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NO. 97783-6

SUPREME COURT OF THE STATE OF WASHINGTON

DOUG HERMANSON, an individual,

Respondent/Cross-Appellant,

v.

MULTICARE HEALTH SYSTEM, INC., a Washington Corporation
d/b/a TACOMA GENERAL HOSPITAL, JANE and JOHN DOES 1-
10 and their marital communities comprised thereof,

Petitioner/Cross-Respondent.

MULTICARE HEALTH SYSTEM, INC.'S
SUPPLEMENTAL BRIEF

Mary H. Spillane, WSBA #11981
FAIN ANDERSON VANDERHOEF
ROSENDAHL O'HALLORAN SPILLANE,
PLLC

701 Fifth Avenue, Suite 4750
Seattle, WA 98104
(206) 749-0094

Attorneys for Petitioner/Cross-
Respondent

TABLE OF CONTENTS

I. SUPPLEMENTAL STATEMENT OF THE CASE 1

II. SUPPLEMENTAL ARGUMENT 4

 A. The Court of Appeals Erroneously Concluded that MultiCare’s Defense Counsel Could Not Have Privileged Ex Parte Contact about the Facts of the Alleged Wrongful Incident with a Nonparty Treating Physician Who Is an Admitted Agent for Whose Conduct MultiCare is Alleged to Be Vicariously Liable 4

 1. The *Loudon* ex parte contact prohibition should not apply to preclude corporate defense counsel from having ex parte communications about the alleged incident with a nonparty treating physician for whose conduct a corporate defendant is alleged to be vicariously liable 5

 2. Defense counsel’s ex parte contact with Dr. Patterson should be subject to both his individual attorney-client privilege under the joint representation agreement, as well as the corporate attorney-client privilege 13

 B. The Court of Appeals Properly Held that Defense Counsel Could Have Privileged Ex Parte Contact about the Facts of the Alleged Incident with the Social Worker and Two Nurse Employees Involved in the Emergency Room Visit at Issue..... 16

III. CONCLUSION..... 20

TABLE OF AUTHORITIES

STATE CASES	Page(s)
<i>Adamski v. Tacoma Gen'l Hosp.</i> , 20 Wn. App. 98, 579 P.2d 970 (1978)	16
<i>Hermanson v. MultiCare Health System, Inc.</i> , 10 Wn. App. 2d 343, 448 P.3d (2019)	1, 14, 13, 15, 16, 18, 19
<i>Loudon v. Mhyre</i> , 110 Wn.2d 675, 756 P.2d 138 (1988) ..	3, 5, 6, 9, 10, 11, 12, 13, 17, 18
<i>Morgan v. County of Cook</i> , 252 Ill. App. 3d 947, 625 N.E.2d 136 (1993)	7, 8, 10
<i>Newman v. Highland Sch. Dist. No. 203</i> , 186 Wn.2d 769, 381 P.3d 1188 (2016)	4, 5, 14-15
<i>Petrillo v. Syntex Labs, Inc.</i> , 148 Ill. App. 3d 581, 499 N.E.2d 952 (1986)	10
<i>Public Health Trust v. Franklin</i> , 693 So.2d 1043 (Fla. App. 1997)	7-8
<i>Ritter v. Rush-Presbyterian-St. Luke's Med. Ctr.</i> , 177 Ill. App. 3d 313, 532 N.E.2d 327 (1988)	8
<i>White v. Behlke</i> , 2004 Pa. Dist. & Cnty Dec. LEXIS 202 at *16-17, 65 Pa D. & C. 4 th 479 (2004)	8
<i>Wilson v. IHC Hosps., Inc.</i> , 2012 UT 43, 289 P.3d 369 (2012)	7
<i>Youngs v. PeaceHealth</i> , 179 Wn. 2d 645, 316 P.3d 1035 (2014)	3, 5, 6, 10-11, 12, 14, 16, 17, 18, 19
 FEDERAL CASES	 Page(s)
<i>In re Bieter Co.</i> , 16 F.3d 929, 937-38 (9th Cir. 1994)	14

