NO. 98350-0

SUPREME COURT OF THE STATE OF WASHINGTON

Deborah Phifer, Personal Representative of the estate of Mr. Phifer,

Appellant,

v.

State of Washington Department of Labor and Industries,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

"Logic, common sense, policy, and precedent do not support imposing liability on persons for reporting suicidal people." Op. at 9. Yet, that is precisely what Petitioner Fred Phifer[1] has endeavored to do: impose liability on the State when a Labor and Industries claims adjuster called law enforcement to do a welfare check on a claimant after a worrisome phone conversation. In an unpublished opinion, the Court of Appeals correctly determined that no duty or breach exists in such a situation. The decision comports with Supreme Court precedent and fundamental concepts of tort liability. Mr. Phifer's argument to the contrary, specifically pointing to sovereign immunity and heightened standards of care, are without merit and should not be considered on review because they were not in front of the trial court. This Court should deny review.

II. COUNTERSTATEMENT OF ISSUES PRESENTED

1. Did the Court of Appeals properly exercise its discretion by refusing to consider Mr. Phifer's sovereign immunity and heightened duty argument when those issues were not in front of the trial court? (Counterstatement to Petitioner's Issue No. 4)

[1] Mr. Phifer passed away in October 2016. Deborah Phifer, as the personal representative of Mr. Phifer's estate, is now the party in interest. CP at 78-79, 160-61. For ease of reference and intending no disrespect, the Department will refer to the appellant herein as Mr. Phifer.

2. Even if considered on review, did the trial court appropriately dismiss Mr. Phifer's negligence claim because the Department of Labor and Industries did not owe him a duty – whether based on a special relationship, statute or common law, and whether ordinary or heightened – to avoid calling the police after he made concerning statement to a claims manager that she understood to be suicidal? (Counterstatement to Petitioner's Issues Nos. 1-3.)

III. COUNTERSTATEMENT OF THE CASE

A. Mr. Phifer Was Injured at Work and Filed an Industrial Injury Claim with the Department

Fred Phifer began working as a metal grinder for Magic Metals in Yakima, Washington in March 2008. CP at 66. The job involved grinding, sanding, and stacking metal boxes, which Mr. Phifer claimed hurt his back and hands. CP at 64, 71. To treat these problems, Mr. Phifer began seeing Dr. Larry LeFors in May 2008. CP at 63-64. Dr. LeFors's chart notes discussed Mr. Phifer's physical complaints related to his back and hands, as well as Mr. Phifer's mental health concerns. CP at 455-57. Mr. Phifer talked to Dr. LeFors about being stressed, tense, and having suicidal thoughts. *Id*.

On May 18, 2008, Mr. Phifer interacted with the Yakima Police Department for the first time. CP at 232-35. At that time, a police officer cited him for "knowingly threaten [*sic*] harm to person or property." *Id*.

About a month later, on approximately June 18, 2008, Magic Metals terminated Mr. Phifer's employment. CP at 65. Two weeks later, Mr. Phifer filed an industrial injury claim with the Department. CP at 71, 479. The claim form stated Mr. Phifer suffered gradual and specific injuries to his back and hands while working at Magic Metals, and listed an injury date of June 18, 2008. CP at 71. The Department assigned the claim to claims manager Annabea Alvarado, who was a Workers' Compensation Adjudicator 3. CP at 238, 479.

After the termination of his employment, Mr. Phifer continued to see Dr. LeFors to address issues related to his physical and mental health. On July 15, 2008, Dr. LeFors noted the need for a psychiatric evaluation of Mr. Phifer and referred him to Dr. Williams, a psychiatrist, for treatment of depression and "not wanting to go on." CP at 461, 464.

B. Mr. Phifer's Concerning Phone Call with Ms. Alvarado, the Department's Claim Manager

Twenty days later, on Monday, August 4, 2008, Ms. Alvarado spoke with Mr. Phifer by phone about time loss benefits related to his industrial injury claim. Op. at 2; CP at 482-83. At that time, the Department had not yet accepted Mr. Phifer's time loss claim. CP at 12. Ms. Alvarado contemporaneously typed what she believed Mr. Phifer told her during the

call, while Mr. Phifer was on the phone, and then saved the typewritten note to the Department's file that same day. CP at 146, 482-83.

