IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

No. 89618-6

JAMES HENRY ESKRIDGE, II and
AMY DAWN ESKRIDGE,

RESPONDENTS,

v.

DARLENE M. TOWNSEND, PH.D.,

PETITIONER.

RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioner Darlene Townsend, Ph.D., is one among thousands of trained professionals in Washington State from whom more is rightly expected in the detection and reporting of child abuse.

For decades, the statutory coupling of the mandatory reporting of child abuse, with liberally applied good faith immunity in making such reports as codified in RCW 26.44, appears never to have produced reported case law involving a mandatory reporter who failed to earn that immunity.

Until now.

The Petitioner's attempt to overcome the jury's verdict against her must be rejected for its plain failure to meet the strict requirements of RAP 13(b). First, on the waiver issue, Dr. Townsend continues to misstate this Court's prior holdings which, when properly read, are not at all in conflict with Division Three's decision below.

Second, Dr. Townsend stands alone in claiming that our Court of Appeals has been uniformly and repeatedly wrong in the multiple cases interpreting the good faith immunity provided in RCW 26.44.060 for more than 20 years. The previous decisions Dr. Townsend now criticizes as "wrong" actually favored mandatory reporters, demonstrating how liberally good faith immunity has been construed.

Dr. Townsend's contorted reading of the good faith immunity statute makes no sense in the face of readily apparent legislative intent. The history and context of the 1988 amendment to RCW 26.44.060 (adding subsections (1)(b) and (4), the provisions at the heart of Dr. Townsend's argument) reveal that the Legislature intended only that persons convicted of intentional, malicious false reporting would thereafter be automatically ineligible for immunity. There was no intent to alter the longstanding immunity for everyone else making reports in good faith.

The "substantial public interest" claimed in her Petition is predicated on Dr. Townsend's own fiction that the system is broken. Every piece of evidence, including the lack of other rulings against reporters of child abuse, proves the statute works very well in offering strong protection for children, and also some measure of rights for adults reported as abusers without any good faith basis.

Finally, Dr. Townsend failed at the trial court level to raise or preserve this objection to how good faith immunity was applied. The Petition should be denied and the jury's verdict should stand.

II. RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

A. Facts.

Respondents James and Amy Eskridge respectfully direct this Court's attention to the Facts section contained in the Division Three decision set forth as Appendix A of Dr. Townsend's Petition.

B. Procedural Facts.

The Procedural Facts section of Division Three's opinion contains a vastly fuller procedural history leading to Judge O'Connor's discretionary ruling that Dr. Townsend had waived her right to claim the defense of immunity under RCW 4.24.510, commonly known as the anti-SLAPP statute. The Eskridges respectfully direct this Court's attention to that section of the opinion for a more complete summation of the facts supporting the trial court's ruling. The key procedural point on the waiver rulings made by the trial court, and affirmed by Division Three, is the sheer lateness and surprise of the purported defense of absolute immunity under the anti-SLAPP statute. This defense was raised for the first time on the eve of trial and, as recognized by both the trial and appellate courts, was inconsistent with nearly two years of Dr. Townsend's litigation behavior. The Petition's recitation of the timing of the assertion of this defense also deserves scrutiny:

> Before trial, Dr. Townsend moved *in limine* to exclude evidence of the reports to official agencies, ... because the reports are privileged under two distinct state statutes, RCW 4.24.510 (as to all reports to official agencies) and RCW 26.44.060 (as to the report to CPS).

Petition at pp. 4-5 (citing CP 24-27).

In truth, Dr. Townsend's *limine* motion regarding CPS and other documents, filed just before trial, was first based on hearsay, not immunity. It was only in a reply brief, filed on the Friday afternoon before Monday's trial start, that Dr. Townsend switched from her hearsay argument to – for the very first time – a defense of complete anti-SLAPP immunity. Petition, Appendix A at p. 11; CP at 24-27.

This late filing followed numerous earlier mandated opportunities to disclose the defense and was at odds with a long string of behavior belying any intent to use the defense. For example, Dr. Townsend failed to reveal her immunity defense throughout discovery, in her Trial Brief, her jury instructions, her responses to ER 904 pleadings, and even the official pre-trial report, despite the local rule that unidentified issues could not thereafter be raised without leave of court. CP at 223-29. *See also* Petition, Appendix A at p. 17 (setting forth other behavior inconsistent with the assertion of complete immunity under RCW 4.24.510).

