NO. 97830-1

SUPREME COURT OF THE STATE OF WASHINGTON

LESA SAMUELS,

Petitioner,

v.

MULTICARE HEALTH SYSTEM, GLORIA LEM, and CITY OF TACOMA,

Respondent.

CITY OF TACOMA'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTY

Respondent, City of Tacoma, submits this answer to Lesa Samuels' petition for review.

II. COURT OF APPEALS DECISION

In its October 1, 2019 unpublished opinion, *Samuels v. MultiCare Health System, et. al.*, No. 51827-9-II, (Oct. 1, 2019) ("Slip. Op."),[1] Division II affirmed the trial court's grant of summary judgment to the City of Tacoma, with the panel unanimously finding that RCW 18.71.210(1)'s qualified immunity provision applied to the City of Tacoma for the acts or omissions of its first responders taken during their contact with Lesa Samuels on December 24, 2015, and that gross negligence was the proper fault standard to be applied, and with a majority of the panel finding that reasonable minds could reach only one conclusion – there was insufficient evidence to create a question of fact on gross negligence – and therefore the City was entitled to immunity and summary judgment.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly determine that RCW 18.71.210 applies and the applicable standard of fault is gross negligence?

2. Did the Court of Appeals correctly conclude that there were

[1] The opinion can be found at *Samuels v. MultiCare Health Sys., et al.*, 2019 Wn. App. LEXIS 2542 (Oct. 1, 2019).

no genuine issues of material fact as to gross negligence, such that summary judgment to the City was properly granted?

IV. COUNTERSTATEMENT OF THE CASE

A. Emergency Medical Services (EMS) Protocols and Stroke Triage Procedures.

In 2015, Tacoma Fire Department's emergency medical technicians (EMTs) and paramedics (collectively first responders) operated under a set of Patient Care Protocols established by the Pierce County Emergency Medical Services and the Pierce County Emergency Medical Director. CP 66-71. The Protocols included a flowchart informing first responders how to triage patients for potential stroke. CP 69-71.

Under the stroke triage procedures in the Protocols, first responders were first required to assess applicability for triage by obtaining the patient's medical history as to:

- Numbness or weakness of the face, arm or leg, especially on one side of the body
- Confusion, trouble speaking or understanding
- Trouble seeing in one or both eyes
- Trouble walking, dizziness, loss of balance or coordination
- Severe headache with no known cause

CP 69. If they observed any of these symptoms, or if any of these symptoms were reported to them, then the first responders were required to perform a F.A.S.T. exam – a screening exam used to determine the urgency of

transport for potential stroke victims. CP 69. The F.A.S.T. exam required a first responder to check the patient for:

> **F**ace: unilateral facial droop?
> **A**rms: unilateral drift or weakness?
> **S**peech: abnormal or slurred?
> **T**ime: last normal (determine time patient last known normal)

CP 69. Under the F.A.S.T. exam, if the face, arms, or speech were abnormal, then the exam was considered "positive." *Id.* If an exam was "positive," then the "T" (time last normal) was used to determine *where* the patient should be transported. CP 69, 241.

Whether the F.A.S.T. exam was "positive" or "negative" determined whether the patient qualified for advanced life support (ALS) transport or basic life support (BLS) transport. CP 69, 71. If the F.A.S.T. exam was positive, the patient qualified for ALS transport to the nearest stroke center. CP 60-61, 69, 71. If the F.A.S.T. exam was negative, the patient qualified for BLS transport – a private ambulance. CP 61, 69, 71. A patient who qualified for BLS transport did not have to accept the transport. CP 71, 243 (*compare* a patient who meets BLS criteria "***may*** be transported" *with* a patient who meets ALS criteria, "***must*** be transported").

B. Tacoma Fire Department's Contact with Lesa Samuels

On December 24, 2015, Lesa Samuels, age 45, had her partner, Arnold Williams, call 9-1-1 because her face felt numb and she thought she

was having a stroke. CP 47 (84:21-23), 60-61, 64, 234. Tacoma Fire Department's Ladder Truck 3 staffed by three EMTs and Medic Unit 1 staffed by two paramedics were dispatched at 11:13 p.m., and promptly arrived at Ms. Samuels' apartment. CP 60-62, 64, 65, 234, 236.

