

COURT OF APPEALS  
DIVISION II

No. 38749-2-II

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IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON  
DEPUTY

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GROUP HEALTH COOPERATIVE, INC., a Washington corporation;  
and JITESH CHAWLA and "JANE DOE" CHAWLA, and GROUP  
HEALTH PERMANENTE, P.C., a Washington corporation,

Appellants/Defendants,

vs.

KARI CHAVEZ, individually and on behalf of all others similarly  
situated; PATTI FILAND, individually and on behalf of all other similarly  
situated; ALISA JACKSON, individually and on behalf of all others  
similarly situated,

Respondents/Plaintiffs.

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APPELLANT GROUP HEALTH COOPERATIVE, INC.'S REPLY  
BRIEF

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**ORIGINAL**

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## I. INTRODUCTION

A party's aspiration of class certification should never strip a non-party patient's state and federally protected right to keep his/her patient health care information private and confidential. No Washington law permits a trial court to indiscriminately apply a post-certification notice procedure (from *Wright v. Jeckle*) to this pre-certification case, wherein Group Health is forced to disclose a purported "class list" before the class is actually certified.

"Given that there is no clear authority allowing the trial court to order pre-certification mailing to potential class members where patient privacy interests may be affected, even using the process approved" in *Wright v. Jeckle*, the trial court abused its discretion when it denied Group Health's request for a protective order (quoting Commissioner Schmidt's Ruling at 5).

Moreover, sweeping the CR 23(c)(2) formal class certification notice requirements under the rug of CR 26 discovery is an abuse of discretion when it involves divulging the names, last known addresses, and telephone numbers of all female patients who received medical treatment from Dr. Chawla. The reality of the matter is that divulging this information—without the patient's express consent—is a violation of state and federal law.

Respondent Chavez’s repeated reliance on CR 26 is so strained it snaps—particularly since none of the state and federal cases upon which she relies provide clear authority for violating the confidentiality of a non-party patient’s health care information.

Accordingly, Group Health respectfully requests that this Court reverse the trial court’s order denying Group Health’s request for a protective order to protect the names, addresses, telephone numbers, and medical information of its patients prior to class certification.

## **II. THREE CORRECTIONS TO RESPONDENT CHAVEZ’S STATEMENT OF THE CASE**

Group Health respectfully submits three corrections to Respondent Chavez’s Response Brief. First, Respondent Chavez’s “Statement of the Case, Factual Background” summarizes the allegations in her Complaint, then states that “[a]t class certification, Plaintiffs must provide support for these allegations and thus demonstrate that their claims arise out of a common course of conduct engaged in by Chawla and Group Health toward female patients.” (Resp. Br. at 5) The foregoing statement is a gross generalization.

To obtain class certification, Respondent Chavez must strictly satisfy each of the prerequisites of CR 23(a)-(b), which are as follows:

(a) *Prerequisites to a class action* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Class actions maintainable* An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for

the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

CR 23(a)-(b).

Second, Respondent Chavez asserts in her “Statement of the Case, Procedural Background” that “[b]efore responding to the interrogatories and without conferring with Plaintiffs, Group Health moved for a protective order, asserting patient confidentiality.” (Resp. Br. at 5, citing CP 32-45) In fact, Group Health’s counsel *did* confer with plaintiff’s counsel twice on October 14, 2008, and filed a Declaration stating that the requirements of CR 26(i) were met. (CP 123-25)

Third, Respondent Chavez states in her “Statement of the Case, Procedural Background” that Group Health had “very few” objections to the language of plaintiff’s proposed letter to Group Health’s patients, and noted that the proposed letter states that medical records have been and will continue to remain confidential. (Resp. Br. at 7, wherein Respondent Chavez cites RP 15:9-12 (Dec. 5, 2008)). This passage, while correctly quoted,

ignores the context of the statement, to wit: Judge Felnagle had already denied Group Health's request for a protective order and indicated that some form of notice letter would be issued. While Group Health remained adamantly opposed at all times to (1) disclosing its patient's confidential health care information; and (2) any pre-certification notice procedure, the trial court's approval of a notice process was *a fait accompli*. For Respondent Chavez to now suggest that Group Health waived any objections by counsel's remark is disingenuous.