> rtc to status not happy the way things were going, was having very bad thoughts, he felt like a loser, feels like he has hit a brick wall and feels like ending it all. says supervisor at magic metals caused his mental health issue. says that he is about to lose his house. cm advised would pay provisional until we get things sorted out, stated bas been seeing dr. lefors since 05/22/08. has always had back problems has 7 messed up discs in the past has gone thru dvr was trained for real estate did that for 14 years … asked iw if he wanted cm to contact mental health or authorities to pay him a visit to discuss his bad thoughts stated no, he would like to speak w/dr. wms … per protocol cm notified yakima police dept.

CP 194; Appellant's Petition, p. 4. Ms. Alvarado also testified to believing that he had a knife. CP at 238. She was concerned for Mr. Phifer's safety because she had no way of knowing if he would act on what she understood to be threats of suicide. CP at 238. Mr. Phifer admits he told Ms. Alvarado he was sharpening knives, but claims he was never suicidal and did not make suicidal statements. CP at 13-15, 62.

When an injured worker threatens to commit suicide, Department policy directs employees to contact law enforcement. CP at 130, 137, 485-88. Employees have a copy of the policy with them at their desks, and Ms. Alvarado testified she received training on what to do if injured workers threaten to harm themselves. CP at 138, 146. Pursuant to the policy, and after speaking with her supervisors, Ms. Alvarado contacted the Yakima

Police Department to report her concern for Mr. Phifer's safety and what she perceived as a potential suicide threat. Op. at 3; CP at 146, 238, 479-80. That was the last involvement by the Department or a Department employee on August 4, 2008.

C. The Yakima Police Perform a Welfare Check on Mr. Phifer

After receiving Ms. Alvarado's call, the Yakima Police Department dispatch sent officers to Mr. Phifer's home for a welfare check and mental health assistance. Op. at 3; CP at 468. Dispatch informed the responding officers that "Bea" (Ms. Alvarado) with the Department of Labor and Industries "was concerned about statements made by a client identified as Phifer, Freddy J . . . ." *Id*. Dispatch also relayed to the officers that Mr. Phifer had a concealed weapons permit, which meant officers acted under the assumption Mr. Phifer was armed. CP at 441, 468.

Three officers arrived at Mr. Phifer's home and met him at the front door. *Id*. Mr. Phifer admitted to the officers he told Ms. Alvarado "that [he] had some sharp knives." *Id*. He also told the officers he lost his job and was probably going to lose his house, and after Mr. Phifer referenced going to "heaven," the officers decided to place him in handcuffs for everyone's safety. Op. at 3; CP at 441, 468. Officers told Mr. Phifer he was going to be taken to the station for a mental health evaluation and Mr. Phifer asked if it could be done at his residence. CP at 441, 468. An officer then contacted

Michael Cape of Central Washington Comprehensive Mental Health; "[w]ith the statements Phifer made and the medical advise [*sic*] of Cape, it was determined Phifer should be taken into custody for a mental health evaluation. Cape stated he would meet [Phifer and the officers] at the station as soon as he finished at the hospital." *Id*. Mr. Cape eventually determined Mr. Phifer was depressed but he did not believe Mr. Phifer would harm himself. *Id*. Mr. Phifer was released shortly thereafter. *Id*.

IV. ARGUMENT

A. This Court Should Decline Review of Issues Petitioner Did Not Raise in the Trial Court Despite the Opportunity to Do So.

Mr. Phifer failed to preserve for appeal the issues of sovereign immunity and heightened duty, and this Court should decline review. Generally, an issue not raised in the trial court may not be raised on appeal. RAP 2.5(a). The rule exists for two important reasons: (1) so the trial court has an opportunity to correct the error, and (2) to give the opposing party an opportunity to respond. *State v. Blazina*, 182 Wn.2d 827, 833, 344 P.3d 680 (2015). RAP 2.5(a) defines three exceptions to the general rule, allowing consideration of errors raised for the first time on appeal when they concern (1) lack of trial court jurisdiction, (2) failure to establish facts upon which

relief can be granted, or (3) manifest error affecting a constitutional right. None of the exceptions apply in this case.

