

FILED
Court of Appeals
Division II
State of Washington
3/4/2019 3:25 PM
No. 51893-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MONIQUE MESSENGER and KEVIN MESSENGER,
wife and husband, individually and on behalf
of their minor children, M.M., G.M., L.M., B.M., and Q.M.,

Appellants,

v.

SHANNON L. WHITEMARSH, as Administrator-Personal
Representative of THE ESTATE OF BRYAN DONALD
WHITEMARSH; and MULTICARE HEALTH
SYSTEM, a Washington nonprofit corporation,

Respondents.

CONSOLIDATED REPLY BRIEF OF APPELLANTS

Douglas R. Cloud, WSBA #13456
Law Office of Douglas Cloud
1008 Yakima Avenue #202
Tacoma, WA 98405-4850
(253) 627-1505

Philip A. Talmadge, WSBA #6973
Aaron P. Orheim, WSBA# 47670
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Appellants
Monique and Kevin Messenger

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	iii-v
A. INTRODUCTION	1
B. REPLY ON STATEMENT OF THE CASE	1
C. ARGUMENT	2
(1) <u>Dr. Whitmarsh Owed a Duty to Monique and Her Family Not to Have Sex with His Primary Care Patient</u>	2
(a) <u>The Estate’s Partial Survey of Laws Is Incomplete</u>	8
(b) <u>Insurance Cases Are Inapplicable</u>	10
(c) <u>The Estate’s Arguments Are Bad Public Policy</u>	13
(2) <u>The Messengers Created a Question of Fact Regarding Whether Dr. Whitmarsh Breached an Independent Duty as a Physician Providing Mental Health Care</u>	15
(a) <u>The Dead Man’s Statute Does Not Apply</u>	15
(b) <u>The Estate Waived the Dead Man’s Statute</u>	17
(c) <u>The Medical Records Were Objectively Falsified</u>	19
(3) <u>Dr. Miller’s Testimony Was Admissible</u>	21

(4)	<u>The Trial Court Erred in Dismissing the Corporate Negligence Claims Against MultiCare</u>	23
(5)	<u>The Trial Court Erred in Denying the Messengers' Motion to Continue the Summary Judgment Hearing</u>	27
D.	CONCLUSION.....	30

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Table of Cases</u>	
<u>Washington Cases</u>	
<i>Adair v. Weinberg</i> , 79 Wn. App. 197, 901 P.2d 340 (1995).....	12, 22, 23
<i>Am. Home Assur. Co. v. Cohen</i> , 124 Wn.2d 865, 881 P.2d 1001 (1994).....	13
<i>Branom v. State</i> , 94 Wn. App. 964, 974 P.2d 335, <i>review denied</i> , 138 Wn.2d 1023 (1999).....	6
<i>Erickson v. Robert F. Kerr, M.D., P.S., Inc.</i> , 69 Wn. App. 891, 851 P.2d 703 (1993), <i>aff'd in part, rev'd in part</i> , 125 Wn.2d 183 (1994)	18
<i>Gomez v. Sauerwein</i> , 180 Wn.2d 610, 331 P.3d 19 (2014)	12
<i>Haley v. Med. Disciplinary Bd.</i> , 117 Wn.2d 720, 818 P.2d 1062 (1991).....	3, 12
<i>Hunter v. Brown</i> , 4 Wn. App. 899, 484 P.2d 1162 (1971), <i>aff'd</i> , 81 Wn.2d 465 (1972).....	7
<i>In re Disciplinary Proceeding Against Halverson</i> , 140 Wn.2d 475, 998 P.2d 833 (2000).....	3
<i>Keck v. Collins</i> , 181 Wn. App. 67, 325 P.3d 306 (2014), <i>aff'd</i> , 184 Wn.2d 358 (2015).....	27
<i>Kellar v. Estate of Kellar</i> , 172 Wn. App. 562, 291 P.3d 906 (2012), <i>review denied</i> , 178 Wn.2d 1025 (2013)	16
<i>Lockett v. Goodill</i> , 71 Wn.2d 654, 430 P.2d 589 (1967)	6, 8
<i>Loudon v. Mhyre</i> , 110 Wn.2d 675, 756 P.2d 138 (1988)	6
<i>Lowy v. PeaceHealth</i> , 174 Wn.2d 769, 280 P.3d 1078 (2012).....	29
<i>Niece v. Elmview Grp. Home</i> , 131 Wn.2d 39, 929 P.2d 420 (1997).....	24, 26
<i>Omer v. Edgren</i> , 38 Wn. App. 376, 685 P.2d 635 (1984)	<i>passim</i>
<i>Schoening v. Grays Harbor Cmty. Hosp.</i> , 40 Wn. App. 331, 698 P.2d 593, <i>review denied</i> , 104 Wn.2d 1008 (1985).....	23
<i>Sherman v. Kissinger</i> , 146 Wn. App. 855, 195 P.3d 539 (2008).....	6
<i>Standard Fire Insurance Co. v. Blakeslee</i> , 54 Wn. App. 1, 771 P.2d 1172 (1989).....	10, 11, 12
<i>Thompson v. Everett Clinic</i> , 71 Wn. App. 548, 860 P.2d 1054 (1993).....	26

<i>Van Hook v. Anderson</i> , 64 Wn. App. 353, 824 P.2d 509 (1992).....	22
<i>Washington Insurance Guaranty Association v. Hicks</i> , 49 Wn. App. 623, 744 P.2d 625 (1987).....	10, 11, 12
<i>West v. Seattle Port Comm'n</i> , 194 Wn. App. 821, 380 P.3d 82 (2016).....	28

Other Cases

<i>Atienza v. Taub</i> , 194 Cal. App. 3d 388, 239 Cal. Rptr. 454 (Cal. Ct. App. 1987).....	10
<i>Bunce v. Parkside Lodge of Columbus</i> , 596 N.E.2d 1106 (Ohio Ct. App. 1991).....	9
<i>Gromis v. Medical Board</i> , 8 Cal. App. 4th 589, 10 Cal. Rptr. 2d 452 (Cal. Ct. App. 1992).....	10
<i>Hoopes v. Hammargren</i> , 725 P.2d 238 (Nev. 1986)	8, 14
<i>Johnson v. Amethyst Corp.</i> , 463 S.E.2d 397 (N.C. App. 1995).....	9
<i>Korper v. Weinstein</i> , 783 N.E.2d 877 (Mass. Ct. App. 2003)	22
<i>Martinmaas v. Engelmann</i> , 612 N.W.2d 600 (S.D. 2000).....	9
<i>Matter of Miller v. Comm'r of Health for State of N.Y.</i> , 270 A.D.2d 584 (N.Y. App. Div. 2000)	5, 17
<i>Pons v. Ohio State Med. Bd.</i> , 614 N.E.2d 748 (Ohio 1993)	5
<i>Roy v. Hartogs</i> , 81 Misc. 2d 350, 366 N.Y.S.2d 297 (N.Y. Civ. Ct. 1975).....	14
<i>Slack v. Farmers Ins. Exch.</i> , 5 P.3d 280 (Colo. 2000).....	9