United States v. Graf,
610 F.3d 1148 (9th Cir. 2010)..... 14

STATUTES AND RULES

RCW 70.02.020 2
RPC 1.7 12, 13

OTHER AUTHORITIES

Restatement (Third) of Agency
§ 8.11 (Am. Law Inst. 2006) 15

Restatement (Third) of the Law Governing Lawyers
§ 73, cmts d & e (Am. Law Inst. 2000) 15

Restatement (Third) of the Law Governing Lawyers
§ 73(2) (Am. Law Inst. 2000) 15

MultiCare submits this supplemental brief to further explain why the Court of Appeals' decision in *Hermanson v. MultiCare Health System, Inc.*, 10 Wn. App. 2d 343, 448 P.3d (2019), should be: (1) reversed to the extent it precludes MultiCare's counsel from having privileged ex parte communications with a nonparty treating physician who is an admitted agent for whose conduct MultiCare is alleged to be vicariously liable; and (2) affirmed to the extent it allows MultiCare's counsel to have such ex parte communications with a social worker and two nurses employed by MultiCare who have knowledge of facts giving rise to the litigation and/or for whom MultiCare is alleged to be vicariously liable.

I. SUPPLEMENTAL STATEMENT OF THE CASE

This case arises out of one visit Doug Hermanson had at MultiCare Tacoma General's emergency department where he was taken after a single-vehicle accident and was found to have a 330 mg/dL blood alcohol level. CP 2, 547, 555; App. to Resp. Br. at 24, 32. He was seen by a trauma surgeon, Dr. Patterson, Multi-Care's admitted agent employed by Trauma Trust (a non-profit MultiCare corporate affiliate under contract with MultiCare to furnish trauma services at Tacoma General); a MultiCare-employed family practice resident, Dr. Stephanie Wheeler; a Trauma Trust-employed physician assistant, Christopher Boeger; two MultiCare-employed nurses, Pauleen Wheeler and Carla DeFibaugh; and a MultiCare-

employed social worker, Lori Van Slyke, CP 10-11, 88, 95-96, 107-08, 129, 154, 472. Claiming MultiCare, “through its authorized employees and agents,” improperly disclosed his blood alcohol level to police, Hermanson sued MultiCare and “Does 1-10” for negligence, false imprisonment, defamation, violation of the physician-patient privilege, CP 1-4; *see also* CP 56, 547-51, and later violation of RCW 70.02.020, CP 598-602.

After receiving Hermanson’s pre-suit demand implicating the emergency department and trauma services, CP 547-51, MultiCare shared it with the insurer for Trauma Trust, and they jointly decided to retain Mullin, Allen & Steiner, PLLC, to help investigate and respond to the demand, CP 543 (¶5). Hermanson’s counsel was made aware, and lodged no objection, that Mullin, Allen & Steiner was jointly representing MultiCare and Dr. Wheeler (alleged in the demand, albeit erroneously, to have disclosed the blood alcohol level to police), and had communicated with Dr. Wheeler and the ER nurses about the pre-suit claims. *See* CP 543 (¶¶5-6), 553, 555. When, after more investigation, it appeared that the pre-suit claims also implicated Trauma Trust, Dr. Patterson, and PA-C Boeger, MultiCare and Trauma Trust’s insurer retained Mullin, Allen & Steiner to jointly represent not only MultiCare and Dr. Wheeler, but also Trauma Trust, Dr. Patterson, and PA-C Boeger, *see* CP 50, 543-45 (¶¶7-11), all of whom signed a joint representation agreement, CP 11-12, 22(¶2), 545 (¶11). Hermanson’s

counsel was advised of that joint representation. CP 33, 38, 50.

Later, when seeking depositions of Dr. Patterson, Nurse Wheeler, and the social worker, Hermanson's counsel objected under *Loudon v. Mhyre*, 110 Wn.2d 675, 756 P.2d 138 (1988), to defense counsel having ex parte contact with any of Hermanson's health care providers, claiming MultiCare's corporate attorney-client privilege did not apply to them and their joint representation created a conflict of interest. CP 12-14, 53-54.

