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

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CARLOS JOHN WILLIAMS,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent.

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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

Plaintiff/Appellant Carlos Williams (Williams) sent a prison kite to his counselor for a copy of his DOC treatment plan from July 2013 and the counselor advised Williams to contact medical records. It is undisputed that after his initial request to his counselor, Williams was allowed to inspect his medical file several times and was offered a copy of the treatment plan if he paid for it. Williams claims that the Department violated both the Public Records Act (PRA), RCW ch. 42.56, and the Uniform Health Care Information Act (UHCIA), RCW ch. 70.02, in its responses to his requests. However, Williams' claims cannot be brought under the PRA because the UHCIA provides the exclusive mechanism for a patient to obtain his own medical records from a provider. Furthermore, the Department did not violate the UHCIA because it allowed Williams to both inspect his medical file and obtain a copy of the document prior to Williams filing the lawsuit.

## **II. STATEMENT OF THE CASE**

### **A. Procedural History**

Williams filed a pro se complaint in June 2014 alleging that DOC violated the PRA by not providing him a copy of a treatment plan he had requested in prison "kites" sent to his counselor and other prison staff. Kites are DOC forms inmates use to communicate with DOC staff members. CP 2-41. Williams filed his complaint pro se. *Id.* DOC moved to dismiss

Williams' action arguing that the UHCIA, not the PRA, applied to his request for his July 2013 treatment plan. Motion to Dismiss, Index No. 13<sup>1</sup>. Counsel appeared for Williams and moved to amend Williams' complaint. Motion to Amend Complaint, Index No. 17. Williams filed an amended complaint alleging violations of both the PRA and the UHCIA. First Amended Complaint, Index No. 24. Counsel for Williams then withdrew from representing him. Notice of Withdrawal of Attorney, Index No. 26. DOC moved for summary judgment which was granted in part. Agreed Order, Index No. 92. The trial court subsequently granted DOC summary judgment on Williams' remaining claims and dismissed Williams' action with prejudice. Order of Dismissal With Prejudice, Index No. 111. Williams filed a timely appeal of the order dismissing his case. Notice of Appeal to Court of Appeals, Index No. 112.

**B. Material Facts**

1. Shelley Beck is employed by DOC as a Forms/Records Analyst 3 at the Monroe Correctional Complex (MCC) in Monroe, Washington. She is a Registered Health Information Technician (RHIT).

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<sup>1</sup> Respondent uses the trial court index numbers rather than Clerk's Papers numbers because Williams failed to designate as Clerk's Papers many of the trial court records needed for appellate review as required by RAP 9.6(b). Because Williams bears the burden of perfecting the record on appeal and failed to adequately do so, this provides an independent basis for the Court to affirm. *See Olmsted v. Mulder*, 72 Wn. App. 169, 183, 863 P.2d 1355 (1993) (concluding court could not reach the merits because the appellant had failed to perfect the record on appeal).

One of her duties is to arrange for inmates to review their medical files and/or to obtain copies of documents in their medical file when inmates make requests for these services. CP 91-94, Declaration of Shelley Beck.

2. Under DOC Policies 280.510 and 640.020, inmates' requests to review their medical files or for copies of documents in their medical file are not treated as requests under the Public Records Act, but are instead treated as requests under the Uniform Health Care Information Act, RCW chapter 70.02. Under DOC Policy 280.510, such requests are processed in accordance with the requirements of DOC Policy 640.020 entitled "Offender Health Records Management". CP 91-112.

3. Under DOC 640.020, inmates must make a request in writing to the local Registered Health Information Administrator (RHIA) /Registered Health Information Technician (RHIT) designee to review their medical files. Under DOC Policy 640.020, inmates' requests for copies of their health care records must be submitted to DOC's Public Disclosure Unit (PDU). Although DOC Policy 640.020 directs inmates to submit their requests for copies of their medical documents to the DOC PDU, Ms. Beck often accepts and processes such requests at MCC. Under DOC Policy 640.020, offenders must pay for copies of their medical records prior to receiving copies. CP 91-94 and 105-112.

4. Williams submitted a kite to his counselor, Stefka Kmiecik, on July 24, 2013 requesting a copy of his treatment plan. Williams' July 24, 2013 kite to his counselor did not state or suggest that it was a request for records under the PRA or the UHCIA. CP 9.

