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Division II
State of Washington
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No. 51340-4-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

SAID FARZAD, individually,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF
HEALTH-MEDICAL QUALITY ASSURANCE
COMMISSION; WASHINGTON PHYSICIANS
HEALTH PROGRAM, a Washington non-profit
corporation doing business in Washington state; LARRY
BERG and “JANE DOE” Berg, and the marital community
composed thereof; CHRIS BUNDY and “JANE DOE”
BUNDY, and the marital community composed thereof;
MOLINA HEALTHCARE OF WASHINGTON, a
Washington corporation; JOHN AND JANE DOES 1-10,

Respondents.

ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT
Honorable Jack F. Nevin

**BRIEF OF RESPONDENT MOLINA HEALTHCARE OF
WASHINGTON, INC.**

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I. INTRODUCTION

Said Farzad, a psychiatrist, repeatedly called Molina Healthcare of Washington one afternoon and threatened to kill its employees with machine guns and bomb its office building. Molina employees reported the threats to police, Dr. Farzad was arrested and charged, and a Snohomish County jury convicted him of felony telephone harassment. In addition, after an administrative hearing, the Medical Quality Assurance Commission¹ (MQAC or “the Commission”) suspended Dr. Farzad’s license to practice medicine. Both the jury and the Commission found that Dr. Farzad threatened Molina employees.

In this lawsuit, Dr. Farzad asserted several claims against Molina based on allegations that it falsely reported threats to police. The superior court properly dismissed Dr. Farzad’s claims on summary judgment because (1) Molina is immune from liability for reporting information to a government agency under RCW 4.24.510 and (2) the doctrine of collateral estoppel precludes Dr. Farzad from relitigating whether he threatened Molina employees.

Dr. Farzad waives any claim of error on appeal by failing to make any pertinent arguments, failing to cite the record or authority, and otherwise failing to comply with the Rules of Appellate Procedure. Even addressing the merits, multiple grounds exist to affirm the summary judgment entered in Molina’s favor. This Court should affirm.

¹ MQAC, now called the Washington Medical Commission (WMC), is a board of the Washington State Department of Health that regulates and disciplines licensed medical professionals. *See* <http://wmc.wa.gov>.

II. RESTATEMENT OF ISSUES ON APPEAL

1. ***Waiver—Deficient Opening Brief.*** Dr. Farzad fails in his opening brief to make any arguments pertaining to his claim of error in entering summary judgment for Molina and generally fails to cite the record or authority in support of the arguments he does make. Has Dr. Farzad thus waived any argument for relief on appeal?

2. ***Immunity for Report to Authorities.*** Dr. Farzad sued Molina for reporting to police that he threatened its employees. Persons are immune from civil liability for reporting information to government agencies under RCW 4.24.510. Did the trial court properly dismiss Dr. Farzad’s claims against Molina under RCW 4.24.510?

3. ***Collateral Estoppel—Administrative Determination.*** Dr. Farzad bases his claims against Molina on allegations that Molina falsely reported threats to police. MQAC found in its final order entered after a hearing that Dr. Farzad threatened Molina employees. Did the trial court properly dismiss Dr. Farzad’s claims under the doctrine of collateral estoppel?

4. ***Collateral Estoppel—Criminal Conviction.*** Dr. Farzad bases his claims against Molina on allegations that Molina falsely reported threats to police. A Snohomish County jury found that Dr. Farzad threatened Molina employees. Did the trial court properly dismiss Dr. Farzad’s claims under the doctrine of collateral estoppel?

III. STATEMENT OF THE CASE

A. Molina Healthcare of Washington, Inc., a private corporation, provides prescription-drug coverage and other health-care services to Medicaid enrollees under a contract with the state.

Molina is one of several private corporations that provide health-care services to Medicaid enrollees under contract with the Washington Health Care Authority (HCA).² CP 941-42. Molina’s role includes

² Molina also offers coverage to individual Washington residents in certain counties through the Washington Health Benefit Exchange.

contracting with health-care providers and authorizing benefits in accordance with HCA requirements. CP 942.

One benefit the state purchases from Molina for Medicaid enrollees is coverage for prescription drugs. CP 942. Under its contract with HCA, Molina must develop a drug formulary, which is a list of drugs that are preapproved for certain health conditions and will be covered if prescribed by a physician. CP 942. If a physician prescribes a drug not on the formulary, it will be covered only if the physician obtained prior authorization from Molina. CP 942. To obtain prior authorization, a physician must demonstrate “medical necessity” by establishing, for example, that the patient is allergic to the formulary drug or a trial of the formulary drug was unsuccessful. CP 942.

B. After Molina denied Dr. Farzad’s incomplete request for prior authorization of medication for a patient, he called in multiple death threats to Molina, which it reported to police.

In 2014, Said Farzad was a practicing psychiatrist. In March of that year, he prescribed an antidepressant called Fetzima for a patient. CP 942. A pharmacist declined to fill the prescription because Fetzima is a non-formulary drug, and Dr. Farzad failed to obtain Molina’s prior authorization to prescribe it. CP 942. Dr. Farzad called Molina numerous times about the issue and was repeatedly advised of the need to submit a prior-authorization request. CP 942. Dr. Farzad eventually submitted a prior-authorization request form to Molina in early April 2014, but it was essentially blank, providing no information to demonstrate medical necessity. CP 943, 947. In mid-April, after Molina followed up with

Dr. Farzad twice, he submitted a second request form but again made no attempt to demonstrate medical necessity. CP 943, 949, 951.

A few days after receiving the second incomplete request, Molina sent Dr. Farzad a letter denying prior authorization but stating that Molina would “re-review” the request if Dr. Farzad provided the needed information. CP 943, 953. Molina repeated this explanation to Dr. Farzad when he called several days after that, on May 2, 2014. CP 943. That same day, Molina sent Dr. Farzad another letter denying prior authorization for failure to provide required information. CP 943, 955.

Three days later, on May 5, 2014, Dr. Farzad called Molina five times within 30 minutes. CP 903. During these calls, he stated to multiple employees that he was five minutes away from Molina offices and would bomb the building when he arrived. CP 917, 919, 929-31. He also stated that he had machine guns and would kill everyone, including specifically the director and another Molina employee named Fasil. CP 924, 929-30. Molina employees locked the building and called 911. CP 919, 949. Police found Dr. Farzad the next day and questioned and arrested him.

C. After an administrative hearing, the Medical Quality Assurance Commission found that Dr. Farzad threatened Molina employees and suspended his license to practice.

The Department of Health investigated Dr. Farzad for unprofessional conduct, including his threats to Molina, and held a hearing before MQAC on whether to suspend his license to practice medicine for being “unable to practice with reasonable skill and safety by reason of a

mental condition.” CP 900, 902-03 (Appx. D). Dr. Farzad appeared at the hearing, testified, and cross-examined witnesses. CP 900-01.

The Commission’s factual findings included that Dr. Farzad repeatedly threatened Molina employees over the phone:

On May 5, 2014, the Respondent placed five telephone calls within a 30-minute timespan to Molina and talked with several employees. During those calls, he threatened to come to Molina and shoot employees and bomb the building.

CP 903. The Commission further found that Dr. Farzad stated to Molina employees “that he was homicidal; that he wanted to murder everyone with machine guns; that he had a gun and wanted to shoot the employees’ supervisor; that he wanted to kill everyone; and that he was five minutes away from Bothell and would bomb Molina when he got there.” CP 903.

In explaining why it accepted Molina employees’ version of events and rejected Dr. Farzad’s, the Commission observed that the Molina employees “all provided consistent accounts of [Dr. Farzad’s] threats” and that Dr. Farzad “provided contradictory explanations to the police.” CP 903.

The Commission determined that the Department of Health proved by clear and convincing evidence that Dr. Farzad was unfit to practice. CP 905. Supporting that determination, the Commission found that “the events of May 5, 2014, can be said to describe the ultimate life-threatening consequences of a mental condition[.]” CP 904. The Commission suspended Dr. Farzad’s license and ordered him to undergo a neuropsychological examination before seeking reinstatement. CP 907-09.

The Pierce County Superior Court upheld the Commission's final order, denying Dr. Farzad's petition for judicial review. CP 912-13 (Appx. E).

D. A Snohomish County jury found that Dr. Farzad threatened Molina employees and convicted him of felony telephone harassment.

Dr. Farzad was convicted of felony telephone harassment. CP 937 (Appx. F). Division One of this Court reversed Dr. Farzad's first conviction because the jury instructions allowed the jury to convict him based on uncharged conduct. *State v. Farzad*, 198 Wn. App. 1018, 2017 WL 1055729 (2017) (unpublished). He was again convicted on retrial. CP 937 (Appx. F). To find him guilty, the jury had to find that Dr. Farzad called Molina employees and threatened to kill them or any other person. CP 937, 939; *see also* RCW 9.61.230(2)(b).

