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SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

LOUIS ALEXANDER DIAZ and MONA DIAZ,

Petitioners,

v.

JAYANTHI KINI, M.D., and MEDICAL CENTER LABORATORY, INC., P.S.,

Respondents.

# ANSWER TO PETITION FOR REVIEW

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ORIGINAL

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## I. IDENTITY OF RESPONDING PARTIES

Respondents Jayanthi Kini, M.D., and Medical Center Laboratory, Inc., P.S. ("MCL"), ask the Court to deny the Diazes' petition for review.

## II. COURT OF APPEALS DECISION

On March 7, 2011, the Court of Appeals filed its opinion, holding that, under RCW 7.70.080, any remaining party to a medical malpractice case may present evidence at trial of compensation paid to the plaintiff pursuant to a former co-defendant's settlement with the plaintiff. On April 27, 2011, the Court of Appeals denied the Diazes' motion for reconsideration and granted Dr. Kini's and MCL's motion to publish. The published opinion can be found at *Diaz v. State of Washington*, ___ Wn. App. ___, 251 P.3d 249 (2011).

## III. COUNTERSTATEMENT OF ISSUES PRESENTED

1. Did both the trial court and the Court of Appeals correctly conclude that, under RCW 7.70.080's abrogation of the collateral source rule for medical malpractice cases, evidence of compensation paid by former co-defendants in settlement of plaintiff's claims may be presented by any remaining party at trial?

2. Did both the trial court and the Court of Appeals correctly conclude that ER 408 does not preclude the admission of evidence under RCW 7.70.080 of compensation paid by former co-defendants in

settlement of plaintiff's claims, because the evidence is not being admitted to "prove liability for or invalidity of the claim or its amount," but is being admitted to avoid overcompensation of medical malpractice plaintiffs?

3. Given that juries are presumed to follow the court's instructions, does the fact that the trial court instructed the jury not to use the evidence it heard concerning plaintiffs' settlement with former co-defendants either to "assume [the former co-defendants] acted negligently to cause damage to the plaintiffs" or to "excuse any liability you find on the part of Dr. Kini or MCL", CP 301 (Court's Instruction No. 8), defeat as a matter of law plaintiffs' claims of prejudice, which were that the settlement evidence might have "induced" the jury "to find no liability on the part of defendant regardless of the evidence, or might have led the jury "to deny the claim against Dr. Kini and MCL based on the perception that [the former co-defendants] would not have paid . . . $400,000 if [they] were not the part[ies] at fault," *App. Br. at 19-20*?

## IV. COUNTERSTATEMENT OF THE CASE

In this medical malpractice action against Dr. Kini and her employer, MCL, the trial court ruled before the start of the second trial[1] that it would admit, under RCW 7.70.080, evidence that the Diazes had settled claims against former co-defendants University of Washington and Dr. Neal Futran for $400,000. *See* CP 307-09. The Diazes' counsel told the jury of the settlement in his opening statement. CP 309, 322.

During the trial, the Diazes' counsel renewed a motion to exclude evidence of the settlement or to reserve a decision regarding the effect, if any, of the settlement on the jury verdict. CP 308. Because he had made reference to the settlement in opening statement, the Diazes counsel also asked the trial court to consider giving a curative instruction. CP 308.

The trial court ruled that the evidence was admissible, CP 308-09, but, after the close of evidence, instructed the jury that:

> You have heard evidence that the University of Washington and Dr. Neal Futran were once parties to this litigation and later entered into a settlement with the plaintiffs, paying the plaintiffs $400,000. This evidence should not be used to either (a) assume the University of Washington or Dr. Futran acted negligently to cause damage to the plaintiffs, (b) excuse any liability you find on the part of Dr. Kini or MCL, or (c) reduce the amount of any damages you find

[1] The first trial against Dr. Kini and MCL, in which the trial court excluded evidence of the compensation that former co-defendants, Dr. Neal Futran and the University of Washington, had paid in settlement with the Diazes, ended in a hung jury .

> were caused by Dr. Kini or MCL. By giving you this instruction, the court does not mean to instruct you for which party your verdict should be rendered.

CP 301 (Court's Inst. No. 8).[2]

The jury, answering special interrogatories, unanimously answered "no" to the question of whether the defendants, Dr. Kini and MCL, had negligently caused injury to the Diazes, and thus did not reach the question of damages. CP 297.