Mr. Phifer's two new issues involve vague allegations of sovereign immunity under RCW 4.92.090 and *Joyce v. Dept. of Corrections*, 155 Wn.2d 306, 323, 119 P.3d 825 (2005); and an alleged heightened duty under *Hutchins v. 1001 Fourth Ave. Assoc*., 116 Wn.2d 217, 227, 802 P.2d 1360 (1991). Appellant's Petition, pp. 9-10. Mr. Phifer raised neither to the trial court and the court of appeals properly exercised its discretion and refused to consider them on appeal.

1. The issue of sovereign immunity was not raised at the trial court, nor is it relevant to this case.

For the first time on review, Mr. Phifer raises issues with sovereign immunity; however, his application to this case is incorrect. The statute waiving sovereign immunity does not render the state liable for all misconduct. *Bailey v. Town of Forks*, 108 Wn.2d 262, 737 P.2d 1257 (1987). Governmental entities are held to the same standard as private ones *Bishop v. Miche*, 137 Wn.2d 518, 529, 137 P.2d 465 (1999), and the Department has never disputed this idea. It is not entirely clear why Mr. Phifer makes general references to sovereign immunity now, as the Department never asserted immunity from suit. Curiously, his petition maintains the appellate court's decision conflicts with RCW 4.92.090,

Joyce, 155 Wn.2d at 309, and *Wash. State Dep't of Transp. v. Mullen Trucking*, 194 Wn.2d 526, 531, 451 P.3d 312 (2019), which all reference sovereign immunity in very general terms. Appellant's Petition, pp. 9-10. There is no explanation or analysis as to how the appellate court's decision conflicts with these general propositions. That is likely because no argument exists.

In this case, the trial court and court of appeals addressed the issue of duty and correctly found it did not exist. The issue of sovereign immunity was not raised, nor is it properly in front of this Court. RAP 2.5(a). Even if it were, Mr. Phifer fails to present any factual or legal argument related to sovereign immunity and its application to this case, let alone establish how it conflicts with Supreme Court precedent as required for review under RAP 13.4.

2. Mr. Phifer's heightened duty argument was not in front of the trial court.

The Court of Appeals correctly exercised its discretion to decline to consider Mr. Phifer's heightened duty argument. Op. at 10-11. Mr. Phifer did not raise, and the trial court did not consider, the issue of heightened duty while ruling on the Department's motion for summary judgment. Mr. Phifer claims the Court of Appeals erred and cites clerk's papers 80-81, 203-04, 332-33, 368, and 444; however, none of the referenced cites deal with a heightened duty argument. Appellant's Petition, p. 16. Instead, Mr. Phifer seems to improperly conflate the concept of a special relationship with heightened duty.

The issue of a duty based on a special relationship was briefed and argued at the trial court level; however, that is separate and apart from an alleged heightened duty. *Hendrickson v. Moses Lake Sch. Dist.*, 192 Wn.2d 269, 276-77, 428 P.3d 1197 (2018) ("[E]ven when the parties have a special relationship, the standard of care remains one of ordinary, reasonable care.") Because the heightened duty argument was not in front of the trial court and the Court of Appeals property exercised its discretion to decline to consider the argument, it should not be considered on review. RAP 2.5(a).

B. The Court of Appeals Decision Comports with Supreme Court Precedent When Finding No Duty of Care.

Even if the issues of sovereign immunity and heightened duty were properly raised, the trial court correctly determined no duty of care exists, whether based on a special relationship or not, and whether it was ordinary or heightened.

Whether or not a duty exists is a question of law. *Folsom v. Burger King*, 135 Wn.2d 658, 671, 958 P.2d 301 (1998). The existence of a duty can arise either from common law principles or from a statute. *M.M.S. v. Dep't. of Soc. & Health Servs.*, 1 Wn. App. 320, 326, 404 P.3d 1163 (2017). Here, the Court of Appeals followed Washington law and determined the Department did not owe Mr. Phifer any such duty.

1. The Court of Appeals cited and followed Supreme Court precedent when finding no common law duty of care.

Duty is often referred to as "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another." *Transamerica Title Ins. Co. v. Johnson*, 103 Wn.2d 409, 413, 693 P.2d 697 (1985) (quoting Prosser on Torts, § 53 (3rd ed. 1964)). If the conduct of an actor does not involve an unreasonable risk of harm to the person injured, there is no duty to the person and no actionable negligence. *Rose v. Nevitt*, 56 Wn.2d 882, 885, 355 P.2d 776 (1960).