E. Dr. Farzad sued multiple defendants, including Molina, and asserted claims based on allegations that Molina falsely reported threats to police.

Dr. Farzad sued Molina, MQAC, and other defendants. CP 12. His claims included negligence, gross negligence, civil conspiracy, discrimination, negligent and intentional infliction of emotional distress, and defamation. CP 19-20. For relief, he sought damages and reinstatement of his license to practice medicine. CP 21.

Dr. Farzad based his claims against Molina on allegations that it falsely reported threats to the authorities. His complaint alleged that Molina "manipulated" a conversation "to characterize Plaintiff's conversation as a threat/bomb threat." CP 14-15.

F. The superior court granted summary judgment to Molina, dismissing Dr. Farzad's claims based on immunity and collateral estoppel.

In its answer to Dr. Farzad's complaint, Molina alleged as affirmative defenses that it was immune from liability under RCW 4.24.510 and common law and that Dr. Farzad's claims were precluded under the doctrine of collateral estoppel. CP 48. Molina moved for a summary judgment dismissing Dr. Farzad's claims based those affirmative defenses. CP 880-81. After a hearing, the superior court granted Molina's motion based on both RCW 4.24.510 and collateral estoppel. CP 967-69; RP (12/15/2017) 18-19.

IV. ARGUMENT

A. Dr. Farzad waives any issue regarding the summary judgment entered for Molina by failing to make any pertinent arguments or otherwise comply with the Rules of Appellate Procedure.

A party is entitled to summary judgment where the record establishes that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). This Court's review of a summary judgment is de novo, and it may affirm the decision on any ground supported by the record. *Washburn v. City of Fed. Way*, 178 Wn.2d 732, 753 n.9, 310 P.3d 1275 (2013).

Although Dr. Farzad assigns error generally to the dismissal of his claims on summary judgment, he makes no arguments on appeal regarding the legal bases on which the superior court entered summary judgment for Molina. An appellant who fails to present arguments in its opening brief on

an issue waives the claim of error. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Dr. Farzad's brief suffers from other critical deficiencies as well, including lack of citation to authority (other than for the summary judgment standard), fact statements unsupported by citation to the record, and record citations that do not correspond to the record before this Court.³ *See* RAP 10.3(a)(5), (6). Pro se appellants are held to the same rule as represented parties, and this Court will decline to consider briefs that fail to comply with the Rules of Appellate Procedure. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999); *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

Given Dr. Farzad's failure to argue the issues or submit a proper brief, this Court should affirm. Even setting aside the multiple defects in Dr. Farzad's brief and addressing the merits, multiple grounds independently support affirming the summary judgment entered in Molina's favor.

B. The trial court properly dismissed Dr. Farzad's claims against Molina because it is immune from liability for reporting to authorities under the anti-SLAPP statute, RCW 4.24.510.

Under Washington common law, one is immune from liability for reporting his version of facts to the authorities. *McCord v. Tielsch*, 14 Wn.

³ Dr. Farzad also failed to designate sufficient clerk's papers for this Court's review. *See* RAP 9.6(a). For instance, he failed to designate Molina's summary-judgment motion or reply, any of the materials submitted in support of the motion, or the order granting summary judgment. Molina designated and paid for over 90 pages of clerk's papers to be transmitted to this Court to correct this deficiency. The appellant has the burden of complying with the rules and presenting a record adequate for review on appeal, and failure to provide an adequate record precludes appellate review. *Olmsted v. Mulder*, 72 Wn. App. 169, 183, 863 P.2d 1355 (1993).

App. 564, 566-67, 544 P.2d 56 (1975) (citing *Parker v. Murphy*, 47 Wash. 558, 560, 92 P. 371 (1907)). The legislature codified and broadened this rule when it enacted RCW 4.24.510, the key provision of Washington’s “anti-SLAPP” (strategic lawsuit against public participation) statute. *See Dang v. Ehredt*, 95 Wn. App. 670, 681, 977 P.2d 29 (1999); *Bevan v. Meyers*, 183 Wn. App. 177, 179, 334 P.3d 39 (2014); 2002 WASH. LAWS ch. 232, § 1.

The anti-SLAPP statute provides absolute immunity to any “person” who communicates a complaint or information to any branch or agency of government “regarding any matter reasonably of concern” to it. RCW 4.24.510 (Appx. B). The purpose of the statute is to encourage the reporting of potential wrongdoing by protecting against retaliatory lawsuits. *Valdez-Zontek v. Eastmont Sch. Dist.*, 154 Wn. App. 147, 167, 225 P.3d 339 (2010). The legislature found that “[i]nformation provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government” and that “the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies.” RCW 4.24.500 (Appx. A). Although the statute originally contained a requirement that the report have been made in good faith, that requirement was eliminated in 2002. 2002 WASH. LAWS ch. 232, § 2; *see also Lowe v. Rowe*, 173 Wn. App. 253, 260, 294 P.3d 6 (2012).

A call to police is the classic example of a report that is subject to immunity under RCW 4.24.510. *See, e.g., Dang v. Ehredt*, 95 Wn. App. 670, 977 P.2d 29 (1999). In *Dang*, when the plaintiff attempted to cash a

check from Seattle Filmworks at a bank, a computer alert directed the bank teller not to cash checks from Seattle Filmworks and to notify the bank's fraud department. *Id.* at 672-73. The bank's customer-service manager called 911 and reported a possible counterfeit item. *Id.* at 673. Police arrested the plaintiff, who turned out to be innocent. *Id.* The superior court dismissed the plaintiff's claims against the bank on summary judgment. *Id.* at 676. The Court of Appeals affirmed, reasoning that the bank was immune under RCW 4.24.510 because "[a]ll of the actions of which [the plaintiff] complains and all of the damages she claims to have suffered stem from (that is, are 'based upon') the bank's telephone call to the police." *Id.* at 683-84 (quoting RCW 4.24.510).

Similarly, all of the actions by Molina of which Dr. Farzad complains and all of the damages he claims to have suffered because of Molina are "based upon" Molina's telephone call to the police. Even assuming that Farzad never actually threatened Molina employees, Molina is entitled to immunity, just like the bank in *Dang*.

Despite assigning error generally to the entry of summary judgment based on immunity, Dr. Farzad makes no arguments regarding immunity in his opening brief. Below, he argued that Molina is not within the anti-SLAPP statute's definition of a "person," which is wrong. The statute defines "person" broadly to mean "an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, or any other legal or commercial entity." RCW 4.24.525(1)(e) (Appx. C). Molina is a private corporation.

Although our Supreme Court has held that a government agency is not a “person” entitled to immunity under RCW 4.24.510, *Segaline v. State, Dep’t of Labor & Indus.*, 169 Wn.2d 467, 473-74, 482, 238 P.3d 1107 (2010), Molina is not a government agency. Nor can Molina be deemed a de facto government agency merely by virtue of its contract with HCA to provide health-care services. When Molina provides health-care services as a managed-care organization, it does not step into the government’s shoes and become, in effect, a government agency. The state purchases health-care services from Molina on behalf of enrollees, and Molina provides those services in its capacity as a private corporation.⁴ When people call Molina, its employees introduce themselves as “from Molina Healthcare.” CP 929.

More to the point, when Molina called police, it did so on its own behalf as a private corporation, for its own purpose of protecting the safety of its own employees, and not on behalf of HCA or for any government purpose.⁵

In support of the notion that Molina should be deemed a government agency, Dr. Farzad in his summary-judgment opposition relied on

⁴ See RCW 41.05.022(1) (designating HCA as the state agent for “purchasing health services”); see also RCW 41.05.006 (“the state is a major purchaser of health care services”), .013 (requiring HCA to coordinate policies across “state purchased health care programs”), .075(2) (requiring HCA to establish a “contract bidding process” to purchase health services).

⁵ RCW 4.24.510 “protect[s] speakers against frivolous, speech-chilling lawsuits.” *Henne v. City of Yakima*, 182 Wn.2d 447, 450, 341 P.3d 284 (2015). Private corporations have a right to free speech. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 342, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). Molina does not lose that right simply because it is providing services under a contract with the government, especially where, as here, it spoke for its own purpose and on its own behalf, and not on behalf of the government or for any government purpose. Cf. *O’Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 714, 116 S. Ct. 2353, 135 L. Ed. 2d 874 (1996) (holding that government contractors are protected from government retaliation for exercising their First Amendment rights).

