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STATE OF WASHINGTON
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No. 86842-5

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**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

GASTON CORNU-LABAT,

Plaintiff/Respondent,

v.

**HOSPITAL DIST. #2 GRANT COUNTY,
d/b/a QUINCY VALLEY HOSPITAL,**

Defendant/Appellant.

**DEFENDANT/APPELLANT QUINCY VALLEY
MEDICAL CENTER'S RESPONSE TO AMICI BRIEF
OF FREEDOM FOUNDATION AND WASHINGTON
COALITION FOR OPEN GOVERNMENT**

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I. INTRODUCTION

Quincy Valley Medical Center (“QVMC”) responds to the brief of Amici Curiae Freedom Foundation and Washington Coalition for Open Government (“Amici”). The Amici’s brief overcomplicates an issue that is fundamentally simple. The plain language of RCW 4.24.250 controls and demonstrates that the information at issue here is privileged simply if it is established that the information was generated for a regularly constituted committee or board of the hospital whose duty it was to review and evaluate the quality of patient care or the competency of staff members. That occurred here. Because RCW 4.24.250 is clear, Amici’s reliance on other statutes to construe it is misplaced. As discussed below, Amici’s other arguments pertaining to RCW 70.41.200 and RCW 70.44.062(1) are also unpersuasive.

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II. RESPONSE TO AMICI'S ARGUMENTS

A. RCW 4.24.250 EXEMPTS THE RECORDS REQUESTED BY PLAINTIFF

RCW 4.24.250 is dispositive of the issues in this action. It specifically exempts from disclosure the “proceedings, reports, and written records” of any “regularly constituted review committee . . . of a hospital” or any “regularly constituted board of a hospital.” RCW 4.24.250(1). This Court has expressly held that RCW 4.24.250 “makes privileged (or protects from discovery) the ‘proceedings, reports, and written records’ of quality review committee proceedings, along with the records of committee members and agents.” Anderson v. Breda, 103 Wn.2d 901, 904-05 (1985) (emphasis added). Thus, there is no question the reports of the medical staff’s authorized agents, to whom the investigations were delegated, are protected.

As Amici concede, RCW 4.24.250 does not actually require “peer review.” (Amici Br. at 5). RCW 4.24.250 does not

even mention “peer review.” Amici argue other statutes interpret RCW 4.24.250 as a “peer review” statute. (Amici Br. at 5-6). That argument is not persuasive. Long standing precedent holds that “[w]here statutory language is plain and unambiguous, we ascertain the meaning of the statute solely from its language.” Dot Foods, Inc. v. Washington Dept. of Revenue, 166 Wn.2d 912, 919 (2009). The language in RCW 4.24.250 is clear and unambiguous, and does not require statutory construction or reliance on characterizations by other statutes. It expressly does not require “peer review.” This makes sense, since hospital boards regularly are composed of lay persons.

Thus, contrary to Amici’s contention, RCW 4.24.250 does not mandate that only physicians investigate another

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physician.¹ The statute specifically contemplates and authorizes investigations conducted by people other than physicians: “The proceedings, reports, and written records of such committees or boards, or member, employee, staff person, or investigator of such committee or board” RCW 4.24.250(1) (emphasis added). Accordingly, the statute specifically authorizes and contemplates that people other than physicians will be involved in the process, including people delegated the responsibility to investigate the allegations. Reading an overly strict interpretation of “peer review” into the statute would impractically require that physicians conduct every aspect of an investigation into another physician for the exemption to apply, including locating records and typing up reports.

¹ Even if the term “peer review” were used, this does not mean only physicians can investigate physicians. This is the federal perspective. The Health Care Quality Improvement Act of 1986 (“HCQIA”), for example, established “professional peer review” to “restrict the ability of incompetent physicians” to relocate “without disclosure or discovery of the physician’s previous damaging or incompetent performance.” 42 U.S.C.A. § 11101. The HCQIA defines peer review broadly as: “a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.” 42 U.S.C.A. § 11151 (emphasis added). Thus, the HCQIA expressly refers to “peer review” yet does not require the committees to be composed solely of physicians.

The evidence in this case, through the declarations of three members of the medical staff, the QVMC Bylaws, and the bylaws of other hospitals, demonstrates the QVMC medical staff undoubtedly is a “regularly constituted committee.” Thus, under RCW 4.24.250, any “proceedings, reports, and written records” of the investigations are clearly exempt from disclosure.