Statutes

RCW 5.60.030	16, 17
RCW 7.70	6, 11, 12, 22
RCW 7.70.040	4
RCW 7.70.040(1).....	2
RCW 18.130.180(1).....	3
RCW 18.130.180(24).....	3

Codes, Rules and Regulations

CR 56(f)	27
ER 102	20

ER 104	20
RPC 1.8 cmt. [17]	3
RPC 8.4	3

Other Authorities

2 J. Dooley, <i>Modern Tort Law</i> § 34.21.50 (B. Lindahl rev. 1983).....	7
Karen A. Jordan, <i>Managed Competition and Limited Choice of Providers: Countering Negative Perceptions Through A Responsibility to Select Quality Network Physicians,</i> 27 <i>Ariz. St. L.J.</i> 875 (1995)	13, 24, 26
Karl Tegland, 5A <i>Wash. Prac., Evidence Law and Practice</i> § 601.20 (6th ed.)	17
N.Y. Educ. Law § 6530(20).....	5
Thomas Fahy & Nigel Fisher, <i>Sexual Contact Between Doctors and Patients: Almost Always Harmful,</i> 304 <i>BMJ</i> 1519 (1992)	3

A. INTRODUCTION

Dr. Bryan Whitemarsh's Estate would have this Court hold that a primary care physician exercises the "degree of care" expected of him by having sex with a patient while continuing to treat her, her husband, and her five minor children. The Estate would have this Court condone the degree of care exercised by a doctor who preyed upon a patient he learned had a history of mental health issues and marital problems, information he learned solely through providing primary care to her and her family. The "degree of care" the Estate champions includes continuing to treat the patient and her entire family while having sexual relations, threatening to kill the patient's husband when he reports the physician's sexual impropriety, and threatening to kill himself if the patient ends the sexual relationship. That cannot be the "degree of care" expected of a primary care physician in this state.

The responsive briefs of the Estate and MultiCare highlight this and the many other errors made below, including dismissal of the Messengers' corporate negligence claim against MultiCare where significant issues of fact exist. Reversal is warranted.

B. REPLY ON STATEMENT OF THE CASE

While this case turns largely on legal principles including the standard of care owed to patients, significant factual disputes, especially

regarding MultiCare's corporate negligence, should have been resolved in the Messengers' favor and precluded summary judgment. Those disputes are discussed in detail below.

C. ARGUMENT

(1) Dr. Whitemarsh Owed a Duty to Monique and Her Family Not to Have Sex with His Primary Care Patient

In order to sustain a claim under RCW 7.70.040(1), a plaintiff must prove that “[t]he health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances.” RCW 7.70.040(1). Thus, the simple question for this Court is whether a primary care physician who treats a patient, her husband, and her children exercises a “degree of care...expected of a reasonably prudent health care provider” by initiating a sexual relationship with his patient while continuing to treat her and her entire family for their most intimate medical needs. The answer must be no.

As discussed in detail in the Messengers' opening brief, no reasonably prudent health care provider would have acted the way Dr. Whitemarsh did, having sex with patients while continuing to act as their primary care physician. Such conduct is unethical and specifically

prohibited under Washington law. RCW 18.130.180(24). Sexual relations, even with a former patient, is an “abuse of the trust inherent in the physician’s role” and is prohibited under RCW 18.130.180(1) as an act of “moral turpitude, dishonesty, or corruption relating to the practice of [a doctor’s] profession.” *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 743, 818 P.2d 1062 (1991); *see also, Omer v. Edgren*, 38 Wn. App. 376, 378, 685 P.2d 635 (1984) (psychiatrist would violate the standard of care that is fiduciary in nature by having sex with patient he treated for 15 years).¹

But even more than these basic ethical and legal considerations, a sexual relationship with a patient is fundamentally harmful. As the Messengers’ unrebutted expert testified, it is predatory behavior predicated on the power imbalance inherent to the relationship. CP 456. Medical authorities agree that “[f]or the patient the overwhelming evidence is that sexual contact with the doctor is seriously harmful.” Thomas Fahy & Nigel Fisher, *Sexual Contact Between Doctors and Patients: Almost Always Harmful*, 304 BMJ 1519 (1992) (Appellants’ br. at Appendix). By putting his desire for sexual gratification over the well-being of his client and her family, Dr. Whitemarsh necessarily failed to

¹ As discussed in the Messengers’ opening brief, attorneys are also expected to refrain from sexual relations with clients, even absent the “bright line” statutory prohibitions that applies to doctors. *In re Disciplinary Proceeding Against Halverson*, 140 Wn.2d 475, 492, 998 P.2d 833 (2000); RPC 1.8 cmt. [17]; RPC 8.4.

provide the “degree of care” expected of a reasonably prudent physician. The Estate offers no serious argument to the contrary.

Importantly, the Court must look to the “class to which” the physician belongs within the profession and evaluate what a reasonably prudent physician of that class would do “acting in the same or similar circumstances.” RCW 7.70.040. Here, Dr. Whitemarsh is a primary care physician, and he was treating Monique, her husband, and her children for primary care. No reasonably prudent primary care physician would consider it appropriate to have a sexual relationship with such a patient to the detriment of (and while continuing to treat) her entire family. CP 454-59. No reasonably prudent primary care physician would threaten to kill his patient for reporting his sexual relationship with the patient’s wife to the medical board. *Id.* And no reasonably prudent primary care physician would threaten suicide if the patient ended their sexual relationship. *Id.* Any argument to the contrary approaches the level of absurdity. It is no wonder the Estate ignores this key step in the analysis.

