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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEASA LOWY,
Plaintiff/Respondent,

vs.

PEACEHEALTH, a Washington corporation, and ST. JOSEPH
HOSPITAL,

Defendants/Petitioners.

FILED
SUPREME COURT
WASHINGTON
2011 DEC 21 P 4:34
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BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

Bryan P. Harnetiaux
WSBA No. 5169
517 E. 17th Avenue
Spokane, WA 99203
(509) 624-3890

George M. Ahrend
WSBA No. ~~25106~~ 25160
100 E. Broadway Avenue
Moses Lake, WA 98837
(509) 764-9000

On Behalf of
Washington State Association for Justice Foundation

ORIGINAL

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the proper interpretation and application of the civil discovery rules and statutory privileges impacting those rules.¹

II. INTRODUCTION AND STATEMENT OF THE CASE

This review involves professional negligence claims by Leasa Lowy (Lowy) against PeaceHealth and St. Joseph Hospital (PeaceHealth or hospital).² The principal legal question on review is the proper interpretation and application of RCW 70.41.200(3), which provides a privilege against discovery or introduction into evidence in a civil action of information and documents “created specifically for, and collected and maintained by, a quality improvement committee” of a hospital. The

¹ David Beninger, a principal in Luvera, Barnett, Brindley, Beninger & Cunningham, one of the law firms representing Leasa Lowy, is a member of the WSAJ Foundation Amicus Committee. Mr. Beninger did not participate in the determination of the Committee to seek amicus curiae status in this case, nor has he or any member of the firm participated in preparing this amicus curiae brief.

² St. Joseph Hospital is owned and operated by PeaceHealth. See PeaceHealth Pet. for Rev. at 3.

underlying facts are drawn from the Court of Appeals opinion and the briefing of the parties. See Lowy v. PeaceHealth, 159 Wn.App. 715, 247 P.3d 7, *review granted*, 171 Wn.2d 1027 (2011); Lowy Br. at 4-11; PeaceHealth Br. at 3-11; PeaceHealth Pet. for Rev. at 3-8; Lowy Ans. to Pet. for Rev. at 4-7; PeaceHealth Supp. Br. at 2-10; Lowy Supp. Br. at 3-6.

For purposes of this amicus curiae brief, the following facts are relevant: Lowy brought this action against PeaceHealth for medical malpractice and corporate negligence, alleging she was injured while a patient at the hospital as a result of an intravenous (IV) infusion procedure. During the course of discovery, Lowy sought to obtain through a CR 30(b)(6) deposition, “information relating to instances of ‘IV infusion complications and/or injuries at St. Joseph’s Hospital for the years 2000-2008.’” Lowy, 159 Wn.App. at 717; see also PeaceHealth Supp. Br. at 2-3.

PeaceHealth sought a CR 26(c) protective order preventing this discovery based on the “quality improvement” privilege provided by RCW 70.41.200 and RCW 4.24.250. See PeaceHealth Br. at 4-5.³ The hospital argued that it could not be compelled to search its own privileged QI Committee database as a means for identifying the medical records sought by Lowy, which admittedly existed elsewhere in the hospital’s recordkeeping system. See Lowy at 717-18. PeaceHealth further

³ The phrase “quality improvement” is used interchangeably with “quality assurance” by the parties and courts below. See PeaceHealth Supp. Br. at 4 n.3; Lowy Supp. Br. at Appendix, A1-A5 (reproducing superior court orders); Lowy, 159 Wn.App. at 718. This brief uses “QI” when referring to the statutory privilege provided by RCW 70.41.200 (and RCW 4.24.250).

contended that identifying the requested medical records by reviewing hospital records *other than* those subject to the statutory privilege would be unduly burdensome. See PeaceHealth Supp. Br. at 3-4.

During the course of the superior court hearing on PeaceHealth's motion for protective order, the following relevant facts were developed, and appear to remain undisputed on review:

- The medical records sought by Lowy are relevant, and exist in the PeaceHealth electronic recordkeeping system apart from the QI Committee database. See PeaceHealth Supp. Br. at 3-9.
- The QI Committee database consists of privileged incident reports and other materials derived therefrom. See PeaceHealth Supp. Br. at 5-6, 7-8.
- While the QI Committee database itself does not contain the requested medical records, an internal search of this database by PeaceHealth could "readily identify" these records, Lowy at 718, and lead to their production. See PeaceHealth Br. at 8; PeaceHealth Supp. Br. at 3-9.
- PeaceHealth otherwise lacks the capability of searching its electronic recordkeeping system (other than the QI Committee database) to identify the requested medical records, and a manual search of the medical records in the system would be unduly burdensome. See Lowy at 717; PeaceHealth Br. at 8; PeaceHealth Supp. Br. at 3.
- The medical records produced under the discovery request would be redacted as necessary to protect the privacy of other patients. See Lowy Supp. Br. at 5 n.3.⁴

The privilege invoked by PeaceHealth is set forth in RCW 70.41.200(3), and provides in relevant part:

⁴ With appropriate redaction these records are considered "unprivileged" under RCW 70.41.200 (and RCW 4.24.250) for purposes of this brief.

Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action....^[5]

Initially, the superior court denied PeaceHealth's motion for a protective order and ordered it to search its QI Committee database and identify and produce the requested medical records. The court made clear that PeaceHealth was not required to produce any records or information contained in the QI Committee database. See Lowy Supp. Br. at Appendix, A4-A5 (reproducing 4/30/09 superior court order).

PeaceHealth moved for reconsideration and the superior court "reversed itself and concluded that the statute prohibits any disclosure arising from the use of the quality assurance database." Lowy at 718-19. The superior court explained:

The court's order of April 30, 2009 authorized access to the relevant, factual complaints and related information in order to balance the competing interests at stake. However reasonable or practical such an accommodation may be, it appears to be contrary to the language of RCW 70.41.200(3).

It is unfortunate that a more practical solution allowing plaintiff relevant discovery is unavailable, but the plain language of RCW 70.41.200(3) compels the conclusion that *any* kind of disclosure, whether of committee opinion or underlying factual complaints, shall not be disclosed. Therefore, on further review and reconsideration, the court is persuaded that the Order of April 30, 2009 must be reversed.

⁵ RCW 4.24.250 contains a similar privilege, although the focus of attention in both the superior court and Court of Appeals was RCW 70.41.200. The text of the current versions of each of these statutes is reproduced in the Appendix to this brief.

Lowy at 719 (quoting superior court 6/15/09 order).⁶

On motion for discretionary review, the Court of Appeals accepted review and reversed. Division I concluded the superior court misinterpreted RCW 70.41.200(3), and that the statute should be viewed “simply as prohibiting review of committee records by persons outside the hospital.” Lowy at 720. The court strictly construed the privilege and held:

The medical charts Lowy seeks were not created specifically for the quality assurance committee, are maintained external to committee files, and are undisputedly relevant and discoverable. In disclosing them, the hospital will not be required to disclose who participated in the review process concerning IV injuries, which incidents the hospital found relevant or important, or how it sorted, grouped, or otherwise organized those incidents. The hospital will not disclose any analysis, discussions, or communications that occurred during the proceedings of the quality assurance committee. The response to the discovery request will reveal no more than if the hospital had produced the medical records through a burdensome page-by-page search.

Id. at 722.

This Court granted PeaceHealth’s petition for review.⁷

III. ISSUE PRESENTED

Is the privilege afforded hospitals by RCW 70.41.200(3) (and RCW 4.24.250) abridged by a discovery order requiring a hospital to search its quality improvement committee database in order to identify and produce relevant medical records contained elsewhere in the hospital recordkeeping system, when the records sought cannot otherwise be identified without requiring an unduly

⁶ This order is contained in the Lowy Supp. Br. Appendix, at A1-A3. Copies of the superior court orders are reproduced in the Appendix to this brief.

⁷ Washington State Hospital Association, Group Health Cooperative, Multicare Health System, Providence Health & Services, Seattle Children’s Hospital and Swedish Health Services filed a joint amicus curiae memorandum in support of review (WSHA et al. ACM). These same organizations also filed an amicus curiae brief on the merits (WSHA et al. Am. Br.).

burdensome search by the hospital of its recordkeeping system, and when compliance with the order will not result in privileged information or documents being divulged?

IV. SUMMARY OF ARGUMENT

The Court of Appeals properly held that, when necessary to produce discoverable medical records maintained in a hospital's recordkeeping system, a hospital may be required to search its quality improvement committee database in order to identify the requested records. Requiring such a search does not abridge the hospital's quality improvement privilege provided by RCW 70.41.200(3) (or RCW 4.24.250), because the internal search conducted by the hospital does not interfere with or undermine the purposes of the statutory privilege, or result in production of any information or documents subject to the privilege.

This result is compelled by the letter and spirit of the discovery rules and corresponding strict construction of this statutory privilege. It preserves plaintiffs' right to meaningful access to court.

V. ARGUMENT

The Court Of Appeals Correctly Held That The Superior Court Could Require PeaceHealth To Use Its Searchable Quality Improvement Committee Database To Identify Discoverable Hospital Records Not Privileged Under RCW 70.41.200(3) (and RCW 4.24.250).