III. ARGUMENT

A. Waiver.

Dr. Townsend continues to misstate this Court's holdings on common law waiver of defenses in an attempt to orchestrate a conflict where none exists.

The main premise of Dr. Townsend's waiver argument is a claim of conflict with prior decisions of this Court. This argument fails because it is based on a clear misstatement of this Court's holding in *Oltman v. Holland America Line USA, Inc.*, 163 Wn.2d 236, 178 P.3d 981 (2008). *Oltman* denied application of waiver for a defense disclosed only 11 days beyond the 20-day period for answering the original complaint. In *Oltman*, this Court was urged to create a bright line rule that waiver is unavailable unless the aggrieved party can prove actual prejudice. This Court declined to make such a rule, stating: "***We need not decide*** whether an affirmative defense raised in an untimely answer is waived if the delay in raising the defense causes prejudice to the plaintiff because no prejudice is established in this case." *Oltman*, 163 Wn.2d at 246 (emphasis added).

Nevertheless, Dr. Townsend claims in her Petition that *Oltman* "means that there can be no argument that defendants have impliedly waived defenses where there has been no prejudice," and that the Court of Appeals below "failed to apply" that alleged mandate. Petition at p. 16. But as stated by Division Three, *Oltman* contains no such holding:

> Contrary to Dr. Townsend's contention, the *Oltman* Court declined to address whether an affirmative defense ... is only waived if the delay causes actual prejudice, finding that no prejudice was established and therefore the issue did not need to be addressed.

Petition, Appendix A at p. 20.

Accordingly, there is no conflict with *Oltman*, and Dr. Townsend's Petition cannot be granted pursuant to RAP 13(b)(1).

Dr. Townsend is similarly mistaken in her view of another of this Court's prior holdings, *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d 1234 (1991), which she claims "has clearly indicated that there can be no implied waiver unless plaintiff can show prejudice." Petition at p. 15. However, just as in *Oltman*, there is no such holding found anywhere in *French*. In fact, the word "prejudice" never even appears in the opinion.

Rather, the *French* Court simply rejected waiver on a number of grounds in a case where the defendant – unlike the case here – clearly and specifically identified the specific defense of insufficient service of process in his Answer, but waited until the time of trial to assert the defense. *French*, 116 Wn.2d at 587-89. The Court held that clearly identifying that specific defense in an Answer was sufficient to preserve the defense. *Id.* In dispensing with an alternative estoppel argument, the Court said the plaintiff "does not direct our attention to any act, statement, or admission by (defendant) prior to his answer that was inconsistent with

the defense and that *French* relied on to his detriment." *Id.* at 594. Here, both the trial court and Division Three cited Dr. Townsend's subsequent discovery answers that clearly directed plaintiffs – for the remainder of the litigation – away from the later asserted defense of absolute immunity.

This Court's decisions in *Oltman* and *French*, and two more opinions cited in the Petition, *Lybbert v. Grant County*, 141 Wn.2d 29, 1 P.3d 1124 (2000) and *King v. Snohomish Co.*, 146 Wn.2d 420, 47 P.3d 563 (2002) all stand for important principles of fairness to the parties and efficiency of court resources in requiring proper and timely disclosure of defenses. The doctrine is meant to promote efficiency in court proceedings and prevent general prejudice to the system and to the parties. Thus, the doctrine applies when the defendant has been dilatory in asserting a defense or has proceeded to act inconsistently with the assertion of that defense over a considerable period of time. *Lybbert,* 141 Wn.2d at 39; *King,* 146 Wn.2d at 424. The trial court below, presiding over two years' of litigation in this case, was best positioned to make the discretionary ruling of waiver. Nor does Division Three's decision effectively create "a scenario whereby every defendant will be obliged to move for summary judgment on its affirmative defenses in order to avoid a plaintiff's claim of waiver," as claimed by Dr. Townsend. Petition at p. 17. Rather, the decision merely applies long-standing law. Defendants

can preserve defenses without moving for summary judgment, but they cannot raise new defenses very late in the game totally inconsistent with their prior conduct and they cannot be dilatory, such as occured in this case. The decision below does nothing to change long-standing precedent.