The Diazes appealed, seeking a new trial on the ground that admission of the evidence of the $400,000 settlement had prejudiced them by "la[ying] the groundwork" for "induc[ing the jury] to find no liability on the part of the defendant regardless of the evidence", *App. Br. at 19-20*, and by leading the jury "to deny the claim against Dr. Kini and MCL based on the perception that UWMC would not have paid the substantial sum of $400,000 if it were not the party at fault," *App. Br. at 20*. The Diazes argued that admitting the settlement evidence was error (a) because Washington case law establishes that settlement evidence remains inadmissible under ER 408 despite the enactment of RCW 7.70.080, *App. Br. at 13-14*; (b) because the last sentence of RCW 7.70.080 means that only the University and Dr. Futran, but not Dr. Kini or MCL, were entitled to offer evidence of the settlement, *App. Br. at 16-17*; and/or (c) because

[2] The Diazes did not assign error to that instruction, or any part of it, on appeal.

interpreting the statute to allow admission of settlement evidence would discourage settlements, *App. Br. at 18-19.* The Diazes also argued – without citing any case authority – that settlement payments are not received from "collateral sources" and thus are not admissible under RCW 7.70.080. *App. Br. at 17.*

After the Court of Appeals issued its opinion affirming the trial court's decision, the Diazes moved for reconsideration, renewing their argument that RCW 7.70.080 does not make settlements admissible because settlement payments are not "collateral sources" and for the first time citing decisions from other jurisdictions in an effort to support that argument. The Diazes in their motion for reconsideration, for the first time, also argued that RCW 7.70.080 unconstitutionally conflicts with ER 408 under separation-of-powers analysis.

The Court of Appeals denied the Diazes' motion for reconsideration. The Diazes timely filed their petition for review. In their petition, the Diazes do not identify the sub-provision(s) of RAP 13.4(b) under which they seek review, nor do they attempt to explain how the admission of evidence of the $400,000 settlement prejudiced them notwithstanding Court's Instruction No. 8.

## V. ARGUMENT WHY REVIEW SHOULD BE DENIED

### A. The Trial Court and the Court of Appeals Correctly Interpreted and Applied RCW 7.70.080.

#### 1. As this Court has recognized, RCW 7.70.080 abolished the collateral source rule for medical malpractice cases to avoid over-compensation of plaintiffs in such cases.

The 1975-76 Legislature made a number of modifications to the law governing actions for injury allegedly resulting from health care provided after June 25, 1976. *See* RCW 7.70.010; *Branom v. State*, 94 Wn. App. 964, 968, 974 P.2d 335 (1999) ("In enacting RCW 7.70.010, the Legislature "modified the substantive aspects of all causes of action . . . for damages for 'injury occurring as a result of health care'"). RCW 7.70.080 was one of the 1975-76 modifications. As further amended in 2006, RCW 7.70.080 provides:

> ***Any party may present evidence to the trier of fact that the plaintiff has already been compensated for the injury complained of from any source*** except the assets of the plaintiff, the plaintiff's representative, or the plaintiff's immediate family. In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation and evidence of any amount paid by the plaintiff, or his or her representative or immediate family, to secure the right to the compensation. ***Compensation as used in this section shall mean payment of money*** or other property ***to or on behalf of the plaintiff***, rendering of services to the plaintiff free of charge to the plaintiff, or indemnification of expenses incurred by or on behalf of the plaintiff. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider. [Emphases supplied.]

RCW 7.70.080 abolished the collateral source rule in medical malpractice cases. *See Mahler v. Szucs*, 135 Wn.2d 398, 412 n.4, 957 P.2d 632 (1998) (noting that, through the enactment of RCW 7.70.080, "[t]he Legislature has abolished the collateral source rule in the specific case of injuries occurring as a result of health care . . ."). As this Court explained 18 years ago in *Adcox v. Children's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 40, 864 P.2d 921 (1993):

> The primary motivation in doing away with the collateral source rule is [that] the rule allows plaintiffs to recover more than their total damages. Under the collateral source rule, a plaintiff could recover 100 percent of the damages from a liable defendant, even if the plaintiff had already recovered a portion of their [sic] damages from another source, such as insurance. Because the rule over-compensated plaintiffs, it came to be viewed as imposing unnecessary costs on society and causing higher insurance premiums. [Citation omitted].