The Court of Appeals correctly ordered reinstatement of the superior court's initial order compelling PeaceHealth to use its searchable QI Committee database to identify medical records not privileged under

RCW 70.41.200(3). See Lowy, 159 Wn.App. at 718-23.⁸ The statutory language at issue provides:

Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action....

RCW 70.41.200(3).

Unquestionably, the medical records sought by Lowy are not created specifically for, and collected and maintained by the PeaceHealth QI Committee.⁹ They are patient medical records existing elsewhere in PeaceHealth's recordkeeping system. The hospital has a statutory obligation to retain and preserve these medical records that is imposed without regard to any relevance they may have for purposes of its quality improvement program. See RCW 70.41.190 (specifying "a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient...").¹⁰

The pivotal holding by the Court of Appeals is that PeaceHealth *itself* is allowed to internally access its QI Committee records for the

⁸ Although the Court of Appeals did not address RCW 4.24.250, there is little doubt that its analysis should apply equally to this statute, which sets forth a substantially similar privilege. See Appendix. The argument presented here is intended to apply equally to RCW 4.24.250.

⁹ WSAJ Foundation disagrees with amici curiae WSHA et al. to the extent they contend the Court of Appeals opinion authorizes use of QI Committee database information or documents, see WSHA et al. ACM at 2 & 8, or that as a consequence of its holding hospital staff would be required to testify as to the contents of incident reports in the QI Committee database, see WSHA et al. Am. Br. at 6-8. Hospital staff are only required to testify about the underlying operative facts relevant to the tort claim, not privileged documents containing or referencing those facts. See Coburn v. Seda, 101 Wn.2d 270, 277, 677 P.2d 173 (1984).

¹⁰ The text of the current version of RCW 70.41.190 is reproduced in the Appendix to this brief.

purpose of identifying relevant medical records stored elsewhere in its recordkeeping system. Lowy at 720. The Court of Appeals rightfully rejected the hospital argument that this would constitute a prohibited “review” under the statute. See PeaceHealth Supp. Br. at 12-13 (reprising same argument).

First, the PeaceHealth argument that all review is prohibited, including internal review by the hospital itself, is unsupportable under the rules of construction established by this Court for interpreting provisions of this nature. To the extent “review” is subject to more than one reasonable interpretation, the Court of Appeals properly construes the term to only preclude *external review by others*. Because statutes providing privileges are inconsistent with the general policy favoring discovery, they must be strictly construed and limited to their purposes. See Coburn v. Seda, 101 Wn.2d 270, 276, 677 P.2d 173 (1984) (interpreting privilege in prior version of RCW 4.24.250); Anderson v. Breda, 103 Wn.2d 901, 905, 700 P.2d 737 (1985) (same); Adcox v. Children’s Orthopedic Hosp., 123 Wn.2d 15, 31, 864 P.2d 921 (1993) (same).

Second, as the Court of Appeals notes, the legislative history of RCW 70.41.200 confirms that when “review” was added to this statute in 2005 it was “simply to ensure that the records [subject to the privilege] could not be released to the public in some extrajudicial context, that is, outside of a civil action.” Lowy at 723 (explicating Laws of 2005,

ch. 291, §§ 1-3).¹¹ (For example, with respect to a public hospital, the records might otherwise be subject to a public records request under Ch. 42.56 RCW.) The Court of Appeals properly rejected PeaceHealth's argument that the prohibition on review in RCW 70.41.200(3) served to limit the hospital's ability to access its own records to locate unprivileged documents that are responsive to a discovery request.

As the Court of Appeals notes, foreclosing use of the QI Committee database to identify relevant, unprivileged medical records would create an unjustified "artificial shield" to discovery. Lowy at 723. This analysis is supported by this Court's teachings regarding the substantially similar privilege afforded by RCW 4.24.250. A protective order should only be available under these circumstances upon proof that "disclosure would interfere with the statutory purposes," Coburn at 278, and this only occurs when the disclosure would stifle "open discussion during committee investigations," Anderson at 907.

PeaceHealth claims that requiring use of the QI Committee database to identify discoverable medical records "hardly encourages or incentivizes hospitals to engage in critical self-assessment." PeaceHealth Supp. Br. at 14. This careful phrasing appears to constitute a tacit admission that the purposes underlying the relevant privilege are not

¹¹ This 2005 amendment, adding the prohibition on "review or disclosure" to RCW 70.41.200, similarly amended RCW 4.24.250, along with a third statute, RCW 43.70.510, governing health care institutions and medical facilities other than hospitals. The full text of this 2005 amendment is reproduced in the Appendix to this brief. The current version of RCW 43.70.510 is also reproduced in the Appendix.