In addition to these logical, common sense arguments, the Messengers presented unrebutted expert testimony of Dr. Miller that, *in primary care*, relationship-building and trust are key to successful treatment. *See* CP 454-59. And courts have noted that a primary care physician/patient relationship “obviously entail[s] a fiduciary relationship”

and such physicians hold “a position of trust and [have] training to treat all medical conditions, including psychiatric conditions.” *Matter of Miller v. Comm’r of Health for State of N.Y.*, 270 A.D.2d 584, 585 (N.Y. App. Div. 2000) (primary care physician’s “consensual” relationship with patient was immoral “conduct in the practice of medicine”) (citing N.Y. Educ. Law § 6530(20)); *accord, Pons v. Ohio State Med. Bd.*, 614 N.E.2d 748, 751 (Ohio 1993) (ostensibly consensual relationship was a “departure from...minimal standards of care” because “the care a [primary care] doctor renders to a patient includes more than just procedures performed or medications prescribed. The overall care consists of the entire treatment relationship between the physician and patient.”). Dr. Whitmarsh should have known that his sexual misconduct was bound to exploit, confuse, and harm his primary care patient, especially Monique, whom he counseled regarding her marital problems and mental health. *Id.*

The Estate would have this Court condone that behavior, callously arguing that “Mrs. Messenger is merely complaining that she had an unhappy affair with a man that happened to be her doctor.” Estate br. at 20. This ignores the authority cited above, the prohibitions against such harmful conduct not only in Washington law but in millennia-old canons of medical practice – *see* Appellants’ br. at 1 (quoting the Hippocratic Oath) – and also the well-settled notion that a physician-patient

relationship “is a fiduciary one of the highest degree. It involves every element of trust, confidence and good faith.” *Lockett v. Goodill*, 71 Wn.2d 654, 656, 430 P.2d 589 (1967). Dr. Whitmarsh did not live up to that standard by his abusive and predatory behavior.

The Estate wrongfully argues that the Messengers are foreclosed from arguing that Dr. Whitmarsh breached the fiduciary duty he owes to his patients because they did not plead a separate cause of action for breach of fiduciary duty. Estate br. at 27. This is a red herring. The fiduciary relationship between a physician and patient does not necessarily give rise to a separate cause of action, rather it describes the standard of care imposed upon physicians.² *Lockett, supra*; *Loudon v. Mhyre*, 110 Wn.2d 675, 679, 756 P.2d 138 (1988); *Omer*, 38 Wn. App. at 378.

In *Omer*, Division III reversed the summary judgment dismissal of a patient’s malpractice claim against her psychiatrist where the patient alleged that a sexual relationship developed during the 15 years the psychiatrist treated her. Importantly, the patient did not allege a separate claim for breach of fiduciary duty. In evaluating the standard of care

² It is also doubtful whether a separate cause of action for breach of fiduciary duty against a physician is still viable in light of the Legislature’s decision to reclassify “all civil actions for damages for injury occurring as a result of health care, regardless of how the action is characterized” under RCW 7.70. *Branom v. State*, 94 Wn. App. 964, 969, 974 P.2d 335, review denied, 138 Wn.2d 1023 (1999) (emphasis added). See, e.g., *Sherman v. Kissinger*, 146 Wn. App. 855, 195 P.3d 539 (2008) (trial court dismissed separate action for breach of fiduciary duty due to RCW 7.70’s exclusivity) (overturned on other grounds).

owed to the patient *pursuant to a malpractice claim*, the court determined that “a fact finder could determine the fiduciary relationship between physician and patient was breached.” *Id.* at 381. The court reasoned that a psychiatrist’s standard of care is the same as any other “medical specialist,” and the “inherent necessity for trust and confidence [in a physician-patient relationship] requires scrupulous good faith on the part of the physician.” *Id.* (quoting *Hunter v. Brown*, 4 Wn. App. 899, 905, 484 P.2d 1162 (1971), *aff’d*, 81 Wn.2d 465 (1972)).³

Here, too, a fact finder could determine that Dr. Whitemarsh breached the standard of care owed by a physician when he put his own interest ahead of his patients’. He abused his role as a trusted confidante and exploited his patient’s vulnerabilities, *vulnerabilities which he only learned through treating her as a primary care physician*. He knew that his behavior was unethical, immoral, and harmful. He knew that by prioritizing his own need for sexual gratification, he would cause harm not only to Monique, but to her husband and children who were also his patients. The Court should not condone such gross abuses of the “trust,

³ Notably, while *Omer* involved a sexual relationship between a psychiatrist and patient, the court did not impose liability due to the transference phenomenon. Rather the court premised liability on a breach of the standard of care that is fiduciary in nature, which the court explained is “the same duty of care owed by other medical specialists.” *Id.* at 378 (quoting 2 J. Dooley, *Modern Tort Law* § 34.21.50, at 482 (B. Lindahl rev. 1983)). *Omer* supports the notion that, under Washington law, a non-mental health physician who has sex with a patient can be liable for malpractice due to breaching the standard of care owed by all medical professionals to refrain from sex with patients.

confidence, and good faith” patients like the Messengers place in their physicians. *Lockett*, 71 Wn.2d at 656.

(a) The Estate’s Partial Survey of Laws Is Incomplete

The Estate relies on a partial survey from other jurisdictions to support its position that sexual misconduct is outside the scope of the practice of medicine and a sexual relationship cannot constitute malpractice. Estate br. at 18-19. But that incomplete survey ignores the courts who have held that sexual misconduct, including an ostensibly consensual relationship, supports a claim for malpractice.

For example, the Nevada Supreme Court has held that “[s]exual advantage of the physician-patient relationship can constitute malpractice.” *Hoopes v. Hammargren*, 725 P.2d 238, 242 (Nev. 1986). In that case, the court reversed summary judgment in favor of a neurosurgeon who began an ostensibly consensual sexual relationship with his MS patient. The court rejected the same arguments advanced by the Estate, namely that liability for malpractice only attaches to psychiatrists or to cases where the sexual contact is proffered under the guise of “therapeutic benefit.” *Id.* at 439-40. Rather, a physician can be liable for malpractice based on a breach of the duty of care which includes the duty to “do no harm,” act with the “utmost good faith,” and not to exploit the physician-patient relationship, which is necessarily a fiduciary one. *Id.* at 242-43.