Thus, the Legislature has allowed defendants in medical malpractice cases to show that plaintiffs have received payments from other sources.[3]

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[3] Since *Adcox* was decided in 1993, the Legislature has broadened RCW 7.70.080, to make evidence of more kinds of what otherwise would be "collateral sources" admissible in medical malpractice cases. From 1976 to 2006, the fact that medical malpractice plaintiffs had received compensation for their injuries from insurance purchased with their own funds was expressly excepted from the evidence of compensation admissible under RCW 7.70.080. A 2006 amendment eliminated that exception, and thus made medical malpractice plaintiffs' receipt of insurance benefits admissible, subject to the plaintiffs' right to show that they are obligated to repay their insurers. *Laws of 2006, ch. 8, § 315.*

2. Contrary to the Diazes' assertions, *Byerly* and *Vasquez* do not hold or suggest that, despite the enactment of RCW 7.70.080, settlement evidence is inadmissible in medical malpractice cases.

The Diazes, *Pet. at 9-10*, cite *Byerly v. Madsen*, 41 Wn. App. 495, 704 P.2d 1236 (1985), *rev. denied*, 104 Wn.2d 1021 (1985), and *Vasquez v. Markin*, 46 Wn. App. 480, 731 P.2d 510 (1986), *rev. denied*, 108 Wn.2d 1021 (1987), as authority for the proposition that, despite the enactment of RCW 7.70.080, settlement evidence remains inadmissible in medical malpractice cases. Neither case stands for such a proposition.

Although *Byerly* and *Vasquez* are appellate decisions published after the enactment of RCW 7.70.080, neither addressed or mentioned that statute because neither decision concerned a trial court ruling as to admissibility of evidence.

The issue in *Byerly* was whether it was an abuse of discretion for a trial court to grant a new trial because a juror had told fellow jurors that the plaintiff had settled with another health care provider. The Court of Appeals found no abuse of discretion and affirmed the grant of a new trial. In so doing, the Court of Appeals did not address, much less cite, either RCW 7.70.080 or ER 408. Nor does it appear that the parties in *Byerly* briefed or argued the admissibility of evidence of settlement under RCW 7.70.080, which is certainly understandable because the issues concerning

the disclosure of information about the settlement (and the possible effect of the disclosure) arose out a juror's injection of extraneous information into deliberations, not out of an evidentiary ruling by the court.

The issue in *Vasquez* was whether the trial court abused its discretion in denying a plaintiff's motion for new trial based upon a claim that the bailiff had told jurors, during their deliberations, of the plaintiff's settlement with other health care providers, something the trial court found had not happened. In affirming the denial of the new trial motion, the Court of Appeals did no mention or address either RCW 7.70.080 or ER 408, as the issue was not whether the trial court had made an erroneous evidentiary ruling, but rather was whether the plaintiff should have been granted a new trial based on alleged misconduct of the bailiff that the trial court found had not occurred. Statements in *Vasquez* that "[e]vidence of settlements is inadmissible" and that "juror statements regarding settlements may warrant a new trial," *Vasquez*, 46 Wn. App. at 484, are not only dicta because the Court of Appeals affirmed the denial of a new trial, but also, and more importantly, are unaccompanied by citation or reference to either ER 408, the common law collateral source rule, or RCW 7.70.080,[4] and thus are not dispositive of the issue in this case.

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[4] The *Vasquez* court did cite *Byerly*, but *Byerly* also contains no reference to ER 408, the collateral source rule, or RCW 7.70.080.

Neither the Court of Appeals in *Byerly* nor the Court of Appeals in *Vasquez* was called upon to consider whether the collateral source rule generally applicable in tort cases was rendered inapplicable to medical malpractice cases by the enactment of RCW 7.70.080, as this Court in *Adcox* and *Mahler* has since recognized to be the case. Neither *Byerly* nor *Vasquez* cited, addressed, or interpreted RCW 7.70.080 and, thus, neither *Byerly* nor *Vasquez* can be said to hold, or even imply, that RCW 7.70.080 does not allow trial courts to admit settlement evidence in medical malpractice cases.

If, by citing *Byerly* and *Vasquez*, the Diazes are asking this Court to grant review under RAP 13.4(b)(2), their request should be denied because there is no conflict between the Court of Appeals decision in this case and the Court of Appeals decisions in either *Byerly* or *Vasquez*.

3. The trial court and the Court of Appeals correctly rejected the Diazes' proposed interpretation of the last sentence of RCW 7.70.080.

The trial court and the Court of Appeals properly rejected the Diazes' argument that the last sentence of RCW 7.70.080 allows only the University and Dr. Futran, and not Dr. Kini or MCL, to offer evidence of the $400,000 settlement. The last sentence of RCW 7.70.080 provides:

> Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider.