There was another amendment to RCW 70.41.200 in 2005, not relevant to the issue before the Court. See Laws of 2005, ch. 33 §7. There were also two 2007 amendments with no relevancy here. See Laws of 2007, ch. 273 §22; Laws of 2007, ch. 261 §3.

implicated, because using the QI Committee database in this fashion does not *discourage* or *dis-incentivize* critical self-assessment. See Lowy at 721 (indicating policy underlying RCW 70.41.200(3) is to avoid stifling candor and inhibiting constructive criticism, relying on Coburn and Anderson discussions of policy underlying RCW 4.24.250). In any event, the hospital offers no specifics in its briefing to explain its claim.

At the heart of PeaceHealth's analysis is the notion that use of the QI Committee database provides Lowy and other injured plaintiffs with a "handy tool for discovery," PeaceHealth Supp. Br. at 14, and that nothing in RCW 70.41.200 compels this type of use, see id. at 13. This argument fails to appreciate the fundamental nature of the civil discovery rules, and how they are supposed to operate. The rules establish a low threshold for discovery, and are liberally interpreted to this end.¹² They are to be applied in a manner that exalts "the letter, spirit and purpose of the rules." Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 344, 858 P.2d 1054 (1993). Privileges are recognized, but in

¹² Parties may obtain discovery regarding any matter that is relevant to the subject matter of the pending action. See CR 26(b)(1). Relevance for purposes of discovery is broader than it is for purposes of admissibility, encompassing all information that is potentially relevant. See Barfield v. Seattle, 100 Wn.2d 878, 886, 676 P.2d 438 (1984). Potential relevance is assessed with respect to the subject matter of the pending action, as distinguished from the specific issues raised by the pleadings. See Bushman v. New Holland Div. of Sperry Rand Corp., 83 Wn.2d 429, 434, 518 P.2d 1078 (1974). It is not grounds for objection that the information sought will be inadmissible if it appears reasonably calculated to lead to the discovery of admissible evidence. See CR 26(b)(1). The scope of discovery is deliberately broad and liberally construed in order to aid in pretrial preparation, reduce the possibility of unfair surprise at trial, and give the parties sufficient information to evaluate the prospects for settlement before trial. See Barfield, 100 Wn.2d at 886 (aid to preparation); Bushman, 83 Wn.2d at 434 (avoidance of surprise); Lurus v. Bristol Labs., Inc., 89 Wn.2d 632, 636, 574 P.2d 391 (1978) (settlement). The text of the current version of CR 26 is reproduced in the Appendix to this brief.

the absence of entitlement to a privilege, there must be documented “good cause” to prevent or limit discovery by protective order. See CR 26(c); see also Dreiling v. Jain, 151 Wn.2d 900, 916-17, 93 P.3d 861 (2004) (requiring specific, substantiated and concrete evidence of prejudice or harm for each document sought to be protected from discovery).

No specific claim of prejudice or harm was identified and rejected in the original superior court order compelling discovery. See Appendix. No specific claim of prejudice or harm was identified and accepted in the order on reconsideration. Instead, the court reversed its previous order compelling discovery based on an error of law in construing the scope of the privilege under RCW 70.41.200(3). While discovery orders are subject to review for abuse of discretion, a superior court necessarily abuses its discretion when its decision is based on an erroneous view of the law. See Fisons, 122 Wn.2d at 339. The Court of Appeals properly required the superior court’s first order to be reinstated. That order was correct because no privileged information or documents were to be disclosed and PeaceHealth otherwise did not show good cause for a protective order.

Nor does the fact that the QI Committee database may be a “handy tool” constitute good cause for a protective order, particularly when the briefing indicates it is the *only* tool available to identify the admittedly relevant medical records. See CR 26(b)(1)(a) (allowing court to revise discovery method if the information or document “is obtainable from

some other source that is more convenient, less burdensome, or less expensive”). PeaceHealth’s “handy tool” lament is a problem of its own making. While its QI Committee database is searchable, apparently the rest of its recordkeeping system is not, at least insofar as answering the particular request here. No other tool exists.¹³

It is certainly foreseeable that a hospital may be asked in discovery to produce medical records of similar events or complications, particularly when sued for corporate negligence. Under this theory, direct liability may be imposed on a hospital when it has actual or constructive notice of a recurring, systemic problem involving substandard care allegedly causing the injury in question. See Pedroza v. Bryant, 101 Wn.2d 226, 230-35, 677 P.2d 166 (1984) (adopting and explaining corporate negligence theory); Douglas v. Freeman, 117 Wn.2d 242, 248-54, 814 P.2d 1160 (1991) (elaborating on corporate negligence theory); see also WPI 105.02.02 (stating elements of corporate negligence claim). Given the likelihood of this type of discovery request, its centrality to a corporate negligence claim, and the letter and spirit of the discovery rules, relevant information should not be, in effect, quarantined by virtue of the way the hospital document retrieval system is designed. Cf. Magaña v. Hyundai Motor Am., 167 Wn.2d 570, 586, 220 P.3d 191 (2009) (quoting, with seeming approval, in the course of upholding a default judgment for willful violation of discovery rules, trial court determination that the

