Findings of fact must be supported by substantial evidence. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 136 Wn.2d 38, 46, 959 P. 2d 1091 (1998). An order is not

supported by substantial evidence where there is not "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *Callecod v. Washington State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997) *rev. denied* 132 Wn. 2d 1004 (1997). This court shall grant relief from an agency order in an adjudicative proceeding if it determines that the order is not supported by evidence that is substantial when viewed in light of the whole record before the court. RCW 34.05.570(3)(e).

The record in this case does not support findings of fact necessary to substantiate a finding of mental abuse. In particular, there is not substantial evidence to support a finding that: (1) Ms. Crosswhite intended to inflict injury; (2) Ms. Crosswhite's actions constituted a verbal assault; (3) or that Jodi sustained injury, unreasonable confinement, punishment, or intimidation.

1. There is not substantial evidence that Ms. Crosswhite's actions were willful where there was no evidence that Ms. Crosswhite intended to inflict injury particularly where there is not substantial evidence to support the finding that there was a prior altercation.

As discussed above, a finding of mental abuse can only be substantiated if the action was willful. RCW 74.34.020(2). An action is willful if it intends to inflict injury. *Brown*, 145 Wn. App. at

183. Further, actions that fall short of professional standards do not automatically amount to abuse if the actions do not meet the statutory definition of abuse. *Raven v. Dep't of Soc. & Health Serv.*, 177 Wn.2d 804, 306 P.3d 920 (2013). (A professional guardian's inactions were not sufficiently established to have resulted in her ward's death and therefore did not amount to abuse under RCW 74.34.020(2) even though the guardian's care of a ward fell short of the standards for professional guardian conduct and the guardian's lack of frequent in-person conduct was "very troubling.")

Here, neither the Review Judge nor the ALJ made a finding that Ms. Crosswhite intended to inflict injury. CP 4-14, 35-42. The Review Judge, who applied the wrong standard, only found that Ms. Crosswhite's actions were purposeful and improper and that Jodi suffered a negative outcome. CP 13. By contrast, the ALJ, who applied the correct standard, accurately found that Ms. Crosswhite's "action as not intended to inflict injury . . . ." CP 41.

There is no support for the Review Judge's finding that there was a prior altercation between Ms. Crosswhite and Jodi during a different medical appointment. CP 5. Contrary to the Review Judge's finding, Ms. Crosswhite was not aware that Jodi had any

concerns about her communication with Jodi's medical team, and there is no evidence of any incident or altercation at any medical appointment prior to August 1, 2013. CP 67-207. The record shows that Jodi complained to her case manager that she did not want Ms. Crosswhite in the examination room with her, but there is nothing in this conversation or the case manager's testimony that indicates a prior altercation. CP 68, 131. The case manager and Jodi decided that Jodi would ask Ms. Crosswhite to wait in the lobby at future appointments, but there is no record the case manager or Jodi ever shared these concerns with Ms. Crosswhite. CP 131. The record does show that Jodi surprised Ms. Crosswhite at the medical clinic by asking her to wait in the lobby. CP 68, 92. There simply is not any evidence to support the Review Judge's finding that there had been an altercation between Jodi and Ms. Crosswhite in a prior doctor's appointment.

Evidence established that Ms. Crosswhite's actions on the day of August 1, 2013, although some may deem improper and possibly fall short of professional caregiver standards, were done with Jodi's best interest in mind. Jodi reported to the APS investigator that after the incident that Ms. Crosswhite told her that she cared for Jodi and was only worried about her health. CP 66.

Ms. Gonzalez testified that she believed that Ms. Crosswhite's prior concerns for Jodi's health were appropriate, valuable to Jodi's doctor, and that Ms. Crosswhite only had Jodi's best interest in mind. CP 122-123. Evidence also established that immediately after the incident Ms. Crosswhite contacted Jodi's DSHS case manager, upset and crying because she was concerned about Jodi and was worried that Jodi did not tell the doctor the truth about her eating habits, self-care and hygiene and the impact that this could have on Jodi's life. CP 68.

Ms. Crosswhite's concern and friendship for Jodi is also evident in her actions toward Jodi in the short time they were acquainted. Ms. Crosswhite arranged to have Jodi's home painted, the carpet cleaned and the lawn and trees trimmed, all free of charge to Jodi and done on Ms. Crosswhite's personal time, in an effort to raise Jodi's spirits. CP 142-143, 164-165, 167, 173. She also used her own money to buy Jodi new clothes and food in an effort to raise Jodi's spirits. CP 144-145.

Conversely, there is no evidence that Ms. Crosswhite intended to inflict injury, unreasonable confinement, intimidation, or punishment on Jodi through her actions on August 1, 2013, or at any other time. In fact, the ALJ found that there was no intent to

inflict injury. There is not substantial evidence to support a finding that Ms. Crosswhite's actions were willful.