Organization to Preserve Agricultural Lands (OPAL) v. Adams County, 128 Wn.2d 869, 877, 913 P.2d 793 (1996). But that case is inapposite because it did not involve a report to a government agency or immunity under RCW 4.24.510. In *OPAL*, our Supreme Court held that a proposed landfill was private under a test meant to ensure that a government agency could not avoid complying with environmental laws simply by contracting with a private entity to carry out a public duty. *Id.* at 877-78. That analysis has no application in determining whether Molina is immune from liability for reporting illegal activity on its own behalf to protect its employees.

The superior court properly granted summary judgment under RCW 4.24.510 because Molina was entitled to immunity for its report to police.

C. The trial court properly dismissed Dr. Farzad’s claims because the doctrine of collateral estoppel precludes him from relitigating whether he threatened Molina employees.

The doctrine of collateral estoppel bars relitigation of facts determined in previous litigation. *Christensen v. Grant Cnty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004). The doctrine “promotes judicial economy and serves to prevent inconvenience or harassment of parties.” *Id.* Collateral estoppel applies where four elements exist:

(1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

Id. at 307. The injustice element “is generally concerned with procedural, not substantive irregularity.” *Id.* at 309. It is satisfied if the party to be

estopped “had a full and fair opportunity to litigate the issue in the earlier proceeding.” *Id.*

Although Dr. Farzad disagrees with the facts found by MQAC and the Snohomish County jury, he raises no argument on appeal regarding the trial court’s application of collateral estoppel. Because the elements of the doctrine are met, this Court should affirm the summary judgment.

1. The trial court properly gave preclusive effect to MQAC’s factual findings.

The elements of collateral estoppel are met with respect to MQAC’s findings. First, the Commission determined the identical fact issue that underlies Dr. Farzad’s claims against Molina in this case, *i.e.*, whether Dr. Farzad threatened Molina employees on May 5, 2014. *See* CP 903. Second, the MQAC proceeding ended in a judgment on the merits—a final order suspending Dr. Farzad’s license. Third, Dr. Farzad was a party to the MQAC proceeding. And fourth, applying collateral estoppel does not work an injustice on Dr. Farzad.

When considering whether it would be unjust to give preclusive effect to a finding by an administrative agency, our courts consider three factors: “(1) whether the agency acted within its competence, (2) the differences between procedures in the administrative proceeding and court procedures, and (3) public policy considerations.” *Christensen*, 152 Wn.2d at 308. Injustice may occur where there is significant disparity in the relief available in the two proceedings, such that the stakes did not give the party sufficient motivation to contest the issue in the administrative proceeding.

Id. at 309. It is not necessary that the administrative agency applied the rules of evidence. *Reninger v. State Dep't of Corrections*, 134 Wn.2d 437, 450, 951 P.2d 782 (1998).

The trial court properly gave preclusive effect to the Commission's findings. The Commission acted within its competence in finding facts that supported its decision to suspend Dr. Farzad's medical license. The procedures in the administrative proceeding were sufficient to give Dr. Farzad a full and fair opportunity to litigate whether he threatened Molina employees, and having his license at stake gave him sufficient motivation to litigate that issue. *See, e.g., Reninger*, 134 Wn.2d at 451-54 (accorded preclusive effect where plaintiff corrections officers were incentivized to oppose their demotions in administrative proceeding and "little of significance" distinguished the proceeding from a trial). And our state's public policy of encouraging reports to authorities supports dismissing Dr. Farzad's serious allegations against Molina based on such a report. *See* RCW 4.24.500.

2. The trial court properly gave preclusive effect to the factual findings underlying Dr. Farzad's criminal conviction.

Where the elements for collateral estoppel are met, a criminal conviction may be given preclusive effect as to fact issues that were essential to the verdict. *Rice v. Janovich*, 109 Wn.2d 48, 65, 742 P.2d 1230 (1987). The elements of collateral estoppel are met as to Dr. Farzad's 2017 criminal conviction. First, the jury determined the identical fact issue that underlies Dr. Farzad's claims against Molina in this case, *i.e.*, whether

Dr. Farzad threatened Molina employees on May 5, 2014. Second, the criminal trial ended in a judgment on the merits—a criminal conviction. Third, Dr. Farzad was a party to the criminal case. And fourth, applying collateral estoppel does not work an injustice on Dr. Farzad, where he had ample incentive in the criminal proceeding to litigate whether threats occurred.

After the superior court entered summary judgment for Molina, a federal district court determined that the second criminal trial violated Dr. Farzad’s double-jeopardy rights and granted a writ of habeas corpus. *Farzad v. Snohomish Cnty. Super. Ct.*, C17-1805-MJP-BAT, 2018 WL 2059679 (W.D. Wash. May 3, 2018) (Appx. G, H). That decision is presently on appeal to the United States Court of Appeals for the Ninth Circuit (case no. 18-35464) and is set to be argued to a panel on April 12, 2019. Appx. I, J. In the event the State’s appeal is successful, Dr. Farzad’s 2017 felony conviction will be reinstated.

This Court may give preclusive effect to Dr. Farzad’s 2017 conviction notwithstanding the granting of habeas relief. A reversed conviction may still be preclusive on specific issues not called into question by the reversal. *See Hanson v. City of Snohomish*, 121 Wn.2d 552, 559-60, 852 P.2d 295 (1993) (holding that a conviction, although reversed, established probable cause as a matter of law). Habeas relief should eliminate the preclusive effect of a conviction only where the basis for the federal determination means that the criminal defendant was denied a full and fair opportunity to litigate the issue in the criminal proceeding. *See*

Fahlen v. Mounsey, 45 Wn. App. 45, 48-50, 728 P.2d 1097 (1986) (holding it was unjust to give preclusive effect to conviction vacated by habeas relief where defendant was denied a full and fair opportunity to defend himself). Regardless of whether the retrial of Dr. Farzad's criminal case was constitutionally permissible for purposes of obtaining a conviction, the jury found that Dr. Farzad threatened Molina employees, and the double-jeopardy violation does not affect the soundness of that finding.

But even if this Court were to conclude that it may not presently accord preclusive effect to Dr. Farzad's criminal conviction because of the federal district court's granting of habeas relief, this Court should not reverse the summary judgment. Regardless of the status of the criminal conviction, this Court may affirm based on (1) immunity under RCW 4.24.510 or (2) the preclusive effect of the MQAC determination. In the event that this Court is not inclined to affirm on either of those grounds, it should stay this appeal pending the outcome of Snohomish County's appeal to the Ninth Circuit, which may result in reinstatement of Dr. Farzad's criminal conviction.

V. REQUEST FOR FEES ON APPEAL

A party who prevails in establishing entitlement to immunity under RCW 4.24.510 is entitled to recover reasonable attorney's fees. RCW 4.24.510. Molina requests an award of its fees on appeal. *See* RAP 18.1.

VI. CONCLUSION

Dr. Farzad waived any argument for relief on appeal by submitting an inadequate opening brief. Regardless, the superior court properly determined that Molina is immune from liability for its report to police and that the doctrine of collateral estoppel precludes Dr. Farzad from relitigating whether he threatened Molina employees. This Court should affirm the summary judgment entered in Molina's favor.

Respectfully submitted this 22nd day of March, 2019.

CARNEY BADLEY SPELLMAN, P.S.

By 

Timothy J. Parker, WSBA No. 8797
• Jason W. Anderson, WSBA No. 30512
*Attorneys for Respondent Molina Healthcare
of Washington, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Via Appellate Portal to the following:

Jonathan E. Pitel Office of the Attorney General PO Box 40126 Olympia, WA 98504	Justin A. Steiner / Bryan T. Terry Mullin, Allen & Steiner PLLC 101 Yesler Way, Suite 400 Seattle, WA 98104 jsteiner@masattorneys.com bterry@masattorneys.com ebohmer@masattorneys.com rgraf@masattorneys.com
Patricia D. Todd 7141 Cleanwater Drive SW Olympia, WA 98504-0126 jonathanp@atg.wa.gov lalolyef@atg.wa.gov amyp4@atg.wa.gov PatriciaT2@atg.wa.gov	

Via Appellate Portal and U.S. Mail to the following:

Said Farzad 3512 A Street NW Gig Harbor, WA 98335 Sfarzad1950@gmail.com	
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DATED this 22nd day of March, 2019.