Upon arriving, the first responders learned that Ms. Samuels had begun experiencing facial numbness about an hour earlier. CP 51 (101:15-25), 64. They began their examination by taking Ms. Samuels' medical history, CP 49 (91:6-8); CP 51-52 (101:15 - 102:16), and also took her vital signs, including pulse, respiratory rate, blood pressure, glucose, and pulse oximetry. CP 48 (88:1-8), 49 (91:16 - 93:23), 64. Ms. Samuels denied any loss of consciousness, chest pain, shortness of breath, nausea, vomiting, or diarrhea, and reported no significant medical history. CP 52 (102:1-11), 64.

The Patient Contact Report reflects this medical history.

> 45 [year old female] called because she thought she was having a stroke because her face felt numb. The [patient] stated it started about an hour prior to the 911 call. The [patient] denies any [loss of consciousness], chest [pain], [shortness of breath], or [nausea, vomiting, or diarrhea]. The [patient] does not have any [medical history], and does not take any [medications]. The [patient] did take an over the counter cold medicine that she has taken in the past [without] any incident.

CP 64, 234 (abbreviations spelled out for ease of reading).[2]

[2] Ms. Samuels repeatedly and mistakenly claims that the first responders did not ask her whether she was experiencing facial numbness, *Pet. for Rev. at 8, 14, 15, 17*, and that they did not take a history, *id.* This contention is belied by the first responders' "run sheet," CP

Because Ms. Samuels' medical history included numbness of the face (a potential indicator of a stroke) and because Ms. Samuels self-reported a suspicion that she was suffering a stroke, the first responders performed a F.A.S.T. exam in accordance with the Protocols. Ms. Samuels described the examination as follows, CP 50 (94:2-25):

> A. He looked in my eyes, and he looked in my throat, and then he also did the – the resistant test.
>
> ***
>
> Q. Did – when you say "the resistance test," you're – you held your hands out – we have to get this for the record – you held your hands out in front of you?
> A. Yes.
> Q. And you put your palms up and down?
> A. Yes.
> Q. Did he actually press on your hands to see whether –
> A. Yes.
> Q. – you could hold them up?
> A. Yes. He pushed down a little bit; so I had to push and pull.
> Q. Okay.
> A. I mean push and – and – and lift.
> Q. Okay.
> A. Right.
> Q. And did you have any trouble resisting the pressure that he put on your hands?
> A. No.

The first responders observed that Ms. Samuels' skin was pink, warm, and dry, and that her lungs were clear. CP 64. They found her ***facial grimace was equal***, her pupils were normal, her ***grip on both sides was***

64, which includes reference to Ms. Samuels experiencing facial numbness as well as a recitation of her medical history

equal, she had ***control over her upper extremities***, and she was ***able to lift both palms equally and steadily***. CP 64. They noted that she was oriented and able to speak, CP 64, and Ms. Samuels has acknowledged that she spoke with the first responders, answering their questions, CP 50 (97:2-9).

Because the first responders (1) found Ms. Samuels' facial grimace equal (*i.e.*, there was no unilateral facial droop – the "F"), (2) did not find any unilateral drift or weakness in her arms (the "A"), and (3) observed her speech was normal (the "S"), the F.A.S.T. exam was negative. *See* CP 64, 69. Under the Protocols, a negative F.A.S.T. exam meant that Ms. Samuels qualified for BLS transport if she wanted it. CP 60-61, 69, 71. Abiding by the Protocols, the first responders recommended that she either take a private ambulance or have her significant other transport her to Tacoma General's emergency room. CP 43 (46:1-6), 53 (113:17-20), 64. As Ms. Samuels confirmed, one of the first responders told her: '"We could take you to the hospital to ease your mind or' – they pointed at Arnold and said he could take me." CP 53 (113:10-23); *see also* CP 43 (46:1-6).

After about ten minutes (a typical amount of time for a call of this nature), the first responders left Ms. Samuels' apartment with the understanding that her significant other, Arnold Williams, would transport her to Tacoma General's emergency room. CP 62, 64 (run sheet states that "spouse of [patient] was going to [transfer] the [patient] via [privately

owned vehicle] to [Tacoma General Emergency Room]" (abbreviations spelled out for ease of reading)). But, after the first responders left, Ms. Samuels decided not to go to emergency room. CP 43 (46:1-6). Instead, she went to bed and, less than six hours later, was feeling well enough to work her 5:00 a.m. shift. CP 43 (46:25 - 47:11).