As explained by the Court of Appeals, "[a] person is not tortuously liable for reporting a matter of concern to law enforcement, or for the actions taken by law enforcement following the report." Op. at 8. The court relied on Supreme Court precedent of *Parker v. Murphy*, 47 Wn. 558, 560, 92 P. 371 (1907), in reaching this conclusion. Op. at 8. The *Parker* opinion has been relied upon by other courts as well. In *McCord v. Tielsch*, 14 Wn. App. 564, 566, 544 P.2d 56 (1975) (footnote omitted), the court held,

> We think [*Parker v. Murphy*, 47 Wash. 558, 92 P. 371 (1907)] and the other Washington cases evidence a rule that liability will not be imposed when the defendant does nothing more than detail his version of the facts to a policeman and ask for his assistance, leaving it to the officer to determine what is the appropriate response, at least where his representation of the facts does not prevent the intelligent exercise of the officer's discretion.

"Here, Ms. Alvarado did nothing other than what the shop owner did in *Parker*." Op. at 8. She called the police to relay her concerns and the officers did the rest. Op. at 8-9. "Reporting a potentially suicidal person does not create an appreciable risk of harm to that person. Not reporting a potentially suicidal person does create an appreciable risk." Op. at 9. Logic, common sense, policy and precedent do not support a duty in this case. Op. at 9.

Mr. Phifer argues the Department owed him a duty "to listen and ask appropriate questions to determine the appropriate way to respond to

[his call]," Op. at 7., making what is essentially a veiled claim of negligent claims administration. Washington law, however, does not recognize claims for negligent claims administration. *See Cena v. State*, 121 Wn. App. 352, 356-57, 88 P.3d 432 (2004) (no claim for negligent claims administration under the Industrial Insurance Act). Washington courts have consistently rejected attempted claims for negligent claims administration under the exclusive remedies provision of the Industrial Insurance Act (IIA), which "is sweeping, comprehensive and of the broadest, most encompassing nature." *Cena*, 121 Wn. App. at 356. Indeed, "[t]he exclusive remedy provisions in RCW 51.04.010 withdraw from private controversy 'all phases of the premises' and consider the administration of a claim as involving one of those phases." *Cena*, 121 Wn. App. at 356-57 (citing *Wolf v. Scott WetzelServs., Inc.*, 113 Wn.2d 665, 675, 782 P.2d 203 (1989)). Therefore, the argument for negligent claims administration fails.

2. Supreme Court precedent shows no duty based on a special relationship.

In Washington, there is no duty to prevent injury caused by a third party unless "a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party's conduct." *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 50, 929 P.2d 420 (1997). Contrary to Mr. Phifer's argument, *Hutchins* and other special relationship

cases do *not* stand for the proposition a heightened duty is owed. *See* Appellant's Petition, p. 16. In fact, nowhere in the entire *Hutchins* opinion does it mention a heightened duty or heightened standard of care. *Hutchins*, 116 Wn.2d at 219-237. A special relationship does not impose a different or heightened duty, it merely defines whether a duty is owed. *Hendrickson,* 192 Wn.2d at 276-77.

According to the Restatement (Second) of Torts § 315, a duty based on a special relationship only arises where (a) a special relationship exists between the defendant and the third person which imposes a duty upon the defendant to control the third person's conduct, or (b) a special relationship exists between the defendant and the other which gives the other a right to protection. *See Niece*, 131 Wn.2d at 43.

Washington courts have consistently found that special relationships are protective or custodial in nature. *Hutchins*, 116 Wn.2d at 227-28; *see also HBH v. State*, 192 Wn.2d 154, 429 P.3d 484 (2018). For example, courts recognize a special relationship between a student and school district. *See McLeod v. Grant Co. Sch. Dist*., *No. 128*, 42 Wn.2d 316, 255 P.2d 360 (1953); *see also Hendrickson v. Moses Lake Sch. Dist*., 192 Wn.2d 269, 428 P.3d 1197 (2018). The relationship gives rise to a duty because "[s]chool districts have a custodial relationship with their students – '[i]t is not a voluntary relationship.'" *Hendrickson*, 192 Wn.2d at 276 (quoting

McLeod, 42 Wn.2d at 319). Several other examples of recognized special relationships are enumerated in Restatement (Second) of Torts § 314A – a common carrier and its passengers; an innkeeper to its guests; or a possessor of land that holds it open to the public. The common thread among all recognized special relationships is that they are protective in nature, and they "historically involve an affirmative duty to render aid." *Hutchins*, 116 Wn.2d at 228.