As stated in oral argument, all counsel had previously spent over one hour hammering out the language in the letter, line-by-line, pursuant to the trial court's order. (RP 4:6-12 (Dec. 5, 2008)). Accordingly, at oral argument Group Health focused on language in Group Health's proposed order and plaintiff's proposed order denying Group Health's motion for a protective order. (RP at 7-13 (Dec. 5, 2008)) As evident throughout its trial and appellate court briefing, Group Health adamantly disagrees with the content of the letter and the mailing process because violates its patients' right to medical privacy.

### **III. SUMMARY OF ARGUMENT SUBMITTED IN STRICT REPLY TO RESPONDENT CHAVEZ'S RESPONSE BRIEF**

Respondent Chavez contends that her “interest in discovery outweighs the potential class members’ interest in keeping their names and addresses private.” (Resp. Br. at 4). However, both the facts and the law are more complicated than her sweeping generalization.

No one disputes that CR 26(b)(1) allows a broad scope of discovery, the only restrictions being that the matter must be relevant and not privileged. (Resp. Br. at 11) However, the integrity of discovery disintegrates when a Court does not properly weigh the interests of the parties, which necessarily may involve consideration of statutory confidentiality or privacy interests of non-parties.

To that end, CR 26(c) provides that upon “good cause shown” the court may make “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” A protective order may include, for example, one of the following limitations: (1) not allowing the discovery to be had; (2) that the discovery may be had only on specified terms and conditions; or (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery. CR 26(c).

Group Health argued—and the trial court agreed—that the names, addresses, telephone numbers, and the fact that female patients were medically treated by Dr. Chawla is protected information. The trial court stated: “The first question is whether it’s protected material or whether it’s directory information, and I don’t think it’s mere directory information. *I do think it’s protected.*” (RP 22:19-23 (Oct. 24, 2008) (emphasis added)) The trial court abused its discretion by subsequently denying Group Health’s request for a protective order, particularly because it had no clear legal authority allowing it to order Group Health to violate its patients’ statutory medical confidentiality.

Likewise, Respondent Chavez has not submitted a single case to the trial court or to this Court, nor cited an exception to either HIPAA or UHCIA that authorizes a health care provider to release a non-party patient’s health care information to anyone or any entity absent the patient’s signed authorization per RCW 70.02.020(1). Not surprisingly, no case, rule, or statute grants such broad “discovery” to a plaintiff. Rather, it is only after a class has been certified under the guidelines of CR 23(a)-(b) that the Court may give formal notice to absent members of the class pursuant to CR 23(c)(2).

Further, Respondent Chavez has already availed herself to other less intrusive avenues to discover potential class members for the purpose of satisfying the elements necessary for class certification. For example, Chavez's attorney paid for full-page legal advertisements in Tacoma and Olympia newspapers, stating in bold capital letters and underlines: **"ATTENTION: FEMALE PATIENTS OF GROUP HEALTH Tacoma, did you or your children have an Appointment with Dr. Jitesh Chawla?"** (CP 317) The full-page legal advertisement states **"A class action lawsuit** has been filed against GROUP HEALTH and Dr. Chawla." (CP 317) **"Contact Attorney Thaddeus P. Martin** if you have information or if [sic] believe that you or your children were the **victim** of an **Inappropriate Examination by Dr. Chawla at Group Health.**" (CP 317) This is a direct invitation by an attorney for potential class members to join Chavez's putative class action, without violating the female patients' health care privacy.

Finally, Respondent Chavez's proposed "new language" (adding 160 more words) to the putative class action solicitation letter does not vitiate the privacy interests of Group Health's patients. (Resp. Br. at 40) The letter is on the plaintiff's counsel's firm letterhead with a return address of "Garden City

Group” to be opened by anyone. Moreover, Respondent’s proposed “new language” in her response brief should be disregarded because it is not properly before this Court. The trial court’s ruling on appeal and Commissioner Schmidt’s ruling granting discretionary review is premised on the original letter and envelope—not multiple variations submitted in subsequent appellate briefing. Accordingly, Respondent’s “new” letter should be disregarded.