Six days later, on December 30, again suspecting she was having a stroke, Ms. Samuels went to MultiCare Westgate Urgent Care Center, where ARNP Gloria Lem examined her, treated her for a headache, and sent her home. CP 45-46 (70:7 - 75:16). She was not diagnosed as having suffered a stroke. *See* CP 4 (¶3.4), 5 (¶3.7)

Then, on January 5, 2016, nearly two weeks after her encounter with the first responders, Ms. Samuels went to Tacoma General, where an emergency department physician found, for the first time, that she exhibited symptoms consistent with a positive F.A.S.T. exam. CP 58.

C. Ms. Samuel's Complaint for Medical Malpractice

Ms. Samuels sued MultiCare and ARNP Lem for medical malpractice. She later amended her complaint to add the City of Tacoma as a defendant, alleging vicarious liability for the conduct of its first responders, as well as negligent hiring, training, and supervision. CP 1-11, 8-9 (¶4.4).

D. Summary Judgment Dismissal of the City

The City moved for summary judgment, arguing that, because there

was no evidence of gross negligence, it was entitled to immunity under RCW 18.71.210(1)'s qualified immunity provision.[3] CP 18-32.

In response, Ms. Samuels argued, contrary to her deposition testimony, that the first responders did not take a patient history and that, as a result, they violated the protocols. CP 466-94. She also argued that the first responders did not follow Department of Health (DOH) regulations because they did not call a "base station physician." *Id.* She submitted three declarations – one from counsel, CP 231-465, one from a California neurologist (Dr. Lombardi), CP 140-62, and one from a New York emergency room physician (Dr. Brown), CP 163-230.

In reply, the City reiterated that the undisputed facts (Ms. Samuels' own testimony) established that the first responders took a patient history, and that, because the Protocols included direction on how to proceed in

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[3] The qualified immunity statute, RCW 18.71.210(1) provides:

> No act or omission of any physician's trained advanced emergency medical technician and paramedic, as defined in RCW 18.71.200, or any emergency medical technician or first responder, as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:
>
> * * *
>
> (g) Any federal, state, county, city, or other local governmental unit or employees of such a governmental unit.

Under RCW 18.71.210(5), however, that immunity from suit does not extend to "any act or omission which constitutes gross negligence or willful or wanton misconduct.

suspected stroke situations, under the applicable regulations, the first responders were not required to call the Medical Program Director (*i.e.*, base station physician) for additional direction. CP 519-30. The City also challenged the admissibility of the opinions contained in Ms. Samuels' experts' declarations, because adequate foundations were not laid to qualify either Dr. Brown or Dr. Lombardi as experts on the standard of care of paramedics in Washington State, and because their declarations contained conclusory opinions based on facts contrary to the record and impermissible opinions on "credibility" of witnesses. CP 527-28; *see* CP 163-230; *see also* CP 495-518.

At the summary judgment hearing, the City argued, as it had briefed, that it was entitled to qualified immunity because (1) Ms. Samuels failed to present competent evidence of gross negligence, and (2) based on the undisputed facts, reasonable minds could reach but one conclusion – there was no gross negligence. RP 5-12. Ms. Samuels argued that RCW 18.71.210 did not apply, suggesting that, before RCW 18.71.210's qualified immunity could apply, the first responders' actions had to be perfect. RP 14-16.

The trial court granted the City's summary judgment motion, finding that RCW 18.71.210 applied and that reasonable minds could reach but one conclusion – the first responders were not grossly negligent. CP 778-80. As the trial court reasoned:

> I believe that the firefighters in this matter, pursuant to RCW 18.71.210, as first responders, including their employing entities, are entitled to the immunity that the City seeks. … I find no basis whatsoever for anything in willfulness conduct. I find nothing that supports gross negligence. I believe they're entitled to the immunity that RCW Title 18 provides them.

RP 27; *see* CP 778-80.

In January 2018, Ms. Samuels settled and dismissed her remaining claims against MultiCare and ARNP Lem. CP 801-02. She then appealed the summary judgment dismissal of her claims against the City. CP 788.