¹³ As Lowy notes, a party’s attorney has a somewhat similar task in sorting through privileged communications to identify and provide discoverable matter. See Lowy Supp. Br. at 18-19 & n.13.

defendant responding to discovery “had the obligation not only to diligently and in good faith respond to discovery efforts, but to maintain a document retrieval system that would enable the corporation to respond to plaintiff’s requests”). The QI Committee database is a ready resource for an internal records search, and a court may require PeaceHealth to use it in answering a legitimate discovery request.¹⁴

Finally, as Lowy notes, PeaceHealth’s interpretation of RCW 70.41.200 jeopardizes Lowy’s right of access to courts. See Lowy Br. at 24-25. The discovery rules are an integral part of the civil justice system. In John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 780-81, 819 P.2d 370 (1991), this Court established that a plaintiff’s right of access to the civil justice system is of constitutional magnitude, describing the nature and extent of this right as follows:

Our constitution mandates that “[j]ustice in all cases shall be administered openly, and without unnecessary delay.” Const. art. 1, § 10. That justice which is to be administered openly is not an abstract theory of constitutional law, but rather is the bedrock foundation upon which rests all the people’s rights and obligations. In the course of administering justice the courts protect those rights and enforce those obligations. Indeed, the very first enactment of our state constitution is the declaration that governments are established to protect and maintain individual rights. Const. art. 1, § 1. Const. art. 1, §§ 1-31 catalog those fundamental rights of our citizens.

¹⁴ This review does not involve the question of whether, in the absence of an existing method for searching a recordkeeping system, a court may require a party to create a program to retrieve relevant documents. This issue is particularly complex with the dramatic increase in and evolution of electronic recordkeeping. See generally Kevin F. Brady et al, E-Discovery in Healthcare & Pharmaceutical Litigation: What’s Ahead for ESI, PHI & HER, 9 Sedona Conf. J. 167 (2008); Fed. R. Civ. Proc. 26(b) & notes regarding 2006 Amendments; Fed. R. Civ. Proc. 34 & notes regarding 2006 Amendments.

This right of access to courts includes, and is effectuated through, the civil discovery rules:

Plaintiff has a right of access to the courts. In this civil case that right of access includes the right of discovery authorized by the civil rules, subject to the limitations contained therein

The court rules recognize and implement the right of access. The discovery rules, specifically CR 26 and its companion rules, CR 27-37, grant a broad right of discovery which is subject to the relatively narrow restrictions of CR 26(c). This broad right of discovery is necessary to ensure access to the parties seeking the discovery. It is common legal knowledge that extensive discovery is necessary to effectively pursue either a plaintiff's claim or a defendant's defense. *Thus, the right of access as previously discussed is a general principle, implicated whenever a party seeks discovery. It justifies the limited nature of the exceptions to broad discovery found in CR 26(c).* Plaintiff, as the party seeking discovery, therefore has a significant interest in receiving it.

Id., 117 Wn.2d at 780, 782-83 (emphasis added); see also Putman v. Wenatchee Med. Ctr., 166 Wn.2d 974, 979, 216 P.3d 374 (2009) (quoting John Doe for the proposition that the "right of access to courts 'includes the right of discovery authorized by the civil rules,'" and striking down certificate of merit requirement for medical negligence actions under Ch. 7.70 RCW in part on this basis). The right of access to courts and discovery is safeguarded by the Court of Appeals' narrow construction of RCW 70.41.200(3).

Given that the superior court order on reconsideration was based solely on the court's misapprehension of the scope of RCW 70.41.200(3), the Court of Appeals properly concluded that the superior court's original

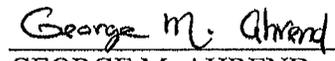
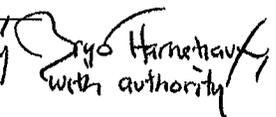
order requiring use of the QI Committee database in answering Lowy's discovery request should be reinstated.

VI. CONCLUSION

The Court should adopt the argument advanced in this brief and resolve this review accordingly.

DATED this 12th day of December, 2011.