The courts below were correct because, at trial, the University and Dr. Futran, having settled, were not "defendants," and thus were not in position to "offer" *any* kind of evidence. As is made clear by the first five words of RCW 7.70.080 ("[a]ny party may present evidence"), the statute concerns evidence that "[a]ny *party*" may offer, not what *nonparties* may offer. The last sentence of RCW 7.70.080 therefore would make no sense if it were construed to limit the right to "offer" settlement or other "collateral source" evidence to someone who is not a party (and thus not a "defendant") who can "offer" evidence of any kind at trial.[5]

4. The trial court and the Court of Appeals correctly concluded that ER 408 did not preclude admission of evidence concerning the settlement, because the evidence was not admitted "to prove liability for or invalidity of the [Diazes'] claim or its amount".

The Diazes assert, *Pet. at 8-9, 15-16*, as they did in the courts below, that ER 408 prevents the admission of evidence of settlement under

[5] That is not to say that the last sentence of RCW 7.70.080 serves no purpose. It serves an important purpose: it makes clear (a) that a "*defendant* health care provider," if the defendant so chooses at trial, may offer evidence that he, she, or it has already compensated the plaintiff to some extent (such as by providing followup care for free), but (b) that the plaintiff, or a co-defendant health care provider, may *not* offer such evidence (because it may imply an admission of fault). Thus, if *Dr. Kini*, who remained "a defendant health care provider" at trial, had compensated the Diazes, she alone would have had the right to offer evidence of *that* compensation; the Diazes could not have offered it. The point of the last sentence of RCW 7.70.080 is to make clear that, when a health care provider who is a defendant at trial has provided compensation to the plaintiff for the injury at issue, only that defendant health care provider may decide to allow the jury to hear about the provision of that compensation.

RCW 7.70.080. The courts below correctly rejected that argument, because ER 408 is not a blanket prohibition against admitting settlement evidence. ER 408 requires exclusion of evidence of settlement only when the purpose for which it is offered is "to prove liability for or invalidity of the claim or its amount," not when the evidence is offered for some other purpose. The purpose of admitting evidence of a settlement with a medical malpractice plaintiff under RCW 7.70.080 is not "to prove liability for or invalidity of the claim or its amount," but rather to allow the jury to avoid overcompensating that plaintiff. As this Court held in *Adcox*, 123 Wn.2d at 41, the "primary goal in eliminating the collateral source rule [through RCW 7.70.080] has been to prevent overcompensating [medical malpractice] plaintiffs in light of the resulting costs to society." Thus, the purpose of admitting settlement or other collateral source evidence in medical malpractice cases is not to prove "liability for or invalidity of the claim or its amount," ER 408, but rather to avoid *over*compensation that puts upward pressure on the cost of health care.[6]

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[6] Furthermore, our courts strive to avoid finding conflicts between statutes and court rules and instead seek to harmonize rules and statutes dealing with the same subject matter, and to give effect to both, whenever possible. *Nearing v. Golden State Foods Corp.*, 114 Wn.2d 817, 820-21, 792 P.2d 500 (1990). The Court of Appeals' decision shows how ER 408 and RCW 7.70.080 are properly and sensibly harmonized. The Diazes fail to acknowledge the preference our courts have for harmonizing court rules and statutes, much less explain why a limited

Any concern that the admission of settlement evidence could induce a jury to infer that the settling persons were the ones at "fault," or that a remaining defendant at trial either was not at fault or has minimal fault, can be – and in this case was – dealt with through an instruction to the jury *not* to draw such inferences.[7] A jury is presumed to have heeded a trial court's instruction. *Tincani v. Inland Empire Zoo. Soc.*, 124 Wn.2d 121, 136, 875 P.2d 621 (1994).

B. None of the Decisions from Other Jurisdictions the Diazes Cite Support Their Contention that Evidence of Compensation They Received Pursuant to Settlement with Former Co-Defendants Is Not Admissible under RCW 7.70.080, Much Less Provide a Basis for Granting Review under RAP 13.4(b).

The Diazes, citing decisions from ten other jurisdictions, argue, *Pet. at 11-12*, that settlement payments made by joint tortfeasors are not "collateral sources" and thus are not admissible under RCW 7.70.080. Their argument ignores the fact that the language of RCW 7.70.080 is broad and allows presentation of evidence of compensation "from any source", not just from a source that courts from other jurisdictions

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rule of exclusion necessarily precludes admission of evidence for a purpose that is not one for which the rule was adopted.