E. Court of Appeals' Decision Affirming the City's Dismissal.

The Court of Appeals, on October 1, 2019, issued its unpublished opinion unanimously finding that RCW 18.71.210 applied and that gross negligence was the proper fault standard, and a majority of the panel finding that summary judgment dismissal was proper because Ms. Samuels failed to raise a genuine issue of material fact as to gross negligence.

Although the due date for filing any petition for review was October 31, 2019, Ms. Samuels' petition for review was not filed until after 5:00 p.m. on November 5, 2016.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) sets forth the considerations governing acceptance of review and provides that a petition for review will be accepted only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the

> Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Although Ms. Samuels does not cite RAP 13.4(b), her arguments for why review should be accepted appear to implicate RAP 13.4(b)(1), (2), and (4).

A. The Court of Appeals' Decision Is Not in Conflict with Any Decision of this Court or of the Court of Appeals so as to Warrant Review under RAP 13.4(b)(1) or (2).

Ms. Samuels argues, *Pet. at 15-17*, that the Court of Appeals' decision in this case conflicts with this Court's decisions in *Brainerd v. Stearns*, 155 Wash. 364, 284 P.348 (1930), *Nist v. Tudor*, 67 Wn.2d 322, 407 P.2d 798 (1965), and *Harper v. State*, 192 Wn.2d 328, 429 P.3d 1071 (2018), and the Court of Appeals' decision in *Kelley v. State*, 104 Wn. App. 328, 17 P.3d 1189 (2000). It does not.

Basically, Ms. Samuels claims that, because *Brainerd*, *Nist*, and *Harper* indicate that gross negligence is typically a question of fact, because *Kelley* considered violations of policy directives in determining whether there was sufficient evidence of gross negligence, and because she believes there was evidence that the first responders did not strictly comply with the Protocols, summary judgment was improper in this case. She ignores, however, that courts may determine the issue of gross negligence as a matter of law if reasonable minds could not differ, as this Court did in *Harper* and

as the Court of Appeals did in *Kelley* notwithstanding the violations of policy directives that occurred in that case. Ms. Samuels does not claim that the Court of Appeals made any new pronouncement of law, nor does she cite to any portion of the Court of Appeals' opinion that purportedly conflicts with established law. Because the Court of Appeals' decision does not conflict with any decision of this Court or any published decision of the Court of Appeals, but rather tracks this Court's most recent decision in *Harper*, *see* Slip Op. at 10-15, review is not warranted under RAP 13.4(b)(1) or (2).

It is well established that "[t]o survive summary judgment in a gross negligence case, a plaintiff must provide substantial evidence of serious negligence." *Harper*, 192 Wn.2d at 345 (quoting *Nist*. 67 Wn.2d at 332). To prove gross negligence there must be a showing that the first responders "substantially breached [their] duty by failing to act with even slight care." *Id.* at 341 (citing *Nist*, 67 Wn.2d at 331). And, "[a]lthough breach is generally a question left for the trier of fact, the court may determine the issue as a matter of law 'if reasonable minds could not differ.'" *Id.* (quoting *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 929 P.2d 400 (1999)). These were the standards the Court of Appeals correctly applied in this case in affirming the trial court's grant of summary judgment to the City. *See* Slip Op. at 10-15.

Nonetheless, Ms. Samuels asserts that, even though the correct law was applied, the Court of Appeals erred in finding no genuine issue of material fact as to gross negligence, citing her experts' unsupported claims that the first responders failed to take a medical history, and her claims that the first responders should have called the Medical Program Director (*i.e.*, base station physician) and that one of the first responders improperly made a diagnosis when he told her she was not having a stroke. But, because those claims are either not supported by evidence, not supported by the law, or are insufficient to establish substantial evidence of serious negligence, the Court of Appeals correctly determined that reasonable minds could reach but one conclusion – there was no gross negligence. That Ms. Samuels disagrees with the Court of Appeals' conclusion in that regard does not render its decision in conflict with any of the cases she has cited in her petition or provide a ground for acceptance of review under RAP 13.4(b).