2. There is not substantial evidence that Ms. Crosswhite's actions constitute verbal assault where there is not substantial evidence to support a finding that Ms. Crosswhite continued to yell at Jodi in the parking lot.

There is no evidence that Ms. Crosswhite's actions on the day of August 1, 2013, constituted a verbal assault, particularly given the singular incident of "yelling." The whole record also does not support the Review Judge's findings and conclusions that Ms. Crosswhite continued to yell at Jodi for 30-45 minutes in the parking lot. These findings and conclusions rely exclusively on Ms. Madill's testimony that "they went out to the car, and I noticed they were still out there. She [Ms. Crosswhite] was really yelling at the patient . . . ." CP 126. However, this testimony is inconsistent with Ms. Madill's testimony on cross-examination, her prior declaration, Ms. Gonzalez's testimony, Ms. Pabasco's statement to APS, the APS investigator's testimony, and Jodi's statement to APS. As such, Findings of Fact 8 and 9 and Conclusion of Law 8 and 10[2]

[2] Findings of fact by an administrative agency which are labeled as conclusions of law will be treated as findings of fact when challenged on appeal. *Morgan v. Dep't of Soc. & Health Serv.*, 99 Wn. App. 148, 992 P.2d 1023 (2000) *rev. denied*, 141 Wn.2d 1014 (2000).

are not supported by substantial evidence when viewed in light of the whole record.

During cross examination, Ms. Madill admitted that she only observed Jodi from inside the building and that she ". . . couldn't tell what was being said out there." CP 128. In her September 27, 2013, declaration to APS, Ms. Madill made no mention of Ms. Crosswhite yelling at Jodi in the parking lot. CP 74. Instead, she stated that "[t]hey left and were outside by their car and were there for ½ [sic] to 45 minutes. Guille went out to see if pt [Jodi] was okay, Jodi was very upset, crying, and distraught." CP 74.

This statement is consistent with Ms. Gonzalez's testimony that "I don't know if they were arguing or what they were doing, but they were still outside and talking." CP 120. Ms. Gonzalez further testified that when she approached Ms. Crosswhite and Jodi that she "asked Verda [Crosswhite] if everything was okay or if they needed anything else. And she said "no" we're just having a conversation . . . ." CP 120. In her interview with APS, Ms. Gonzalez stated that "she checked on AV [Jodi] after a few minutes as they were sitting on a bench out in the hot sun." CP 70. She further told the APS investigator that when she was checking on them, Ms. Crosswhite "looked up and said nicely "[o]h, Jodi is just

having a cigarette." CP 70. At no point does Ms. Gonzalez, who actually approached Ms. Crosswhite and Jodi, state that Ms. Crosswhite was yelling at Jodi in the parking lot.

Ms. Pabasco, who accompanied Ms. Gonzalez out to the parking lot, told the APS investigator that Ms. Crosswhite took Jodi "outside and they sat out there, she [Ms. Pabasco] was worried about AV [Jodi] as it was a very hot day." CP 70. Ms. Pabasco also made no mention of hearing Ms. Crosswhite yell at Jodi in the parking lot. CP 70. At no point does Ms. Pabasco, who actually approached Ms. Crosswhite and Jodi in the parking lot, state that Ms. Crosswhite was yelling at Jodi in the parking lot.

The APS investigator testified that ". . . she [Jodi] was still crying, but she said she was . . . okay." CP 101. In addition, Jodi told the APS investigator that Ms. Crosswhite took her outside and that Ms. Crosswhite "tried to calm her down, and told her that she cared about her" and that she was concerned about her health. CP 69. Evidence that Jodi was upset outside, and that Ms. Crosswhite tried to calm her down and explain that she cared for her and was concerned about her health does not support the Review Judge's findings and conclusions that Ms. Crosswhite yelled at Jodi for 30-45 minutes in the parking lot.

Further, yelling is not, by itself, mental abuse. RCW 74.34.020(2)(c). Rather, when yelling is a part of a verbal assault, it can constitute mental abuse. RCW 74.34.020(2)(c). Verbal assault is not defined anywhere in the statute. RCW 74.34.020. Without a statutory definition, the court may look to related statutes when interpreting a regulation. *Mader,* 49 Wn.2d at 473.