Moreover, prejudice was demonstrated in the present case. Application of the anti-SLAPP statute would have required Dr. Townsend to prove that her statements were "reasonably of concern" to the agencies to which she reported. RCW 4.24.510. As indicated in Division Three's opinion, Dr. Townsend never revealed any of the material facts germane to that issue although asked to do so. Petition, Appendix A at p. 17. By extension, the Eskridges were never able to challenge and refute those facts during discovery. Moreover, by failing to assert the defense until the 11th hour and behaving throughout the litigation in a manner inconsistent with the assertion of the defense, Dr. Townsend forced the Eskridges to spend considerable time and money, developing a theory of the case largely premised on her communications to government agencies. The waiver doctrine is meant to prevent unfair advantage and unnecessary waste of the parties' and court's time and resources. Its application here is fully consistent with this Court's precedent.

B. Immunity under RCW 26.44.060.

Washington courts have not misread the good faith immunity statute for 25 years. All of the previous decisions are directly in line with the readily apparent intent of the Legislature.

Dr. Townsend's alternative basis for seeking review of the previous decisions against her requires an unprecedented and illogical interpretation of the good faith immunity contained in RCW 26.44.060. When viewed in its clear and proper history and context, the statute has been properly read and understood by numerous courts over more than 25 years. Dr. Townsend's byzantine and strained approach simply fails.

Dr. Townsend's emotional appeal to our common revulsion of child abuse – complete with images of children "severely beaten, chained up in the basement or deprived of food and water" (Petition at p. 8), none of which is alleged here – does not justify the serious harm her Petition poses to the longstanding check-and-balance protocol of RCW 26.44. The real-life history of these statutes, from the Legislature itself and from 25 years of case law, proves that the mix of mandatory reporting with readily accessible immunity works well and must continue to be supported.

1. The history of RCW 26.44.060 and its amendments belie Dr. Townsend's faulty interpretation of this statute.

The Petition posits that the Legislature intended to dramatically change the immunity landscape with its 1988 amendment to RCW

26.44.060. That amendment added a new subsection (4), which automatically revoked immunity for any person convicted of intentional, bad faith false reporting of abuse, an act that became a new crime under this comprehensive bill. *See* LAWS of 1988, Ch. 142. Dr. Townsend would have this Court reverse more than 25 years of prior interpretation and hold that the Legislature actually *meant* to say that absolute immunity is automatic for all reporters unless they are first convicted of the crime of intentional, malicious, false reporting. Dr. Townsend provides no support for her theory through legislative history, news accounts of the amended legislation, or court opinions, not to mention the fact this interpretation would render the good faith immunity provided for in the statute meaningless. But, it is the legislative history itself that disproves Dr. Townsend's argument.

RCW 26.44.060 was first enacted in 1965 and originally gave blanket immunity for medical practitioners reporting suspected child abuse. LAWS of 1965, Ch. 13. A 1975 amendment added the qualification of good faith for immunity to attach to a host of mandatory reporters and for others who chose to file abuse reports, despite no requirement they do so. LAWS of 1975 (1st Exec. Session), Ch. 217.

The 1988 amendment at issue here is best viewed in its entire context within multiple amendments to the entire set of child abuse

reporting statutes within RCW 26.44 which occurred simultaneously. These were reported as "AN ACT Relating to malicious reporting of child abuse or neglect; amending RCW 26.44.060; reenacting and amending RCW 26.44.020; and prescribing penalties." LAWS of 1988, Ch. 142. (see copy attached as Appendix B).

The only fair reading of this comprehensive bill is that the Legislature sought to amend the reporting statutes to enact a criminal penalty for intentional and malicious false reporting and to remove those convicted of this new crime from any consideration of good faith immunity. The many parts of this bill lead only to this conclusion.