BRYAN P. HARNETIAUX


GEORGE M. AHREND by 
with authority

On behalf of WSAJ Foundation

Appendix

Received

JUN 17 2009

Office of Luvera Barnett Brindley
Beninger & Cunningham

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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

LEASA LOWY,	}	No. 08-2-37646-0 SEA
PLAINTIFF,		
v.	}	ORDER
PEACEHEALTH, a Washington corporation;		
ST. JOSEPH HOSPITAL; and UNKNOWN		
JOHN DOES,		
DEFENDANTS,		

Defendants have moved the Court to reconsider its order of April 30, 2009 requiring the disclosure of the underlying factual basis contained in hospital records relating to any injuries, complications, malfunctions or adverse events associated with any IV infusions during the period January 1, 2003 through March 31, 2009. The Court has considered Defendant's Motion for Reconsideration, Plaintiff's Response in Opposition and Defendant's Reply, as well as the previous submissions of the parties.

The Court's order of April 30, 2009 was an effort to balance plaintiff's broad discovery rights under CR26 with the statutory mandate of R.C.W. 70.41.200 (3), specifically prohibiting the disclosure of "[i]nformation and documents, including complaints and incident reports created specifically for, and corrected and maintained by a quality improvement committee" *Id.* The statutory language chosen by the legislature had made clear its intent to bar disclosure while

ORDER

Judge Hairy J. McCarthy
King County Superior Court
516 Third Avenue
Seattle, WA 98104
206-298-9206

1 simultaneously created a privilege for all information collected by the hospital committee. The
2 question again presented to the Court is whether or not the liberal discovery rules of CR26
3 trump the prohibitions set forth at R.C.W. 70.42.200 (3).
4

5 As a general matter, Washington's liberal discovery rules would ordinarily prevail over a
6 statute in derogation of common law, such as R.C.W. 70.41.200. Helpful case authority on this
7 issue is scarce. In its analysis of a similar statute, R.C.W. 4.24.250, Division Three of the Court
8 of Appeals in Ragland v. Lawless, 61 Wn. App 830, 838-39 812 P.2d 872 (1991), held that "all
9 civil actions not falling within the specific exemption are subject to the statutory provision
10 shielding certain information from discovery." Id at 838. The Court's analysis in Ragland is
11 instructive as applied to the circumstances of this case.
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14 The statutory scheme examined in Ragland precluding discovery except in certain
15 specific instances, is very similar to R.C.W. 70.41.210 (3). Both statutes reflect a legislative
16 decision to bar discovery of any hospital peer evaluation committee records unless a particular
17 exemption can be shown. Here, as in Ragland, plaintiff does not claim that any of the
18 exceptions apply but instead argues that a practical accommodation should be reached so that
19 plaintiff's right to discovery of important, relevant underlying factual information present in the
20 hospital records can be achieved.
21

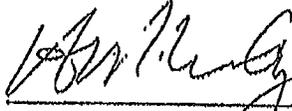
22
23 The court's order of April 30, 2009 authorized access to the relevant, factual complaints
24 and related information in order to balance the competing interests at stake. However
25 reasonable or practical such an accommodation may be, it appears to be contrary to the language
26 of R.C.W. 70.41.210 (3).
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ORDER

1 It is unfortunate that a more practical solution allowing plaintiff relevant discovery is
2 unavallable, but the plain language of R.C.W. 70.41.200 (3) compels the conclusion that any
3 kind of disclosure, whether of committee opinion or underlying factual complaints, shall not be
4 disclosed. Therefore, on further review and reconsideration, the court is persuaded that the
5 Order of April 30, 2009 must be reversed.
6

7 Defendants' Motion for Reconsideration is GRANTED.
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10 DATED this 15 day of June, 2009

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14 Harry J. McCarthy, Judge
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ORDER

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Received

MAY 01 2009
Office of Luvera Barnett Brindley
Beninger & Cunningham

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

LEASA LOWY,)	
)	
PLAINTIFF,)	No. 08-2-37646-0 SEA
v.)	
)	ORDER
PEACEHEALTH, a Washington corporation;)	
ST. JOSEPH HOSPITAL; and UNKNOWN)	
JOHN DOES,)	
DEFENDANTS,)	

THIS MATTER came before the Court upon Defendant's Motion for Protective Order.

In reviewing the motion, the Court has considered:

1. Defendant's Motion for Protective Order;
2. Declaration of Mary Whealdon;
3. Plaintiff's Response in Opposition to Defendant's Motion for Protective Order;
4. Declaration of Andrew Hoyal;
5. Defendant's Reply.