Similarly, Ohio courts have held that a patient could sustain a malpractice case against a drug and alcohol treatment provider even for an ostensibly consensual relationship. In *Bunce v. Parkside Lodge of Columbus*, 596 N.E.2d 1106, 1111 (Ohio Ct. App. 1991), the court explained:

It is axiomatic that, although consent would be a valid defense to a criminal charge of sexual assault or rape, consent is not a defense to a malpractice claim based upon sexual contact. Malpractice involves the breach of a professional duty; where the duty itself is to refrain from sexual contact, consent would not excuse the breach.

Id. at 1111. The provider abused the patient’s trust and “was in a better position than [the patient] to prescribe limits to their relationship.” *Id.*

Other courts have also expressed support for a malpractice claim based on sexual misconduct. *See, e.g., Martinmaas v. Engelmann*, 612 N.W.2d 600, 608 (S.D. 2000) (“[F]or tort liability purposes, sexual misconduct falls within the definition of malpractice” because it “deviate[s] from the required standard of care.”); *Johnson v. Amethyst Corp.*, 463 S.E.2d 397, 401 (N.C. App. 1995) (“A cause of action for medical malpractice may be initiated based upon sexual advances made by a health care professional.”); *Slack v. Farmers Ins. Exch.*, 5 P.3d 280, 283-84 (Colo. 2000) (“It goes without saying that a physician owes all examinees a duty not to assault them sexually, and would be liable for

such conduct.”). In answering this question of first impression under Washington law, the Court should consider these authorities which support an action for malpractice against Dr. Whitemarsh.

Additionally, one of the foreign cases heavily relied upon by the Estate, *Atienza v. Taub*, 194 Cal. App. 3d 388, 239 Cal. Rptr. 454 (Cal. Ct. App. 1987), has been limited by more recent opinions from that state. In *Gromis v. Medical Board*, 8 Cal. App. 4th 589, 10 Cal. Rptr. 2d 452 (Cal. Ct. App. 1992), the California Court of Appeals characterized *Atienza*’s musings that only sexual contact under the guise of treatment could sustain a claim of malpractice as “mere dictum.” *Id.* at 587. The *Atienza* court “overlooked other reasons for proscribing sexual activity” including abuse of a physician’s “status” or the fact that “the doctor’s medical judgment may be compromised by his or her sexual interest in the patient.” *Id.*⁴ The Estate’s one-sided survey of authorities and reliance on *dictum* in foreign cases highlights the flaws in its arguments.

(b) Insurance Cases Are Inapplicable

The Estate also relies heavily on two insurance cases, *Washington Insurance Guaranty Association v. Hicks*, 49 Wn. App. 623, 744 P.2d 625 (1987), and *Standard Fire Insurance Co. v. Blakeslee*, 54 Wn. App. 1, 771

⁴ These “overlooked” justifications are present here where Dr. Whitemarsh abused his trusted role as the entire family’s primary care physician, falsified medical records to cover his indiscretions, and psychologically tormented a patient he knew had mental health problems by threatening suicide when she tried to end the relationship.

P.2d 1172 (1989), for its argument that sexual contact cannot constitute malpractice. Those cases are irrelevant.

First and foremost, neither case analyzed the standard of care under RCW 7.70 or the duty owed by a physician to a patient to refrain from sexual contact. Neither case even cited RCW 7.70. Rather, those cases involved the interpretation of private insurance contracts and the expectations of coverage between the parties. In *Hicks*, Division I held that a chiropractor's rape of a client during a treatment session was not a "medical incident" under the language of the parties' contract. 49 Wn. App. at 625. And in *Blakeslee*, this Court held that a dentist's criminal, sexual assault of a sedated patient was not "intended by the parties" to be covered under their private insurance policy. 54 Wn. App. at 12.

Not only are the facts of those cases completely different, but the legal principles were as well. Those contract cases did not discuss whether an injured patient could sue in tort for the sexual misconduct of a physician. They merely discussed who is on the hook to pay for the damages based on the coverage and exclusionary language of privately bargained-for insurance contracts. Moreover, the *Hicks* court expressly acknowledged that "plaintiff-victims" suffer damages as a result of a physician's sexual misconduct, but the court's limited inquiry was not

whether they could sue for malpractice, but whether “the malpractice insurance policy [covered] the damages.” 49 Wn. App. at 627.

Additionally, *Hicks* and *Blakeslee* were decided before the Supreme Court’s opinion in *Haley* which rejected the argument that a relationship with a former patient is “not related to [a physician’s] practice of medicine because it was not performed during the course of his medical diagnosis, care, or treatment of patients.” 117 Wn.2d at 737-38. And even more recent opinions have explained that one of the “overarching goals of chapter 7.70 RCW” is to mandate a “patient-centric view when imposing liability on health care providers.” *Gomez v. Sauerwein*, 180 Wn.2d 610, 628, 331 P.3d 19 (2014) (González, J., concurring). These principles were simply not considered by the courts in *Hicks* and *Blakeslee*.⁵ Insurance cases simply do not apply here.

The Estate also argues that “a ruling that a non-mental health physician’s sexual relationship with a patient necessarily constitutes ‘health care’ would effectively overrule *Hicks* and *Blakeslee* and

⁵ The Court must remember that “both the medical profession and society play a role in establishing what is expected of a medical provider” for purposes of tort law under RCW 7.70. *Adair v. Weinberg*, 79 Wn. App. 197, 203, 901 P.2d 340 (1995). As the Estate admits, the vast majority of cases it relies on to construct its arguments (including *Hicks* and *Blakeslee*) are “decades-old.” Estate br. at 16. This Court should be mindful that society’s expectations of reasonable conduct by a person in a position of power has changed over the past several decades, even very recently as evidenced by the Me Too and Time’s Up movements. In answering this question of first impression – whether a primary care physician owes a duty to refrain from sexual relations with a current patient – the Court should be wary of giving too much weight to outdated authority.

potentially force insurers to provide legal defenses for non-professional acts.” Estate br. at 16. This slippery slope argument is not only beyond the scope of the questions presented in the case, but it is also dubious given that our Supreme Court has already held that an insurance carrier may impose greater limits on coverage for a doctor’s sexual misconduct than it does for nonsexual misconduct. *Am. Home Assur. Co. v. Cohen*, 124 Wn.2d 865, 877, 881 P.2d 1001 (1994). Questions regarding insurance coverage are simply irrelevant to this appeal.

(c) The Estate’s Arguments Are Bad Public Policy

The Estate asserts that refusing to recognize a claim for malpractice under these circumstances “will not leave patients out in the cold” because criminal and administrative penalties exist to “regulate the medical profession.” Estate br. at 29. This is bad public policy.