5. Williams made a request to Shelley Beck in writing on January 14, 2014 to review his medical file. Ms. Beck complied with this request and Williams reviewed his medical file in late January 2014. Williams did not request copies of documents in his medical file immediately after his file review in late January 2014. CP 91-94.

6. Williams made another request on March 12, 2014 to review his medical file and another medical file review was conducted on March 20, 2014. After this review Williams requested five pages of documents from his medical file which included a kite from September 2013 and four pages of dental treatment records. Ms. Beck provided Williams the requested copies on April 3, 2014 or shortly thereafter. Williams did not request a copy of his 2013 mental health treatment plan during or immediately after his March 20, 2014 medical file review. CP 91-94.

7. Williams sent a prison kite to Ms. Beck on March 20, 2014 complaining about an incorrect dental billing on March 7, 2014, inquiring about skin cream for his leg, and asking whether two DOC

employees, Rachel Simon and Dr. Jewitt, had received Williams' July 24, 2013 requests for a copy of his treatment plan. Williams did not ask Ms. Beck for a copy of his July 2013 treatment plan in his March 20, 2014 kite to Ms. Beck. *Id.* Ms. Beck volunteered in her response to Williams' March 20, 2014 kite that he could ask his counselor for a copy of his treatment plan. CP 39.

8. On June 4, 2014 the DOC PDU received a request by Williams for a June or July 2013 mental health treatment plan authored by his counselor, Stefka Kmiecik. This was given offender health record (OHR) number 14-23451 by the DOC PDU. Ms. Beck advised Williams by letter dated June 5, 2014 that he needed to pay \$.60 in order to get a copy of his three-page treatment plan. Ms. Beck never received notification from the accounts office that Williams had paid for a copy of his treatment plan therefore she closed out this request without providing Williams the copy he had requested but had not paid for. CP 41, 91-94, 123, and 125.<sup>2</sup>

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<sup>2</sup> CP 41 and CP 125 are the same document, the June 5, 2014 letter to Williams offering him a copy of the treatment plan he had requested.

### III. ARGUMENT

#### A. The PRA Does Not Apply to Williams' Request for a Copy of One of His Own Medical Records

In 1991 the Legislature passed the “Uniform Health Care Information Act” (UHCIA), RCW chapter 70.02. Laws of 1991, ch. 335, §§ 101-907. This Act served two primary purposes: to protect the confidentiality of patient health care information and records, and to provide patients access to their own health care information and records. *Id.* A section of the bill establishing this Act added a new section to the State’s Public Disclosure Act, RCW chapter 42.17, providing that the UHCIA “applies to public inspection and copying of health care information of patients.” *Id.* § 902, now codified at RCW 42.56.360(2). Properly construed, RCW 42.56.360(2) places requests for patient health care information outside of the PRA and places them exclusively under the UHCIA.

The phrase “public inspection and copying” in RCW 42.56.360(2) clearly means requests for inspection and copying under the PRA as this phrase is nearly identical to other provisions of the PRA: “Public records shall be available for inspection and copying, . . . .” RCW 42.56.080(2). As such, RCW 42.56.360(2) makes the UHCIA the exclusive means of obtaining patients’ health care information. Any interpretation of RCW

42.56.360(2) as not excluding a request for patient medical records from the provisions of the PRA would improperly render RCW 42.56.360(2) entirely superfluous and meaningless; “The legislature is presumed to not engage in unnecessary or meaningless acts and statutes must be interpreted so no part is rendered superfluous or insignificant.” *State v. McGrew*, 156 Wn. App. 546, 560-61, 234 P.3d 268 (2010); (citing *State v. Wanrow*, 88 Wn.2d 221, 228, 559 P.2d 548 (1977)). Plaintiff’s PRA claim based on his request to inspect and/or copy his DOC medical file is foreclosed by the plain language of RCW 42.56.360(2) and must be dismissed.

DOC’s interpretation of RCW 42.56.360(2) is consistent with other provisions of the PRA and court decisions interpreting the PRA. The PRA provides that an agency need not produce public records for inspection or copying if another statute “exempts or prohibits disclosure of specific information or records.” RCW 42.56.070(1). Washington courts have interpreted this general provision to mean that when a statute other than the PRA provides a comprehensive mechanism for the release of public records, the other statute is the exclusive means of obtaining such records and the PRA does not apply to requests for such records. *Wright v. State*, 176 Wn. App. 585, 309 P.3d 662 (2013) (RCW 13.50 provides the exclusive means of obtaining juvenile justice and case records and the PRA does not apply to requests for such records). *Dependency of K.B.*, 150 Wn. App.

