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Washington State Supreme Court

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Ronald R. Carpenter
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NO. 90429-4
NO. 69643-2-I

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

PATRICIA A. GRANT, PhD,

Petitioner,

v.

CLAUDIO GABRIEL ALPEROVICH, ST FRANCIS HOSPITAL- FRANCISCAN
HEALTH SYSTEM; VALLEY MEDICAL, CENTER, TRIENT M. NGUYEN,
MICHAEL K. HORI; PACIFIC MEDICAL, CENTER, INC.; LISA OSWALD;
SHOBA KRISHNAMURTHY; MICHELE PULLING; WM. RICHARD LUDWIG;
U.S. FAMILY HEALTH PLAN @PACIFIC MEDICAL CENTER INC.;
VIRGINIA MASON MEDICAL CENTER; RICHARD C. THIRLBY, MD'S

Respondents.

Court of Appeals Case No. 69643-2-1
Appeal from the Superior Court for the
State of Washington for King County

PETITION FOR REVIEW

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MAJOR NATIONAL CONCERNS AND PUBLIC INTEREST

Trial Judges denial of Dr. Grant's November 9, 2012, ADA accommodations request and Affirmed by State Court of Appeals is a Punishable under 42 U.S.C. § 12131 (ADA).

June 3, 2013, President Obama speaking at the White House National Conference on Mental Health¹, initiated termination of the stigma associated with mental health, asking American's with these health conditions to step out of the shadows and obtain medical treatment. President Obama addressed the nation's stigma (discrimination) of mental health and the negative divisions between physical and mental/behavioral health, stating this sector of our society have been ignored far too long, as he committed to establishing whole health treatment. May 1, 2014, President Obama furthers his commitment by Proclamation -- National Mental Health Awareness Month, 2014¹.

The National Institute of Mental Health (NIMH) reported that approximately 57.7 million people, ages 18 years and older (pursuant to the 2004 U.S. census and U.S. Census Bureau, 2005), suffer from a diagnosable mental disorder in a given year. These figures do not include increases in mental health diagnoses related to the Afghanistan and Iraq Wars. The NIMH research revealed diagnosable disorders are the leading cause of disability in the U.S. and reported

¹ President Obama - National Conference on Mental Health – June 3, 2013; National Mental Health Awareness Month 2014.

that 6% or one in 17 of mentally challenged individuals suffer from a serious mental illness, also approximately one-fourth of the U.S. population has some form of mental health-related diagnosis with these numbers increasing annually (NIMH, n.d.).²

In 2003, Washington Supreme court civil legal needs study revealed “courts and courts programs were not accessible”³, and” individuals with disabilities experience legal problems at a significantly higher rate more than other lower-income groups... and are least likely to secure help from an attorney”⁴. “STATE AND FEDERAL LAWS require that government programs be accessible to persons with disabilities (RCW 49.60.010 et seq; Americans with Disabilities Act, 42 U.S.C. § 12131 et. seq. (ADA))⁵: In 2004, the United States Supreme Court made the following observations in upholding application of the ADA to courts and court services: The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem....Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this ‘difficult and intractable problem’ warranted [the enactment of Title II]....

²Exploring Relationships Between Organizational Leadership and Mental Illness Stigma. Patricia A. Grant, PhD. <http://gradworks.umi.com/36/02/3602468.html>.

³Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts Revised 2011- (P 1).

⁴⁻⁵Ibid

Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility.... [A]s it applies to the class of cases implicating the fundamental right of access to the courts, [Title II] constitutes a valid exercise of Congress' ...authority to enforce the guarantees of the Fourteenth Amendment. *Tennessee v. Lane*, 124 S. Ct. 1978, 1993-4 (2004)"⁶.

Mental health civil rights are now a Presidential focus, yet Washington State courts are barring access and accessibility to protected class citizens. No Justice! No Peace.

IDENTITY OF THE PETITIONER

The Petitioner is Patricia A. Grant, PhD⁶, Pro Se, 55 yrs., Black female, 100% Disable Veteran /w Mental and Behavioral Health disabilities within the meaning of American's Disability Act (ADA) 42 U.S.C. § 12102; 28 C.F.R. § 36.104 (4)(i).

⁶Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts Revised 2011- (P. iii).

⁷ Dr. Grant Scholar, PhD Organizational Management-Leadership Researcher (Mental Illness Stigma in the Organizational Environment through Leadership) Medically Retired Air Force Personnel (EEO) Officer, over 35 years of community work in the area of human and civil rights, 20 years with personal homeless ministry administratively assisting disable veterans, elderly, and countless others in obtaining life help [Food, Clothing, Shelter, Medical Treatment (Whole Health - Physical, Mental, and Behavioral)]. Her degree and title was confirmed November 2013. Earlier Pleadings were prior to the obtainment of her professional title.

CITATION TO THE COURT OF APPEALS (COA) DECISIONS

Dr. Grant seeks review of unpublished Court of Appeals' opinion, Grant v Alperovich, et al, No. 69643-2-I (April 28, 2014) (Appendix (App.) A), which affirmed King County Superior Court rulings of November 09, 2012 and March 2013 orders granting Respondent's Motion Summary Judgment Dismissals with Prejudice. (App. B). May 29, 2014, the COA issued an order denying Dr. Grant's Motion for Reconsideration. (App. C). June 16, 2013 Respondent's Motion to Publish denied (App. D).

ISSUES PRESENTED FOR REVIEW

- 1) Was Dr. Grant "unduly burden and barred court access". *John Doe v. Puget Sound Blood Ctr.*, 117 Wash.2d 772, 780, 819 P.2d 370 (1991); *Putman v. Wenatchee Valley Medical Center*, P.5., 166 Wn.2d 974, 216 P.3d 374 (2009).
- 2) Was Dr. Grant, person with mental and behavioral health disability, denied her constitutional rights of equal protection and due process of the law when Superior Court denied and COA affirmed her ADA accommodation request- punishable under 42 U.S.C. § 12131 Title II?
- 3) Was Dr. Grant's denial of court access and accessibility, also the result of a Washington State Judicial Conflict of Interest; whereas the judicial system is protecting the interest of their own Municipal Officer as defined in RCW 42.23.020(2); Former Commissioner, Washington State Medical Quality Assurance Commission and present Special Assistant Attorney General Douglas K. Yoshida – Representing Respondent Michelle Pulling, MD former state employee?
- 4) Was Dr. Grant denied equal protection and due process of the law, due to Intended and Unintended Structural (Institutionalize) Discrimination (De facto and De jure) including Mental Illness Stigma (Discrimination)?

- 5) Is the award of Attorney fees inconsistent with due process in the denial of court access and accessibility that are punitive, retaliatory, and exemplary actions taken against Dr. Grant?

STATEMENT OF THE CASE

A) Denial of Corrective Post-Gastric Bypass Surgical Procedure (GBSP):

June 17, 2009, Dr. Grant undergoes a GBSP. Days after surgery she reports GBSP side-effects associated with Hernias, identified by Respondent Dr. Alperovich, July 13-14, 2009 examinations. He diagnoses mental illness; initiates a placation mental health treatment with Respondent's Dr(s) Nguyen and Hori and places her on intravenous feeding. July 2009- January 2010, Dr. Grant's Federal Primary Healthcare and Insurance providers ignored, placated, falsified to her prescriptive medication, and denied recommended internal examinations.