#### **IV. REPLY ARGUMENT**

##### **A. The Standard of Review is Abuse of Discretion and *De Novo***

Group Health and Chavez agree that this appeal involves issues reviewed for an abuse of discretion, but Chavez contends that Group Health is “mistaken” in also applying *de novo* review to the trial court’s order denying Group Health’s motion for a protective order. (Resp. Br. at 9)

Notably, the trial court’s order heavily relies upon its interpretation of Washington’s Uniform Health Care Information Act (RCW 70.02) and its federal counterpart, the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320). Also, the trial court makes specific legal findings in its order. (CP 241-43)

It has been and continues to be Group Health's position that the court-ordered dissemination of this information requires that Group Health violate the Washington Uniform Healthcare Information Act ("UHCIA") and the federal Health Insurance Portability and Accountability Act ("HIPAA"). Of equal importance is the corresponding violation of the spirit of the commitment by Group Health to its patients. Group Health's opening brief addresses the trial court's error and argues that UHCIA and HIPAA protect a non-party patient's medical privacy. Likewise, Respondent Chavez devotes a significant portion of her brief to statutory construction and analysis. (Resp. Br. at 28-33)

"A court's interpretation of a statute is inherently a question of law; this court reviews questions of law *de novo*." *Smith v. Continental Cas. Co.*, 128 Wn.2d 73, 78, 904 P.2d 749 (1995); *Dioxin Ctr. v. Pollution Board*, 131 Wn.2d 345, 352, 932 P.2d 158 (1997). Accordingly, the *de novo* standard of review also applies in this appeal.

**B. None of Respondent's Cases Authorize a Trial Court to Disclose a Non-Party Patient's Health Care Information in the Context of a Pre-Certification Class Action Involving Allegations of Medical Malpractice.**

Respondent Chavez seeks to "discover" and contact other non-party patients at Group Health who were treated by Dr. Chawla, for the purpose of

establishing the elements of numerosity and typicality for class certification under CR 23. However, none of the federal and state cases cited in her response brief provide clear legal authority that allows the trial court to order Group Health to produce its patients' names, addresses, telephone numbers and disclosure of treatment by Dr. Chawla to anyone—including third-party administrators—without a written and signed authorization.

None of the cases cited in her response brief authorize disclosure of non-party patient privacy interests in the context of discovery to obtain class certification. Accordingly, such disclosure must be protected as required by RCW 70.02, absent clear authority allowing the trial court to order pre-certification mailing to potential class members.

Group Health will briefly address why the state and federal cases upon which Respondent Chavez rely are inapt in this putative class action medical malpractice case. Significantly, no privacy interests are at stake in the following cases cited by Respondent (Resp. Br. at 12-14): *Hoffman La-Roche, Inc. v. Sperling*, 493 U.S. 165, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989) (age discrimination case wherein the ADEA expressly authorizes employees to bring collective age discrimination actions on behalf of themselves and other employees similarly situated, and the court has a managerial responsibility to oversee the joinder of additional parties); *Gulf Oil Co. v. Bernard*, 45 U.S. 89, 1015 S. Ct. 2193, 68 L. Ed. 2d. 693 (1981)

(racial discrimination employment case wherein court abused discretion by entering a restraining order without weighing competing factors); *Howard Gunty Profit Sharing Plan v. Superior Court*, 105 Cal. Rptr. 2d 896 (Cal. Ct. App. 2001) (putative class action by a profit sharing plan against a banking corporation); *Shannon v. Hess Oil Virgin Islands Corp.*, 96 F.R.D. 236 (D.V.I. 1982) (denying defendant's 12(b) motion to dismiss plaintiffs' race and gender employment discrimination claims); and *Duke v. Univ. of Texas at El Paso*, 729 F.2d 994 (5<sup>th</sup> Cir. 1984) (alleging gender discrimination in pay and promotion).