In an effort to balance plaintiff's discovery rights to obtain relevant information with the hospital's right to protect privileged information submitted to and maintained by a peer review

ORDER

Judge Harry J. McCarthy
King County Superior Court
610 Third Avenue
Seattle, WA 98104

1 and quality assurance committee at St. Joseph's Hospital pursuant to R.C.W. 4.24.250 and
2 70.41.200,

3 It is ORDERED as follows:

4
5 The designated agent of St. Joseph's Hospital shall review all relevant records of the
6 quality assurance and peer review committee for the period January 1, 2003 through March 31,
7 2009 and disclose the following information:

8
9 The underlying facts and explanatory circumstances charted in hospital records relating
10 to alleged injuries, complications, malfunctions or adverse events associated with any IV
11 infusions.

12 Any peer review or quality assurance committee commentary, evaluations, opinions,
13 discussion or conclusions related to alleged IV injuries, complications, malfunctions or adverse
14 events associated with IV administrations, shall not be disclosed. Any information and
15 documentation, other than records of the underlying facts and explanatory circumstances,
16 "created specifically for, and collected and maintained by a quality improvement committee,"
17 R.C.W. 70.41.200 (3), shall not be disclosed.
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22 DATED this 30 day of April, 2009.

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26 Harry J. McCarthy, Judge

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29 ORDER

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(f) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

Passed by the House March 9, 2005.

Passed by the Senate April 13, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 291

[Enacted House Bill 2254]

HEALTH CARE PROVIDERS—QUALITY IMPROVEMENT COMMITTEES

AN ACT Relating to peer review committees and coordinated quality improvement programs; and amending RCW 4.24.250, 43.70.510, and 70.41.200.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.250 and 2004 c 145 s 1 are each amended to read as follows:

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) (as ~~new-existing or hereafter-amended~~) who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For

the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, (~~shall not be~~) are ~~not~~ subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined (~~above~~) in RCW 7.70.020 (1) and (2).

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200 and any committees or boards under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4) and 70.41.200(3).

Sec. 2. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state

agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such programs shall comply with the requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to review or disclosure, except as provided in this section or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action

by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Sec. 3. RCW 70.41.200 and 2004 c 145 s 3 are each amended to read as follows:

(1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention

program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (3) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons

involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 43.70.510 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet

the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section and RCW 4.24.250.

(9) Violation of this section shall not be considered negligence per se.

Passed by the House March 15, 2005.

Passed by the Senate April 12, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.

CHAPTER 292

[Substitute House Bill 2304]

MEDICAL ASSISTANCE—DEBT RECOVERY

AN ACT Relating to debts owed to the department of social and health services for medical assistance and recovery of those debts; amending RCW 65.04.050, 6.13.080, 43.20B.030, and 43.20B.080; adding a new section to chapter 43.20B RCW; and adding a new section to chapter 64.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 43.20B RCW to read as follows:

(1) When an individual receives medical assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the department of social and health services may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The department shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The department shall present to the county auditor for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(3) The department shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the public assistance recipient and a departmental case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's public assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the department to receive the notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in RCW 36.18.010 for those forms intended to be recorded.

(4) The department shall pay the recording fee required by the county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

NEW SECTION. Sec. 2. A new section is added to chapter 64.04 RCW to read as follows:

(1) If the department of social and health services has filed a request for notice of transfer or encumbrance under section 1 of this act:

(a) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance when performing a title search on real property shall disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property; and

(b) Any individual who transfers or encumbers real property shall provide the department of social and health services with a notice of transfer or encumbrance. The department of social and health services shall adopt by rule a model form for notice of transfer or encumbrance to be used by a purchaser or lender when notifying the department.

(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under section 1 of this act, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section.

Sec. 3. RCW 65.04.050 and 1996 c 143 s 4 are each amended to read as follows:

Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, ((or)) claims of separate or community property, or notice for request of transfer or encumbrance under section 1 of this act shall be placed on

RCW 70.41.190. Medical records of patients--Retention and preservation

Unless specified otherwise by the department, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW.

[1985 c 213 § 27; 1975 1st ex.s. c 175 § 1.]

**RCW 70.41.200. Quality improvement and medical malpractice prevention program--
-Quality improvement committee--Sanction and grievance procedures--Information
collection, reporting, and sharing**

(1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith,

shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and

confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se.

[2007 c 273 § 22, eff. July 1, 2009; 2007 c 261 § 3, eff. July 22, 2007. Prior: 2005 c 291 § 3, eff. July 24, 2005; 2005 c 33 § 7, eff. July 24, 2005; 2004 c 145 § 3, eff. June 10, 2004; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

**RCW 4.24.250. Health care provider filing charges or presenting evidence--
Immunity--Information sharing**

(1) Any health care provider as defined in RCW 7.70.020(1) and (2) who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020(1) and (2).