Commentators have recognized that while “effective regulatory approach should diminish the need to look to tort law to impose a duty of care because the standard by which conduct is measured is expressly set forth. However, regulatory schemes are rarely perfect or sufficiently comprehensive to address all situations.” Karen A. Jordan, *Managed Competition and Limited Choice of Providers: Countering Negative Perceptions Through A Responsibility to Select Quality Network Physicians*, 27 Ariz. St. L.J. 875, 937 (1995). Likewise, courts have

recognized that a tort liability is necessary to make the victims of a doctor's serious misconduct whole again, because "[w]hile [a doctor] may also be subject to professional sanctioning, [a patient] has the right to seek redress in the courts." *Hoopes*, 725 P.2d at 242.

In *Omer*, Division III addressed this very issue, and held that a patient should have a right to pursue a civil remedy against a treating doctor. The court cited the following passage from a New York case:

[T]here is a public policy to protect a patient from the deliberate and malicious abuse of power and breach of trust by a psychiatrist when that patient entrusts to him her body and mind in the hope that he will use his best efforts to effect a cure. That right is best protected by permitting the victim to pursue civil remedies, not only to vindicate a wrong against her but to vindicate the public interest as well.

38 Wn. App. at 379 (citing *Roy v. Hartogs*, 81 Misc. 2d 350, 366 N.Y.S.2d 297, 299 (N.Y. Civ. Ct. 1975)). For the reasons stated above, this public policy applies equally to primary care physicians who undoubtedly owe a duty to refrain from sexual contact with their current patients. *Id.* at 378.

Patients like Monique and her family should be given the opportunity to recover for the significant harm Dr. Whitemarsh's reprehensible actions caused. Administrative penalties were not enough to deter Dr. Whitemarsh's pervasive misconduct. Even if they had been

imposed the family would have been left “in the cold,” unable to recover for the significant damage he caused. A civil remedy in this case is appropriate under the law, logical in light of the scrupulous duty a primary care physician owes to a patient, and sound, patient-centric, public policy. The trial court should be reversed.

(2) The Messengers Created a Question of Fact Regarding Whether Dr. Whitemarsh Breached an Independent Duty as a Physician Providing Mental Health Care

As discussed in the Messengers’ opening brief, the Messengers presented ample evidence to create a genuine issue of fact regarding their independent theory of liability – i.e., whether Dr. Whitemarsh breached a duty to refrain from sexual contact with a patient whom he treated for mental health issues. Appellants’ br. at 24-26. The Estate does not dispute that this theory of liability is viable in Washington. The only question is whether the Messengers created a material issue of fact to survive summary judgment. For the reasons stated in the Messengers’ opening brief, they did, medical records show that Dr. Whitemarsh treated Monique for mental health concerns at multiple appointments. CP 350-52, 356, 361. This issue of fact is only bolstered by additional evidence wrongfully excluded under the inapplicable dead man’s statute.

(a) The Dead Man’s Statute Does Not Apply

As discussed in the Messengers' opening brief, the so-called dead man's statute, RCW 5.60.030, does not apply to testimony regarding a person's "feelings and impressions." *Kellar v. Estate of Kellar*, 172 Wn. App. 562, 574-75, 291 P.3d 906 (2012), *review denied*, 178 Wn.2d 1025 (2013). This is especially applicable to this case where liability under the transference phenomenon focuses on the patient's impressions regarding the care received and his or her reliance on the treatment provider as an authoritative, trusted figure. Appellants' br. at 27-30.

The Estate falsely claims that the Messengers did not offer impression testimony and instead have tried to "breathe new life into her claim by recharacterizing [Monique's] testimony on appeal." Estate br. at 38. Not true. The Messengers argued the feelings and impressions exception in the Court below. CP 445. And the record contains ample evidence (especially for summary judgment purposes) regarding Monique's feelings, impressions, and the psychiatric concerns she felt she confided in Dr. Whitemarsh. *See, e.g.*, CP 463 ("I did express that I was having periods of depression at the 11/08/2012 office visit with Dr. Whitemarsh and periodically from that point forward, including before and after our sexual relationship commenced"); 465 ("I was having intense mood swings and paranoia which I described to Dr. Whitemarsh"); 481 ("I was depressed. I felt like I had postpartum from the twins."); 483 ("He

knew I was going through postpartum. He knew that we were having a tough time in our marriage...*my trust was a hundred percent in him*...He wouldn't have known those things about me if he had not been my doctor") (emphasis added); CP 487-88 (explaining her impression of the issues she sought counsel from Dr. Whitemarsh).

Importantly, this testimony does not include statements or promises of the deceased, nor does it relate to a "principal event or occurrence" like the conveyance of property or execution of a contract which is typically the purview of the dead man's statute. Appellants' br. at 28 (citing Karl Tegland, *5A Wash. Prac., Evidence Law and Practice* § 601.20 (6th ed.)). Rather, Monique's testimony (and liability itself) revolves around the "surrounding circumstances" of a physician-patient relationship, her feelings regarding the counseling she received, and the trust she placed in him as her primary care physician and counselor which developed over the course of *years*. *Id.*⁶ RCW 5.60.030 simply does not apply to such testimony.

(b) The Estate Waived the Dead Man's Statute

⁶ As discussed above, courts have recognized that primary care physicians hold "a position of trust and [have] training to treat all medical conditions, including psychiatric conditions." *Miller*, 270 A.D.2d at 585. They should know better than to abuse this trust and breach the fiduciary standard of care they owe, especially to vulnerable patients like Monique with documented mental health issues.

The Estate argues that it did not waive dead man's statute by offering medical records relying on *Erickson v. Robert F. Kerr, M.D., P.S., Inc.*, 69 Wn. App. 891, 893, 851 P.2d 703 (1993), *aff'd in part, rev'd in part*, 125 Wn.2d 183 (1994). That case is clearly distinguishable, and the Estate's utter failure to analyze the facts of that case is telling.

In *Erickson* an estate of a former patient sued a doctor for wrongful death and introduced medical records authored by the doctor as part of the case against him. The Supreme Court ultimately ruled that the medical records were properly admitted and did not waive the dead man's statute's protections because they fell under the "business records exception" to the statute. 125 Wn.2d at 189. The records in that case qualified under the exception because they were "kept in the usual course of business, and hence in no manner self-serving." *Id.* (quotation omitted). The Court explained that such records must be "made contemporaneously with [the doctor's treatment of the patient] and in the usual course of [his or her] medical practice." *Id.*

The medical records in this case are nothing of the sort. They are self-serving notes authored by a doctor and offered by his Estate in his own defense. They contain material omissions and objectively false entries, in a selfish attempt to hide the fact that he was having sex with a patient he continued to treat. CP 374 (falsely reporting her sexual history).