On MultiCare's motion to confirm that its counsel could have privileged ex parte communications with the health care providers involved in the emergency room visit, the trial court ruled that, under *Youngs v. PeaceHealth*, 179 Wn. 2d 645, 316 P.3d 1035 (2014), MultiCare's counsel could not have ex parte contact with Dr. Patterson because he was "not an employee" of MultiCare, or with the social worker because she was not a physician, but could have such contact with the nurses. 8/11/17 RP 23-25; CP 135-36. The trial court also required defense counsel to seek a protective order before speaking with other MultiCare health care providers. *Id.*

In a split decision on discretionary review, a majority of the Court of Appeals' panel affirmed the trial court's order to the extent it prohibited defense counsel from having privileged ex parte contact with Dr. Patterson, while the panel unanimously affirmed the part of the trial court's order allowing such contact with the nurses, and reversed the parts prohibiting

such contact with the social worker and requiring MultiCare to obtain leave of court before having contact with other MultiCare health care providers.

This Court granted MultiCare's petition for review of that portion of the Court of Appeals' decision precluding defense counsel from having privileged ex parte communication with Dr. Patterson, and Hermanson's cross-petition as to the portion of the Court of Appeals' decision allowing MultiCare's defense counsel to have ex parte communications with the MultiCare-employed social worker and nurses. This Court should reverse the Court of Appeals' decision as to Dr. Patterson, and affirm as to the social worker and nurses.

II. SUPPLEMENTAL ARGUMENT

- A. The Court of Appeals Erroneously Concluded that MultiCare's Defense Counsel Could Not Have Privileged Ex Parte Contact about the Facts of the Alleged Wrongful Incident with a Nonparty Treating Physician Who Is an Admitted Agent for Whose Conduct MultiCare is Alleged to Be Vicariously Liable.

As to Dr. Patterson, the Court of Appeals' majority held that defense counsel could not have privileged ex parte communications with him, based on its view that, under the spirit of the dissenting opinion in *Youngs* and the majority opinion in *Newman v. Highland Sch. Dist. No. 203*, 186 Wn.2d 769, 381 P.3d 1188 (2016), the corporate attorney-client privilege does not extend beyond the employer-employee relationship, and thus does not apply to a physician like Dr. Patterson who is an admitted agent, but not an

employee, of MultiCare. It did so even though Hermanson seeks to hold MultiCare vicariously liable for Dr. Patterson's alleged wrongdoing.

The Court of Appeals' decision as to Dr. Patterson should be reversed for any number of reasons, not the least of which are that: (1) it presupposes that *Loudon*'s prohibition was intended to or should apply to preclude counsel for a corporate health care provider defendant from having ex parte communications about the alleged wrongful event with a nonparty treating physician for whose alleged wrongful conduct as a corporate employee, agent, or ostensible agent the plaintiff seeks to hold the corporate defendant vicariously liable; and (2) neither *Youngs* nor *Newman* holds or suggests that the corporate attorney-client privilege applies only to employees, but not to agents or ostensible agents, of a corporation.

1. The *Loudon* ex parte contact prohibition should not apply to preclude corporate defense counsel from having ex parte communications about the alleged incident with a nonparty treating physician for whose conduct a corporate defendant is alleged to be vicariously liable.

This Court has never directly addressed the question whether the *Loudon* ex parte contact prohibition should or does apply when the nonparty treating physician is one for whose conduct a defendant corporate health care provider is alleged to be vicariously liable. This Court was not confronted with that issue in either *Loudon* or *Youngs*. *Loudon* did not involve any claim of vicarious liability against a corporate health care

provider. The question in *Loudon* was whether defense counsel could have ex parte contact with two out-of-state treating physicians whose care was not at issue and was provided after the events triggering the lawsuit against the defendant physician had occurred. *Loudon*, 110 Wn.2d at 676.