October –November 2009, Dr. Grant files Congressional and obtains internal examination; revealing internal angulation, hematomas, and other intestinal twisting requiring corrective surgery. December 23, 2009 Respondent Dr. Thirlby denied corrective surgery, alleging his decision on a non-existence Air Force mental health discussion with Dr. Grant. February 26, 2010, Dr. Goodman performed emergency corrective GBSP surgery in New York, NY.

For brevity, Dr. Grant has exacerbated her mental and emotional health clarifying, explaining, arguing and defending her complaint. She asks the courts to please review her Appellant Motion's for Reconsideration, Appellant Brief, and Appellant Responses to the Appellees, and all supporting documentation.

B) Dr. Grant sues for Medical Neglect and Mental Health ADA Civil Rights Violation:

June 15, 2012, Dr. Grant filed two complaints medical malpractice in King County (KNT) and ADA Civil Rights violations in Federal District courts About July 28, 2012, Respondent Dr. Hori's 1st Set of Discovery (Interrogatories, Production of Documents, and Admissions) received. About August 28, 2012, using same form and style as Dr. Hori she returns replies and her 1st Set of Discoveries. September 12, 2012 Five Respondent's files November 9, 2012, Summary Judgment Oral Hearing notices. October 9, 2012, Special States Attorney General Yoshida gives October 29, 2012 Non-Oral hearing notice. One Respondent observed with no reply. September 29 –October 9, 2012, Dr. Grant receives six Summary Motion Briefs, five of her seven first discovery requests; absent the requested policies, practices, procedures, and governing guidelines. Respondent's filing for jurisdiction release and observing did not answer Dr. Grant's discovery requests.

Dr. Grant's reply Respondent's summary briefs, due October 12, 2012, and October 29, 2012. February 11, 2013, Dr. Grant files Adverse Inference and Summary Judgment Notices with March 22, 2013 hearing. Trial Judge case dismissals: October 29, 2012; November 9, 2012; and March 22, 2013. November 28, 2012 and March 22, 2013, Dr. Grant completes her Notice of Appeal.

C). Appeal Court Affirms the Dismissal of Dr. Grant's Lawsuit:

The Court of Appeal's ruling and opinion filed April 28, 2014: "We have no doubt that Grant was at a significant disadvantage because she was unrepresented and we have considered all of her examples in support of her claim of bias. However, after carefully examining the available record, we have discovered no evidence that the trial court discriminated against Grant because of her pro se status or for any other reason. Instead, it appears that the court displayed considerable patience with Grant and appropriate sensitivity to her position".

The court relied on the following legal authorities to affirm the Superior court's ruling: **1)** De Novo reviewed engaged in same inquiry as trial court - *Ranger Ins. Co. v. Pierce Cy.*, 164 Wn.2d 545, 552, 192 P .3d 886 (2008); **2)** CR 56 (c) Summary Judgment Motion and Proceedings – Not supporting the COA's statement to justify ruling; **3)** Construed all facts and reasonable inferences in light of non-moving party. *Michael v. Mosquere-Lacy*, 165 Wn.2d 595, 601, 200 P .3d 695 (2009); **4)** Healthcare damage controlled by statute - RCW 7.70.030; *Brandon v. State*, 94 Wn. App. 964, 969, 974 P. 2d 335 (1999); **5)** Expert Witness Testimony - *Young v. Key Pharms, Inc.*, 112 Wn. 2d 216, 228, 770 P .2d 182 (1989); *Young*, 112 Wn. 2d at 228-29 (quoting *Hart v. Steele*, 416 S.W. .2d 927, 932, 37 A. L. R. 3d 456, 462 (Mo. 1967)); **6)** Expert Witness Prevent Laymen from Speculating - *Douglas v. Bussabarger*, 73 Wn.3d 476, 479, 438 P.2d 829 (1968); **7)** Expert witness establishes causation. *Seybold v. Neu*. 105. App. 666,

676, 19 P .3d 1068 (2001); **8**) Expert Witness have reasonable degree of medical certainty. *McLaughlin V. Cooke*, 112 Wn.2d 829, 836, 774 P. 2d 1171 (1989); **9**) Lacking medical evidence for prima facia. *Morinaga v. Vue*, 85 Wn. App. 822, 32, 935 P .29 637 (1997); **10**) Produce affidavit from qualified witness. *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 25, 851 P .3d 689 (1993); **11**) Judge's abuse of discretion. *Southwick v. Seattle Police Officer John Doe Nos. 1-5*, 145 Wn. App. 292 297, 186 P. 3d 1089 (2008);

12) Trial judge well within rights of discretion striking the unsworn and untimely letter. CR 56(c); 56(e); *Young Soo Kim v. Choong-Hyun Lee*, 174 Wn. App. 319, 326-27, 300 P .3d 431 (2013); **13**) Law clear on proper service. *Woodruff v. Spence*, 76 Wn. App. 207, 209 883 P .2d 936 (1994); **14**) some opportunity of discovery. Summary Judgment reference no legal authority reference; **15**) 28 days' notice of hearing; **16**) Did not request continuance in writing or verbally at the hearing.

If request verbal was made trial court can refuse for a number of reasons: CR 56(f); *Turner v Kohler*, 54 Wn. App. 688, 693, 775 P .2d 474 (1989); **17**) One qualifying ground is sufficient for denial. *Gross v. Sunding*, 139 Wn. App. 54, 68, 161 P .3d 380 (2007); **18**) Grant failed to file an Affidavit stating she needed more time and what she expected to develop; 19) Grant Pro Se Litigant same standard as Attorney. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P .2d 1175 (1997).

The Court of Appeals also awarded attorney fees to Respondents (App A. at 2-2). Dr. Grant now petitions this Court to Review the Court of Appeals (COA) Opinion and Decisions.

D) Dr. Grant's Federal Complaint – A Matter of Court Record and Clarity:

Dr. Grant's Federal claims have been dismissed. Notice of Appeal filed. She will defend her ADA Civil Rights and Defamation cause of action in federal court.

ARGUMENT

This petition raises important questions of law and policies and practices regarding King County Superior Court and COA denying Dr. Grant court access and 42 U.S.C. § 12131 Title II accessibility and State Conflict of Inters. 28 U.S.C. § 1654 grants her the right of personal appearance or counsel to address her legal claims of medical injuries with equal protection of law.

I.

Court Inaccessible Causing Dr. Grant Undue Burden and Deprivation of Federal and State Legal Rights and Entitlements – 28 U.S.C., 1654; *Marbury v. Madison*; *John Doe v. Puget Sound Blood Ctr.*, 117 Wash.2d 772,780, 819 P.2d 370 (1991) Id. at 782, 819 P.2d 370. *Putman v. Wenatchee Valley Medical Center*, P.5., 166 Wn.2d 974, 216 P.3d 374 (2009). *Davis v. Wechler*, 263 U.S. 22, 24; *Stromberb v. California*, 283 U.S. 359; *NAACP v. Alabama*, 375 U.S. 449.