First, the definitions statute, (RCW 26.44.020) was amended to define the new terms "malice" and "maliciously" as "evil intent, wish, or design to ... (injure) another person." *Id.* Next, RCW 26.44.030 allowed police officers to interview reporters of abuse "to determine if any malice is involved in the reporting." RCW 26.44.030(19).[1]

Finally RCW 26.44.060 was amended to state that any person who "intentionally and in bad faith or maliciously, knowingly makes a false report of abuse or neglect" would thereafter be guilty of a misdemeanor. And, such persons would lose good faith immunity. RCW 26.44.060(4).

[1] This statute was very recently amended (effective December 1, 2013) to recodify this subsection from the former RCW 26.44.030(17).

In this context, it is clear the Legislature intended only to divest malicious false reporters of any immunity claim. The official published Final Bill Report for this legislation further underscores this critical point. The title/summary of the report itself identifies the amendments as "[i]mposing penalties for malicious reporting of child or dependent adult abuse or neglect." The "Synopsis as Enacted" portion of the report states that a "person who makes a good faith report of abuse is immune from liability in making the report or testifying in court." LAWS of 1988, Ch. 142. The "Summary" section reads: "Any person who, intentionally and in bad faith or maliciously, knowingly makes a false report of child abuse or neglect is guilty of a misdemeanor. A person convicted of making a false report is not immune from civil liability." *Id.*

The Legislature, as part of these overall amendments, did add the words "[e]xcept as provided in (b) of this subsection" in front of the existing grant of immunity for anyone making a good faith report of child abuse. RCW 26.44.060(1)(a).[2] But that qualifying phrase only accommodated the new exception for malicious, intentional, false reports. If the Legislature intended to guarantee immunity for everyone unless they were convicted of the crime, as Dr. Townsend claims, the bill and final report would be expected to directly convey that intent, by eliminating any

[2] A copy of RCW 26.44.060 as amended is attached as Appendix A.

good faith requirement from the law. Certainly, the statute would not continue to include the words "good faith" – words Dr. Townsend's proposed interpretation ignores altogether.

2. Traditional statutory construction rules further disavow Dr. Townsend's reading of the reporting statute.

Statutes cannot be construed to make sections or words void, meaningless, or superfluous. *In re Dependency of K.D.S. v. D.S.H.S.*, 176 Wn.2d 644, 656, 294 P.3d 695 (2013), quoting *Taylor v. City of Redmond*, 89 Wn.2d 315, 319, 571 P.2d 1388 (1977). Dr. Townsend's interpretation that only those first convicted of the crime of malicious reporting are not immune from civil liability in reporting child abuse would effectively render meaningless and superfluous the words requiring good faith found in subsection RCW 26.44.060(1)(a). Such a *carte blanche* application of immunity is simply not consistent with the plain language of this statute.

Another rule of construction holds that courts presume the Legislature considered its prior enactments in amending statutes. *State v. Public Util. Dist. No. 1*, 91 Wn.2d 378, 383, 588 P.2d 1146 (1979). Under this rule, a more recent (2004) amendment of RCW 26.44.060 further demonstrates Dr. Townsend's interpretation of good faith immunity is not held by the Legislature itself. That amendment added a new subsection (5) which further extended immunity to persons who cooperate in a child

abuse investigation following an initial report. LAWS of 2004, Ch. 37. The Legislature could have written the amendment to mirror Dr. Townsend's contention by revoking immunity only for those making intentionally false, criminal statements during their cooperation. But instead, it expressly conditioned immunity on good faith.

Here, the plain construction of RCW 26.44.060(1)(a) is that immunity is conditioned upon a showing of good faith. This common sense interpretation of the words "[e]xcept as provided in (b) of this subsection ..." is that people convicted of intentional, bad faith reporting are automatically ineligible for immunity. This is in accord with principles of collateral estoppel and obviates the need for a civil plaintiff to relitigate issues already decided in a criminal proceeding. *See Clark v. Baines*, 150 Wn.2d 905, 912-14, 84 P.3d 245 (2004).