Such notes were not kept in the “usual course” of his medicine practice; they were falsified to hide his indiscretions and the full extent of the treatment he provided Monique, including mental health counseling which blurred beyond the established parameters of office visits. The records were not made contemporaneously with treatment; many were entered weeks after the medical appointments took place. CP 462-66. This is further evidence of the fact that Dr. Whitmarsh used the medical records to craft an inaccurate narrative of his relationship and treatment of Monique. By offering these records, the Estate waived the dead man’s statute’s protections and the trial court erred in refusing to allow Monique the opportunity to refute their accuracy.

(c) The Medical Records Were Objectively Falsified

In an attempt to escape the fact that it improperly offered medical records that had been falsified, the Estate claims that the Messengers raised this issue for the first time on appeal. Estate br. at 41-42. Not true. The Messengers have argued, consistently and repeatedly, that the medical records were incomplete and falsified by Dr. Whitmarsh. *See, e.g.*, CP 423-24 (arguing that the Estate “opened the door” for the Messengers to rebut inaccuracies and material omissions in the records); CP 445-47 (same); 463-65 (declaration of Monique detailing errors and “false entries” in the records). Even a cursory review of the records reveals that

Dr. Whitmarsh falsely reported Monique's sexual history in a self-serving effort to cover his indiscretions, among other material falsehoods and omissions which the Messengers raised below. *Id.*; CP 374.

The Estate spends most of its argument on this point taking personal issue with the Messengers' citation of RPC 3.3 comment [10]'s warning that false evidence subverts the adversary system. Estate br. at 41-43. The Estate's hyperbole misses the point. Pursuant to ER 102 and 104, the trial court is the gatekeeper of admissible evidence and must construe its rulings so that "the truth may be ascertained." ER 102. Here, the court erred by allowing the Estate to offer self-serving, objectively-false medical records and refusing to allow the Messengers to rebut that testimony in any way based on an erroneous interpretation of the dead man's statute. By offering that evidence, the Estate opened the door to the Messengers' rebuttal, and the trial court erred in determining otherwise.

Finally, in its blind zeal to cover for Dr. Whitmarsh's indiscretions, the Estate ignores the fundamental principles of a summary judgment hearing, wrongfully arguing that the Messengers cannot point out favorable passages in the medical records. Estate br. at 42. The Messengers were the *non-moving party* to the summary judgment hearing below. All evidence and reasonable inferences therefrom must be viewed in the light most favorable to them, and all disputed facts resolved in their

favor. *Omer*, 38 Wn. App. at 377-78. As the non-moving party, the Messengers must not be penalized for pointing out the favorable facts in materials submitted by the opposing party.

Here, large portions of the medical records show that Dr. Whitmarsh did, in fact, counsel Monique regarding her mental health, depression, and marital issues during multiple medical appointments. CP 350-52, 356, 361.⁷ The Estate even admitted below that whether a therapeutic relationship existed was an “evidentiary” dispute, CP 415, making the matter particularly inappropriate for summary judgment. Summary judgment dismissal of this independent theory of liability should be overturned.

(3) Dr. Miller’s Testimony Was Admissible

The Estate relies on entirely cyclical arguments to support the trial court’s erroneous decision to ignore the testimony of the Messengers’ unrebutted expert, Dr. Miller, regarding the standard of care expected by the medical profession. It argues that because no court has formally recognized a duty in tort to refrain from sexual contact with a patient, Dr.

⁷ The fact that portions of the medical records corroborate Monique’s testimony, also undermines the Estate’s arguments that Dr. Miller’s testimony is inadmissible because it was based on inadmissible testimony. Estate br. at 45-56. Assuming *arguendo* that Monique’s feelings and impressions regarding Dr. Whitmarsh’s role as a mental health counselor are inadmissible, Dr. Miller based his opinion on much more than just her statements. CP 455. He evaluated her medical records, psychiatric evaluations, and statements of third parties to arrive at his conclusions. *Id.*

Miller's opinions are "contrary to law" and must be excluded. Estate br. at 45. It is no wonder the Estate relies almost entirely on a case from Massachusetts to support this argument, because this is not the standard in Washington. *Id.* at 44 (citing *Korper v. Weinstein*, 783 N.E.2d 877 (Mass. Ct. App. 2003)).

In Washington, while the courts have the ultimate say in defining the legal standard of care, testimony from a medical expert regarding the standard of care within the medical profession is admissible and "evidential" of what "constitutes reasonable prudence" under RCW 7.70. *Adair*, 79 Wn. App. at 203-04; *Van Hook v. Anderson*, 64 Wn. App. 353, 358, 824 P.2d 509 (1992).⁸ Courts must consider such evidence when defining the parameters of medical negligence in this state, and the trial court erred in refusing to do so in this case. *Id.*

Likewise, MultiCare's only argument regarding Dr. Miller's testimony is that his opinion that MultiCare failed to exercise its independent duty of care owed to its patients is "entirely conclusory." MultiCare br. at 19. However, that is also not the standard for excluding expert testimony in Washington. In fact, courts have rejected such

⁸ In *Van Hook*, the only expert testimony offered by either party opined that the physician followed the standard of care. *Id.* at 362. This Court held that summary judgment was appropriate due to the lack of conflicting expert testimony because "at trial a lay jury would have no rational ground for disbelieving their testimony." *Id.* (quotation omitted). Here, too, the Estate and MultiCare offered no conflicting expert testimony. This further shows the trial court's error in dismissing the case on summary judgment.

arguments specifically in the context of a corporate negligence claim against a medical provider. *Schoening v. Grays Harbor Cmty. Hosp.*, 40 Wn. App. 331, 335 n.3, 698 P.2d 593, *review denied*, 104 Wn.2d 1008 (1985) (expert opinion from doctor regarding hospital's negligent supervision was enough at summary judgment despite the expert's opinion being "somewhat conclusory" because "[a]ffidavits of qualified experts are sufficient to raise a factual issue as to whether the standard of care has been met."); *see also, Adair, supra*. The trial court erred in excluding Dr. Miller's testimony.