“The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.” *Davis v. Wechler*, 263 U.S. 22, 24; *Stromberb v. California*, 283 U.S. 359; *NAACP v. Alabama*, 375 U.S. 449.

Rule 8(f) FRCP, holds that all pleadings shall be construed to do substantial

justice; it is not a game of skill with misstep deciding outcome. *Conley v. Gibson*, 355 U.S. 41 at 48 (1957). Pleadings should not raise barriers preventing the arrival of fair and just settlements of controversies between litigants. *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938).

A) Did the trial court and COA's use of the Expert Witness Affidavit-Letter (EWA-L) synonymously replace the stricken RCW 7.70.150 Certificate of Merit (CoM); Unduly burden, and Unconstitutionally deny Dr. Grant Court Access? (See Motion for Reconsideration)

COA ruled that Dr. Grant could not obtain the required EWA-L for medical prima facia, and did verbally or in writing state that she needed discovery. As a matter of court records, Dr. Grant cited *Putman v. Wenatchee Valley Medical Center, P.5.*, 166 Wn.2d 974, 216 P.3d 374 (2009), as authority for discovery [RP 25 1-25 and 26 1] Judge cut of discussion of EWA-L [RP 25 1-25, 26 1-25]; Tape erasers [RP 26 2]; Judge acknowledging request for discovery investigate [RP 27 6-11]; Attempt to argue for discovery and read responses [RP 27 12-25]; .and trial judge wanted to be persuaded [RP 27 9 – 15] COA affirmed and overruling *Conley v. Gibson*, 355 U. S. 41, 355 U. S. 45-46 (1957).See *Dioguardi v. Durning*, 139 F.2d 774 (CA2 1944) requiring "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." .

The Certificate of Merit Unduly Burdened the Right of Court Access.
Putman v. Wenatchee Valley Medical Center, P.5., 166 Wn.2d 974, 216 P.3d 374

(2009). The COA's affirmed requirements for both CoM and EMA-L were utilized simultaneously denying discovery". COA: EWA-L provides medical evidence for malpractice prima facia. *Morinaga v. Vue*; Reasonable degree of medical certainty. *McLaughlin V. Cooke*; Establishes causation. *Seybold v. Neu*. Although the policy behind the use of the EWA-L is to "prevent laymen from speculating as to what is the standard of reasonable care in a highly technical profession". *Douglas v. Bussabarger*. COA Affirms EWA-L the legal medical malpractice prima facia for case dismissal with prejudice.

COA denies Dr. Grant equal protection under the law: "The court acted well within its discretion in striking the unsworn and untimely letter" responding to argument of less than 30-days of discovery void receipt of her requested policies, practices, and procedures *John Doe v. Puget Sound Blood Ctr., 117 Wash.2d 772, 780, 819 P.2d 370 (1991); Putman v. Wenatchee Valley Medical Center, P.5., 166 Wn.2d 974, 216 P.3d 374 (2009).*

B) Is Washington State's Pro Se Litigant same Standards as Attorney Law Constitutionally Vague and Discriminatory; further denying Dr. Grant's 14th Amendment equal protection and due process of the law?

"Allegations such as those asserted by petitioner, however in artfully pleaded, are sufficient"... ; "[W]hich we hold to less stringent standards than formal pleadings drafted by lawyers". *Haines v. Kerner*, 404 U.S. 519 (1972).

Washington's Pro Se – Attorney Same Standards law or rule epitomizes De Facto/ De jure Institutional (Structural) discrimination. This rule/law implies

or infers that a lay person must be a lawyer. This rule disenfranchises protected classes citizen: First it is not clear if this standard is a rule or law, established by local practices denying Pro Se Litigants (Civil and Criminal) equal protection under the law. De facto discrimination is applicable if this “standard” is a local rule in practice, but not sanction by law. De Jure discrimination is applicable if this “standard” is a practice sanctioned by local laws.

Second the COA has affirmed usage of this rule/ law to be invoked at judge’s discretion allowing judicial biasness. Third, COA cited no federal or state sanctioning application of this rule/law. Fourth the undefined and general application of Washington State’s Same Standards as an Attorney law/rule contradicts Supreme Court’s “less stringent standards”. *Haines v. Kerner*, 404 U.S. 519 (197). This rule/law is constitutionally vague and confusing.

II.

Structural (Intended and Unintended Institutional) Mental Illness Stigma (MIS) Discrimination (De facto and De jure), Case Profiling, Hostile Courtroom Environment governed by the Title II of the Americans with Disabilities Act of 1990 (ADA) & ADA Amendments Act of 2008 (ADAAA) , 42 U.S.C. §§12181-12189, and its implementing regulation, 28 C.F.R. Part 36; Civil Rights Act III, VI and IX, and Washington Judicial Cannons 2; Rule 2.2, contributory barriers to Dr. Grant’s court accessibility.

Washington State Minority and Justice Commission and Center for Court Research’s, Justice in Washington State Survey (Revised and Updated 2014); the Department of Justice (DOJ) Civil Rights Division’s Investigation (March 31,

2011) and Settlement Agreement of the Seattle Police Department (SPD) supports Dr. Grant's allegations of Judicial Structural (Institutional) Mental Illness Stigma (MIS) discrimination.

These references reveal beyond doubt that Washington State have racial and criminal justice problems. Judicial human and civil rights extend beyond race and criminal justice. COA's opinion is classic Jim Crow biasness: "... [W]e have discovered no evidence that the trial discriminated against Grant because of her pro se or for any other reason. Instead, it appears that the court displayed considerable patience with Grant and appropriate sensitivity to her position".

COA's opinion epitomizes covert discriminatory applications of the stricken "Separate but Equal" Doctrine's De facto, De jure, and Structural (Institutional) discrimination against multi-class protected, 100% Disable Veteran with mental and behavioral health disabilities within ADA 42 U.S.C. § 12102; 28 C.F.R. § 36.104 (4)(i); and gross 1st and 14th Amendment rights violations. What are the legal authorities and guidelines used supporting COA's claim? What legal authority supports COA's no discrimination findings? When, Where, and How were hearings held addressing Dr. Grant's allegations of judicial biasness? Intentional or Unintentional Structural (Institutional) MIS discrimination " includes the sociopolitical forces and/or leadership that 'represents policies of private and government entities, which restrict the opportunities of the groups that are stigmatized,' such as the U.S. Jim Crow laws

that sparked the 1960s Civil Rights Movement”⁸. Dr. Grant’s allegations of intentional and unintentional structural discrimination hold true, even if she had limited her discrimination allegations solely to her race.

Note two of the three-male COA Justices are of her same race of Dr. Grant. Same Race Discrimination is prevalent in upper echelon governmental leadership, *Wilson v. McClure*, 135 F. Supp. 2d 66 (D. Mass. 2001), legal precedence.

The State of Washington Supreme Court acknowledges terminating institutional MIS and other forms of discrimination in the judicial process: “Many who are entitled to ADA accommodation also face other barriers and obstacles to the justice system, so that their difficulties compound. Such barriers or disparate treatment may result from age, religion, ethnicity or race, social class, sexual orientation, nationality, gender or language. The findings of the Washington State Civil Legal Needs Study tell us that people who have disabilities experience discrimination more than other groups, and that many will be without financial resources as well. When disability is compounded by other factors the situation will be more complex and difficult, and the accommodations needed may be affected. How we respond in such complex situations will likely

⁸ Structural Levels of Mental Illness Stigma and Discrimination: Patrick W. Corrigan, Fred E. Markvitz, and Amy C. Watson- Schizophrenia Bulletin, Vol. 30, No. 3, 2004; Exploring Relationships Between Organizational Leadership and Mental Illness Stigma: An Exploratory Quantitative Study. Patricia A. Grant, PhD.

have lasting consequences”.⁹ NOW is the time for the Supreme Court of Washington to intervene.

III.

Did COA Affirm and Sanction Disenfranchment through Structural Multi-Protected Class and Mental Illness (MIS) Discrimination; Violating ADA Title II & III, Civil Rights Act 1964, and 14th Amendment Laws, Rulings, and Legislations; By Mocking the U.S. Judicial System and Subjecting Dr. Grant to A Hostile Courtroom Environment?

November 9, 2012, trial judge stated he was from reviewing the parties, and underling issues [RP 5 18-22]. Structural mental discrimination was before judicial viewing case profile: Pro Se Plaintiff⁶ (100% Disable w/ Veteran Mental and Behavioral Health Diagnoses, Disabilities over 50 yrs., Black, Female); Special Assistant Attorney General Yoshida, and Respondent’s 7 -12 (Seattle Hospitals, State Medical Officer, Federally Contracted Medical Clinic with Government Insurance Plan, Surgeons, and Healthcare providers); Disputing Civil Rights Violations (Federal Court - ADA) and Medical Malpractice-Neglect (Weight Loss), due to Medical Profiling (Race, Gender, Age, Mental Health Disability), Structural and Personal MIS. This case is ripe for a plethora of unprecedented state and federal legal actions, due in part to violations of Washington State Court Rules -Code of Judicial Conduct:

Canon 1: Full examination of the November 9, 2012 Report of Proceedings reveals a rush to summary judge and permanent disposal of her case:

1) Judge established no response time-limit, cutting off responses [RP 16 1- 14 – 27 and 18 4-24]; not allowed to address Respondent's singly; Not allowed to read responses into court record; and COA affirmed.

Canon 2: Court records reflects Dr. Grant's complaints of trial judge's lack of courtroom professional barring, making a mockery of the proceedings through non-verbal communication (winking, smirking, signaling, waving his hand and mouthing) to the six lawyers. Important note of Impartially November 9, 2012 court proceedings: Trial Judge's conversation on his ruling of "Frivolous" of State Attorney's Special Agents Douglas K. Yoshida #WSBA 17365- Client Respondent Dr. Pulling; topic of October 29, 2012 Non-Oral Summary Judgment Hearing [RP 2 22-24 Frivolous questioning erased] and trial judge arguments [RP 3 1-14], establishing a hostile courtroom environment.

IV.

Was Dr. Grant's denial of court access and accessibility, also the result of a Washington State Judicial Conflict of Interest; whereas the judicial system is protecting the interest of their own Municipal Officer as defined in RCW 42.23.020(2); Former Commissioner, Washington State Medical Quality Assurance Commission and present Special Assistant Attorney General, Douglas K. Yoshida WSBA #17365 – Representing Respondent Michelle Pulling, MD former state employee?

Allegation against Respondent Dr. Pulling (State Agent) deliberate psychiatric misrepresenting prescriptive drugs, while denying recommended surgery is not a

⁹Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts Rev 2011 (P. 1).

frivolous claim (See Dr. Grant's COA Motion for Reconsideration and trial court pleadings). Former Commissioner, Washington State Medical Quality Assurance Commission and present Special Assistant Attorney General, Douglas K. Yoshida's (WSBA #17365), October 29, 2012 Non-Oral Hearing notices identified Dr. Pulling as a State Agent.

Dr. Grant cites *Santos v. United States*, 559 F.3d 189, as legal authority for not knowing Dr. Pulling was a State Agent June 15, 2012 in trial court pleadings. She cites *In re. Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001) and *Boudette v. Barnett*, 923 F. 2d 754, 756 (9th Cir. 1991) informing COA case harm in granting jurisdiction in COA reconsideration motion. Dr. Grant alleges conflict of interest and foul play.

V.

Did the COA affirm trial judges' denied Dr. Grant's ADA accommodations request that is punishable under within Americans with Disabilities Act of 1990, ("ADA") Titles II & III, 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36; and the Civil Rights Act III, VI and IX?

"When justice is inaccessible, the simple result is injustice. The need to eliminate barriers preventing access to our courts is real and immediate"¹⁰. "The United States Constitution. Because access to the courts is a fundamental right, the United States Supreme Court has held that Title II of the ADA is constitutionally valid. In *Tennessee v. Lane*, 124 S. Ct. 1978 (2004), the Court held that —Title II unquestionably is valid...as it applies to the class of cases implicating the accessibility of judicial services[.] Id. at 1993. The Court

observed that the —duty to accommodate is perfectly consistent with the well-established due process principle that ‘within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard’ in its courts. *Id.* at 1994 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971))”¹⁰.

“Washington State Constitution. The Washington State Supreme Court has held that the right of access to the courts is fundamental and preservative of all other rights and that denial of access on the basis of poverty violate the

Washington State Constitution. *Carter v. University of Washington*, 85 Wn.2d 391, 536 P.2d 618 (1975).”¹¹ “When a person with a disability represents him- or herself, there may be no intermediary between the court and the litigant on the subject of necessary accommodations. It is acutely important that judicial officers, clerk's staff, and courtroom staff be alert, communicate effectively and respectfully, and determine appropriate accommodation if needed”¹²

Dr. Grant’s disability is a matter of court record. It is a matter of court record the denial of her mental health ADA accommodations to read her legal responses to each Respondent [RP 27 1- 25], and supported Superior and COA’s summary judgment case dismissal.

Since 2004, Washington State has updated their governing guidelines

¹⁰Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts Rev 2011 (P. 3).

¹¹*Ibid* P. 3.

requiring court accessibility for the mental disable, yet COA and Superior courts has blatantly denied her court access and accessibility, thus continuing disfranchisement of her as a Pro Se, Minority, Multi-protected class, 100% Disable Veteran /w mental and behavioral health disabilities U.S. citizen (Person).

V.

The Court of Appeals Award of Attorney Fees to Respondents Creates Significant Due Process and Equal Protection Problems Raising Questions of Retaliation, Punishment and Conflict of State Interest That This Court Should Resolve.

Dr. Grant is no longer cleared for work; she was self-rehabilitating, and living on disability retirement when her civil rights were taken away: Was the Award of Attorney Fees, denial of Dr. Grant's Reconsideration Motion, and Motion for Opinion Publication; Acts of Retaliation, Punitive and Exemplary rulings, due to Superior courts having PATIENTS with her? Or Conflict of State

Interest due to Representation by Former Commissioner, Washington State Medical Quality Assurance Commission and present Special Assistant Attorney General, Douglas K. Yoshida WSBA #17365? Should Dr. Grant be made to pay legal fees, when her case has legal merit, but was denied court access and accessibility?

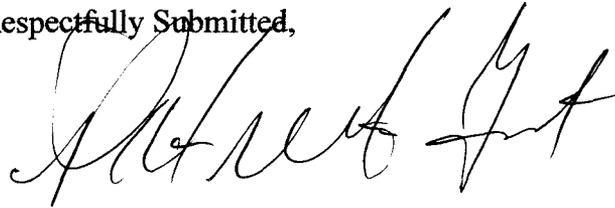
¹²Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts (P. 10)

CONCLUSION

Petitioner Patricia A. Grant, PhD respectfully prays this Court grant her
Petition for Review; Deny COA Award of Attorney Fees; Allow to precede
infamous paupas; Respondent's Certify their Medical Records; Remand for Trial
De Novo /w Mental Health ADA Title II Accommodations for trial and hearings
void any conflict of interest by State Municipal Officer's.

Dated: June 27, 2014

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Patricia A. Grant', written in a cursive style.

PATRICIA A. GRANT, PhD, Pro Se
1001 Cooper Point Rd # 240-231
Olympia, WA 98502
(210) 543-2331

APPENDIX

- A. Court of Appeals of the State of Washington Division One, Unpublished Opinion. Filed April 28, 2014.
- B. Superior Court of the State of Washington, In and For the County of King, Orders Grant CR 56 Motion to Dismiss. Dated November 9, 2012 and March 22, 2013.
- C. Court of Appeals of the State of Washington Division One, Order denying Motion for Reconsideration. Filed May 29, 2014.
- D. Court of Appeals of the State of Washington Division One, Motion and Order denying Motion to Publish. Filed May 29, 2014.

APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

PATRICIA A. GRANT,)	
)	No. 69643-2-1
Appellant,)	
)	DIVISION ONE
v.)	
)	
CLAUDIO GABRIEL ALPEROVICH,)	
M.D.; ST. FRANCIS HOSPITAL-)	
FRANCISCAN HEALTH SYSTEM;)	
VALLEY MEDICAL CENTER; TRENT)	
NGUYEN, DO; MICHAEL K. HORI;)	
PACIFIC MEDICAL CENTER, INC.;)	
LISA OSWALD; SHOBA)	UNPUBLISHED OPINION
KRISHNAMURTHY; MICHELE)	
PULLING; WM. RICHARD LUDWIG;)	
U.S. FAMILY HEALTH PLAN AT)	
PACIFIC MEDICAL CENTER, INC.,)	
VIRGINIA MASON HEALTHY SYSTEM;)	
and RICHARD C. THIRLBY,)	
)	
Respondents.)	FILED: <u>April 28, 2014</u>

SPEARMAN, C.J. — Patricia Grant appeals the trial court’s summary dismissal of her malpractice suit against a surgeon and several other healthcare providers and entities involved in her care following a surgical procedure. She challenges the court’s decision to strike the expert’s letter she submitted at the hearing on the defendants’ motion for summary judgment. She claims the court further erred in concluding that even considering the expert’s letter, Grant failed to meet her burden to establish a prima facie case of medical malpractice. We affirm.

FACTS

In June 2009, Patricia Grant had a laparoscopic gastric bypass procedure at St. Francis Hospital. Dr. Claudio Alperovich performed the surgery. In the months that

followed the procedure, Grant suffered various complications and persistent symptoms, including nausea, vomiting, and the inability to tolerate solid food or thick liquids. Grant sought treatment and evaluation by many healthcare providers in the months following the surgery. She was hospitalized on a few occasions and underwent various diagnostic tests. In February 2010, approximately eight months after the initial surgery, Dr. Elliot Goodman in New York City performed a second surgery. During this surgery, he identified and treated a "Peterson's hernia." Clerk's Papers (CP) at 346. Most of Grant's symptoms eventually abated after the second surgery.

Pro se, Grant filed a "Complaint for Medical Negligence and Damages" in June 2012. CP at 3-13. She named more than a dozen defendants including individual treatment providers, hospitals, healthcare institutions, and an insurer. She alleged that the individual providers misdiagnosed, neglected, and mistreated her for various reasons. She also alleged that the providers conspired together to cover up the misdiagnoses and to attribute her medical issues to mental illness. Grant engaged in discovery by propounding discovery on many of the defendants, including requests for admissions, requests for production, and interrogatories.

In October 2012, all but two of the named defendants filed motions for summary judgment. One defendant, Dr. Michelle Pulling, argued that the claims against her should be dismissed because she was not served with a summons and complaint. Grant had not served Dr. Pulling or her employer, the University of Washington, nor had she filed a tort claim as required by RCW 4.92.100. The court entered an order dismissing the case against Dr. Pulling on October 29, 2012.

Dr. Alperovich and ten other defendants argued that Grant could not meet her burden to establish liability or causation. The defendants pointed to the absence of competent medical expert testimony to establish the elements of Grant's malpractice claims. Grant responded to the motions, and in support of her claims, submitted exhibits consisting of voluminous unauthenticated medical records.

At the November 9, 2012 hearing on the summary judgment motions, Grant produced an unsworn three-page letter written by Dr. Elliot Goodman, the New York surgeon who performed the second surgery on Grant in February 2010. In this letter, Dr. Goodman reviewed the events following the June 2009 procedure based on "selected" medical records provided by Grant. CP at 345. He states that Grant's ongoing complaints warranted surgical exploration. He claims there was a failure to timely diagnose and treat Grant's internal hernia, to which he attributes her problems following the gastric bypass. In conclusion, he states that there was a "deviation in the appropriate standard of care in the care and treatment rendered to Patricia Grant by Dr. Alperovich and the other physicians treating the patient during the period between June 2009 and January 2010." CP at 346.

The trial court struck the untimely and unsworn letter. Notwithstanding, the court determined that even if Dr. Goodman's letter was admissible, it was not sufficient to establish that any of the defendants deviated from the applicable standard of care or caused injury to the plaintiff. In five separate orders, the trial court dismissed the claims against eleven defendants.¹

¹ Although Grant designated all five orders entered on November 9, 2012 in her notice of appeal, one of the orders entered that day dismissing claims against Virginia Mason and Dr. Richard Thirlby is not included in the record on review.

Several months later, the court entered a separate order dismissing the claims with respect to the two remaining defendants in the case, Valley Medical Center and Dr. Triet Nguyen, based on lack of jurisdiction because neither defendant was properly served with a summons and complaint. Grant appeals.

ANALYSIS

Proceeding pro se on appeal, Grant challenges the orders of dismissal below on a variety of bases. Primarily, Grant contends that the trial court erred by refusing to consider Dr. Goodman's letter. She also challenges the court's conclusion that her evidence was insufficient to raise a genuine issue of material fact for trial.

We review an order of summary judgment de novo, engaging in the same inquiry as the trial court. Ranger Ins. Co. v. Pierce Cy., 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Summary judgment is proper if the records on file with the trial court show "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." CR 56(c). As in the trial court, we construe all facts and reasonable inferences in the light most favorable to the nonmoving party. Michael v. Mosquera-Lacy, 165 Wn.2d 595, 601, 200 P.3d 695 (2009).

Actions for damages occurring as a result of health care are controlled exclusively by statute, regardless of how a claim is characterized. RCW 7.70.030; Branom v. State, 94 Wn. App. 964, 969, 974 P.2d 335 (1999). To establish a claim of medical malpractice under RCW 7.70.030(1), the plaintiff must prove: (1) the defendant failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs,

in the state of Washington, acting in the same or similar circumstances; and (2) this failure was a proximate cause of the plaintiff's injury.

Expert testimony is required to establish the standard of care and whether the physician met that standard. Young v. Key Pharms., Inc., 112 Wn.2d 216, 228, 770 P.2d 182 (1989). "What is or is not standard practice and treatment in a particular case, or whether the conduct of the physician measures up to the standard is a question for experts and can be established only by their testimony." Young, 112 Wn.2d at 228-29 (quoting Hart v. Steele, 416 S.W.2d 927, 932, 37 A.L.R.3d 456, 462 (Mo.1967)). The policy behind this rule is to "prevent laymen from speculating as to what is the standard of reasonable care in a highly technical profession." Douglas v. Bussabarger, 73 Wn.2d 476, 479, 438 P.2d 829 (1968). Expert testimony is also required to establish most aspects of causation in a medical malpractice action. Seybold v. Neu, 105 Wn. App. 666, 676, 19 P.3d 1068 (2001). This medical testimony must be based upon a reasonable degree of medical certainty. McLaughlin v. Cooke, 112 Wn.2d 829, 836, 774 P.2d 1171 (1989).

Summary judgment is proper if the plaintiff lacks competent medical evidence to establish a prima facie case. Young, 112 Wn.2d at 225; Morinaga v. Vue, 85 Wn. App. 822, 832, 935 P.2d 637 (1997). If a defendant files a motion alleging the lack of such evidence, the plaintiff must then present competent evidence to rebut the defendant's initial showing of the absence of a material issue of fact. Young, 112 Wn.2d at 227. Here, the defendants' motions shifted the burden to Grant to produce an affidavit from a qualified expert alleging specific facts to support a cause of action. See Guile v. Ballard Cmty. Hosp., 70 Wn. App. 18, 25, 851 P.2d 689 (1993).

Grant argues that she submitted competent medical evidence, but the trial court disregarded it because of a “technicality.” Appellant’s Brief (App. Br.) at 18. A court’s ruling to strike evidence is reviewed for abuse of discretion. Southwick v. Seattle Police Officer John Doe Nos. 1-5, 145 Wn. App. 292, 297, 186 P.3d 1089 (2008). In this case, there were two legitimate reasons why the trial court struck the evidence. First, Grant failed to timely submit the letter in response to the defendants’ motions. See CR 56(c) (adverse party may file affidavits, memoranda, or other documents no later than 11 calendar days before the hearing). The defendants had no opportunity to respond to Dr. Goodman’s letter prior to the hearing because Grant did not make the court or the parties aware of it until the hearing was underway. And more importantly, CR 56(e) requires evidence offered in support of or in opposition to a motion for summary judgment be in the form of sworn affidavits or declarations made under penalty of perjury. It is well-established in this context that without more, an unsworn letter discussing alleged negligent treatment is not sufficient to create a genuine issue of material fact. See Young Soo Kim v. Choong-Hyun Lee, 174 Wn. App. 319, 326-27, 300 P.3d 431 (2013). For these reasons, the trial court acted well within its discretion in striking the unsworn and untimely letter.

But the trial court did not dismiss Grant’s case merely because of the timing and form of Grant’s evidence. The court concluded that even ignoring these deficiencies, the letter was insufficient to establish a factual basis for Dr. Goodman’s conclusions. The physicians named as defendants, practice in a variety of specialties. Yet, Dr. Goodman does not address the standard of care for physicians of any specialty in

Washington State or elsewhere.² Although he states generally that surgical exploration should have happened earlier, he does not identify any specific act that deviated from the standard of care. He mentions only two physicians by name, but does not specify any negligent acts or omissions with respect to those physicians.

Dr. Goodman attributes Grant's symptoms to the presence of the hernia that he surgically repaired in February 2010. He asserts that there was unreasonable delay in diagnosing the condition between June 2009 and January 2010. However, he does not say when that condition existed with any degree of certainty or precision. Dr. Goodman's letter acknowledges that diagnostic testing was performed in July and December of 2009, but he does not suggest that any testing indicated the presence of the hernia. He states, without explanation, that the hernia "most likely" existed for several months before the February 2010 surgery. CP at 347. And while Dr. Goodman suggests that surgical exploration should have occurred even considering the lack of evidence of an anatomical cause for the problem, he does not claim that the approach he describes represents the standard practice.

In sum, the letter does not demonstrate that any of the physicians failed to exercise the degree of care of a reasonably prudent health care provider, violated of Washington's standard of care, or that their actions proximately caused Grant's injuries. Because Grant failed to meet her burden to defeat summary judgment by producing

² Grant suggests that her expert was not required to testify about the standard of care in Washington because Washington standards are no different from national standards with regard to gastric bypass surgery. But expert testimony is required to establish that this is the case. Grant's expert's letter does not address the issue of national versus local standards, does not describe any standard of care, nor explain how it applies in the circumstances of Grant's case.

competent medical evidence to support her malpractice claims, the trial court properly granted the defendants' motions for summary judgment.

The dismissal of claims against Dr. Pulling, Valley Medical Center, and Dr. Nguyen was based on lack of jurisdiction, not lack of evidence. Grant does not raise specific arguments with respect to these two orders of dismissal except, again, to characterize them as based on "technicalities." App. Br. at 24. But the law is clear that proper service of the summons and complaint is a prerequisite to the court obtaining jurisdiction over a party. See Woodruff v. Spence, 76 Wn. App. 207, 209 883 P.2d 936 (1994). Grant does not dispute, here or below, that she failed to personally serve the three defendants whose claims were dismissed on this ground. The dismissals were proper.

Grant suggests that the court unfairly dismissed her complaint without allowing sufficient time for discovery. But a motion for summary judgment follows commencement of an action and some opportunity for ~~discovery~~. The record here demonstrates that Grant used the discovery process to obtain information from several defendants.

CR 56(c) also requires 28 days' notice of the hearing and has its own continuance provision—CR 56(f)—for any party who can demonstrate why he or she is unable, without further discovery, to oppose the motion. Although Grant argued that the court should deny summary judgment and allow further discovery to proceed, she did not specifically request a continuance in writing or at the hearing. Even if she had made such a request, a trial court may refuse to continue proceedings for a number of reasons:

(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.

Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). One qualifying ground is sufficient for denial. Gross v. Sunding, 139 Wn. App. 54, 68, 161 P.3d 380 (2007).

Had Grant filed an affidavit stating that she needed more time to gather facts to oppose summary judgment, she still had to identify evidence she expected to develop with additional discovery and explain why it would help. Grant failed to do so. Grant was not denied the opportunity to develop evidence in support of her claim. Nor does she demonstrate that she would have been entitled to a continuance, had she requested one

Finally, Grant claims that the trial court was biased against her because of her status as a pro se litigant and treated her unfairly by holding her to the same standard as the attorneys representing the defendants. But as with all pro se litigants, Grant is properly held to the same standard as an attorney. Westberg v. All-Purpose Structures, Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

~~We have no doubt that Grant was~~ at a significant disadvantage because she was unrepresented and we have considered all of her examples in support of her claim of bias. However, after carefully examining the available record, we have discovered no evidence that the trial court discriminated against Grant because of her pro se status or for any other reason. Instead, it appears that the court displayed considerable patience with Grant and appropriate sensitivity to her position

We affirm the orders dismissing the claims against all defendants.

Spreen, C.J.

WE CONCUR:

Dreyfus

Cox, J.

APPENDIX B

10/29/12 11:57 AM
HONORABLE JAY WHITE
Hearing Date: October 29, 2012
Without Oral Argument
SUPERIOR COURT
CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PATRICIA A. GRANT,

Plaintiff,

v.

CLAUDIO GABRIEL ALPEROVICH; ST. FRANCIS HOSPITAL - FRANCISCAN HEALTH SYSTEM; VALLEY MEDICAL CENTER; TRIENT M. NGUYEN; MICHAEL K. HORI; PACIFIC MEDICAL CENTER, INC.; LISA OSWALD; SHOBA KRISHNAMURTHY; MICHELE PULLING; WM. RICHARD LUDWIG; U.S. FAMILY HEALTH PLAN at PACIFIC MEDICAL CENTER, INC.; VIRGINIA MASON HEALTH SYSTEM; and RICHARD C. THIRLBY,

Defendants.

NO. 12-2-20677-5 KNT

ORDER DISMISSING
DEFENDANT DR. MICHELE
PULLING ONLY *OW*

~~Resposed~~

[Clerk's Action Required]

THIS MATTER having come on regularly for hearing upon Defendant Dr. Michele Pulling's Motion to Dismiss, and the Court having considered the records and files in this matter, and having specifically considered the following:

1. Defendant Dr. Michele Pulling's Motion to Dismiss;
2. Response of Plaintiff *Pro Se*: *a request to stay proceedings.*
3. Defendant Dr. Michele Pulling's Reply Brief,;

ORDER DISMISSING DEFENDANT
DR. MICHELE PULLING - 1

{DKY1022346.DOC;2/12458.000014/ }

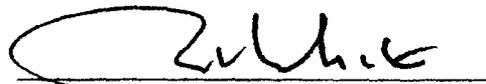
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

The Court considered the foregoing and also determined there is no sufficient reason for a "stay" or continuance of this motion, OW

it is now, therefore

ORDERED ADJUDGED AND DECREED that Defendant Dr. Michele Pulling's Motion to Dismiss is GRANTED. Plaintiff's claims and cause of action, ^{only} as against Dr. Pulling are hereby dismissed ^{OW} for lack of jurisdiction.

DATED this 29 day of October, 2012.



The Honorable Jay White

Presented By:

OGDEN MURPHY WALLACE, PLLC

By 

D.K. Yoshida [WSBA No. 17365]
Special Assistant Attorney General

Attorney for Defendant Michele Pulling, M.D

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The Honorable Jay White
Friday, November 9, 2012, 9:00 a.m.
Oral argument requested

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PATRICIA A. GRANT,

Plaintiff,

v.

CLAUDIO GABRIEL ALPEROVICH, MD,
ST. FRANCIS HOSPITAL – FRANCISCAN
HEALTH SYSTEM, VALLEY MEDICAL
CENTER, TRIENT M. NGUYEN, DO,
MICHAEL K. HORI, PACIFIC MEDICAL
CENTER INC., LISA OSWALD, SHOBA
KRISHNAMURTHY, MICHELE PULLING,
WM. RICHARD LUDWIG, U.S. FAMILY
HEALTH PLAN @ PACIFIC MEDICAL
CENTER, INC., VIRGINIA MASON
HEALTH SYSTEM, RICHARD C.
THIRLBY,

Defendant.

NO. 12-2-20677-5KNT

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT BY
DEFENDANTS VIRGINIA MASON
AND THIRLBY

Clerk's Action Required*

~~[Proposed]~~

THIS MATTER came before the Court on Defendant Virginia Mason Medical Center's
Motion for Summary Judgment. The Court considered the following:

1. Motion for Summary Judgment by Defendants Virginia Mason and Thirlby;
2. Plaintiff's Responses to Defendant's Virginia Mason Medical Center and Richard C. Thirlby Motion for Summary Judgment;

ORDER GRANTING MOTION FOR SUMMARY
JUDGMENT BY DEFENDANTS VIRGINIA MASON
AND THIRLBY - 1

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119-4296
TEL 206 441-4455
FAX 206 441 8484

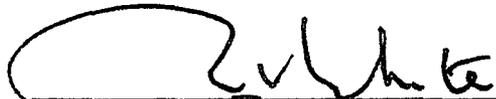
ORIGINAL

3. Declaration of Patricia A. Grant in Support of Plaintiff's Responses to Defendant's Virginia Mason Medical Center and Richard C. Thirlby Motion for Summary Judgment, with exhibits;
4. Reply on Summary Judgment of Defendants Virginia Mason and Thirlby;
5. The Court's complete files and records in this cause; and
6. The oral arguments of the parties.

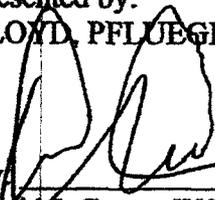
It is now ORDERED that summary judgment is granted in favor of defendants Virginia Mason and Thirlby. All claims against these defendants are hereby dismissed with prejudice.

It is further ordered *The letter dated 11/17/12 of Dr. Elliot R. Goodman is struck for reasons stated in a companion order.*

DONE IN OPEN COURT this 9th day of November, 2012.


THE HONORABLE JAY WHITE

Presented by:
FLOYD, PFLUEGER & RINGER, P.S.

By 
David J. Corey, WSBA #26683
Of Attorneys for defendants Virginia Mason and Thirlby

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS VIRGINIA MASON AND THIRLBY - 2.

FLOYD, PFLUEGER & RINGER P.S.
200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119-4296
TEL 206 441-4455
FAX 206 441-8484

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

PATRICIA A. GRANT,

Plaintiff,

v.

CLAUDIO GABRIEL ALPEROVICH, M.D.;
ST. FRANCIS HOSPITAL - FRANCISCAN
HEALTH SYSTEM; VALLEY MEDICAL
CENTER; TRIENT M. NGUYEN, DO;
MICHAEL K. HORI; PACIFIC MEDICAL
CENTER, INC.; LISA OSWALD; SHOBA
KRISHNAMURTHY; MICHELE PULLING;
WM. RICHARD LUDWIG; U.S. FAMILY
HEALTH PLAN AT PACIFIC MEDICAL
CENTER, INC.; VIRGINIA MASON
HEALTHY SYSTEM; and RICHARD C.
THIRLBY;

Defendants.