The parties have extensively briefed *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978). To be clear, Justice Powell, on behalf of the Supreme Court, opined as follows: "We hold that Rule 23(d), which concerns the conduct of class actions, *not the discovery rules*, empowers the District Court to direct petitioners to help compile such a list. We further hold that, although the District Court has some discretion in allocating the cost of complying with such an order, that discretion was abused in this case. We therefore reverse and remand." *Id.* at 2385 (emphasis added).

The Court concluded as follows: "Our conclusion that Rule 23(d), not the discovery rules, is the appropriate source of authority is supported by the fact that, although a number of courts have ordered defendants to help

identify class members in the course of ordering notice, few have relied on the discovery rules.” *Id.* at 354 n.23. Stated differently, “we do not think that the discovery rules are the right tool” for providing notice to absent class members. *Id.* at 2391.

Respondent Chavez relies on *Martin v. LaFon Nursing Facility*, 244 F.R.D. 352 (E.D. La. 2007) for permitting discovery of potential patient plaintiffs for the purpose of determining the court’s jurisdiction under the Class Action Fairness Act. However, *Martin* is not useful to the case at bar because the court relied on language contained in Louisiana’s convoluted health care statutes, which are vastly different than Washington’s Uniform Health Care Information Act. *Id.* at 357 (quoting Louisiana’s health care statutes in tandem with its Rules of Evidence). *See* Resp. Br. at 18.

Likewise, *Gazelah v. Rome Gen. Prac., P.C.*, 502 S.E.2d 151 (Ga. App. 1998) is not helpful because Georgia Code Ann. § 24-9-40 (disclosure of medical information differs from language contained in Washington’s Uniform Health Care Information Act. Moreover, the *Gazelah* Court relied on its holding in *Nat’l Stop Smoking Clinic v. Dean*, 378 S.E.2d 901 (1989) (wherein the Court states that Georgia does not recognize a physician-patient privilege in its evidentiary rules). *See* Resp. Br. at 19.

Similarly, *In Re Fort Worth Children’s Hosp.*, 100 S.W.3d 582 (Tex. App. 2003) is unavailing because the court determined that a “face sheet” and

a name were not protected by Texas Health and Safety Code Ann. §241.152 and that pursuant to Texas Rule of Evidence 509(a)(2), the Hospital did not meet the definition of “physician” to be protected by the physician-patient privilege. Again, the differences between the Texas statutes and Washington’s Uniform Health Care Information Act belie its application to the case at bar. *See* Resp. Br. at 19.

*In House v. SwedishAm. Hosp.*, 564 N.E.2d 922 (Ill. App. 1990), the Appellate Court of Illinois held that the mere *name* of a patient who allegedly assaulted the plaintiff was not protected health care information. However, the court reiterated its recent holding in *Ekstrom v. Temple*, 553 N.E.2d 424 (1990) that “medical records of nonparty patients were privileged and not subject to disclosure, even though a different result would have been reached had the patients been parties to the malpractice action.” *House*, 564 N.E.2d at 926. This holding was premised on the court’s interpretation of the physician-patient privilege in Ill. Rev. Stat. 1987, ch. 110, par. 8—802.

Like the other cases cited by Respondent Chavez, *Miller v. Savanna Maint. Assoc.*, 979 S.2d 1235 (Fla. App. 2008) does not authorize the disclosure of confidential medical information for the purpose of contacting non-parties to support a class certification. Rather, Miller was required to produce the names and addresses of current and former residents of an assisted living facility, which she was allegedly running in violation of the

homeowner's regulations. *Id.* Notably, the names and addresses were unconnected to any medical forms or medical information. *Id.* at 1237.