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or any committee or board under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4), 70.41.200(3), 18.20.390(6) and (8), and 74.42.640(7) and (9).

[2005 c 291 § 1, eff. July 24, 2005; 2005 c 33 § 5, eff. July 24, 2005; 2004 c 145 § 1, eff. June 10, 2004; 1981 c 181 § 1; 1979 c 17 § 1; 1977 c 68 § 1; 1975 1st ex.s. c 114 § 2; 1971 ex.s. c 144 § 1.]

**RCW 43.70.510. Health care services coordinated quality improvement program--
Rules**

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.56.360(1)(c) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. For purposes of this section, a health care provider group may be a consortium of providers consisting of five or more providers in total. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be

rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by, a quality improvement committee are exempt from disclosure under chapter 42.56 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents

shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

[2007 c 273 § 21, eff. July 1, 2009. Prior: 2006 c 8 § 113, eff. June 7, 2006; 2005 c 291 § 2, eff. July 24, 2005; 2005 c 274 § 302, eff. July 1, 2006; 2005 c 33 § 6, eff. July 24, 2005; 2004 c 145 § 2, eff. June 10, 2004; 1995 c 267 § 7; 1993 c 492 § 417.]

CR 26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

(2) *Insurance Agreements.* A party may obtain discovery and production of: (i) the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and (ii) any documents affecting coverage (such as denying coverage, extending coverage, or reserving rights) from or on behalf of such person to the covered person or the covered person's representative. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Structured Settlements and Awards.* In a case where a settlement or final award provides for all or part of the recovery to be paid in the future, a party entitled to such payments may obtain disclosure of the actual cost to the defendant of making such payments. This disclosure may be obtained during settlement negotiations upon written demand by a party entitled to such payments. If disclosure of cost is demanded, the defendant may withdraw the offer of a structured settlement at any time before the offer is accepted.

(4) *Trial Preparation: Materials.* Subject to the provisions of subsection (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under

subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this section, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules.
(ii) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(B) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(A)(ii) and (b)(5)(B) of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) *Claims of Privilege or Protection as Trial-Preparation Materials for Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must

promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. Either party may promptly present the information in camera to the court for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(7) *Discovery From Treating Health Care Providers.* The party seeking discovery from a treating health care provider shall pay a reasonable fee for the reasonable time spent in responding to the discovery. If no agreement for the amount of the fee is reached in advance, absent an order to the contrary under section (c), the discovery shall occur and the health care provider or any party may later seek an order setting the amount of the fee to be paid by the party who sought the discovery. This subsection shall not apply to the provision of records under RCW 70.02 or any similar statute, nor to discovery authorized under any rules for criminal matters.

(8) *Treaties or Conventions.* If the methods of discovery provided by applicable treaty or convention are inadequate or inequitable and additional discovery is not prohibited by the treaty or convention, a party may employ the discovery methods described in these rules to supplement the discovery method provided by such treaty or convention.

(c) **Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that the contents of a deposition not be disclosed or be disclosed only in a designated way; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) **Sequence and Timing of Discovery.** Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) **Supplementation of Responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(h) Use of Discovery Materials. A party filing discovery materials on order of the court or for use in a proceeding or trial shall file only those portions upon which the party relies and may file a copy in lieu of the original.

(i) Motions; Conference of Counsel Required. The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions provided under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met.

(j) Access to Discovery Materials Under RCW 4.24.

(1) *In General.* For purposes of this rule, "discovery materials" means depositions, answers to interrogatories, documents or electronic data produced and physically exchanged in response to requests for production, and admissions pursuant to rules 26-37.

(2) *Motion.* The motion for access to discovery materials under the provisions of RCW 4.24 shall be filed in the court that heard the action in which the discovery took place. The person seeking access shall serve a copy of the motion on every party to the action, and on nonparties if ordered by the court.

(3) *Decision.* The provisions of RCW 4.24 shall determine whether the motion for access to discovery materials should be granted.

[Amended effective July 1, 1972; September 1, 1985; September 1, 1989; December 28, 1990; September 1, 1992; September 17, 1993; September 1, 1995; January 12, 2010.]

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Subject: RE: Lowy v. PeaceHealth, et al. (S.C. #85697-4) - Request for Permission to File Amicus Curiae Brief

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Subject: Lowy v. PeaceHealth, et al. (S.C. #85697-4) - Request for Permission to File Amicus Curiae Brief

Dear Mr. Carpenter,

Attached is our amicus curiae brief in the above case. Counsel have previously agreed to accept service of this brief by email.

Respectfully submitted,

Bryan Harnetiaux, WSBA 5169

on behalf of WSAJ Foundation