[7] The trial court went farther, and also instructed the jury not to consider the settlement evidence "[to] reduce the amount of any damages you find were caused by Dr. Kini or MCL." If the defense had taken exception to inclusion of that language in the court's limiting instruction, and if the jury had found Dr. Kini liable and awarded damages to the Diazes, inclusion of that language would have been reversible error. But the jury did not award damages, and the defense did not take exception to the court's limiting instruction.

consider "collateral sources." Even if this Court were to consider the non-Washington decisions the Diazes cite, none of which were brought to the attention of the Court of Appeals until the Diazes' motion for reconsideration,[8] none of those decisions are pertinent to the issue here.

Nine of the ten decisions – all except *Kiss v. Jacob*, 650 A.2d 336 (N.J. 1994) – held that settlements are not "collateral sources" for purposes of offsets against judgments, that is, in the context of determining whether defendants were entitled to have settlements considered for purposes of offsets or credits against damages awards. None of the ten decisions holds that settlements are inadmissible despite statutes like RCW 7.70.080. Although *Kiss* did involve the issue of admissibility of settlement payments under a New Jersey statute, that statute is worded much more narrowly than RCW 7.70.080, and makes admissible evidence of "benefits", whereas RCW 7.70.080 makes admissible evidence of "compensation", meaning "***payment of money*** or

[8] This Court, in deciding whether to accept review, may and should ignore the nonWashington authorities the Diazes cite because the Diazes did not cite them to the Court of Appeals in their opening brief on appeal (the Diazes filed no reply brief) and first cited them in their motion for reconsideration. The Court of Appeals generally does not consider arguments first raised in motions for reconsideration, *e.g.*, *Housing Auth. of King Cy. v. Northeast Lake Wash. Sewer & Water Dist.*, 56 Wn. App. 589, 595 n. 5, 784 P.2d 1284, *rev. denied*, 115 Wn.2d 1004 (1990), and this Court has declined to consider an argument first raised in a motion seeking reconsideration of a Court of Appeals decision, *1515-1519 Lakeview Blvd. Condo Ass'n v. Apt. Sales Corp.*, 146 Wn.2d 194, 203 n. 4, 43 P.3d 1233 (2002).

other property ***to*** or on behalf of ***the plaintiff***, rendering of services to plaintiff free of charge to the plaintiff, or indemnification of expenses incurred by or on behalf of the plaintiff."

Thus, not one of the ten decisions from other jurisdictions that the Diazes cite, *Pet. at 11-12*, comes even close to being on point, and nine of those decisions hold that settlement payments must be considered by the court in adjusting damages awards. In *Adcox*, the Supreme Court held that RCW 7.70.080 makes it the job of juries, not trial judges, to avoid overcompensating medical malpractice plaintiffs by allowing juries, in awarding damages, to consider amounts of money that medical malpractice plaintiffs have already received for their injuries, including amounts of money received from what would otherwise be "collateral sources." *Adcox*, 123 Wn.2d at 40-41. Thus, the non-Washington decisions on which the Diazes rely are inapposite not only because they did not involve application of a statute like RCW 7.70.080, but also because nine of them dealt with a mechanism for post-verdict adjustment of damages by trial judges that *Adcox* holds is not the function of judges in Washington.[9]

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[9] As the Court of Appeals noted, Slip Op. at 6, n. 2, this case did not involve any apportionment of fault.

C. The Diazes' Belatedly Raised Constitutional Argument Does Not Warrant Review, Especially When the Diazes Have Not Shown and Cannot Show Actual Prejudice.

The Diazes argue, *Pet. at 14-15*, that RCW 7.70.080 is unconstitutional under separation of powers analysis. That argument need not be considered because it presumes a conflict between RCW 7.70.080 and ER 408 that, as explained in Section A.4., *supra*, does not exist. Moreover, the constitutional argument is one the Diazes did not raise in the trial court and did not raise in the Court of Appeals until their motion for reconsideration.