Patti Saiden, Legal Assistant

APPENDICES

- Appendix A:** RCW 4.24.500
- Appendix B:** RCW 4.24.510
- Appendix C:** RCW 4.24.525
- Appendix D:** *In the Matter of: Said Farzad*, Medical Quality Assurance Commission no. M2104-191, Amended Findings of Fact, Conclusions of Law, and Final Order (August 27, 2014) (CP 900-10)
- Appendix E:** *Farzad v. Med. Quality Assurance Comm'n*, Pierce County Superior Court no. 14-2-12758-3, Order Denying Petition for Judicial Review (March 11, 2016) (CP 912-13)
- Appendix F:** *State v. Farzad*, Snohomish County Superior Court No. 14-1-01917-8, Verdict Form A (October 5, 2017) (CP 937)
- Appendix G:** *Farzad v. Snohomish Cnty. Super. Ct.*, United States District Court, W.D. Wash. no. CV 17-1805 MJP, Order Adopting Report and Recommendation; Modifying Case Caption; and Granting Writ of Habeas Corpus (May 3, 2018)
- Appendix H:** *Farzad v. Snohomish Cnty. Super. Ct.*, United States District Court, W.D. Wash. no. CV 17-1805 MJP, Judgment in a Civil Case (May 3, 2018)
- Appendix I:** *Farzad v. Snohomish Cnty. Super. Ct.*, United States District Court, W.D. Wash. no. CV 17-1805 MJP, Notice of Appeal (May 31, 2018)
- Appendix J:** *Farzad v. Snohomish Cnty. Super. Ct.*, United States Court of Appeals for the Ninth Circuit no. 18-35465, docket as of March 1, 2019

APPENDIX

A

RCW 4.24.500**Good faith communication to government agency—Legislative findings—Purpose.**

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

[1989 c 234 § 1.]

APPENDIX

B

RCW 4.24.510

Communication to government agency or self-regulatory organization—Immunity from civil liability.

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

[2002 c 232 § 2; 1999 c 54 § 1; 1989 c 234 § 2.]

NOTES:

Intent—2002 c 232: "Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. Chapter 232, Laws of 2002 amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making." [2002 c 232 § 1.]

APPENDIX

C

RCW 4.24.525

Public participation lawsuits—Special motion to strike claim—Damages, costs, attorneys' fees, other relief—Definitions.

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

[2010 c 118 § 2.]

NOTES:

Reviser's note: As to the constitutionality of this section, see *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2015).

Findings—Purpose—2010 c 118: "(1) The legislature finds and declares that:

- (a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;
 - (b) Such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;
 - (c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;
 - (d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and
 - (e) An expedited judicial review would avoid the potential for abuse in these cases.
- (2) The purposes of this act are to:
- (a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;
 - (b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and
 - (c) Provide for attorneys' fees, costs, and additional relief where appropriate." [**2010 c 118 § 1.**]

Application—Construction—2010 c 118: "This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts." [**2010 c 118 § 3.**]

Short title—2010 c 118: "This act may be cited as the Washington Act Limiting Strategic Lawsuits Against Public Participation." [**2010 c 118 § 4.**]

APPENDIX

D

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of:

SAID FARZAD,
License No. MD.MD.00044681,

Respondent.

Master Case No. M2014-191

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER**

APPEARANCES:

Said Farzad, the Respondent, pro se

Department of Health Medical Program (Department), by
Office of the Attorney General, per
Kristin Brewer, Assistant Attorney General

PANEL: Richard Brantner, M.D., Panel Chair
Michael Concannon, J.D., Public Member
Warren B. Howe, M.D.
Mimi Winslow, J.D., Public Member

PRESIDING OFFICER: Frank Lockhart, Health Law Judge

AMENDMENT

This Final Order was originally issued August 13, 2014. On August 22, 2014, both the Department and the Respondent filed requests that the Presiding Officer deemed to be Motions for Reconsideration. The Panel reconvened on August 22, 2014, and revised its decision. This Amended Final Order is entered and the changes are in **bold face**.

INTRODUCTION

A hearing was held in this matter on July 30, 2014, regarding allegations of unprofessional conduct. Credential **SUSPENDED**. Conditions for reinstatement imposed.

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER**

Page 1 of 11

Master Case No. M2014-191

Farzad v. State
02010003

ISSUES

- A. Is the Respondent unable to practice with reasonable skill and safety due to any mental or physical condition pursuant to RCW 18.130.170(1)?
- B. If so, what is the appropriate sanction under RCW 18.130.160?

SUMMARY OF PROCEEDINGS

At the hearing, the Department presented the testimony of Mary Creeley, Health Care Investigator; Sydney Doherty, Social Service Specialist, Department of Social and Health Services (DSHS); Cynthia Sambataro, former Director, Sound Mental Health; and Detective Glen Chissus, Bothell Police Department. The Respondent testified on his own behalf.

The Presiding Officer admitted the following Department exhibits:

- Exhibit D-1: The Respondent's credential verification.
- Exhibit D-2: The Respondent's Statement, dated November 5, 2013.
- Exhibit D-3: Memo to File regarding text messages between the Respondent and Patient A, authored by Health Care Investigator Mary Creeley, date November 27, 2013
- Exhibit D-4: Medical Notes for Patient A authored by the Respondent and dated November 6, 2012.
- Exhibit D-5: Prescription monitoring report listing medication the Respondent prescribed for Patient A.
- Exhibit D-6: The Respondent's posting of "Like" on Patient A's Facebook Photo.
- Exhibit D-7: The Respondent's Plan of Care regarding Patient B, dated August 10, 2013.
- Exhibit D-8: Patient B's Statement.

- Exhibit D-9: The Respondent's Declaration Opposing Petition for Anti-Harassment Order in the matter of *Cynthia Sambataro v. Said Farzad*, Kitsap County Superior Court Cause No. Y13-03825.
- Exhibit D-10: CPS report made by the Respondent regarding Patient B.
- Exhibit D-11: Pages 1-5 of the Statement of Allegations *In the Matter of the license to practice as a Physician and Surgeon of: Said Farzad, M.D.*, Docket No. 2014-46, dated January 28, 2014.
- Exhibit D-12: Email message from the Respondent to Carol Knutzen, Health Services Consultant with the Washington State Nursing Commission (Commission), dated February 6, 2014.
- Exhibit D-13: Snohomish County Superform Booking Data, along with the Bothell Police Department's Affidavit, Certification for Determination of Probable Cause, Case No. 14-10003.
- Exhibit D-14: Case Summary Report from Bothell Police Department, dated May 5, 2014.
- Exhibit D-15: Transcribed witness statements (Molina Health Care employees) from Bothell Police Department.
- Exhibit D-16: The Respondent's audio statements made to Bothell Police Department.
- Exhibit D-17: KIRO TV video interview of the Respondent, dated May 12, 2014.

I. FINDINGS OF FACT

1.1 The Respondent was granted a license to practice as a physician and surgeon in the state of Washington on February 28, 2005. The Respondent is not board-certified but practices in the areas of Psychiatry and Child/Adolescent Psychiatry.

1.2 In 2014, the Respondent was working for a Sea Mar Clinic in Tacoma, Washington. Many of the Respondent's patients were on Medicare/Medicaid, or other

government funded programs, and had to have their prescriptions authorized by Molina HealthCare Prior Authorization Department (Molina), located in Bothell, Washington. When there were delays or denials of his patients' prescription authorizations, the Respondent became upset and would call Molina. By his own estimate, he called Molina over 1,000 times from January to May 2014. The Respondent's calls became progressively more abusive and aggressive.

1.3 On May 5, 2014, the Respondent placed five telephone calls within a 30-minute timespan to Molina and talked with several employees. During those calls, he threatened to come to Molina and shoot employees and bomb the building. The police were called and interviewed the Molina employees, who all provided consistent accounts of the Respondent's threats.¹ The police subsequently arrested the Respondent on five felony charges of Threatening to Bomb and Telephonic Harassment.

1.4 The Respondent provided contradictory explanations to the police, the media, and to the Commission regarding these extremely serious threats. On different occasions, he stated that he did not make the threats, or that he had blacked out and could not remember making the threats. At the hearing, he provided great detail about the phone conversations, but claimed that the Molina employees had misunderstood him. However, the Respondent's testimony at hearing highlighted the real issue of this case.

¹ The Respondent stated that he was homicidal; that he wanted to murder everyone with machine guns; that he had a gun and wanted to shoot the employees' supervisor; that he wanted to kill everyone; and that he was five minutes away from Bothell and would bomb Molina when he got there.