(4) The Trial Court Erred in Dismissing the Corporate Negligence Claims Against MultiCare

The Messengers presented sufficient evidence to create a material issue of fact over whether MultiCare breached its independent duty to its patients to exercise reasonable care in hiring, retaining, training, and supervising its employees at the clinic where Dr. Whitmarsh's sexual misconduct occurred. MultiCare spends much of its brief quibbling over the technical differences between theories of corporate liability such as negligent hiring versus negligent retention. MultiCare br. at 13-15. This focus is misplaced, and ignores the broad duty MultiCare owes to patients to exercise reasonable care in overseeing its staff:

Generally, direct institutional liability [for health care providers] has been applied broadly. In addition to a

hospital's duty to investigate a physician's qualifications and to select and retain only competent physicians, a hospital has been held to owe other independent duties to patients: a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; a duty to oversee all persons who practice medicine within its walls; and a duty to formulate, adopt, and enforce adequate rules and policies to ensure the provision of quality care to patients.

Karen A. Jordan, *supra* at 938-39 (citations omitted).

MultiCare also highlights the trial court's error by focusing on the allegedly "secret" nature of Dr. Whitemarsh's misconduct. MultiCare br. at 15-18. This is not the standard. The question is not whether MultiCare knew of an affair, but whether it *should have known* upon exercising "reasonable care" that Dr. Whitemarsh presented a risk of danger to others. *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 48, 929 P.2d 420 (1997); *see also*, Karen A. Jordan, *supra* at 938 ("The doctrine of institutional negligence is premised upon the general common law duty to refrain from any act that will cause foreseeable harm to others, *even though the exact nature of the harm and the identity of the harmed person are unknown at the time of the negligent act.*") (emphasis added). Importantly, foreseeability is a *question of fact* for the jury and summary judgment is inappropriate unless the employee's conduct is "so highly extraordinary or improbable as to be wholly beyond the range of expectability." *Niece*, 131 Wn.2d at 50 (quotation omitted).

Viewed in the light most favorable to the Messengers, material issues of fact existed as to whether MultiCare should have known that Dr. Whitemarsh was a danger due to his repeated, pervasive misconduct. He made inappropriate sexual comments about patients in front of MultiCare staff. CP 499. He engaged in sexual relations with multiple patients and staff. CP 256, 651. At least one former patient made a formal complaint regarding his sexual misconduct to the Board of Health. CP 465. He had sexual relations with Monique at the Frederickson Clinic. CP 256, 382. The other day-to-day supervisor at the small clinic where he worked, Patti Jordan, caught him with Monique after hours, alone in his office, and failed to report it to anyone. CP 525. Jordan and Dr. Whitemarsh carried on their own romantic affair, texting until they went to bed and telling each other they loved each other every night. CP 256.⁹ They wrote undocumented prescriptions for one another. CP 274-75, 526-27. And Jordan admitted that she would not have reported Dr. Whitemarsh's affairs with patients due to their own less-than professional relationship. CP 257,

⁹ MultiCare stretches the bounds of reason when it argues that Jordan and Dr. Whitemarsh did not have a "romantic" relationship. MultiCare br. at 22. They texted and said "I love you" before bed every night, he used the same affectionate nickname for her as he did Monique, and Jordan refused to disclose the details of their relationship because she "kn[e]w for a fact it wouldn't help [Monique] to hear what we talked about all the time." CP 258. The reasonable inference from this (and other) evidence is that the two day-to-day supervisors at the Frederickson Clinic had a romantic relationship which clouded their judgment and their ability to properly supervise one another. MultiCare offered *no* evidence of any reasonable steps it took to prevent this from happening.

530. This severe lack of oversight within the Frederickson Clinic, especially the *carte blanche* freedom enjoyed by the day-to-day supervisors, should have precluded summary judgment.

This evidence of MultiCare's failings distinguishes this case from the one most heavily relied on by MultiCare, *Thompson v. Everett Clinic*, 71 Wn. App. 548, 860 P.2d 1054 (1993). The *Thompson* court did not hold that a hospital may never be liable for failing to supervise a doctor who engages in sexual misconduct. Rather, the plaintiff in that case merely "failed to offer any substantial evidence" that the hospital knew or should have known about his misconduct. *Id.* at 555. Here, the Messengers presented more than enough evidence to survive the low threshold of summary judgment, as described above. Any remaining doubts regarding foreseeability were for the jury to decide. *Niece, supra*.

Importantly, MultiCare offered *no evidence* of its own to show that it adequately oversaw the persons practicing medicine in the Frederickson Clinic, nor did it present *any evidence* that it upheld its "duty to formulate, adopt, and enforce adequate rules and policies" to prevent Dr. Whitmarsh's sexual misconduct. Karen A. Jordan, *supra* at 939. It offered no training manuals, clinic policies, personnel files, declarations from staff, etc. In fact, it avoided producing such evidence at all cost. As discussed below, MultiCare filed its summary judgment motion before

making Dr. Whitmarsh's supervisor, Dr. Smathers, and its 30(b)(6) corporate representative available for a deposition, and then vehemently opposed a modest continuance request (made months before the discovery cutoff) so the Messengers could obtain additional evidence of MultiCare's failure to train and supervise its employees at the Frederickson Clinic. Summary judgment should be reversed where the Messengers created a material issue of fact as to MultiCare's negligence.

(5) The Trial Court Erred in Denying the Messengers' Motion to Continue the Summary Judgment Hearing

While the Messengers presented ample evidence to survive summary judgment, their claims would have been strengthened had the trial court not wrongfully denied a CR 56(f) continuance request, made months before the discovery cutoff, so that full discovery could be completed. Neither MultiCare nor the Estate argue that they would have suffered any prejudice as a result of the Messengers' modest continuance request under CR 56(f) before the motions for summary judgment were decided. That alone is determinative where "[a]bsent prejudice to the moving party, the trial court should grant a motion for continuance" of a summary judgment hearing pursuant to CR 56(f). *Keck v. Collins*, 181 Wn. App. 67, 88, 325 P.3d 306 (2014), *aff'd*, 184 Wn.2d 358 (2015).