"Assault" is extensively defined in Washington law. As an intentional tort, assault means a defendant acted with the intent to put another person in immediate apprehension of harmful or offensive physical contact, and that person had such an apprehension. *Sutton v. Tacoma School District No. 10,* 180 Wn. App. 8, 324 P.3d 763 (2014). As a crime, first degree assault requires an intention to inflict great bodily harm. RCW 9A.30.011. Lesser crimes of assault include recklessness that a reasonable person would know would result in great bodily harm, or the act is designed to inflict great pain. RCW 9A.30.021; RCW 9A.30.031. The ordinary meaning of assault is "a violent attack, either physical or verbal" or "an unlawful threat or unsuccessful attempt to do physical harm to another, causing a present fear of immediate harm." WEBSTER'S NEW WORLD DICTIONARY, 3RD Ed., p.82.

Accordingly, a "verbal assault" under the statute must be an intentional act that causes great harm or the present fear of immediate harm. Therefore, to be mental abuse the act must be deliberate and intentional, and causes or intends to cause harm.

There is no evidence in the record that Ms. Crosswhite's behavior inside of the medical clinic constituted a verbal assault. Despite Ms. Crosswhite's raised voice, her comments were not a violent verbal attack, and there is no evidence that Jodi was in fear of imminent harm.

3. There is not substantial evidence that Jodi suffered injury, unreasonable confinement, punishment, or intimidation where the record reflects that the most Jodi suffered was a negative outcome.

To substantiate a finding of mental abuse, the court must find that the vulnerable adult suffered injury, unreasonable confinement, punishment, or intimidation. RCW 74.34.020(2). The BOA Order does not find or conclude that Jodi suffered any of these things. It bases a finding of mental abuse solely on analysis of whether there was a "negative outcome." CP 13. Moreover, there is not substantial evidence in the record that Jodi suffered injury, unreasonable confinement, punishment, or intimidation.

Finding of Fact 10 also lacks substantial evidence because the record does not contain evidence that Ms. Crosswhite was "fired due to this incident" on August 1, 2013. CP 7. In fact, Jodi allowed Ms. Crosswhite into an examination room at her medical appointment, the next day, August 2, 2013. CP 89. Ms. Crosswhite continued to work for Jodi until August 7, 2013. CP 155-156. Jodi fired Ms. Crosswhite after she had talked to Jodi's husband about whether Jodi was suffering from restlessness or insomnia, and stated that she told Ms. Crosswhite to ask her questions directly instead of going behind her back. CP 69. The record does not contain evidence that Jodi fired Ms. Crosswhite solely because of the incident in the medical clinic on August 1, 2013.

Neither the Review Judge nor the ALJ found that Jodi suffered an injury, unreasonable confinement, punishment, or abandonment. In addition, there is not substantial evidence to support a finding that Jodi suffered any of these types of harm.

E. MS. CROSSWHITE IS ENTITLED TO ATTORNEY FEES AND COSTS ON APPEAL IN THIS MATTER PURSUANT TO RAP 18.1 AND WASHINGTON'S EQUAL ACCESS TO JUSTICE ACT, RCW 4.84.340-360.

Attorney fees are available to the prevailing party where authorized by "contract, statute, or a recognized ground in equity." *Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 296-297, 149 P.3d 666 (2006). In the present case, Ms. Crosswhite is entitled to recover her attorney fees under Washington's Equal Access to Justice Act ("EAJA"), RCW 4.84.340-360, which provides in pertinent part:

> Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.
>
> RCW 4.84.350(1).

Here, Ms. Crosswhite is a "qualified party," and will have prevailed if the Court reverses the Department's action affirming the founded finding of mental abuse.

Upon establishing that Ms. Crosswhite is a "qualified prevailing party," the Department can avoid an attorney fees award

only by convincing the Court that its action affirming the founded finding of mental abuse was "substantially justified." *See Language Connection, LLC v. Employment Sec. Dep't*, 149 Wn. App. 575, 586, 205 P.3d 924 (2009). To meet this burden, the Department would have to demonstrate that its action "had a reasonable basis in law and fact." *Id.*

However, the Department has been on notice for many years that it may not exceed its statutory authority and erroneously interpret and apply the law by expanding definitions of abuse and neglect. In *Marcum*, the court held that even though the Department "exceeded its statutory authority in adopting a *per se* rule for founded neglect when a caregiver violates WAC 388-15-009(5)(a), it had a reasonable basis -- the protection of Washington's children -- for doing so." The court declined to award Ms. Marcum attorney fees because it held that the Department's actions were not "substantially unjustified." *Marcum* at 561. With the *Marcum* ruling, however, the Department was "put on notice" that it was not appropriate to apply legal standards outside of the plain language of the statute.