1.5 If this case alleged a violation of RCW 18.130.180, the Commission would be evaluating the Respondent's conduct in terms of the rules of professional conduct. However, this case involves a RCW 18.130.170(1) allegation – whether the Respondent is unable to practice with reasonable skill and safety by reason of a mental condition. While the events of May 5, 2014, can be said to describe the ultimate life-threatening consequences of a mental condition, the ongoing “inability to practice with reasonable skill and safety” issue in this case can be seen in regular conversation with the Respondent and was clearly apparent to the Commission: It is the manner in which the Respondent attempts to dominate and manipulate everyone with whom he interacts in a constant effort to gain their attention and admiration, whether it is through his grandiose presentation of self; his misleading and hyperbolic answers; his contemptuous and impatient dismissal of others; blame-shifting; launching into lengthy stories that overestimate his accomplishments or abilities; or his flagrant attempts to control every discourse to prove his superiority. The Respondent's demeanor and presentation during his testimony was simply and fundamentally manipulative, controlling, and grandiose, and indicates some type of underlying mental condition that does interfere with his ability to practice as a physician with reasonable skill and safety.² The Respondent's testimony, the testimony of all the witnesses, the transcripts of the Respondent's text messages to patients, and the transcripts of the interviews with

² The impact of this conduct on patient care was obvious in the evidence presented regarding the Respondent's relationship with Patients A and B, where the Respondent's grandiose sense of his role in the patients' lives violated the proper boundaries of a psychiatric physician-patient relationship.

Molina employees, were all consistent in portraying someone whose behavior and mental state are destructively contaminated by a sense of personal entitlement.

II. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over the Respondent and subject of this proceeding. RCW 18.130.040.

2.2 The Washington Supreme Court has held the standard of proof in disciplinary proceedings against physicians is proof by clear and convincing evidence. *Nguyen v. Department of Health*, 144 Wn.2d 516, 534 (2001), cert. denied, 535 U.S. 904 (2002).

2.3 The Commission used its experience, competency, and specialized knowledge to evaluate the evidence. RCW 34.05.461(5).

2.4 The Department proved by clear and convincing evidence that the Respondent's ability to practice with reasonable skill and safety was sufficient impaired by a mental condition to trigger the application of RCW 18.130.170(1), which states:

Capacity of license holder to practice — Hearing — Mental or physical examination — Implied consent:

(1) If the disciplining authority believes a license holder may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder to practice with reasonable skill and safety. If the disciplining authority determines that the license holder is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

2.5 The Department requests that the Respondent's credential be suspended, that he be ordered to undergo a psychiatric evaluation at the Gabbard Center in Houston, Texas, and that his credential not be reinstated until the Gabbard Center certifies that he's safe to return to practice. The Respondent requests that the case be dismissed.

2.6 In determining the appropriate sanctions, public safety must be considered before the rehabilitation of the Respondent. RCW 18.130.160. The conduct in this case is not described in a sanctioning schedule in Chapter 246-16. Thus, the Commission used its judgment to determine sanctions. WAC 246-16-800(2)(d). There are WAC 246-16-890 aggravating factors related to the Molina conduct (repeated threats to human life and safety). However, what actually drives the determination of sanctions in RCW 18.130.170(1) cases is the need to determine the course of action or treatment that needs to occur to ensure that a respondent is safe to return to the practice of medicine.

2.7 The Commission agrees with the Department that the Respondent's credential should be suspended until he is deemed to be safe to return to practice. **The Commission believes that a thorough neuropsychological examination is necessary to determine when the Respondent may return to practice. Upon reconsideration of the matter, the Commission determines that the Gabbard Center is an appropriate facility to perform said evaluation. Because of the**

unavailability of local examiners, and for this case only,³ the Commission determines that it would be appropriate to split the cost of said examination.

III. ORDER

3.1 The Respondent's license to practice as a physician and surgeon in the state of Washington is **SUSPENDED**.

3.2 The Respondent shall submit to a neuropsychological examination conducted by **the Gabbard Center in Houston, Texas**.

3.3 The following conditions apply to the neuropsychological examination:

- a. **The cost of the examination and travel expenses to/from the Gabbard Center shall be split 50-50 between the Respondent and the Commission. Travel expenses include costs of transportation (airfare, rental cars, etc.), lodging, and subsistence incurred by the Respondent in travel status. The Commission will reimburse the Respondent for travel expenses in accordance with the rates allowed for state of Washington employees as regulated by the Office of Financial Management. All lodging and transportation arrangements shall be pre-approved by the Commission unless otherwise agreed to in writing between parties.**
- b. It is the Respondent's responsibility to make an appointment for the examination. If he does not make an appointment or otherwise fails to comply with these conditions, his license to practice medicine will remain suspended.
- c. The Respondent shall notify the Commission and **the Washington Physicians Health Program (WPHP)** of the date of his examination **prior to his examination**. The Respondent shall provide a copy of this Final Order to the examiner. The Commission may provide any other material to the examiner that the Commission believes is relevant.

³ Normally, the costs of post-hearing evaluations are a respondent's responsibility. However, for this case only, the Commission will split the cost of the Gabbard evaluation with the Respondent. No precedent for other cases is intended.

- d. The Respondent shall sign all releases necessary so that the examiner may speak to the Commission and provide a copy of the evaluation to the Commission.
- e. The examiner shall author a neuropsychological evaluation of the Respondent that shall include the components listed in Paragraph 3.4 below

3.4 The neuropsychological evaluation referred to in Paragraph 3.3(e) above shall contain the following components:

- a. A complete history of the Respondent including social, developmental, medical, and psychiatric aspects.
- b. Appropriate and sufficient testing to evaluate fully the mental, psychological, and physical status of the Respondent.
- c. A review of any material supplied by the Commission and the Respondent.
- d. A review of any other factors and information deemed appropriate and relevant by the examiner.
- e. A full and detailed discussion of any diagnosis of the Respondent, and a report of the evaluator's assessments, conclusions, and recommendations.

3.5 Upon completion of the evaluation in Paragraphs 3.3 and 3.4 above, the Respondent must complete the following:

- a. The Respondent shall sign all releases necessary so that **personnel at the Gabbard Center** may speak to **the Commission and to WPHP**.
- b. The examiner shall provide a copy of the evaluation to the Respondent, to the Commission, and to WPHP. (WPHP may be contacted at 720 Olive Way, Suite 1010, Seattle, WA 98101-1819. (206) 583-0127.)
- c. Following his receipt of the neuropsychological evaluation, the Respondent shall make an appointment with WPHP to discuss the evaluation. The Respondent shall notify the Commission of the

date of his appointment with WPHP prior to his appointment with WPHP.

- d. WPHP may refer the Respondent for further examination and assessment.
- e. WPHP shall provide a report to the Commission with an opinion of whether the Respondent is safe to return to practice, and if not, what course of treatment is recommended. If treatment is indicated, WPHP shall monitor said treatment and provide quarterly progress reports to the Commission.

3.6 The Respondent may not apply for reinstatement of his credential until WPHP provides a final assessment to the Commission that indicates that the Respondent is safe to return to practice.

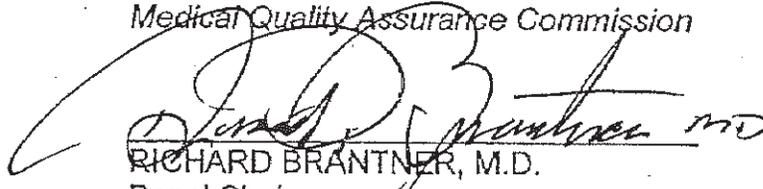
3.7 The Respondent may not seek modification of the terms and conditions of this Order.

3.8 Change of Address. The Respondent shall inform the Commission and the Adjudicative Service Unit, in writing, of changes in his residential and/or business address within 30 days of such change.

3.9 Assume Compliance Costs. With the exception of the cost splitting described in Paragraph 3.3(a) above, the Respondent shall assume all costs of complying with all requirements, terms, and conditions of this Order.

Dated this 27 day of August, 2014.

Medical Quality Assurance Commission


RICHARD BRANTNER, M.D.
Panel Chair

AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

Page 10 of 11

Master Case No. M2014-191

Farzad v. State
02010012

CLERK'S SUMMARY

Charge
RCW 18.130.170(1)

Action
Violated

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Department of Health Medical Program
P.O. Box 47866
Olympia, WA 98504-7866

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Commission does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at:

<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionalsandFacilities/Hearings.aspx>

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER**

Page 11 of 11

Master Case No. M2014-191

Farzad v. State
02010013

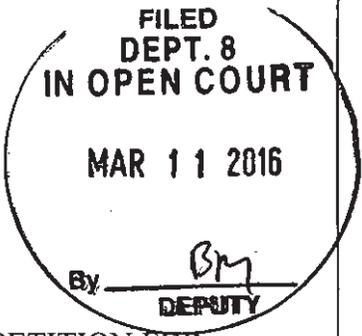
APPENDIX

E



14-2-12758-3 46523381 ORDY 03-11-16

The Honorable Brian M. Tollefson
March 11, 2016 at 9:00 a.m.
Department 8



**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

SAID FARZAD, MD,

NO. 14-2-12758-3

Petitioner,

v.