B. QVMC PROPERLY RAISED RCW 70.41.200 AT THE TRIAL COURT LEVEL AND NEVER CONCEDED IT IS INAPPLICABLE

QVMC specifically raised the RCW 70.41.200 exemption at the trial court level. (CP 107-08). QVMC has never conceded the RCW 70.41.200 exemption does not apply. At the trial court level, QVMC merely conceded that its specific committee named the quality assurance committee was not involved in the investigations into Plaintiff’s alleged misconduct, and that QVMC’s specific policy relating to that committee did not apply. (CP 271-73). It never claimed that the

investigations were not performed by a quality assurance committee.

RCW 70.41.200 provides broad protection from disclosure of information created for, collected for, or maintained by a quality assurance committee responsible for reviewing the quality of services in a hospital. What Amici misunderstand is that QVMC's Bylaws and policies establish that the evidence shows that the medical staff as a whole is a quality improvement committee. (CP 132-71). One of its functions is to review the services rendered in the hospital both retrospectively and prospectively in order to improve the quality of medical care to a patient and to prevent medical malpractice. (CP 134, 136-37, 148-50, 163, 255-57, 259-264, 266-67).

C. AMICI'S READING OF RCW 70.44.062 IS TOO RESTRICTIVE

RCW 70.44.062 expressly protects "[a]ll meetings, proceedings, and deliberations of the board of commissioners . .

. .” Amici take an overly narrow and restrictive reading of the statute that is not consistent with common sense and a natural understanding of what normally constitutes “meetings, proceedings, and deliberations.”

The term “proceeding” is commonly understood to mean written records of events, and not just face-to-face meetings. This is confirmed by the standard dictionary definition of the term, which is broad and expansive. The American Heritage Dictionary defines “proceeding” as follows: “A record of business carried on by a society or other organization: minutes.” (American Heritage Dictionary at 1043 (New College ed. 1976).

Thus, the exemption RCW 70.44.062 applies not only to face-to-face meetings and deliberations, but also to any specific written records relied on, referenced, or generated by a meeting of a board of commissioners concerning the status of a physician’s privileges. It is beyond logic to contend that the meetings themselves are confidential but any minutes or reports

summarizing the minutes are not protected. The exemption applies, therefore, to any written materials produced by the board to investigate the charges against Plaintiff, such as any written accounts of the interviews.

The RCW 70.44.062 exemption certainly applies in full force here. The investigations carried out by QVMC's board and its agents were directly related to Plaintiff's ability to practice medicine, and, therefore, concerned the possible denial and/or revocation of his clinical privileges at QVMC. Minutes of the meetings or written reports relied on, referenced, or generated during those meetings fall under the protections of RCW 70.44.062 and are exempt from disclosure.

D. AMICI IMPROPERLY ASSERTS, FOR THE FIRST TIME ON APPEAL, THAT RCW 42.56.070(1) DOES NOT APPLY

Amici also argue the "other statute" provision found at RCW 42.56.070(1) does not apply. (Amici Br. at 9). The Court should be aware that Plaintiff did not raise this issue in his appellate brief submitted to Division Three. (CP 226-47, 305-

09). QVMC specifically noted that omission in its reply brief. (App.'s Reply Brief at 3). This is the first time this argument has been raised on appeal, and it is improper. "The general rule is that appellate courts will not consider issues raised for the first time on appeal." State v. Kirkman, 159 Wn.2d 918, 926 (2007). The Supreme Court will normally decline to consider an issue raised for first time in supplemental brief filed after acceptance of review. Shoreline Community College Dist. No. 7 v. Employment Sec. Dept., 120 Wn.2d 394, 402 (1992).

III. CONCLUSION

Amici's arguments are misplaced and unpersuasive. RCW 4.24.250 is clear, unambiguous, and dispositive of the issues before the Court. The Court should reverse the decision of the trial court, or, alternatively, remand this case to the trial

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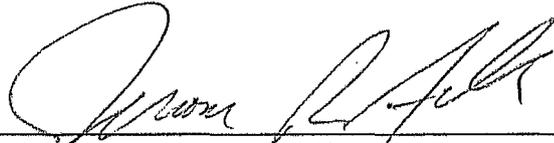
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court to resolve the factual issues regarding the applicability of
RCW 4.24.250 and other privilege issues presented in this case.

Respectfully submitted this 30 day of April, 2012.



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CERTIFICATE OF SERVICE

I, SHERYL JONES, declare under penalty of perjury of the laws of the state of Washington, that on the 30th day of April, 2012, I sent via e-mail and also deposited in the mails of the United States Postal Service a properly stamped and addressed envelope containing Defendant/Appellant Quincy Valley Medical Center's Response to Amici Brief, to the following:

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Dear Clerk:

Attached please find Quincy Valley Medical Center's Response to Amici Brief of Freedom Foundation and Washington Coalition for Open Government regarding the above matter. We ask your assistance in filing this response document with a due date of today.

Thank you for your time and attention. Please call me with any questions or concerns.

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