When a petitioner raises a constitutional issue for the first time on appeal, he or she must establish that the alleged constitutional error was manifest. RAP 2.5(a)(3); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995); *Fishburn v. Pierce Cy. Planning & Land Servs. Dept.*, 161 Wn. App. 452, 456 n.2, 250 P.3d 146 (2011).[10] That requirement applies even in a death-penalty case. *E.g.*, *State v. Gregory*, 158 Wn.2d 759, 837, 147 P.3d 1201 (2006). As the *McFarland* court explained:

> [T]he asserted error must be "manifest"--*i.e.*, it must be "truly of constitutional magnitude". [*State v.*] *Scott*, 110 Wn.2d [682] at 688 [757 P.2d 492 (1988)]. The defendant

[10] *See also State v. Lynn*, 67 Wn. App. 339, 344, 835 P.2d 251 (1992) ("permitting *every possible* constitutional error to be raised for the first time on appeal undermines the trial process, generates unnecessary appeals, creates undesirable retrials and is wasteful of the limited resources of prosecutors, public defenders and courts" [italics by the court]).

> must identify a constitutional error ***and show how, in the context of the trial, the alleged error actually affected the defendant's rights***; it is this showing of actual prejudice that makes the error "manifest", allowing appellate review. *Scott*, 110 Wn.2d at 688; *Lynn*, 67 Wn. App. at 346. [Emphasis added.]

*McFarland*, 127 Wn.2d at 333. Or, as the court explained in *State v. Lynn*, 67 Wn. App. 339, 345, 835 P.2d 551 (1992), "a plausible showing by the defendant that the asserted error had practical and identifiable consequences" at trial, in that it actually "affected" a constitutional right, is essential to determining whether the alleged error is manifest.

In their petition, the Diazes neither acknowledge RAP 2.5(a)(3) nor make any attempt to show actual prejudice in the form of "practical and identifiable consequences" to them, at trial, resulting from the admission of evidence of their settlement with the University and Dr. Futran. Nor *can* the Diazes show actual prejudice, because the trial court instructed the jury not to consider the evidence of settlement to "excuse any liability" it found on the part of Dr. Kini or MCL, and the jury is presumed to have heeded a trial court's instruction. *Tincani*, 124 Wn.2d at 136. That presumption applies to limiting instructions not only in civil cases, *Gardner v. Spalt*, 86 Wash. 146, 149, 149 P. 647 (1915), but also in criminal cases, *State v. Lough*, 125 Wn.2d 847, 864, 889 P.2d 487 (1995); *In re Det. of Coe*, 160 Wn. App. 809, 837, 250 P.3d 1056 (2011), and even

when the Supreme Court is reviewing a sentence of death, *State v. Lord*, 117 Wn.2d 829, 861, 822 P.2d 177 (1991).

Because the jury in this civil case is presumed to have heeded the trial court's instructions and, thus, to have not considered the settlement evidence in deciding that Dr. Kini and MCL were not negligent, there is no basis for inferring or suspecting actual prejudice. The Diazes' failure to address RAP 2.5(a)(3) should not be excused, and this Court should not consider their belatedly raised constitutional argument in deciding whether to grant review.

## VI. CONCLUSION

For the foregoing reasons, the Diazes' petition for review should be denied.

RESPECTFULLY SUBMITTED this 27th day of June, 2011.

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on the 27th day of June, 2011, I caused a true and correct copy of the foregoing document, "Answer to Petition for Review," to be delivered in the manner indicated below to the following counsel of record:

| | |
|---|---|
| Counsel for Appellants:<br>Joseph A. Grube, WSBA #26476<br>RICCI GRUBE BRENEMAN, PLLC<br>1200 Fifth Ave., Suite 625<br>Seattle, WA 98101<br>Ph: (206) 770-7606<br>joe@rgbcounsel.com | SENT VIA:<br>☐ Fax<br>☐ ABC Legal Services<br>☐ Express Mail<br>☑ Regular U.S. Mail<br>☑ E-file / E-mail |
| Co-Counsel for Respondents:<br>Jeffrey R. Street, WSBA #17002<br>HODGKINSON STREET, LLC<br>1620 SW Taylor, Suite 350<br>Portland, OR 97205<br>Ph: (503) 222-1143<br>jrs@hs-legal.com | SENT VIA:<br>☐ Fax<br>☐ ABC Legal Services<br>☐ Express Mail<br>☑ Regular U.S. Mail<br>☑ E-file / E-mail |

DATED this 27th day of June, 2011, at Seattle, Washington.

Carrie A. Custer

Carrie A. Custer

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Attached for filing in .pdf format is the Answer to Petition for Review in *Diaz v. Kini, et al.*, Supreme Court Cause No. 86049-1. The attorneys filing this answer are Mary Spillane, (206) 628-6656, WSBA No. 11981, e-mail address: mspillane@williamskastner.com and Dan Ferm, (206) 233-2908, WSBA No. 11466, e-mail address: dferm@williamskastner.com.

Respectfully submitted,

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