**ORDER DENYING PETITION FOR
JUDICIAL REVIEW**

MEDICAL QUALITY ASSURANCE
COMMISSION, DEPARTMENT OF
HEALTH, STATE OF
WASHINGTON,

Respondents.

This matter having come before the above-entitled Court on March 11, 2016, the Petitioner, Said Farzad, MD, appeared through his counsel of record, Zenovia N. Love, and Respondents appeared through their attorney of record, Kristin G. Brewer, Assistant Attorney General. The Court, having considered the arguments of counsel, having reviewed the administrative record, and the following pleadings:

1. Petition for Judicial Review dated September 25, 2014;
2. Petitioner's Opening Trial Brief dated February 11, 2016; and
3. Brief of Respondent dated March 8, 2016.

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THE COURT HEREBY ORDERS Dr. Farzad's Petition for Judicial Review DENIED.

DATED this 11 day of March, 2016.



HONORABLE BRIAN M. TOLLEFSON
Pierce County Superior Court Judge

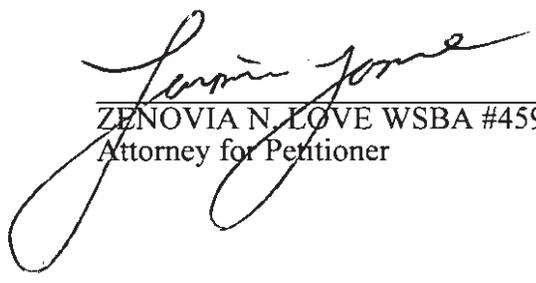
Presented by:

ROBERT W. FERGUSON



KRISTIN G. BREWER, WSBA #38494
Assistant Attorney General
Attorney for Respondent

Approved as to form:



ZENOVIA N. LOVE WSBA #45989
Attorney for Petitioner

FILED
DEPT. 8
IN OPEN COURT
MAR 11 2016
BY Bm
DEPUTY

APPENDIX

F

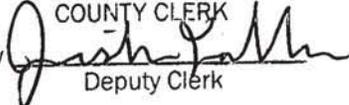
14-1-01917-8
VRD 136
Verdict Form
1897738



Filed in Open Court

Oct. 5, 2017

SONYA KRASKI
COUNTY CLERK

By 
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

STATE OF WASHINGTON)	CASE NO. 14-1-01917-8
)	
Plaintiff,)	
)	
v.)	VERDICT FORM A
)	
)	
SAID FARZAD,)	
Defendant.)	

We, the jury, find the defendant SAID FARZAD

Guilty

(write in not guilty or guilty)

of the crime of Telephone Harassment—Threat to Kill as charged in Count I.

DATED this 5th day of October, 2017.


PRESIDING JUROR

ORIGINAL

APPENDIX

G

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAID FARZAD,

Petitioner,

v.

SNOHOMISH COUNTY SUPERIOR
COURT,

Respondent.

CASE NO. C17-1805-MJP-BAT

ORDER ADOPTING REPORT AND
RECOMMENDATION;
MODIFYING CASE CAPTION;
AND GRANTING WRIT OF
HABEAS CORPUS

THIS MATTER comes before the Court on Respondents’ Objections (Dkt. No. 28) to the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge. (Dkt. No. 27.) Having reviewed the Report and Recommendation, the Objections, the Response (Dkt. No. 30) and all related papers, the Court ADOPTS the Report and Recommendations and GRANTS Petitioner’s 28 U.S.C. § 2241 Petition.

Background

The relevant facts and procedural background are set forth in detail in the Report and Recommendation. (Dkt. No. 27.) Respondents raise three objections to the Report and Recommendation: (1) Respondents object to Magistrate Judge Tsuchida’s conclusion that the

1 state court proceedings violated Petitioner Said Farzad’s Double Jeopardy rights, and object to
2 the recommendation that Petitioner’s habeas corpus petition be granted; (2) Respondents object
3 to the inclusion of Respondents Mark Roe and Robert Ferguson in the caption of the Proposed
4 Order and Proposed Judgment; and (3) Respondents contend that Petitioner is required to
5 exhaust state remedies. (Dkt. No. 28 at 1-2.)

6 Discussion

7 I. Legal Standard

8 Under Federal Rule of Civil Procedure 72, the Court must resolve de novo any part of the
9 Magistrate Judge’s Report and Recommendation that has been properly objected to and may
10 accept, reject, or modify the recommended disposition. Fed. R. Civ. P. 72(b)(3); see also 28
11 U.S.C. § 636(b)(1).

12 II. Respondents’ Objections

13 A. Double Jeopardy

14 Respondents object to the Report and Recommendation’s finding that Petitioner’s retrial,
15 after the jury was unable to reach a verdict on Count I, violated Double Jeopardy. (Dkt. No. 28
16 at 2-5.)

17 The Report and Recommendation indicate that, while the jury expressly declared that
18 they were deadlocked as to Count II, they did not do so as to Count I. (Dkt. No. 27 at 7-8.) The
19 trial court did not make further inquiry or finding as to whether the jury was deadlocked on
20 Count I. (Id. at 8.) Respondents contend that when Petitioner rejected the trial court’s offer to
21 do so, he “acquiesced” in the jury’s discharge and provided “implied consent” such that retrial
22 was permitted. (Id. at 3.)

1 After review of the Report and Recommendation and all related papers, the Court
2 concludes that Petitioner's retrial violated Double Jeopardy. In Brazzel v. Washington, the Ninth
3 Circuit held that "[a]n implied acquittal occurs when a jury returns a guilty verdict as to a lesser
4 included or lesser alternate charge, but remains silent as to other charges, without announcing
5 any signs of hopeless deadlock." 491 F.3d 976, 981 (9th Cir. 2007). That is precisely what
6 occurred here. Petitioner's failure to affirmatively request that the trial court question the jurors
7 as to whether they were genuinely deadlocked on Count I does not constitute "acquiescence" or
8 "implied consent" allowing for retrial. Further, contrary to Respondents' suggestion, Petitioner's
9 agreement to the use of the "failure to agree" instruction does not constitute "waiver" of the
10 implied acquittal as this is the proper instruction in Washington. Daniels v. Pastor, No. C09-
11 5711BHS, 2010 WL 56041, at *4 (W.D. Wash. Jan. 6, 2010) (citation omitted).

12 The Court concludes that Petitioner's retrial on Count I violated Double Jeopardy.

13 **B. Dismissal of Mark Roe and Robert Ferguson**

14 Respondents object to the Report and Recommendation's inclusion of Respondent Mark
15 Roe and Robert Ferguson on the Proposed Order and Judgment. (Dkt. No. 28 at 5.) Magistrate
16 Judge Tsuchida recommended that these Respondents be dismissed from the action, as neither
17 has custody over or supervises Petitioner. (Dkt. No. 27 at 5-6); see also Rumsfeld v. Padilla, 542
18 U.S. 426, 434 (2004) (quoting 28 U.S.C. § 2242).

19 The Court concludes that Respondents Roe and Ferguson should be dismissed from this
20 action, and modifies the caption on the Proposed Order and Proposed Judgment, entered
21 herewith, accordingly.

1 **C. Exhaustion of State Remedies**

2 Respondents object to the Report and Recommendation’s finding that Petitioner need not
3 exhaust state judicial remedies before claiming Double Jeopardy in federal court. (Dkt. No. 28 at
4 5-6.) In its Order staying further proceedings and sentencing, the Court previously found that,
5 under the precedent established by State v. Glasmann, 183 Wn.2d 117, 119 (2015), it was
6 “highly unlikely” that Petitioner would succeed on his Double Jeopardy claim in state court, such
7 that requiring him to exhaust his state judicial remedies would be “futile.” (See Dkt. No. 26 at 5-
8 6.)

9 The Court concludes that, for the reasons discussed in its prior Order, futility dispensed
10 with the exhaustion requirement in this § 2241 case.

11 **Conclusion**

12 The Court, having reviewed the Report and Recommendation of United States Magistrate
13 Judge Brian A. Tsuchida, the Objections, the Response, and all related papers, ORDERS as
14 follows:

- 15 (1) The Report and Recommendation is ADOPTED;
- 16 (2) The case caption is AMENDED to remove Respondents Mark Roe and Robert Ferguson;
- 17 (3) The 28 U.S.C. § 2241 petition (Dkt. No. 5) is GRANTED. Further proceedings against
18 Said Farzad on the charge of Felony Telephone Harassment in Snohomish County Case
19 No. 14-1-01917-8 would violate the Double Jeopardy Clause and are prohibited, and;
- 20 (4) The Clerk of Court is directed to send copies of this Order to the Snohomish County
21 Superior Court, to Judge Tsuchida, and to all counsel.
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1 Dated May 3, 2018.