A medical history was taken. As a preliminary matter, Ms. Samuels' experts' "opinions" regarding whether a medical history was taken are inadmissible. The experts do not have firsthand knowledge of the facts in this case and cannot offer lay witness testimony about the events that occurred. ER 602, 702, 703. Moreover, the experts cannot base their opinions on facts contrary to those in the record. "Affidavits containing conclusory statements without adequate factual support are insufficient to defeat summary

judgment." *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 25, 851 P.2d 689 (1993). "The expert's opinion must be based on fact and cannot simply be a conclusion or based on an assumption if it is to survive summary judgment." *Volk v. DeMeerler*, 187 Wn.2d 241, 277, 386 P.3d 254 (2016).

Here, the admissible evidence – deposition testimony and the run sheet, CP 64, 49 (91:6-8), 51-52 (101:15 - 102:16) – confirm that the first responders (1) took a medical history; (2) took actions to evaluate each aspect of the F.A.S.T. examination; (3) determined that there were no positive stroke symptoms; and (4) knew Ms. Samuels' facial numbness began about an hour prior to the 911 call. Ms. Samuels' experts' post-hoc claim that a medical history including the time of onset was not taken is contrary to the facts in the record and is not sufficient to create a genuine issue of material fact as to gross negligence. As the Court of Appeals correctly concluded, "[v]iewing the evidence in the light most favorable to Ms. Samuels, reasonable minds could not differ on whether the first responders exercised at least slight care." Slip Op. at 12.

The Medical Program Director did not need to be contacted. Ms. Samuels also claims that the Protocols did not sufficiently cover the first responders' contact with her, requiring them, under DOH regulations, to contact the medical program director (MPD), because she was experiencing facial numbness and had an elevated blood pressure. She is incorrect.

Under WAC 246-976-182, "certified EMS personnel are only authorized to provide patient care … ***[w]ithin the scope of care that is … included in state approved county MPD protocols***." WAC 246-976-182(1)(c)(iii) (emphasis added). If the Protocols do not provide direction for a situation, then the first responders need to contact their online medical control and receive instruction from the MPD or its delegate. WAC 246-976-182(2); WAC 246-976-010(44) and (46). Such contact is ***only*** required when the protocols do not advise how to treat a patient in a given situation. WAC 246-976-182. Here, Ms. Samuels' presentation was not outside the scope of the Protocols, and the Protocols were adequate to address the care she needed. There was no need to call the MPD.

Nonetheless, Ms. Samuels argues that, because she had "unresolved facial numbness" and high blood pressure, the first responders should not have ended their contact with her. This argument is contrary to the Protocols, which provided direction for both situations. CP 69, 71. The Protocols contemplated that an individual may experience facial numbness and yet still not require emergent transport for a stroke. CP 69. In fact, facial numbness was merely a symptom that indicated a F.A.S.T. exam should be performed. CP 69. It was not a symptom that triggered ALS transport. CP 69, 71. Moreover, the Protocols provided that a blood pressure higher than 180/120 should result in ALS transport. CP 71. But,

Ms. Samuels' blood pressure was 176/98, CP 64, lower than the blood pressure requiring ALS transport. She did not exhibit any signs that qualified her for ALS transport. *Compare* CP 64 *with* CP 69, 71.

As the Court of Appeals correctly observed, Slip Op. at 14:

> Under WAC 146-976-182, first responders are required to contact the medical program director only when the protocols did not provide appropriate direction for the circumstance. Here, the protocols governed the first responders' interaction with Samuels and they acted within those protocols by performing the FAST examination."

The first responders are required to assess the presence or absence of symptoms in order to triage patients. Finally, Ms. Samuels' characterization of a first responder's alleged comment that she was not having a stroke as a diagnosis is incorrect. Although first responders are not physicians and are not trained to diagnosis patients, they are trained to triage patients, including looking for symptoms of stroke. The Court of Appeals correctly rejected Ms. Samuels claim that the first responders gave her a medical diagnosis when one of them allegedly told her "you're not having a stroke," reasoning, Slip Op. at 15:

> The first responders are required, as part of their job and within the scope of their practice, to assess and communicate to the patient at the time. Viewing the evidence in the light most favorable to Samuels, even if this statement was made to her by a first responder, Samuels fails to present "substantial evidence of serious negligence." In sum, reasonable minds could not differ on whether the first responders acted with gross negligence and the City is

entitled to qualified immunity as a matter of law.