Respondent Chavez claims that "plaintiffs' counsel routinely seek and receive discovery of class member names and contact information so they can interview witnesses and establish the requirements of CR 23." (Resp. Br. at 21, citing CP 142-46) However, in *Taber v. Oasis Physical Therapy et al.*, Franklin County Superior Court No. 08-2-50576-9, after allowing plaintiff access to the physical therapy facility's patient list (1,400 patients) in a medical malpractice case (using the same sort of solicitation letter at issue in this case and hiring Garden City Group—*see* CP 156-58), the Franklin County Superior Court denied plaintiff's motion for class certification on August 7, 2009, because plaintiff Taber failed to satisfy the numerosity and superiority elements of CR 23. In the context of medical treatment, this is not surprising. *See also In re Air Disaster Near Honolulu, Haw.*, 792 F. Supp. 1541 (N.D. Cal. 1990) (finding that individualized issues predominate in any personal injury class action).

Finally, Respondent Chavez's generalization of what the courts "favor" in Washington is a bit misleading. (Resp. Br. at 25) *Smith v. Behr Process, Inc.*, 113 Wn. App. 306, 54 P.3d 665 (2002) states that "courts have generally rejected a per se rule *against product liability actions* in favor of a case-by-case application of class certification requirements." *Id.* at 322

(emphasis added). *Behr* was a product liability case that also included a Consumer Protection claim. *Behr* cites *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227 (9<sup>th</sup> Cir. 1996), which states: “We hold that the law of this circuit, and more specifically our leading decision in *Dalkon Shield*, does not create any absolute bar to the certification of a multi-state plaintiff class action in the medical products liability context.” *Id.* at 1230. Significantly, the Ninth Circuit vacated class certification, holding that “on the basis of the record before us, that we must vacate this class certification order, because there has been no demonstration of how this class satisfies important Rule 23 requirements, including the predominance of common issues over individual issues and the superiority of class adjudication over other litigation alternatives.” *Id.*

**C. Courts Interpreting the Parameters of Discovery Should Be Fair and Equitable, and Weigh the Respective Interest of the Parties.**

Respondent Chavez complains that it is neither fair nor equitable that Group Health may contact *its own patients* without providing her the same opportunity. (Resp. Br. at 20) First, Group Health is a medical service provider to its own patients—of course it may contact them. It also has a statutory duty to protect their privacy.

Second, it is not unusual for one party to have greater access to witnesses than another. For example, the seminal case of *Loudon v. Mhrye*,

110 Wn.2d 675, 756 P.2d 138 (1998) prevents defendants or defense counsel in any personal injury action from communicating *ex parte* with the plaintiff's treating physicians—even though the plaintiff has waived the physician-patient privilege. “We hold that *ex parte* interviews should be prohibited as a matter of public policy. The physician-patient privilege prohibits a physician from being compelled to testify, without the patient's consent, regarding information revealed and acquired for the purpose of treatment.” *Id.* at 677-78.

Likewise, Group Health is legally bound to protect its patients' medical privacy and not disclose confidential information without the patient's consent. Accordingly, the trial court abused its discretion when it ordered Group Health to turn over its patients' health care information to Respondent Chavez so that she could engage in *ex parte* communication with its patients.

**D. Washington Has a Proud History of Statutorily Protecting Confidential Information from Disclosure.**

Respondent Chavez asserts that “Washington has a proud history of protecting plaintiffs' right to access to the courts via the discovery rules.” (Resp. Br. at 3) As a preliminary matter, Chavez's “right to access to the court” is grounded in her ability to file a lawsuit—not in discovery. However, filing a lawsuit does not grant her unfettered access to discover

any and all information. In fact, there are dozens of state and federal statutes that protect both Respondent Chavez and a non-party's confidential or private information, including RCW 43.07.100 (information regarding personal affairs furnished to the Bureau of Statistics is deemed confidential); RCW 71.05.390 (information regarding the mentally ill is fully protected); and RCW 7.68.140 (information regarding records of crime victims is deemed confidential).