The prevention of child abuse is, and should be, the pre-eminent priority. But Washington's legislature recognized a need for some balance in protecting the rights of parents and adults in general against the harm that can follow reports not made in good faith. *See* RCW 26.44.010 (recognizing that "[t]he bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian" but also providing for the reporting of instances of

abuse).[3] Good faith immunity was never meant to be a shield penetrated only if criminal prosecutors first chose to investigate and charge a person for intentional, bad faith reporting, and then again only if a conviction was won. Under legislative policy, a bad faith reporter will not even be referred to the State for prosecution unless the person has made a bad faith report once before. *See* RCW 26.44.061(2). Therefore, Dr. Townsend's interpretation of RCW 26.44.060 would give a free pass to a first time bad faith reporter, a nonsensical result that finds no support in the statute, its legislative history, or interpretation over the many years.

3. Dr. Townsend's "Issue of Serious Public Interest" must be demonstrated from anecdotal evidence and actual real-life experience, rather than hyperbolic creation of a crisis that doesn't exist.

The Petition is rife with unsupported prose, such as the claim of a "cruel dilemma" for reporters which, as in the following passage, are plainly eviscerated by the utter lack of real-life examples:

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[3] *See also* RCW 26.44.030 (limiting duty to report instances of child abuse to situations where "reasonable cause" exists); *see also* RCW 26.44.015 (stating the "chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, or safety."); *see also* RCW 26.44.032 (providing that public employer shall provide for legal defense of public employee acting "in good faith" when making a report under RCW 26.44.030); *see also* RCW 26.44.056(3) (providing that "a child protective services employee, an administrator, a doctor or a law enforcement officer shall not be held liable in any civil action for the decision for taking the child into custody, if done in good faith" where that child may be in danger from abuse if returned to his or her home.

> But mandatory reporters are learning, from Dr. Townsend's case *and others,* that the only realistic way for a mandatory reporter to later prove her own good faith is to prove that she was right, i.e., that abuse actually did happen.

Petition at p. 12 (emphasis added).

There is no citation to any additional case supporting the words "and others." In truth, previous appellate opinions going back 25 years show that immunity has been readily sustained for good faith reporting.

Even though the rest of these previously reported opinions landed plainly in favor of immunity for the reporters (and dismissal of the plaintiffs' cases), Dr. Townsend still claims Washington's appellate courts have uniformly "misapplied" the good faith immunity statute for all of these many years. In fact, these cases show that demonstration of good faith by mandatory reporters is a minimal burden, far from Dr. Townsend's contention that "the only realistic way for a mandatory reporter to later prove her own good faith is to prove that she was right, i.e., that abuse actually did happen." Petition at p. 12.

For example, in *Whaley v. State*, 90 Wn. App. 658, 956 P.2d 1100 (Div. I 1998), Division One of the Washington Court of Appeals rejected a claim against a mandatory reporter in a manner that demonstrated liberal application of statutory good faith immunity for child abuse reports:

> [T]here is no legal requirement that information giving rise to a suspicion of child abuse be investigated or verified before it is reported. RCW 26.44.050 imposes the duty of investigation upon the authorities who receive the report, not upon those who make the report. The purpose of the statutory grant of immunity, to encourage the reporting of child abuse, would not be served if immunity could be defeated simply by showing the reporter passed on unverified or uninvestigated information. Thus, a traditional negligence standard--based on what the reporter reasonably should have known--is not used to determine whether immunity will attach. Rather the question is whether the reporter acted "with a reasonable good faith intent, judged in light of all the circumstances then present."

Id. at 668-69 (citations and footnotes omitted).

In reaching this decision, the *Whaley* Court actually engaged in a particular analysis that directly contradicts Dr. Townsend's view of RCW 26.44.060. *Whaley* concerned a parent's claims against a day care provider over a false child abuse report.

> ... (The provider) initially argues (the plaintiff) cannot defeat the claim of immunity because (plaintiff) has not alleged (provider) acted in bad faith. *But the necessity of alleging bad faith under the statute arises only in cases charging criminal liability under RCW 26.44.060(4) for making a false report.*

Id. (emphasis added).

With that analysis, the *Whaley* Court appropriately singled out cases of criminal, intentional bad faith reporting as belonging to a discrete sub-class of reporters for whom immunity is automatically lost. The natural implication is that the language contained in RCW 26.44.060(4) does not apply to the larger group of reporters, like Dr. Townsend.

In a 2002 case, Division Three engaged in a full analysis of the evils of child abuse, the need for mandatory reporting, potential criminal sanctions for mandatory reporters who fail in those duties, and the readily available good faith immunity for reporters. *Yuille v. State,* 111 Wn. App. 527, 45 P.3d 1107 (Div. III 2002). *Yuille* concerned a doctor's reporting of a mother's mental illness thought to be harming her children. The *Yuille* Court repeated the well-established principle that "[g]ood faith flows from a 'mind indicating honesty and lawfulness of purpose'." *Id.* at 533. The Court concurred with the protections noted in *Whaley*, that good faith immunity "does not require that the information giving rise to the suspicion of abuse be investigated or verified before it is reported." *Id.* And it cited with approval a companion appellate court opinion which found that "even if mistakes were made ... the parties believed they were acting in the best interests of the children. And therefore, they acted in good faith." *Id.*, at 534, citing *Miles v. CPS*, 102 Wn. App. 142, 6 P.3d 112 (2000), rev. den., 142 Wn.2d 1021, 16 P.3d 1266 (2001).

Yuille is also extremely significant as standing in direct opposition to another of Dr. Townsend's claims, that this Washington Supreme Court "has never had occasion to review" the claimed "misapplication" of RCW 26.44.060. Division Three's published opinion in *Yuille* was centered entirely on the same interpretation of good faith immunity that

Dr. Townsend now claims has been misguided for years and years. A Petition for Review of that appellate decision was sought, considered by this Court and denied at 148 Wn.2d 1003, 60 P.3d 1212 (2003).

This Court also had the opportunity to review this longstanding and plain interpretation of RCW 26.44.060 in the apparent first of a long line of appellate cases that Dr. Townsend claims to be misguided, *Dunning v. Pacerelli*, 63 Wn. App. 232, 818 P.2d 34 (Div. III 1991). The *Dunning* Court held that good faith immunity attaches when reporters have "reasonable good faith intent, judged in light of all the circumstances then present." *Id.* at 240. Here, as in all of the numerous other cases analyzing the issue, there is no rule removing immunity only for those convicted of intentional, bad faith reporting. A Petition for Review of this Division Three decision was also sought, considered and denied by this Court at 118 Wn.2d 1024, 827 P.2d 1392 (1992).

C. Dr. Townsend failed to preserve at trial the construction of RCW 26.44.060 that she urges here.

Division Three did not offer particular analysis or reasoning in denying Dr. Townsend's unprecedented construction of RCW 26.44.060. One likely reason is that Dr. Townsend did not make any record before the trial court either through a proposed jury instruction or as an objection to the jury instruction on the issue of good faith immunity that became the

law of the case. The wording of the jury instruction regarding Dr. Townsend's right to avail herself of good faith immunity was thoroughly argued by the parties before Judge O'Connor. Dr. Townsend did not propose her own instruction on good faith immunity, nor did she argue or propose an instruction that the statute did not apply to her because she had not been previously convicted of a crime regarding her report to CPS. CP at 95-117 (Court's instructions to jury); RP at 853-59 (Defendant's exceptions to instructions).[4] As a consequence, Dr. Townsend's argument on this issue here is essentially one of having an objection to jury instructions. "An appellate court may consider a claimed error in a jury instruction only if the appellant raised the specific issue by exception at trial." *Van Hout v. Celotex Corp.*, 121 Wn.2d 697, 702, 853 P.2d 908 (1993); Petition, Appendix A at 25. Because Dr. Townsend failed to raise the issue at trial, she is precluded from arguing it now in this Petition.

IV. CONCLUSION

For the reasons set forth above, Respondents James and Amy Eskridge respectfully request the Court to deny the Petition for Review.

[4] The Court of Appeals similarly ruled Dr. Townsend failed to preserve at trial her appeals court objection to language in the good faith immunity jury instruction pertaining to reporting within 48 hours. Petition, Appendix A at pp. 24-26.

Respectfully submitted this 12th day of December, 2013.

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CERTIFICATE OF SERVICE

I, Jessica Turk, hereby declare that on the 12th day of December, 2013, I caused to be served a true and correct copy of the foregoing *Response to Petition for Review*, by first class U.S. Mail delivery, to all parties named below:

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APPENDIX A

RCW 26.44.060
Immunity from civil or criminal liability — Confidential communications not violated — Actions against state not affected — False report, penalty.

(1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

(4) A person who, intentionally and in bad faith, knowingly makes a false report of alleged abuse or neglect shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

(5) A person who, in good faith and without gross negligence, cooperates in an investigation arising as a result of a report made pursuant to this chapter, shall not be subject to civil liability arising out of his or her cooperation. This subsection does not apply to a person who caused or allowed the child abuse or neglect to occur.

[2007 c 118 § 1; 2004 c 37 § 1; 1997 c 386 § 29; 1988 c 142 § 3; 1982 c 129 § 9; 1975 1st ex.s. c 217 § 6; 1965 c 13 § 6.]

Notes:

Application -- Effective date -- 1997 c 386: See notes following RCW 13.50.010.

Severability -- 1982 c 129: See note following RCW 9A.04.080.

Nurse-patient privilege subject to RCW 26.44.060(3): RCW 5.62.030.

APPENDIX B

government and its existing public institutions, and shall take effect immediately.

Passed the House March 9, 1988.
Passed the Senate March 5, 1988.
Approved by the Governor March 21, 1988.
Filed in Office of Secretary of State March 21, 1988.

CHAPTER 142

[Substitute House Bill No. 608]

CHILD ABUSE OR NEGLECT—MALICIOUS REPORTING, MISDEMEANOR

AN ACT Relating to malicious reporting of child abuse or neglect; amending RCW 26.44.060; reenacting and amending RCW 26.44.020 and 26.44.030; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 13, Laws of 1965 as last amended by section 2, chapter 206, Laws of 1987 and by section 9, chapter 524, Laws of 1987 and RCW 26.44.020 are each reenacted and amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatry, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

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

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing

social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Child abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby. An abused child is a child who has been subjected to child abuse or neglect as defined herein: PROVIDED, That this subsection shall not be construed to authorize interference with child–raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety: AND PROVIDED FURTHER, That nothing in this section shall be used to prohibit the reasonable use of corporal punishment as a means of discipline. No parent or guardian shall be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons not able to provide for their own protection through the criminal justice system" shall be defined as those persons over the age of eighteen years who have been found legally incompetent pursuant to chapter 11.88 RCW or found disabled to such a degree pursuant to said chapter, that such protection is indicated: PROVIDED, That no persons reporting injury, abuse, or neglect to an adult dependent person as defined herein shall suffer negative consequences if such a judicial determination of incompetency or disability has not taken place and the person reporting believes in good faith that the adult dependent person has been found legally incompetent pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing,

the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(8) Persons or agencies exchanging information under subsection (6) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(9) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(10) Upon receiving a report of incidents, conditions, or circumstances of child abuse and neglect, the department shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(11) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(12) The department of social and health services shall, within funds appropriated for this purpose, use a risk assessment tool when investigating child abuse and neglect referrals. The tool shall be used, on a pilot basis, in three local office service areas. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall report to the ways and means committees of the senate and house of representatives on the use of the tool by December 1, 1988. The report shall include recommendations on the continued use and possible expanded use of the tool.

(13) Upon receipt of such report the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

Sec. 3. Section 6, chapter 13, Laws of 1965 as last amended by section 9, chapter 129, Laws of 1982 and RCW 26.44.060 are each amended to read as follows:

(1) (a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or

testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

(4) A person who, intentionally and in bad faith or maliciously, knowingly makes a false report of abuse or neglect shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

Passed the House March 10, 1988.
Passed the Senate March 1, 1988.
Approved by the Governor March 21, 1988.
Filed in Office of Secretary of State March 21, 1988.

OFFICE RECEPTIONIST, CLERK

From: Jessica Turk <jessica@eahjlaw.com>
Sent: Thursday, December 12, 2013 1:56 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: John Allison; Diane Latta
Subject: Eskridge v. Townsend; Case No. 89618-6
Attachments: Response to Petition for Review.pdf; Appendix A.pdf; Appendix B.pdf

Eskridge v. Townsend; Case No. 89618-6
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Attached is the Response to Petition for Review and Appendices A and B for filing.

Thank you.

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