Ultimately, "[i]n determining whether the plaintiff has provided substantial evidence, the court must look at all the evidence before it, evidence that includes both what the defendant failed to do and what the defendant did." *Harper*, 192 Wn.2d at 345. Here, it is undisputed that the first responders promptly responded to Ms. Samuels' 9-1-1 call. CP 60-62, 64. They took her medical history and learned that she was experiencing facial numbness. CP 64, 48 (88:1-8), 49 (91:16 – 93:23). They examined her, took her vital signs, and performed a F.A.S.T. exam. CP 64, 71. They looked at her face and noted "grimace equal." CP 64. They performed a resistance test and found her grip equal, and her palm lift equal and steady. CP 64, 50 (94:2-25). They spoke with her and assessed the normalcy of her speech. *See e.g.* CP 50 (97:2-90). And, although not required because the remainder of the F.A.S.T. exam was negative, they noted that the onset of symptoms was "about an hour prior to the 911 call." CP 64. Considering the totality of the actions the first responders took to determine whether or not Ms. Samuels qualified for ALS transport, there is not substantial evidence of serious negligence. s. Samuels has not established that the Court of Appeals' decision is in conflict with any decision of this Court or of the Court of Appeals. Thus, review is not warranted under RAP 13.4(b)(1) or (2).

B. Ms. Samuels' Petition Does Not Involve an Issue of Substantial Public Interest that Should be Determined by this Court so as to Warrant Review under RAP 13.4(b)(4).

Ms. Samuels suggests, *Pet. at 17-20*, that review should be granted under RAP 13.4(b)(4) based on her subjective belief that first responders should be required to strictly comply with the Protocols in order to avail themselves or the City of the immunity afforded by RCW 18.71.210. She argues, as she did below, that first responders only have authority to act within the defined scope of the Protocols, and that, as a prerequisite to the determination of qualified immunity under RCW 18.71.210, they cannot act outside of the protocols. According to Ms. Samuels, any act outside of the protocols is "not within the field of medical expertise of the … emergency medical technician and paramedic" as required by RCW 18.71.210, and renders the statute's immunity provision inapplicable.

As the Court of Appeals correctly recognized, *Slip Op. at 8-11*, Ms. Samuels' interpretation of the statute is patently wrong. Even if she had factual support for her claim that the first responders did not follow the Protocols (which she does not), her interpretation of the statute would lead to absurd results. "Stripping" immunity and permitting liability based on any trivial act or omission not strictly in compliance with the Protocols (even if the act was taken in good faith and in the course of duty), would abrogate the legislature's clear intent that first responders should be able to

act free from the unduly inhibiting fear of liability. *See Marthaller v. King County Hosp. Dist. No. 2*, 94 Wn. App. 911, 916, 973 P.2d 1098 (1999).

Contrary to Ms. Samuels' contentions, the plain language of RCW 18.71.210 (1) indicates that its qualified immunity applies even absent strict adherence to the Protocols. "No act or omission of any [first responder] done or omitted in good faith while rendering emergency medical service … shall impose any liability." RCW 18.71.210 (1). This language is broad; it does not include a precondition of strict adherence to the Protocols before first responders or their employing city may qualify for immunity.

In enacting RCW 18.71.210, the legislature implicitly recognized that first responders must act in emergencies, and must make quick decisions in real time. Accordingly, the legislature determined that suits against first responders and their employing agencies should be limited to those involving acts or omissions rising to the level of gross negligence or willful or wanton misconduct. Ms. Samuels' argument to the contrary – that first responders are required to abide perfectly by the protocols, otherwise a simple negligence standard will apply – contravenes the plain meaning and purpose of RCW 18.71.210.

Ms. Samuels' questioning of the wisdom of the legislature in enacting RCW 18.71.210's qualified immunity provision does not raise an issue of substantial public interest that should be determined by this Court

so as to warrant review under RAP 13.4(b)(4).

VI. CONCLUSION

Because Ms. Samuels has not established the applicability of any of the RAP 13.4(b) considerations governing acceptance of review, her petition for review should be denied.

RESPECTFULLY SUBMITTED this 13th day of December, 2019.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 13th day of December, 2019, I caused a true and correct copy of the foregoing document, "City of Tacoma's Answer to Petition for Review," to be delivered in the manner indicated below to the following counsel of record:

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Carrie A. Custer, Legal Assistant

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