Other statutes protecting a citizen's confidentiality include RCW 15.65.510 (marketing agreements deemed confidential); RCW 18.46.090 (all information received by the Department regarding individuals at birthing center is confidential); RCW 18.71.0195 (medical disciplinary reports are confidential and exempt from public disclosure); RCW 19.16.245 (information contained in a collection agency's financial statement is confidential); RCW 24.03.435 (interrogatories propounded by the Secretary of State are confidential and not open to public inspection); RCW 24.06.480 (same).

The Public Disclosure Act contains a long list of certain records "the disclosure of which would violate personal privacy or vital governmental interests." RCW 42.56.210 protects the following disclosures: RCW

10.29.090 (accounting records of special inquiry judge); RCW 70.47.150 (basic health plan records); RCW 1.08.027, 44.68.060 (bill drafting service of code reviser's office); RCW 46.20.041 (certificate submitted by individual with physical or mental disability seeking a driver's license); RCW 15.54.362 (commercial fertilizers, sales reports); RCW 10.97 (criminal records); RCW 50.13.060 (employer information); RCW 43.06A.050 (family and children's ombudsman); RCW 44.68.060 (legislative service center, information); RCW 10.29.030 (organized crime advisory board files); RCW 43.43.856 (investigative information); RCW 47.04.240 (public transportation information); and RCW 41.06.160 (salary and fringe benefit survey information). This list is not exhaustive.

Federal statutes forbid disclosure except for limited purposes of census information (Census Act, 13 U.S.C. §§ 8, 9, 214 (1954)); data concerning personal lives and business affairs given for purposes of tax collection (Internal Revenue Code, 26 U.S.C. § 6103 (1964)); and disclosure by a federal officer of a wide range of confidential information concerning the operation of businesses (18 U.S.C. § 1905 (1948)).

Under CR 26(c), “the trial court exercises a broad discretion to manage the discovery process in a fashion that will implement the goal of full

disclosure of relevant information and at the same time afford the participants protection against harmful side effects.” *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 654 P.2d 673 (1982), aff’d, 476 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984). Violation of a patient’s medical privacy is one such harmful effect. The Uniform Health Care Information Act is intended to protect highly personal information regarding medical care, to encourage free communication between patients and providers, and to afford “clear and certain rules” for the disclosure of patient information. The “findings” section of the UHCIA states:

Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy, health care, or other interests.

\* \* \*

In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

RCW 70.02.005(1) and (3). These rules also extend to non-health care providers, which include the trial court, counsel, and third-parties (such as mailing agent Garden City Group), should Group Health’s patients’ records be disclosed: The “public policy of this state” is that “a patient’s interest in the proper use and disclosure of the patient’s health care information

survives,” even in the hands of a non-health care provider. RCW 70.02.005(4). “These findings show the importance of the substantive rights that patients and health care providers have under the Health Care Information Act.” *Wynn v. Earin*, 163 Wn.2d 361, 372, 181 P.3d 806 (2008) (holding that the Health Care Information Act prevails over the common law witness immunity rule, and that the Health Care Information Act provides substantive rights to patients and health care professionals regarding disclosure of health care information, and enforcement of these rights is within the legislature’s province).

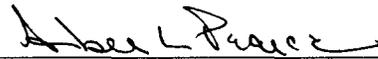
## V. CONCLUSION

For the reasons set forth above, Group Health respectfully requests that the Court reverse the trial court’s order commanding Group Health to violate its patients’ privacy, absent written authorization, and commanding Group Health to produce a list containing the identify and healthcare information of its female patients before the putative class has been properly certified. The trial court abused its discretion in denying Group Health’s request for a protective order. It also incorrectly interpreted and applied the law set forth in RCW 70.02.

Dated this 11 day of September, 2009.

Respectfully submitted,

FLOYD, PFLUEGER & RINGER, P.S.



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**CERTIFICATE OF SERVICE**

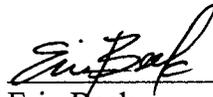
THIS IS TO CERTIFY that on the 11<sup>th</sup> day of September, 2009, I caused to be served a true and correct copy of the foregoing via electronic mail and legal messengers addressed to the following:

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