Additionally, a CR 56(f) continuance should have been granted

because the Messengers did not delay seeking evidence. *West v. Seattle Port Comm'n*, 194 Wn. App. 821, 833-34, 380 P.3d 82 (2016). MultiCare distorts the reality of the litigation by arguing that the Messengers “waited an entire year after they filed their complaint to seek Dr. Smathers’s deposition.” MultiCare br. at 25. This argument is disingenuous. Discovery was active and ongoing, the cutoff was four months away, and the parties were still in the process of disclosing potential witnesses. MultiCare had only just disclosed its initial list of primary witnesses two months before the Messengers requested to depose Dr. Smathers. CP 46-54.¹⁰ And the deadline for disclosing rebuttal witnesses was still over one month away. CP 1. The Messengers had already conducted important depositions and served a *third* set of interrogatories and requests for production based on prior discovery, the results of which were pending when they moved for a continuance. CP 219. The Messengers were actively pursuing discovery in their case, months before the cutoff.

Importantly, the Messengers sent their request to interview Dr. Smathers *before* MultiCare even filed its motion for summary judgment. CP 218. MultiCare did not make him available for a deposition until after

¹⁰ MultiCare acknowledged that discovery was active and potential witnesses were fluid, specifically reserving the right to “supplement, modify, or delete” witnesses from its initial disclosure “as warranted by further discovery.” CP 52

the hearing. *Id.* MultiCare’s refusal to make Dr. Smathers available before the hearing on its summary judgment motion shows not only that there was no delay, but also the tactical nature of MultiCare’s efforts to deprive the Messengers of their fundamental right to discovery.¹¹ Likewise, the Messengers asked to depose the Estate’s personal representative, Dr. Whitemarsh’s wife, months before the Estate moved for summary judgment. CP 297. The Estate indicated it would make her available, then tactically delayed the deposition for over two months before moving for summary judgment and subsequently raising a spousal privilege objection for the first time *after* moving for summary judgment. CP 297-304. Any delay was the fault of MultiCare and the Estate.

The Messengers identified the additional evidence they sought. This included document production from the Estate – i.e., Dr. Whitemarsh’s texts, emails, etc. – depositions of nurses and staff who interacted with Dr. Whitemarsh and practiced in the Frederickson Clinic – including his friend and supervisor, Dr. Smathers – depositions of the other patients he had sex with – including “Wendi” a patient known to both the Estate and Patti Jordan – and a 30(b)(6) deposition of MultiCare’s

¹¹ As the Supreme Court has made clear, “The right of discovery and the rules of discovery are integral to the civil justice system,” and the right to discover is constitutionally based. *Lowy v. PeaceHealth*, 174 Wn.2d 769, 776, 280 P.3d 1078 (2012) (overturning protective order in favor of hospital who cannot “hide the keys to locating discoverable information”).

corporate representative. CP 216-20. Each of these important pieces of discovery would have raised a genuine issue of fact as to what MultiCare knew or should have known regarding Dr. Whitmarsh's pervasive misconduct.

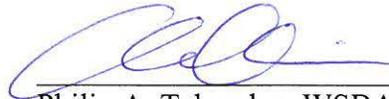
Summary judgment was inappropriate, but at the very least, the Messengers should have been given the opportunity to conduct full and fair discovery before their claims were erroneously dismissed.

F. CONCLUSION

This case offers the Court a chance to define the standard of care in Washington, and the bounds of permissible treatment of patients by their primary care physicians. The Court should not condone sexual misconduct of professionals, especially those in trusted positions of power bound by a sworn oath to "first, do no harm." Nor should the court condone employers who are utterly oblivious to the pervasive sexual misconduct of their employees, which they should have discovered. Summary judgment should be reversed and costs on appeal awarded to the Messengers.

DATED this 4th day of March, 2019.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "Philip A. Talmadge", written over a horizontal line. To the right of the signature, the number "#47670" is handwritten in blue ink.

Philip A. Talmadge, WSBA #6973
Aaron P. Orheim, WSBA #47670
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Douglas R. Cloud, WSBA #13456
Law Office of Douglas Cloud
1008 Yakima Avenue #202
Tacoma, WA 98405-4850
(253) 627-1505

Attorneys for Appellants
Monique and Kevin Messenger

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Reply Brief of Appellants* in Court of Appeals Cause No. 51893-7-II to the following parties:

Douglas R. Cloud
Law Office of Douglas Cloud
1008 Yakima Avenue #202
Tacoma, WA 98405-4850

Elizabeth A. Leedom
Rhianna M. Fronapfel
Bennett Bigelow & Leedom, P.S.
601 Union Street, Suite 1500
Seattle, WA 98101-1363

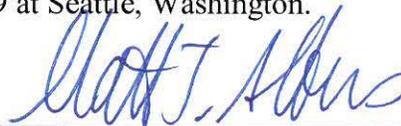
Daniel F. Mullin
Tracy A. Duany
Mullin, Allen & Steiner, PLLC
101 Yesler Way, Suite 400
Seattle, WA 98104

Howard M. Goodfriend
Catherine W. Smith
Smith Goodfriend, P.S.
1619 8th Avenue North
Seattle, WA 98109

Original E-filed with:
Court of Appeals, Division II
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 4, 2019 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK/TRIBE

March 04, 2019 - 3:25 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51893-7
Appellate Court Case Title: Monique Messenger, et al., Appellants v. Shannon L. Whitemarsh, et al.,
Respondents
Superior Court Case Number: 17-2-06482-9

The following documents have been uploaded:

- 518937_Briefs_20190304152249D2703883_7797.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was Reply Brief of Appellants.pdf
- 518937_Motion_20190304152249D2703883_2499.pdf
This File Contains:
Motion 1 - Waive - Page Limitation
The Original File Name was Mot for Overlength Reply Brief of Appellants.pdf

A copy of the uploaded files will be sent to:

- andrienne@washingtonappeals.com
- assistant@tal-fitzlaw.com
- cate@washingtonappeals.com
- cmarsh@dcloudlaw.com
- cphillips@bblaw.com
- dmullin@masattorneys.com
- drc@dcloudlaw.com
- eboehmer@masattorneys.com
- eledom@bblaw.com
- howard@washingtonappeals.com
- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com
- rfronapfel@bblaw.com
- tduany@masattorneys.com

Comments:

Motion for Leave to File Overlength Reply Brief of Appellants; Consolidated Reply Brief of Appellants

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

Filing on Behalf of: Aaron Paul Orheim - Email: Aaron@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:
2775 Harbor Avenue SW
Third Floor Ste C
Seattle, WA, 98126
Phone: (206) 574-6661

Note: The Filing Id is 20190304152249D2703883