None of the special relationship characteristics exist in this case. Mr. Phifer was not under the care or control of the Department, and, in fact, he actually had opposing interests from the Department at the time this incident occurred. CP at 12. The Department was still investigating Mr. Phifer's underlying industrial injury claim and had not made any final decisions. CP at 12. Nor was Mr. Phifer physically located on the Department premises. Ms. Alvarado was having a remote telephone conversation with Mr. Phifer, who was physically located in his own home and engaged in conduct of his own choosing – sharpening knives, per his own report. CP at 13-15, 62. The Department did not have complete control over Mr. Phifer, and his attempts to analogize his situation to that of a jailer and inmate should be rejected. *See* Appellant'sPet., p. 18 (citing *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 635, 244 P.3d 924 (2010)). Because

Mr. Phifer was not under the Department's custody or protection, it did not have a special relationship with him. *See Hutchins*, 116 Wn.2d at 227-28.

3. The Court of Appeals correctly determined statutes do not impose liability on the Department.

Mr. Phifer insinuates throughout his brief that the Industrial Insurance Act (RCW Title 51) creates a special relationship and a heightened duty of care. *See* Appellant's Pet., pp. 16-19. The argument was not properly raised at the trial court and should not be considered; however, even if considered, the argument is without merit. The special relationship argument presented in Mr. Phifer's brief relates to a common law duty for injuries caused by the intentional acts of third parties. *See Id.* at p. 16 (citing *Hutchins*, 116 Wn.2d at 227-28). To the extent, however, that Mr. Phifer continues to misconstrue RCW Title 51 as creating an actionable duty of care, the public duty doctrine bars any such claim and its exceptions are inapplicable.

"When the defendant in a negligence action is a governmental entity, the public duty doctrine provides that a plaintiff must show the duty breached was owed to him or her in particular, and was not the breach of an obligation owed to the public in general, i.e. a duty owed to all is duty owed to none." *Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 878, 288 P.3d 328 (2012). The doctrine is simply a tool used to narrow focus

when determining "whether a defendant owed a duty to a nebulous public or a particular individual." *Id.* (quoting *Osborn v. Mason Cty.*, 157 Wn.2d 18, 27, 134 P.3d 197 (2006)).

There are four exceptions to the public duty doctrine: (1) legislative intent, (2) failure to enforce, (3) the rescue doctrine, and (4) a special relationship. *Munich*, 175 Wn.2d at 879. If any exception applies, the governmental entity owes a duty to the plaintiff. *Id*

Mr. Phifer appears to rely on RCW 51.04.030 and RCW 48.30.015 in attempts to establish a statutory duty. *See* Appellant's Petition, pp. 17-18. He argues that, pursuant to RCW 48.30.015, an insurer has a "duty to promptly, fairly, and in good faith investigate its insured's claims and provide the benefits that the insured is entitled to." Appellant's Petition, p. 17. The first problem with Mr. Phifer's position is that industrial insurance is *not governed* by RCW 48.30.015 – nor any other provision under RCW Title 48. Industrial insurance in the State of Washington is governed by RCW Title 51, as opposed to RCW Title 48. The two types of insurance Mr. Phifer has conflated are fundamentally different, which is why his analogy to bad faith law is unavailing. Further, Mr. Phifer does not allege a bad faith claim, which is its own independent cause of action. *See* WPI Chapter 320 (Insurance Bad Faith Actions).

Industrial insurance, on the other hand, is a no fault system specifically "withdrawn from private controversy." RCW 51.04.010. There is no contract, there is no private cause of action, and there is no insurer/insured relationship falling under RCW Title 48.