And, while *Youngs* addressed the issue of whether *Loudon* “which prohibits defense counsel in a personal injury case from communicating ex parte with the plaintiff’s nonparty treating physician, applies to such physicians when they are employed by a defendant,” *Youngs*, 179 Wn.2d at 650, it did so in consolidated cases where the plaintiffs’ objections to defense counsel having ex parte contact with their treating physicians did not include those physicians for whose conduct they sought to hold the corporate health care provider vicariously liable. *Youngs*, 179 Wn.2d at 654 (plaintiff *Youngs* did not object to ex parte contact with Drs. Leone and Berry, the physicians he had identified in his complaint as “physicians whose conduct gave rise to his lawsuit”); *id.* at 656 (plaintiff Glover, while initially objecting to contact with treating physicians at Harborview outside the emergency department, withdrew her objection as to “any of the [Harborview] Emergency Department or Cardiology Staff ... involved in [her] care, so long as those individuals were not shown any records of her subsequent care [at UWMC]”). Thus, *Youngs* did not address whether the *Loudon* prohibition applies to bar corporate defense counsel from having ex

parte communication about the facts of the alleged incident with the physicians for whose allegedly wrongful conduct plaintiff seeks to hold a corporate defendant vicariously liable.

Other jurisdictions that have directly confronted the issue have recognized an exception to their prohibitions against ex parte contact with a plaintiff's nonparty treating physician, at least with respect to the facts of the alleged negligent incident, in instances where a patient seeks to hold a hospital vicariously liable for the alleged wrongdoing of that treating physician. *E.g.*, *Morgan v. County of Cook*, 252 Ill. App. 3d 947, 954, 625 N.E.2d 136, 140 (1993) (holding that "if a plaintiff attempts to hold a hospital vicariously liable for the conduct of his own treating physician," ex parte conferences between defense counsel and the treating physician are permissible); *Wilson v. IHC Hosps., Inc.*, 2012 UT 43, 289 P.3d 369, 395-96 (2012) (holding ex parte meetings with defendant hospital's "Employed Physicians" were permissible to extent plaintiff sought to hold [hospital] vicariously liable for the Employed Physicians' conduct); *Public Health Trust v. Franklin*, 693 So.2d 1043, 1046 (Fla. App. 1997) (quashing trial court order preventing defense counsel from communicating with two doctors, reasoning "the general rule of patient confidentiality was waived as to the two doctors in question because [hospital] had been named as a defendant on a theory of vicarious liability for the alleged negligent actions

or inactions of those doctors who are its agents or employees and who are not named defendants”); *White v. Behlke*, 2004 Pa. Dist. & Cnty Dec. LEXIS 202 at *16-17, 65 Pa D. & C. 4th 479, 490-92 (2004) (concluding that the actual and ostensible employee exceptions to court rule that generally bars ex parte contact between treating physician and defense counsel applies only to “client’s actual or ostensible employees whose treatment and agency status are relevant to the claims in the underlying malpractice suit”).

As the court in *Morgan* 252 Ill. App. 3d at 954, held:

[I]f a plaintiff attempts to hold a hospital vicariously liable for the conduct of his own treating physician, the defendant hospital is included within the physician-patient privilege and the patient has impliedly consented to the release of his medical information to the defendant hospital’s attorneys. Thus, in such a situation, *ex parte* conferences between defense counsel and plaintiff’s treating physician are permissible.

And as the *Morgan* court further explained:

We do not believe, in such a situation where the plaintiff’s physician’s alleged negligent treatment is purported to be the cause of plaintiff’s injuries, that the confidentiality of medical information the physician may have learned during his allegedly negligent treatment of plaintiff outweighs the defendant’s right to effectively defend itself and to unfettered communication “with the physician for whose conduct the hospital is allegedly liable.

Morgan, 252 Ill. App. 39 at 956 (quoting *Ritter v. Rush-Presbyterian-St. Luke’s Med. Ctr.*, 177 Ill. App. 3d 313, 317-18, 532 N.E.2d 327 (1988)).