Again, in *Brown v. Dep't of Soc. & Health Serv.*, ___ Wn. App. ___, 360 P.3d 875 (2015), the court reversed a finding of

neglect because the Department expanded the definition of neglect to include a reasonable person standard not authorized by statute. There is no rational basis for the Department to have augmented or circumvented the requirements of the Vulnerable Adult Protection Act in making a finding of mental abuse in Ms. Crosswhite's.[3]

All of the requirements in the EAJA for authorizing an award of reasonable attorneys' fees to Ms. Crosswhite are met in this case. The Court should authorize an award of fees and costs, including reasonable attorney fees. pursuant to RAP 18.1 and RCW 4.84.350.

V. CONCLUSION

The intent of the Vulnerable Adult Protection Act is to protect vulnerable adults from abuse, neglect, financial exploitation, and abandonment and to provide protective services to the vulnerable adult. RCW 74.34.005(1). The purpose of this statute is not to protect vulnerable adults from all unpleasant situations in life. Arguments with friends and family that cause a vulnerable adult to

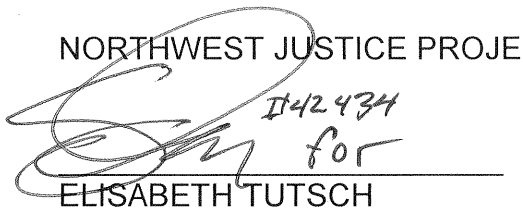
[3] Moreover, *Marcum* was wrongly decided on this point. The court equated "reasonable basis" with "substantially justified." As indicated above, "reasonable basis" is a much lower standard than "substantially justified". Under the *Marcum* court's ruling, the general state interest in "the protection of Washington children" would justify all illegal abuse findings and render RCW 4.84.350 meaningless by denying attorney fees with respect to any judicial challenge to Department action.

cry do not, and should not result in a finding of mental abuse. The intent of the statute is not to deprive vulnerable adults from meaningful and beneficial relationships that often have ups and downs, but rather to protect them from people who abuse them by intentional actions to inflict harm. The definition of mental abuse utilized by the Department case is over-reaching and exceeds legislative authority and intent.

Ms. Crosswhite asks this Court to reverse the Department's finding that she mentally abused a vulnerable adult. The BOA Order upholding the finding was outside its statutory authority, erroneously interpreted and applied the law, and is not supported by evidence that is substantial when viewed in light of the whole record. The Court should also Ms. Crosswhite her attorney fees.

Respectfully submitted on the 14th day of December, 2015.

NORTHWEST JUSTICE PROJECT



ELISABETH TUTSCH
WSBA #27301
Co-Counsel for Appellant

JACQUELYN HIGH-EDWARD
WSBA #37065
Co-Counsel for Appellant

APPENDIX

West's Revised Code of Washington Annotated
Title 74. Public Assistance (Refs & Annos)
Chapter 74.34. Abuse of Vulnerable Adults (Refs & Annos)

West's RCWA 74.34.020

74.34.020. Definitions

Currentness

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1)(a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

Credits

[2012 c 10 § 62, eff. June 7, 2012. Prior: 2011 c 170 § 1, eff. July 22, 2011; 2011 c 89 § 18, eff. Jan. 1, 2012; 2010 c 133 § 2, eff. June 10, 2010; 2007 c 312 § 1, eff. July 22, 2007; 2006 c 339 § 109, eff. June 7, 2006; 2003 c 230 § 1, eff. May 12, 2003; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

HISTORICAL AND STATUTORY NOTES

Application--2012 c 10: See note following RCW 18.20.010.

Effective date--2011 c 89: See note following RCW 18.320.005.

Findings--2011 c 89: See RCW 18.320.005.

Intent--Part headings not law--2006 c 339: See notes following RCW 70.96A.325.

Effective date--2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c

230 § 3.]

Findings--Purpose--Severability--Conflict with federal requirements--1999 c 176: See notes following RCW 74.34.005.

Short title--Findings--Construction--Conflict with federal requirements--Part headings and captions not law--1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements--Severability--Effective date--1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Laws 1995, 1st Sp.Sess., ch. 18, § 84, rewrote the section, which previously read:

"Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"(1) 'Abandonment' means leaving a vulnerable adult without the means or ability to obtain food, clothing, shelter, or health care.

"(2) 'Abuse' means an act of physical or mental mistreatment or injury which harms or threatens a person through action or inaction by another individual.

"(3) 'Consent' means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"(4) 'Department' means the department of social and health services.

"(5) 'Exploitation' means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

"(6) 'Neglect' means a pattern of conduct resulting in deprivation of care necessary to maintain minimum physical and mental health.

"(7) 'Secretary' means the secretary of social and health services.

"(8) 'Vulnerable adult' means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself."

Laws 1997, ch. 392, § 523, inserted subsec. (9), relating to a frail elder or vulnerable person relying upon spiritual treatment.

Laws 1999, ch. 176, § 3, rewrote the section, which previously read: