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**No. 93729-0  
SUPREME COURT OF  
STATE OF WASHINGTON**

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**SHERRIE LENNOX, as Personal Representative of the  
ESTATE OF VIOLA WILLIAMS**

**Plaintiff/Respondent,**

**vs.**

**LOURDES HEALTH NETWORK, a Washington non-  
profit corporation; BENTON COUNTY and FRANKLIN  
COUNTY, Washington municipal corporations; BENTON  
FRANKLIN COMMUNITY ACTION COMMITTEE, a  
Washington not-for profit corporation, and THE STATE  
OF WASHINGTON,**

**Defendants/Petitioner.**

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**COURT OF APPEALS CAUSE No. 332012  
Appeal from Superior Court of Benton County  
Benton Superior Court Cause No. 14-2-00139-5**

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**REPLY IN SUPPORT OF PETITION FOR REVIEW  
BY LOURDES HEALTH NETWORK**

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 **ORIGINAL**

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
1. IDENTITY OF PETITIONER .....	1
2. ARGUMENT IN REPLY .....	1
A. Plaintiff Applies the Wrong Standard of Review .....	1
B. The Court Should Review the Issues in This Case Now Because of the Policy and Legal Implications .....	3
3. CONCLUSION .....	5

TABLE OF AUTHORITIES

**CASES**

Bader v. State  
43 Wn. App. 223, 716 P.2d 925 (1986) ..... 4

Cornu-Labat v. Hospital Dist. No. 2  
177 Wn.2d 221, 283 P.3d 741 (2013) ..... 3

Petersen v. State  
100 Wn.2d 421, 671 P.2d 230 (1983) ..... 4

Volk v. Demeerleer  
184 Wn. App. 389, 337 P.3d 372 (2014), review granted,  
183 Wn. 2d 1007, 352 P.3d 188 (2015) ..... 5

**Rules**

RAP 2.3 ..... 1,3

RAP 13.4 ..... 1

RAP 13.4(b) ..... 2

RAP 13.4(b)(1)-(4) ..... 3

RAP 13.4(b)(3) ..... 4

**Statutes**

RCW 71.05.120 ..... 3,5

**1. IDENTITY OF PETITIONER**

Petitioner is Defendant Lourdes Health Network (“Lourdes”).

**2. ARGUMENT IN REPLY**

**A. Plaintiff Applies the Wrong Standard of Review**

Plaintiff begins by incorrectly arguing that review is not justified because “[a] court ordinarily will not accept review, as Lourdes requests, from a denial of summary judgment.” *Pl. ’s Response at 7*. Plaintiff then confusingly attempts to apply the RAP 2.3 “obvious error” standard applicable for discretionary review. *Pl. ’s Response at 8*.

Plaintiff applies the wrong standard and cites inapplicable case law.<sup>1</sup> This case does not involve review of a denial of a summary judgment motion. The trial court granted Lourdes’ Summary Judgment Motion. This case also does not involve discretionary review of a trial court order. Plaintiff appealed the summary judgment order to the Court of Appeals as of right pursuant to RAP 2.3. This

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<sup>1</sup> Plaintiff’s citation to cases discussing the purpose of the summary judgment process is irrelevant and confusing at best. *See Pl. ’s Response at 8*. We have already crossed that bridge. The Court’s inquiry now is to address the broad policy implications of the Court of Appeals’ decision that merit review now as opposed to at the termination of the case. *See RAP 13.4*.

case has nothing to do with the court system's general opinion of interlocutory, piecemeal review.

The fact that the Court of Appeals reversed the trial court order does not impose a discretionary review standard now. The sole issue before the Court is whether it should grant Lourdes' Petition for Review of the Court of Appeals' ruling. Pursuant to RAP 13.4(b), the standard of review is whether:

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

RAP 13.4(b).

Thus, the sole relevant criteria are based on policy concerns and the nature of the legal issues. Plaintiff completely ignores this

standard.<sup>2</sup> Lourdes, on the other hand, has established that review is appropriate under RAP 13.4(b)(1)-(4).

**B. The Court Should Review the Issues in This Case Now Because of the Policy and Legal Implications**

The Court of Appeals decision holds that a health care entity can be liable for the unforeseen gross negligence of another entity. Quite apart from the fact that it is incorrect, the ruling has significant policy implications outside of the confines of this case and, if left standing, will have negative consequences for, and impose new burdens on, healthcare facilities around the State by subjecting them to increased liability. It is axiomatic that healthcare is an issue of primary and significant public concern. Washington courts and the legislature have repeatedly emphasized the importance of providing protections to healthcare providers and entities in performing their duties in a variety of contexts. *See, e.g., Cornu-Labat v. Hospital Dist. No. 2*, 177 Wn.2d 221, 283 P.3d 741 (2013); RCW 71.05.120. The Court of Appeals decision negatively impacts those providers, and

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<sup>2</sup> RAP 2.3 has no application here at all.

provides this Court the opportunity to clarify the law in an area of significant public concern.

It is also important to reiterate that whether the CRU's gross negligence was unforeseeable as a matter of law is a significant issue of law and a matter of first impression in Washington, as Plaintiff concedes. That is a criterion justifying review under RAP 13.4(b)(3).

In addition, the Court of Appeals ruling that Lourdes can be grossly negligent (and misapplying the standards in Bader and Petersen) despite the lack of evidence that Mr. Williams was potentially dangerous or that his grandmother was ever a potential victim raises serious policy concerns. The Court of Appeals decision will result in negative consequences for healthcare providers in this State at large by forcing them to be hyper vigilant to warn against any possible violence against any possible person, thereby taking time and energy away from caring for patients.

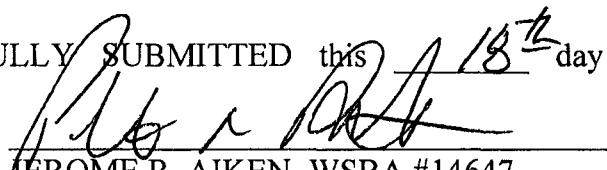
Lastly, Lourdes reiterates that the Court of Appeals neglected to address the critical duty issue. The Court of Appeals did not address this issue, as Plaintiff alleges. *See Pl.'s Response at 16*. The portion of the record cited to by Plaintiff does not explain why Lourdes, or

other similarly situated providers, should be subject to a broad, expansive duty to protect third parties rather than a more limited duty to protect identifiable persons from actual threats of violence, as intended by the Legislature when it enacted RCW 71.05.120. Whether healthcare providers in this State are subject to a broader or lesser duty of care is a significant question of law and involves a substantial public interest, as clearly evidenced by this Court's decision to review the Volk decision.<sup>3</sup>

### 3. CONCLUSION

This case involves important legal issues and substantial issues of public concern meriting review now as opposed to at the termination of litigation. This Court should accept review of this case and grant Lourdes' Petition for Review.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of November, 2016.

  
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<sup>3</sup> Plaintiff argues, without any support, that consolidation of the appeals is untimely. We do not see why that would be so. This Court is free to consolidate the appeals at any time, and to do so where the same duty element is involved would seem to preserve judicial resources by avoiding a multiplicity of appellate decisions.

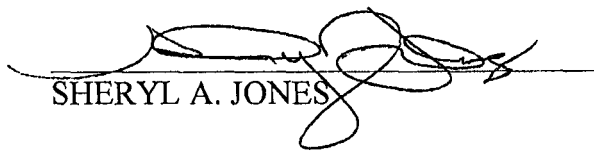


**CERTIFICATE OF TRANSMITTAL**

I certify under penalty of perjury under the laws of the state of Washington that the undersigned caused a copy of this document to be sent to the attorney(s) of record listed below as follows:

<b>For Plaintiffs:</b> Ms. Rebecca J. Roe Ms. Anne Kysar Schroeter, Goldmark & Bender 810 Third Avenue, Suite 500 Seattle, WA 98104	<input checked="" type="checkbox"/> via U.S. Mail <input type="checkbox"/> via fax <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via hand delivery
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DATED this 18<sup>th</sup> day of November, 2016 at Yakima, Washington.

  
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SHERYL A. JONES