Next, Mr. Phifer quotes RCW 51.04.030, a statute establishing rules on medical aid, maximum fees, and records for physicians working on industrial injury claims. *See* Appellant's Petition, pp. 17-18. That statute sets forth obligations the Department owes to the public in general, and not anyone in particular. *See Munich*, 175 Wn.2d at 878. Further, neither the legislative intent exception nor the special relationship exception applies in this case.

The legislative intent exception provides that liability to an individual can exist if a statute evidences "a clear intent to identify and protect a particular and circumscribed class of persons." *Halverson v. Dahl*, 89 Wn.2d 673, 676, 574 P.2d 1190 (1978). Here, the legislature expressly disavowed any liability on the part of the Department for claims falling short of outrage within the workers compensation scheme:

> The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided

> in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided.

RCW 51.04.010; *see also Cena*, 121 Wn. App. at 356-57 (claims falling short of outrage do not pass the separate injury test). Any argument that RCW 51.04.030 somehow creates an individualized, actionable tort duty, and not a duty owed to the general public, is contrary to the express direction of the legislature.

Nor does the special relationship exception to the public duty doctrine apply. A special relationship can give rise to an actionable duty, if three elements are met: (1) direct contact or privity between the public official and the plaintiff that sets the plaintiff apart from the general public, (2) an express assurance given by the public official, and (3) justifiable reliance on the assurance by the plaintiff. *Munich*, 175 Wn.2d at 879. Case law typically focuses on express assurances given by 911 operators in emergencies. *Id.* To satisfy the second element, there must be evidence of an unequivocally given assurance. *Cummins v. Lewis Cty.*, 156 Wn.2d 844, 855, 133 P.3d 458 (2006). "A government duty cannot arise from implied assurances." *Id.*

No express assurances were given in this case. There is no evidence, not even in Mr. Phifer's own declarations and testimony (CP at 12-15), that

shows Ms. Alvarado gave Mr. Phifer any type of assurance, whether implied or expressed. Thus, the special relationship exception does not recognize a duty in this case under RCW Title 51.

C. The Court of Appeals Correctly Found the Department's Internal Memorandum Did Not Create a Duty, and Even If So, the Department Did Not Breach That Duty.

Internal agency policies do not create an independent legal duty. *Hungerford v. State Dep't of Corrs.*, 135 Wn. App 240, 258, 139 P.3d 1131 (2006). This Court explained, "[u]nlike administrative rules and other formally promulgated agency regulations, internal policies and directives generally do not create law. . . . [B]ecause the Department's policy directives are not promulgated pursuant to legislative delegation, *they do not have the force of law*." *Joyce*, 155 Wn.2d at 323 (emphasis added).

Mr. Phifer's argument that the internal agency policy creates some kind of duty is the exact argument rejected by the courts in *Hungerford* and *Joyce.* Even if some kind of duty were imposed, there is no genuine issue of material fact that the Department complied with the policy. Op. at 9-10. The internal policy explains, "when an injured worker tells you that he/she is threatening to commit suicide, you need to contact the appropriate County Law Enforcement Agency in the county where the worker lives." CP at 396. Ms. Alvarado did exactly that.

Mr. Phifer also cites RCW 5.40.050 in support of his argument. The statute generally makes violation of a statute, ordinance, or administrative rule

evidence of negligence. RCW 5.40.050. This argument fails. As discussed by this court in *Joyce*, internal policies are different from statutes, ordinance or administrative rules; and therefore, RCW 5.40.050 has no application to the internal agency policy in this case.

V. CONCLUSION

Mr. Phifer's sovereign immunity and heightened duty arguments should not be considered under RAP 2.5(a) because they were not raised at the trial court level. Even if these arguments are considered, Mr. Phifer fails to establish a duty of care under any theory advanced in his petition. No special relationship exists, no heightened duty exists, no duty of ordinary care exists, and the internal policy does not create a duty. "Logic, common sense, policy and precedent do not support imposing liability on persons for reporting suicidal people." The Department respectfully requests the Court deny Mr. Phifer's petition for review.

RESPECTFULLY SUBMITTED this 28th day of April, 2020.

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PROOF OF SERVICE

I certify that I served a copy of the foregoing document on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of April, 2020, at Spokane, Washington.

s/Derek T. Taylor
DEREK T. TAYLOR

WASHINGTON ATTORNEY GENERAL SPOKANE TORTS

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