This Court should not allow to stand the Court of Appeals' presupposition that *Loudon* precludes corporate defense counsel from having ex parte communications about the alleged negligent event with the very treating physicians whose conduct forms the basis for the corporation's alleged vicarious liability. Instead, this Court should make clear the *Loudon* ex parte contact prohibition does not apply to prevent such ex parte communications about the alleged negligent event with those treating physicians (whether current or former employees, agents, or ostensible agents) for whose conduct the plaintiff seeks to hold a corporate health care provider defendant vicariously liable. To hold otherwise would, as the courts cited above recognize, effectively prevent the corporate health care provider defendant from defending itself against a plaintiff's vicarious liability claims by barring its counsel from communicating with the physicians for whose conduct it is allegedly liable – the very physicians whose conduct corporate defense counsel has been retained to investigate and defend on behalf of the corporation.

The policy concerns underlying *Loudon*'s ex parte contact prohibition do not justify applying it so as to deprive a corporate health care provider defendant of its ability to effectively defend against plaintiff's vicarious liability claims. One of the primary policy concerns the *Loudon* court articulated was protection of the trust and confidence that is inherent

in the fiduciary nature of the doctor-patient relationship, quoting the following from *Petrillo v. Syntex Labs, Inc.*, 148 Ill. App. 3d 581, 595, 499 N.E.2d 952 (1986), the decision that initially “forbid ex parte conferences between defense counsel and plaintiff’s treating physician,” in Illinois:

[W]e find it difficult to believe that a physician can engage in an *ex parte* conference with the legal adversary of his patient without endangering the trust and faith invested in him by his patient.

Loudon, 110 Wn.2d at 679. But, even the court in *Morgan*, 252 Ill. App. 3d at 956, found such a rationale insufficient to justify precluding corporate defense counsel from having ex parte contact about the alleged negligent event with a plaintiff’s treating physician where the plaintiff sought to hold the defendant hospital liable for that treating physician’s conduct. As the *Morgan* court aptly reasoned, when such a physician spoke with the hospital’s defense counsel, he “was not speaking to plaintiff’s legal adversary so much as he *was* plaintiff’s legal adversary.” *Id.* at 956.

Here, by placing Dr. Patterson’s conduct at issue in an attempt to hold MultiCare vicariously liable, Hermanson himself breached the sanctity of the fiduciary doctor-patient relationship, made Dr. Patterson as much his legal adversary as if he had sued him directly, and made him a non-neutral and necessary witness for the defense, rendering the policy concerns expressed in *Loudon*, see *Loudon*, 110 Wn.2d at 678-80; *Youngs*, 179

Wn.2d at 659-60, inapplicable here. Moreover, as Dr. Patterson's sole involvement in Hermanson's care is limited to the one emergency room visit at issue, there is no concern that Dr. Patterson has or may disclose irrelevant privileged information to MultiCare's counsel, or that there is any ongoing physician-patient relationship that might be chilled by his ex parte communication about the facts of the alleged wrongful incident with defense counsel, rendering those policy concerns, *see Loudon*, 110 Wn.2d at 678-80; *Youngs*, 179 Wn.2d at 659-60, equally inapplicable here.

Even had Dr. Patterson had other involvement in Hermanson's care before or after the emergency room visit at issue, a tailored exception to the *Loudon* ex parte prohibition that would allow corporate defense counsel to have ex parte communications with a nonparty treating physician about the facts of the alleged incident (and only the facts of the alleged incident) in cases where plaintiff claims the corporate health care provider defendant is vicariously liable for the conduct of that physician should suffice to avoid any danger of disclosure of irrelevant, privileged medical information. There is no principled reason to believe that defense counsel for a corporate health care provider cannot be trusted to limit its ex parte communication with a physician for whose conduct the corporation is alleged to be vicariously liable to the facts of the alleged incident. Indeed, the *Youngs* court, has already placed such a limitation on the extent to which corporate

defense counsel may have corporate attorney-client privileged ex parte communications with other nonparty treating physicians whose care was not at issue. See *Youngs*, 179 Wn.2d at 664-65, 671 (holding that the corporate attorney-client privilege trumps the *Loudon* prohibition such that corporate defense counsel may have privileged ex parte communication with a nonparty treating physician with direct knowledge of events triggering the litigation, so long as the communications concern the facts of the alleged negligent incident, and not information about prior or subsequent treatment).

Where, as here, plaintiff seeks to hold a defendant corporate health care provider vicariously liable for the misconduct of a treating physician who was acting as an employee, agent, or ostensible agent of the corporation, this Court should hold that *Loudon* does not preclude corporate defense counsel from having ex parte communication with that treating physician concerning the facts of the alleged wrongful incident. Whether such ex parte contact would be privileged is a separate question that then depends on whether it is subject to an individual attorney-client privilege under a joint representation agreement that meets the ethical standards of RPC 1.7, and/or to the corporate attorney-client privilege.

2. Defense counsel's ex parte contact with Dr. Patterson should be subject to both his individual attorney-client privilege under the joint representation agreement, as well as the corporate attorney-client privilege.

As for the joint representation agreement in this case, the Court of Appeals' majority, having presupposed that *Loudon* applied to prohibit MultiCare's defense counsel from having ex parte communication with Dr. Patterson about the allegedly negligent event even though Hermanson claims that MultiCare is vicariously liable for his conduct in connection with that event, concluded that MultiCare could not then "contract around the plaintiff's physician-patient privilege by entering into the joint representation agreement. *Hermanson*, 10 Wn. App. 2d at 361. But, if *Loudon* does not (and it should not) preclude defense counsel from having ex parte communication about the alleged negligent event with a nonparty treating physician for whose allegedly wrongful conduct the corporate defendant is alleged to be vicariously liable, then *Loudon* poses no impediment to defense counsel's ability to jointly represent the physician and the allegedly vicariously liable corporate defendant with regard to plaintiff's claims about the physician's conduct. And, here, for reasons MultiCare has previously briefed, *see* Br. of App/Cross-Resp MultiCare at 22-24, there is no conflict under RPC 1.7 that precludes defense counsel from jointly representing MultiCare, Dr. Patterson, and the other signatories

to the joint representation agreement in this case.

As for the corporate attorney-client privilege, the Court of Appeals' majority interpreted *Newman* and the spirit of the *Youngs*' dissent to mean that the corporate attorney-client privilege applies only in the context of the employer-employee relationship, and therefore declined to adopt the federal courts' approach taken in *In re Bieter Co.*, 16 F.3d 929, 937-38 (9th Cir. 1994), and *United States v. Graf*, 610 F.3d 1148, 1159 (9th Cir. 2010), that extends the corporate attorney-client privilege to an agent of the corporation who in relevant respects is the "functional equivalent of an employee." *Hermanson*, 10 Wn. App. 2d at 353-360. It did so not because it felt that Dr. Patterson was not the functional equivalent of an employee, but rather because it believed that this Court in *Newman* had shown "reluctance ... to expand the reach of the corporate attorney-client privilege" beyond the employer-employee relationship. *Id.* at 360. But neither *Newman* nor *Youngs* warrant the Court of Appeals' conclusion that the corporate attorney-client privilege does not extend to Dr. Patterson simply because he is not directly employed by MultiCare, but rather is an admitted agent for whose conduct *Hermanson* seeks to hold MultiCare vicariously liable.

Although *Youngs* involved applicability of the corporate attorney-client privilege to physicians who were corporate employees, and *Newman* involved its applicability to former corporate employees, neither case

established some bright-line rule that the privilege applies only to corporate *employees* and not to other corporate *officers, constituents, agents, or ostensible agents*. Indeed, this Court’s decision in *Newman* declining to expand the scope of the privilege to former employees was based on agency principles, with the majority repeatedly citing with approval Restatements on agency and the law governing lawyers for guidance. *Newman*, 186 Wn.2d at 780-83 (citing *Restatement (Third) of the Law Governing Lawyers* § 73(2) (Am. Law. Inst. 2000), and *Restatement (Third) of Agency* § 8.11 (Am. Law. Inst. 2006). And, as the comments to *Restatement (Third) Governing Lawyers* § 73 make clear “the objective of the organizational privilege is to encourage the organization to have its *agents* communicate with its lawyer” *id.*, cmt. e. (emphasis added), and “[t]he concept of agent also includes independent contractors with whom the corporation has a principal-agent relationship,” *id.*, cmt. d.

Judge Glasgow got it right in her dissent in *Hermanson*: (1) the distinction drawn in *Newman* was not based on some “rigid adherence to the definition of “employee”, but “was temporal: the former employees were not covered by the privilege because they were no longer agents of the corporation”; (2) Dr. Patterson “is no different from an employee because he has an ongoing duty of loyalty towards MultiCare” in the context of a “continuing agency relationship [that] would surely benefit from forthright

communication with MultiCare’s attorney “to determine what happened”;

(3) treating Dr. Patterson differently “simply because he is an agent but not a formal employee” “is at odds with the delicate balance” this Court struck in *Youngs*; and (4) “no compelling justification” exists for not treating him as the “functional equivalent” of an employee subject to “the same rules of corporate attorney-client privilege.” *Hermanson*, 10 Wn. App. 2d at 370-73. Indeed, even the Court of Appeals’ majority never suggested that Dr. Patterson, whose provision of trauma services at Tacoma General is an inherent function of the hospital, and one without which the hospital could not properly achieve its purpose, see *Adamski v. Tacoma Gen’l Hosp.*, 20 Wn. App. 98, 112, 579 P.2d 970 (1978), was not the “functional equivalent” of an employee.

B. The Court of Appeals Properly Held that Defense Counsel Could Have Privileged Ex Parte Contact about the Facts of the Alleged Incident with the Social Worker and Two Nurse Employees Involved in the Emergency Room Visit at Issue.

Before reaching the question of whether *Youngs*’ rationale applies to nonparty non-physician health care provider employees or agents of a corporate defendant such that defense counsel may have corporate attorney-client privileged communications with them about the facts of the alleged negligent event, this Court should first resolve the question whether

Loudon's ex parte contact prohibition even applies to such ***non-physician*** health care providers. Neither *Loudon* nor *Youngs* holds that it does.

Loudon only addressed defense counsel's ability to have ex parte contact with nonparty treating physicians and says nothing about ex parte contact with nonparty non-physician treating health care providers, such as social workers or nurses. Nor does the majority opinion in *Youngs* say anything about whether *Loudon*'s prohibition applies to communications with non-physician treating health care providers. The dissent in *Youngs*, however, does suggest that the *Loudon* prohibition does not apply to nonparty non-physician health care providers. While the *Youngs* dissent would have held that the *Loudon* prohibition applies to all nonparty treating physicians regardless of whether they are employed by a defendant corporate health care provider, it justified such a holding in part by noting that, under *Loudon*, a "corporate defendant remains free to engage in privileged communications with its employees other than plaintiff or the plaintiff's nonparty treating physicians, before and throughout litigation." *Youngs*, 179 Wn.2d at 680 (Stephens, J., concurring/dissenting). If *Loudon*'s prohibition applied to non-physician health care provider employees, that statement would not have been true.

And there are valid reasons why the rationale behind the *Loudon* prohibition as applied to nonparty treating physicians does not apply with

equal force to nonparty non-physician health care providers. Indeed, in ruling that defense counsel could not have ex parte contact with a plaintiff's nonparty treating physicians, the Court in *Loudon* focused not so much on the existence of the (waivable) physician-patient privilege, but rather on the unique and fiduciary nature of the physician-patient relationship and the sanctity of that relationship. See *Loudon*, Wn. 2d at 679, 681. This Court has never held that the nurse-patient or the social worker-client relationship is equivalent to "[t]he unique nature of the physician-patient relationship," that underlies the *Loudon* prohibition. See *id.* at 681.

In any event, whether or not *Loudon*'s prohibition applies to communications with nonparty non-physician treating health care providers, the Court of Appeals correctly recognized that, if it does apply, then the *Youngs* rule allowing corporate defense counsel to have privileged ex parte communications with physician employees (or agents) of the defendant corporation with "direct knowledge of the event or events triggering the litigation" about the "the facts of the alleged negligent incident" applies equally to the social worker and the nurses in this case. *Hermanson*, 10 Wn. App. at 362-64. Indeed, *Hermanson* offers no principled justification for his claim that the *Youngs* rule has been or should be limited to such physicians, but not to such non-physician health care providers.

Hermanson nonetheless complains, Resp. to Pet. at 1-2, 16, that the

Court of Appeals erroneously ordered that MultiCare's counsel could have "ex parte contact without limitation of all Mr. Hermanson's non-physician health care providers employed by MultiCare." That is not true. The Court of Appeals explicitly stated that "the corporate attorney-client privilege does not allow for unlimited communication" in this case and "MultiCare's corporate attorney-client privilege is subject to the limitations set forth in *Youngs*." *Hermanson*, 10 Wn. App. at 368.

And to the extent Hermanson persists in claiming that only Dr. Patterson and social worker Van Slyke have knowledge of events triggering the litigation, his claim is premised on the faulty assumption that the only such knowledge must concern the alleged disclosure of blood alcohol level to police. But his claims against MultiCare include broader claims for defamation, false imprisonment, negligent supervision, and negligence with regard to policies or procedures and claims that the information disclosed to police about his intoxication was false. *See* CP 1-4, 598-602. Thus, much more (about which the social worker, the nurses, and the other members of the trauma team have first-hand knowledge) is at issue to trigger MultiCare's alleged liability than just the alleged disclosure of the blood alcohol level to police.

The Court of Appeals did not err in concluding that defense counsel could have corporate attorney-client privileged ex parte communications

about the facts of the alleged incident with the social worker and the two nurses involved in emergency department visit at issue.

III. CONCLUSION

For the foregoing reasons and those set forth in MultiCare's prior briefing, this Court should reverse the Court of Appeals' decision to the extent it precludes MultiCare's counsel from having privileged ex parte communications with Dr. Patterson; and (2) affirm the Court of Appeals' decision to the extent it allows MultiCare's counsel to have such ex parte communications with social worker Van Slyke and the two nurses, and eliminates the requirement that MultiCare seek leave of court before contacting any other MultiCare health care provider.

RESPECTFULLY SUBMITTED this 2nd day of March, 2020.

FAIN ANDERSON VANDERHOEF ROSENDAHL
O'HALLORAN SPILLANE, PLLC

s/Mary H. Spillane

Mary H. Spillane, WSBA #11981
Attorneys for Petitioner/Cross-Respondent

701 Fifth Ave., Suite 4750
Seattle WA 98104
Ph: 206.749.0094
Email: mary@favros.com

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 2nd day of March, 2020, I caused a true and correct copy of “MultiCare Health System, Inc.’s Supplemental Brief,” to be delivered in the manner indicated below to the following counsel of record:

Counsel for Respondent/Cross-Appellant:

Dan’L W. Bridges, WSBA #24179
MCGAUGHEY BRIDGES DUNLAP PLLC
3131 Western Ave Suite 410
Seattle, WA 98121-1036
Ph: 425.462.4000
Email: Dan@mcbsdlaw.com

SENT VIA:

- Fax
- ABC Legal Services
- Express Mail
- Regular U.S. Mail
- E-file / E-mail

Co-counsel for Appellant/Cross-Respondent:

Daniel F. Mullin, WSBA #12768
Tracy A. Duany, WSBA #32287
Bryan T. Terry, WSBA #39645
MULLIN, ALLEN & STEINER PLLC
101 Yesler Way Suite 400
Seattle, WA 98104-3425
Ph: 206.957.7007
Email: dmullin@masattorneys.com
tduany@masattorneys.com
bterry@masattorneys.com

SENT VIA:

- Fax
- ABC Legal Services
- Express Mail
- Regular U.S. Mail
- E-file / E-mail

Counsel for Amicus Curiae AMA, WSHA
and WSMA:

Michael F. Madden, WSBA #08747
David M. Norman, WSBA # 40564
BENNETT, BIGELOW & LEEDOM, P.S.
601 Union St., Suite 1500
Seattle WA 98101-1363
Ph: 206.622.5511
Email: mmadden@bblaw.com
dnorman@bblaw.com

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Carrie A. Custer, Legal Assistant

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- jennifer@favros.com
- lvandiver@bblaw.com
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- reception@mcbdlaw.com
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