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4 Marsha J. Pechman
5 United States District Judge
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APPENDIX

H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAID FARZAD,

Petitioner,

v.

SNOHOMISH COUNTY SUPERIOR
COURT,

Respondent.

JUDGMENT IN A CIVIL CASE

CASE NO. C17-1805-MJP

Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to consideration before the court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT

The Report and Recommendation is ADOPTED; the case caption is MODIFIED; and the 28 U.S.C. § 2241 petition (Dkt. No. 5) is GRANTED. Further proceedings against Said Farzad on the charge of Felony Telephone Harassment in Case No. 14-1-01917-8 would violate the Double Jeopardy Clause and are prohibited, and the Clerk of Court is directed to send copies of this Order to the Snohomish County Superior Court, to Judge Tsuchida, and to all counsel.

Dated May 3, 2018.

William M. McCool

Clerk of Court

s/ Paula McNabb

Deputy Clerk

APPENDIX

I

HONORABLE MARSHA J. PECHMAN

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAID FARZAD,

Plaintiff,

vs.

SNOHOMISH COUNTY SUPERIOR COURT,

Defendants(s).

No. CV 17-1805 MJP-BAT

NOTICE OF APPEAL

NOTICE is hereby given that Defendant, Snohomish County Superior Court, Defendant in the above-captioned matter, does appeal to the United States Court of Appeals for the Ninth Circuit from actions of trial court culminating in the judgment entered in this matter on behalf of Defendant terminating Defendant’s case on May 3, 2018, a copy of which is attached as Exhibit A.

Respectfully submitted on May 31, 2018.

FOR MARK ROE
Snohomish County Prosecuting Attorney

By: S/S SETH A. FINE
SETH A. FINE, WSBA NO. 10937
Deputy Prosecuting Attorney
Attorney for Defendants Snohomish County
Superior Court and Mark Roe

I hereby certify that I served a true and correct copy of the foregoing Notice of Appeal upon the person/persons listed herein by the following means:

Jesse Cantor
Assistant Federal Public Defender
Attorney for Said Farzad
Federal Public Defender’s Office
1601 Fifth Avenue, Suite 700
Seattle, WA 98101
Email: Jesse_Cantor@fd.org

- Electronic Filing (CM/ECF)
- Facsimile
- Express Mail
- Email
- U.S. Mail
- Hand Delivery
- Messenger Service

John Joseph Samson
Washington State Attorney General
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Email: JohnS@atg.wa.gov

- Electronic Filing (CM/ECF)
- Facsimile
- Express Mail
- Email
- U.S. Mail
- Hand Delivery
- Messenger Service

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 31st day of May, 2018.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: S/S: DIANE K. KREMENICH
Diane K. Kremenich, Legal Assistant
Snohomish County Prosecutor’s Office –
Criminal Division
3000 Rockefeller Ave., M/S 504
Everett, Washington 98201
(425) 388-3572/FAX: (425) 388-3333
Email:
diane.kremenich@co.snohomish.wa.us

APPENDIX

J

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 18-35465 Nature of Suit: 2530 Habeas Corpus Said Farzad v. Snohomish County Superior Ct., et al Appeal From: U.S. District Court for Western Washington, Seattle Fee Status: Paid	Docketed: 06/01/2018
--	-----------------------------

Case Type Information: 1) prisoner 2) federal 3) 2241 habeas corpus

Originating Court Information:			
District: 0981-2 : 2:17-cv-01805-MJP			
Trial Judge: Marsha J. Pechman, Senior District Judge			
Date Filed: 12/01/2017			
Date Order/Judgment: 05/03/2018	Date Order/Judgment EOD: 05/03/2018	Date NOA Filed: 05/31/2018	Date Rec'd COA: 05/31/2018

Prior Cases: None
Current Cases: None

SAID FARZAD Petitioner - Appellee,	Jesse Cantor, Attorney Direct: 206-553-1100 [COR NTC Assist Fed Pub Def] FPDWA - FEDERAL PUBLIC DEFENDER'S OFFICE Western District of Washington Suite 700 1601 Fifth Avenue Seattle, WA 98101
v.	Alan Zarky, Attorney Direct: 253-593-6710 [COR NTC Assist Fed Pub Def] FPDWA - FEDERAL PUBLIC DEFENDER'S OFFICE (TACOMA) 400 1331 Broadway Tacoma, WA 98402
SNOHOMISH COUNTY SUPERIOR COURT Respondent - Appellant,	Seth Aaron Fine, Esquire Direct: 259-9333 [COR NTC County Counsel] Snohomish County Prosecuting Attorney 3000 Rockefeller Avenue M/S 504 Everett, WA 98201
MARK ROE, Snohomish County Prosecuting Attorney Respondent - Appellant,	Seth Aaron Fine, Esquire Direct: 259-9333 [COR NTC County Counsel] (see above)

SAID FARZAD,

Petitioner - Appellee,

v.

SNOHOMISH COUNTY SUPERIOR COURT; MARK ROE, Snohomish County Prosecuting Attorney,

Respondents - Appellants.

- 06/01/2018 [1](#) [10893183] DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellants Mark Roe and Snohomish County Superior Court opening brief due 07/30/2018. Appellee Said Farzad answering brief due 08/29/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10893183] --[Edited 06/01/2018 by KM] (KM) [Entered: 06/01/2018 11:12 AM]
17 pg, 1.71 MB
- 06/01/2018 [2](#) Filed (ECF) notice of appearance of Alan Zarky for Appellee Said Farzad. Date of service: 06/01/2018. [10894071] [18-35465] (Zarky, Alan) [Entered: 06/01/2018 04:13 PM]
2 pg, 112.42 KB
- 06/01/2018 [3](#) Filed (ECF) notice of appearance of Alan Zarky for Appellee Said Farzad. Date of service: 06/01/2018. [10894181] [18-35465] (Zarky, Alan) [Entered: 06/01/2018 04:44 PM]
2 pg, 108.99 KB
- 06/01/2018 [4](#) Added attorney Alan Zarky for Said Farzad, in case 18-35465. [10894191] (JFF) [Entered: 06/01/2018 04:49 PM]
- 06/07/2018 [5](#) Filed clerk order (Deputy Clerk: ME): Order to show cause docket fee due. [10900922] (ME) [Entered: 06/07/2018 03:56 PM]
9 pg, 348.74 KB
- 06/08/2018 [6](#) Received notification from District Court re: payment of docket fee. Amount Paid: USD 505.00. Date paid: 06/08/2018. [10902768] (KM) [Entered: 06/08/2018 04:11 PM]
- 06/12/2018 [7](#) Filed (ECF) Appellants Mark Roe and Snohomish County Superior Court Mediation Questionnaire. Date of service: 06/12/2018. [10905250] [18-35465] (Fine, Seth) [Entered: 06/12/2018 09:28 AM]
6 pg, 191.76 KB
- 06/21/2018 [8](#) MEDIATION ORDER FILED: The Mediation Program of the 9th Circuit Court of Appeals facilitates settlement while appeals are pending. By 07/03/2018, counsel for all parties intending to file briefs in this matter are requested to inform the Circuit Mediator by email of their clients' views on whether the issues on appeal or the underlying dispute might be amenable to settlement presently or in the foreseeable future. This communication will be kept confidential, if requested... This communication should not be filed with the court... The existing briefing schedule remains in effect... [10917460] (LW) [Entered: 06/21/2018 01:10 PM]
2 pg, 201.63 KB
- 07/02/2018 [9](#) MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. The briefing schedule previously established by the court remains in effect. [10928662] (LW) [Entered: 07/02/2018 10:45 AM]
1 pg, 183.26 KB
- 07/30/2018 [10](#) Submitted (ECF) Opening Brief for review. Submitted by Appellants Mark Roe and Snohomish County Superior Court. Date of service: 07/30/2018. [10959528] [18-35465] (Fine, Seth) [Entered: 07/30/2018 01:55 PM]
22 pg, 150.82 KB
- 07/30/2018 [11](#) Submitted (ECF) excerpts of record. Submitted by Appellants Mark Roe and Snohomish County Superior Court. Date of service: 07/30/2018. [10959539] [18-35465] (Fine, Seth) [Entered: 07/30/2018 01:57 PM]
103 pg, 14.45 MB
- 08/01/2018 [12](#) Filed clerk order: The opening brief [\[10\]](#) submitted by Mark Roe and Snohomish County Superior Court is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [\[11\]](#) submitted by Mark Roe and Snohomish County Superior Court. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10962098] (KWG) [Entered: 08/01/2018 09:10 AM]
2 pg, 187.36 KB
- 08/06/2018 [13](#) Filed 4 paper copies of excerpts of record [\[11\]](#) in 2 volume(s) filed by Appellants Mark Roe and Snohomish County Superior Court. [10967514] (KWG) [Entered: 08/06/2018 02:12 PM]
- 08/06/2018 [14](#) Received 7 paper copies of Opening Brief [\[10\]](#) filed by Mark Roe and Snohomish County Superior Court. [10967595] (DB) [Entered: 08/06/2018 02:32 PM]
- 08/20/2018 [15](#) Filed (ECF) Appellee Said Farzad Motion to extend time to file Answering brief until 10/19/2018. Date of service: 08/20/2018. [10982002] [18-35465] (Zarky, Alan) [Entered: 08/20/2018 11:23 AM]
6 pg, 22.39 KB
- 09/04/2018 [16](#) Filed clerk order (Deputy Clerk: amt): Granting (ECF Filing) motion [10982002-] to extend time to file answering brief. The answering brief is due 10/19/2018. The optional reply brief is due 21 days after service of the answering brief. [10998544] (AT) [Entered: 09/01/2018 12:48 PM]
1 pg, 185.02 KB
- 10/19/2018 [17](#) Submitted (ECF) Answering Brief for review. Submitted by Appellee Said Farzad. Date of service: 10/19/2018. [11053614] [18-35465] (Zarky, Alan) [Entered: 10/19/2018 12:03 PM]
57 pg, 772.42 KB
- 10/19/2018 [18](#) Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Said Farzad. Date of service: 10/19/2018. [11053617] [18-35465] (Zarky, Alan) [Entered: 10/19/2018 12:05 PM]
12 pg, 1.36 MB
- 10/19/2018 [19](#) Filed clerk order: The answering brief [\[17\]](#) submitted by Said Farzad is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached

to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [18] submitted by Said Farzad. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [11054431] (GV) [Entered: 10/19/2018 05:28 PM]

- 10/23/2018 20 Received 7 paper copies of Answering Brief [17] filed by Said Farzad. [11057140] (RG) [Entered: 10/23/2018 12:21 PM]
- 10/23/2018 21 Filed four paper copies of supplemental excerpts of record [18] in 1 volume(s) filed by Appellee Said Farzad. [11059196] (GV) [Entered: 10/24/2018 04:21 PM]
- 11/09/2018 22 COURT DELETED INCORRECT ENTRY. Notice about deletion sent to case participants registered for electronic filing. Brief resubmitted using correct filing type in Entry: [23]. Original Text: Filed (ECF) Appellants Mark Roe and Snohomish County Superior Court reply to answer to Original Habeas petition. Date of service: 11/09/2018. [11083264] [18-35465] (Fine, Seth) [Entered: 11/09/2018 11:12 AM]
- 11/09/2018 [23](#)
20 pg, 85.82 KB Submitted (ECF) Reply Brief for review. Submitted by Appellants Mark Roe and Snohomish County Superior Court. Date of service: 11/09/2018. [11084181]--[COURT ENTERED FILING to correct entry [22].] (RY) [Entered: 11/09/2018 04:54 PM]
- 11/13/2018 [24](#)
2 pg, 187.47 KB Filed clerk order: The reply brief [23] submitted by Mark Roe and Snohomish County Superior Court is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [11084761] (KWG) [Entered: 11/13/2018 09:37 AM]
- 11/15/2018 25 Received 7 paper copies of Reply Brief [23] filed by Mark Roe and Snohomish County Superior Court. [11089000] (RG) [Entered: 11/15/2018 12:30 PM]
- 11/20/2018 26 This case is being considered for an upcoming oral argument calendar in Seattle
- Please review the Seattle sitting dates for March 2019 and the two subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please inform the court *within 3 days of this notice*, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** regarding availability for oral argument).
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter *within 3 days of this notice*, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** request for mediation).[11095385] (AW) [Entered: 11/20/2018 04:12 PM]
- 11/26/2018 [27](#)
2 pg, 47.01 KB Filed (ECF) Appellants Mark Roe and Snohomish County Superior Court Correspondence: Counsel's Oral Argument Availability. Date of service: 11/26/2018 [11099464] [18-35465] (Fine, Seth) [Entered: 11/26/2018 04:25 PM]
- 12/19/2018 28 This case is being considered for an upcoming oral argument calendar in Seattle
- Please review the Seattle sitting dates for April 2019 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's [instructions](#) carefully.
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** request for mediation).[11125582] (AW) [Entered: 12/19/2018 09:11 AM]
- 12/20/2018 [29](#)
1 pg, 46.05 KB Filed (ECF) Attorney Seth Aaron Fine, Esquire for Appellants Mark Roe and Snohomish County Superior Court response to notice for case being considered for oral argument. Date of service: 12/20/2018. [11128952] [18-35465] (Fine, Seth) [Entered: 12/20/2018 03:17 PM]
- 01/27/2019 30 Notice of Oral Argument on Friday, April 12, 2019 - 09:00 A.M. - SE 7th Flr Courtroom 2 - Seattle WA.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the [ACKNOWLEDGMENT OF HEARING NOTICE](#) filing type in CM/ECF no later than 21 days before Friday, April 12, 2019. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11167985] (AW) [Entered: 01/27/2019 06:17 AM]

- 02/06/2019 [31](#) Filed (ECF) Acknowledgment of hearing notice by Attorney Alan Zarky for Appellee Said Farzad. Hearing in Seattle on 04/12/2019 at 09:00 A.M. (Courtroom: Courtroom 2). Filer sharing argument time: No. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 02/06/2019. [11180572] [18-35465] (Zarky, Alan) [Entered: 02/06/2019 09:14 AM]
- 02/06/2019 [32](#) Filed (ECF) Acknowledgment of hearing notice by Attorney Seth Aaron Fine, Esquire for Appellants Mark Roe and Snohomish County Superior Court. Hearing in Seattle on 04/12/2019 at 09:00 A.M. (Courtroom: Courtroom No. 2). Filer sharing argument time: No. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 02/06/2019. [11181529] [18-35465] (Fine, Seth) [Entered: 02/06/2019 02:54 PM]
- 02/22/2019 [33](#) Filed (ECF) Appellee Said Farzad Unopposed Motion for miscellaneous relief [Motion for Leave to File a Surreply]. Date of service: 02/22/2019. [11203844] [18-35465] --[COURT UPDATE: Removed brief (refiled in entry [35](#)). 3/1/2019 by TYL] (Zarky, Alan) [Entered: 02/22/2019 08:58 AM]
7 pg, 31.48 KB
- 02/22/2019 [35](#) Submitted (ECF) Reply Brief for review. Submitted by Appellee Said Farzad. Date of service: 02/22/2019. [11213207] --[COURT ENTERED FILING to correct entry [33](#) .] (TYL) [Entered: 03/01/2019 01:59 PM]
14 pg, 54.73 KB
- 03/01/2019 [34](#) Filed text clerk order (Deputy Clerk: WL): Petitioner-appellee's unopposed motion for leave to file a surreply (Docket Entry # [33](#)) is granted [11212733] (WL) [Entered: 03/01/2019 10:51 AM]
- 03/01/2019 [36](#) Filed clerk order: The surreply brief [35](#) submitted by Said Farzad is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be submitted to the principal office of the Clerk. [11213236] (KWG) [Entered: 03/01/2019 02:05 PM]
2 pg, 186.49 KB
- 03/05/2019 [37](#) Received 7 paper copies of Surreply Brief [35](#) filed by Said Farzad (sent to panel). [11216492] (DB) [Entered: 03/05/2019 12:20 PM]
- 03/08/2019 [38](#) Filed (ECF) Appellants Mark Roe and Snohomish County Superior Court Motion for miscellaneous relief [motion to vacate and dismiss case]. Date of service: 03/08/2019. [11221080] [18-35465]--[COURT UPDATE: Attached searchable version of motion and updated docket text to reflect content of filing. 03/08/2019 by SLM] (Fine, Seth) [Entered: 03/08/2019 11:42 AM]
21 pg, 1.02 MB
- 03/15/2019 [39](#) Filed (ECF) Appellee Said Farzad response to motion (([38](#)) Motion (ECF Filing), [38](#)) Motion (ECF Filing)). Date of service: 03/15/2019. [11230332] [18-35465] (Zarky, Alan) [Entered: 03/15/2019 04:41 PM]
13 pg, 51.36 KB

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Superior Court Case Number: 17-2-07459-0

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