912, 210 P.3d 330 (2009) (same); *Deer v. DSHS*, 122 Wn. App. 84, 93 P.3d 195 (2004) (same). The UHCIA provides a comprehensive mechanism for obtaining medical records and applies exclusively to patients' requests to examine or copy their medical records.

It is undisputed that patients of government health care providers such as DOC may access their own government health care records under the UHCIA. The legislature clearly did not intend for the PRA and the UHCIA to apply simultaneously to a patient's request to examine or copy their own medical records because the PRA and the UHCIA are inherently incompatible. The UHCIA contains comprehensive rules concerning access to medical records that differ markedly from the PRA, as well as penalties for improper disclosure that are inconsistent with the PRA's approach of penalizing nondisclosure and immunizing good-faith disclosure. Compare RCW 42.56.030 (policy favoring disclosure) with RCW 70.02.005 (policy in favor of protecting patient confidentiality). The time frames for agency responses to requests for medical records, the penalties for non-compliance, and the amount that may be charged for copies also differ markedly between the PRA and the UHCIA. For example, the PRA requires an agency to respond to a PRA request within five days under RCW 42.56.520, whereas the UHCIA allows health care providers 15 days to respond to patients' requests to examine their records.

RCW 70.02.020(1). It is also significant that the UHCIA was intended to be a uniform statute providing consistency in the treatment of medical records within and among the states enacting the UHCIA:

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

RCW 70.02.901. Williams' interpretation of RCW 42.56.360(2) undermines the uniformity of construction requirement of RCW 70.02.901 and should be rejected.

Williams argued below that RCW 70.02.090(1) supports his assertion that the PRA applies to his requests to examine or copy his DOC medical records. RCW 70.02.090(1) states:

- (1) Subject to any conflicting requirement in the public records act, chapter 42.56 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:
  - (a) Knowledge of the health care information would be injurious to the health of the patient;
  - (b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;
  - (c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;
  - (d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or
  - (e) Access to the health care information is otherwise prohibited by law.

It is unclear what the reference to the PRA in RCW 70.02.090(1) means. Williams did not identify any circumstance where the PRA would require a health care provider to provide a patient health care information/records that the provider would otherwise not have to disclose under RCW 70.02.090(1) and DOC cannot envision any such circumstance. The only direct reference in the PRA to patient medical records is RCW 42.56.360(2) which states that the UHCIA applies to requests for patient records. The nebulous reference to the PRA in RCW 70.02.090(1) is insufficient to override the plain language of RCW 42.56.360(2).

The UHCIA also addresses other state laws that may conflict with the UHCIA and states that the UHCIA:

[D]oes not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.96A, and 74.09 RCW and rules adopted under these provisions.

RCW 70.02.900(2). It is legally significant that the PRA is not on the above list. When the legislature creates a list of exceptions in a statute, the courts will presume that the legislature intended to exclude all other exceptions. *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 133-34, 814 P.2d 629 (1991). This Court must, therefore, presume that the legislature intended for the UHCIA to “modify the terms and conditions of disclosure” of patient records under the PRA. RCW 70.02.900; *Weyerhaeuser, supra*. The

legislature modified the terms and conditions of disclosure of health care records held by government agencies under the PRA by requiring that disclosure of such records be governed exclusively by the UHCIA.

The PRA provides that it does not affect the duty of an agency to either disclose or withhold records “contained in any other law.” RCW 42.56.510. The UHCIA is clearly an “other law” that contains the duty of health care providers to disclose and withhold patient health care records, therefore the specific dictates of the UHCIA is clearly the comprehensive and exclusive means of a patient requesting to see his own health records from a public agency. RCW 42.56.360(2) cannot be interpreted in a manner that is merely redundant of RCW 42.56.510 and must be interpreted to mean that the UHCIA was intended to be the exclusive means for patients to access their medical records. Williams’ PRA claims were properly dismissed by the trial court as the PRA does not apply to his request for his own medical records.

**B. Williams’ PRA Claim was Properly Dismissed by the Trial Court Even if the PRA Applies to his Kite Requesting a Copy of His Treatment Plan**

Williams submitted a kite to his prison counselor asking: “Please provide my copy of the treatment plan, especially considering ‘the deletion.’” CP 9. This kite and other similar kites did not trigger any PRA liability for several reasons. First, this kite and Williams’ other kites were

not valid PRA requests. It is well established that requestors must “at a minimum, provide notice that the request is made pursuant to the [PRA].” *Hangartner v. Seattle*, 151 Wn.2d 439, 447, 90 P.3d 26 (2004); *Germeau v. Mason County*, 166 Wn. App. 789, 271 P.3d 932 (2012). Because Williams’ kites did not indicate or suggest that they were PRA requests, they were invalid and did not trigger any liability under the PRA. *Id.*, and see *Bonamy v. Seattle*, 92 Wn. App. 403, 960 P.2d 447 (1998) (Agencies are not required to comply with invalid PRA requests).

Williams’ kite requests for copies of records are also invalid as they were not directed to the proper person or office within DOC. Under DOC regulations and policies, all requests for copies of records under the PRA must be directed to the DOC Headquarters Public Records Unit. WAC 137-08-090; DOC Policies 280.510 and 640.020. CP 96-112. It is clear that agencies may require requestors to submit PRA requests to particular persons within the Agency. *Parmelee v. Clarke*, 148 Wn. App. 748, 201 P.3d 1022 (2008). Because Williams did not direct his requests for copies to the proper person in DOC, his requests were invalid and did not trigger the provisions of the PRA. *Id.*

Williams disingenuously argues that the PRA was violated by Ms. Kmiecik and Ms. Beck when Ms. Kmiecik told Williams to contact medical records for copies of medical records and after he did so Ms.

Beck advised him to contact his counselor, Ms. Kmiecik, for copies. This argument fails because Williams' kite to Ms. Beck in March 2014 did not contain a request by Williams for a copy of his July 2013 treatment plan, but instead asked Ms. Beck if two prison employees, Rachel Symon and Dr. Jewitt, had received his kites concerning his treatment plan in July 2013. CP 39. Ms. Beck's gratuitous advice to Williams to contact his counselor for a copy of his treatment plan did not implicate, much less violate, the PRA. The fact that Ms. Beck has sometimes provided copies of medical records to inmate requestors does not aid Williams as he did not ask Ms. Beck for copies and even if he had done so Ms. Beck was under no legal obligation to provide them to him:

Furthermore, even if an agency has on occasion processed a request directed to the wrong person, it would be unreasonable to rely on such an event as a promise by the agency to abandon its rule in all future cases.

*Parmelee, supra* at 758.

Finally, it is both noteworthy and fatal to Williams' PRA claim that after he made a request to the DOC HQ Public Records Unit for his 2013 treatment plan on May 31, 2014, DOC promptly offered him a copy of the plan which Williams failed to pay for. CP 41 and 125. The trial court did not err in dismissing Williams' PRA claim.

**C. The Trial Court Properly Dismissed Williams' UHCIA Claim**

The undisputed facts in this case demonstrate that the trial court did not err in dismissing Williams' UHCIA claims. Williams requested a free copy of one of his mental health treatment plans from his mental health counselor, Stefka Kmiecik, by way of a prison kite on July 24, 2013. CP 9. Counselor Kmiecik advised Williams that in order to receive a copy he needed "to go through medical records". CP 9. Plaintiff concedes in his original complaint that he reviewed his medical records on March 20, 2014. CP 5. Plaintiff also conceded in his original complaint that DOC honored his request for a copy of his treatment plan on June 5, 2014.

The Defendant, exhibited bad faith, by denying the Plaintiff's PRA request on 7/24/14, and 3/20/14, then turning around to honor it on June 5, 2014.

CP 6.

Contrary to Williams' suggestion, DOC's June 5, 2014 letter offering him a copy of his July 2013 treatment plan was not prompted by either his July 2013 kite to Ms. Kmiecik, his March 2014 review of his medical file, or his March 2014 requests for copies of medical documents. DOC's June 5, 2014 letter was sent solely in response to Williams' May 31, 2014 request to the DOC Headquarters Public Records Unit for a copy of his July 2013 treatment plan. CP 41 and 125.

The trial court did not err in dismissing Williams' UHCIA claim under the above set of facts.

Under the UHCIA, a patient must make a written request to a health care provider in order to examine or copy "all or part of the patient's recorded health care information." RCW 70.02.080(1). The health care provider must allow the patient to review the information or provide a copy of the information to the patient within 15 days. *Id.* If the health care provider does not maintain the requested information, the health care provider must inform the patient of the name and address of the health care provider that does maintain the requested information. *Id.* The health care provider may charge a reasonable fee for the examination or copying of information and "is not required to permit examination or copying until the fee is paid." RCW 70.02.080(2).

DOC has recognized and implemented the UHCIA provisions for patient examination and copying of records in its policies. Under DOC policies, an inmate may examine his/her medical file by requesting to do so at the DOC facility where the inmate is housed, and may obtain copies of all or some of his/her DOC medical records by making a request to the DOC HQ Public Records Unit. CP 96-112, DOC Policy 280.510 and DOC Policy 640.020; and *see* WAC 137-08-090. Williams' kite request to Counselor Kmiecik clearly did not comply with DOC regulations and

policies that require inmates to request copies of their medical records from the DOC Public Records Unit. DOC's regulations and policies concerning inmates' requests for copies of medical records are lawful.

Washington's courts have consistently recognized that prisons are unique environments and prison rules and regulations are to be accorded deference. *McNabb v. Dep't of Corrections*, 163 Wn.2d 393, 180 P.3d 1257 (2008); *In re Pers. Restraint of Gronquist*, 138 Wn.2d 388, 405, 978 P.2d 1083 (1999). The Legislature has recognized these principles in enacting RCW 72.01.050(2) which states:

The secretary of corrections shall have full power to manage, govern, and name all state correctional facilities, subject only to the limitations contained in laws relating to the management of such institutions.

This Court has characterized RCW 72.01.050(2) as a "broad grant of power" to manage and govern DOC. *Greenhalgh v. Dep't of Corrections*, 180 Wn. App. 876, 324 P.3d 771 (2014).

The deference that must be accorded DOC policies and practices includes deference to DOC's policies implementing state statutes of general applicability. *Sappenfield v. Dep't of Corrections*, 127 Wn. App. 83, 110 P.3d 808 (2005) (DOC policies implicating the Public Records Act accorded deference and upheld as reasonable); *Gronquist v. Dep't of Corrections*, 159 Wn. App. 576, 247 P.3d 436 (2011) (same). DOC

regulations and policies requiring inmates to make requests for copies of DOC records, including medical records, to a specified person or unit at DOC Headquarters is reasonable and lawful as such regulations and policies ensure that requests are properly recorded and properly responded to by trained DOC staff in accordance with DOC's rules and the applicable law. *Parmelee*, supra. (DOC may lawfully require PRA requestors to make PRA requests to specified persons within DOC). Williams makes no argument to the contrary. Because Williams' kite request to Counselor Kmiecik did not comply with DOC policy for obtaining medical records, it did not violate the UHCIA and the trial court did not err in dismissing Williams' UHCIA claim.

Even if this Court rejects DOC's argument that it has the authority to require inmates to make requests for copies of their medical records to a particular person or unit within DOC, Williams still fails to demonstrate a violation of the UHCIA. Williams failed to establish that Counselor Kmiecik maintained the health record Williams requested. The record below is clear that the person who maintained medical records at the institution in which Williams was housed was Ms. Beck, not Ms. Kmiecik. Ms. Beck is a Registered Health Information Technician whose duties included arranging for inmates to review their medical files and obtain copies of documents in their medical files.

CP 91-94. Ms. Kmiecik's response to Williams' kite asking for a copy of his treatment plan directed Williams to "go through medical records" for a copy of his treatment plan. CP 9. This response by Counselor Kmiecik complied with the UHCIA:

If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record.

RCW 70.02.080(1)(c).

Finally, Williams' claim against DOC fails as Williams did not establish that DOC violated the UHCIA:

A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

RCW 70.02.170(1).

The record in this case is clear that DOC fully complied with the UHCIA by allowing Williams to review his medical file on multiple occasions and by promptly making a copy of the requested treatment plan available to Williams once he made a proper request to DOC for this record. CP 41 and 125. Finally, Williams' UHCIA claim based on the actions of Ms. Beck fails, as fully discussed above, for the simple reason that Williams did not make a request for a copy of his treatment plan to

Ms. Beck. CP 39. The trial court did not err in dismissing Williams' UHCIA claims.

#### IV. CONCLUSION

Williams' PRA and UHCIA claims were properly dismissed by the trial court and this Court should therefore affirm the trial court's dismissal of Williams' action.

RESPECTFULLY SUBMITTED this 2nd day of July, 2018.

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**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the foregoing BRIEF OF RESPONDENT with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

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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.

EXECUTED this 2nd day of July, 2018, at Olympia, Washington.

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