NO. 12-2-20677-5 KNT

ORDER GRANTING DEFENDANTS
PACIFIC MEDICAL CENTER, INC.,
LISA OSWALD, MD, SHOBA
KRISHNAMURTHY, MD, WM.
RICHARD LUDWIG, MD, AND U.S.
FAMILY HEALTH PLAN AT PACIFIC
MEDICAL CENTER, INC.'S MOTION
FOR SUMMARY JUDGMENT

(Clerk's Action Required)

THIS MATTER came before the Court upon Defendants Pacific Medical Center, Inc., Lisa Oswald, Shoba Krishnamurthy, Wm. Richard Ludwig, and U.S. Family Health Plan at Pacific Medical Center, Inc.'s Motion for Summary Judgment. The Court is familiar with the records and files herein and having considered the argument of the parties, as well as the following pleadings:

1. Defendants Pacific Medical Center, Inc., Lisa Oswald, M.D., Shoba Krishnamurthy, M.D., Wm. Richard Ludwig, M.D., and U.S. Family Health Plan at Pacific Medical Center, Inc.'s Motion for Summary Judgment

ORDER GRANTING SUMMARY JUDGMENT ON BEHALF OF
DEFENDANTS PACIFIC MEDICAL CENTERS, DR. OSWALD, DR.
KRISHNAMURTHY, DR. LUDWIG AND U.S. FAMILY HEALTH
PLAN - 1

ORIGINAL

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
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(206) 682-0810

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- 2. Declaration of Nancy C. Elliott, with attachment;
- 3. Plaintiff's Responses to Defendants Pacific Medical Center, Inc., Lisa Oswald, MD, Shoba Krishnamurthy, MD, William Richard Ludwig, MD, and U.S. Family Healthcare Plan at Pacific Medical Center, Inc.'s Motion for Summary Judgment;
- 4. Declaration of Patricia A. Grant in Support of Plaintiff's Responses to Defendants Pacific Medical Center, Inc., Lisa Oswald, MD, Shoba Krishnamurthy, MD, William Richard Ludwig, MD, and U.S. Family Healthcare Plan at Pacific Medical Center, Inc.'s Motion for Summary Judgment, with attachments;
- 5. Defendants Pacific Medical Center, Inc., Lisa Oswald, MD, Shoba Krishnamurthy, MD, William Richard Ludwig, MD, and U.S. Family Health Plan at Pacific Medical Center, Inc.'s Reply Regarding Defendants' Motion for Summary Judgment;
- 6. The Motions for Summary Judgment filed on behalf of the other Defendants, the Declarations and Exhibits filed in support of the other Defendants' Motions for Summary Judgment and the Reply Memoranda filed on behalf of the other

including Dr. Elliott's affidavit
all pleadings listed with companion orders entered today.
 The Court finding that there is no genuine issue of material fact regarding these

Defendants' Motion for Summary Judgment, that Plaintiff Grant has failed to produce competent evidence to support her claims against these Defendants and to defeat these Defendants' Motion for Summary Judgment and there being no just reason for delay; NOW,

IT IS HEREBY ORDERED that Defendants Pacific Medical Center, Inc., Lisa Oswald, M.D., Shoba Krishnamurthy, M.D, William Richard Ludwig, M.D., and U.S. Family Health Plan at Pacific Medical Center, Inc.'s Motion for Summary Judgment is GRANTED, and IT IS FURTHER

dated 11/7/12
 IT IS ORDERED that The UNSWORN letter of Dr. Elliot R. Bourman submitted by plaintiff at oral argument is stricken; however, it will be filed as part of the record herein. Even if not stricken the letter offers assertions and opinions with insufficient factual basis, does not address the standard of care in Washington.

ORDER GRANTING SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS PACIFIC MEDICAL CENTERS, DR. OSWALD, DR. KRISHNAMURTHY, DR. LUDWIG AND U.S. FAMILY HEALTH PLAN - 2

MERRICK, HOFSTEDT & LINDSEY, P.S.
 ATTORNEYS AT LAW
 3101 WESTERN AVENUE, SUITE 200
 SEATTLE, WASHINGTON 98121
 (206) 882-0610

1 ORDERED that Plaintiff Grant's Complaint filed against Defendants Pacific Medical
2 Center, Inc., Lisa Oswald, M.D, Shoba Krishnamurthy, M.D, William Richard Ludwig, M.D.,
3 and U.S. Family Health Plan at Pacific Medical Center, Inc. is dismissed with prejudice and with
4 costs to these Defendants.

5 DATED this 7th day of November, 2012.

6
7
8 By Jay White
The Honorable Jay White

9 Presented by:

10 MERRICK, HOFSTEDT & LINDSEY, P.S.

11
12 By: Nancy P. Elliott
13 Nancy P. Elliott, WSBA #11411
14 Attorneys for Defendants Pacific Medical Center, Inc., Lisa Oswald, M.D.,
15 Shoba Krishnamurthy, M.D., Wm. Richard Ludwig, M.D., U.S. Family
Health Plan at Pacific Medical Center, Inc.

* *Ad does not identify
any specific deviation
from the standard of care
by Dr. Alperovich or other
defendants.
His letter also is
intentionally inconsistent*

16 Approved as to form and notice of presentation waived:

17
18 By: Patricia A. Grant
19 Patricia A. Grant
20 Plaintiff Pro Se

*because he did not
examine plaintiff until
January, 2010, complains
of a fall due to
widespread treatment
of an internal hernia which
most likely pre-dated my
he explanation by several
months, and does not
specifically cite a omission
by any of the defendants
except to assert a "deviation" is
the standard of care "by Dr. Alperovich
and the other physicians treating the patient
between June 2009 and January 2010."*

21 WILLIAMS, KASTNER & GIBBS PLLC

22
23 By: Scott M. O'Halloran
24 Scott M. O'Halloran, WSBA #25236
25 Michelle M. Garzon, WSBA #31558
26 Attorneys for Defendant Franciscan Health System
d/b/a St. Joseph Medical Center and Dr. Alperovich

ORDER GRANTING SUMMARY JUDGMENT ON BEHALF OF
DEFENDANTS PACIFIC MEDICAL CENTERS, DR. OSWALD, DR.
KRISHNAMURTHY, DR. LUDWIG AND U.S. FAMILY HEALTH
PLAN - 3

MERRICK, HOFSTEDT & LINDSEY, P.S.
ATTORNEYS AT LAW
3101 WESTERN AVENUE, SUITE 200
SEATTLE, WASHINGTON 98121
(206) 682-0610

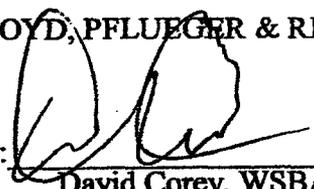
1 JOHNSON, GRAFFE, KEAY, MONIZ & WICK

2

3 By: Donna M. Moniz, WSBA #12762
4 Attorneys for Defendants King Co. Public Hospital
5 District #1 and Dr. Nguyen

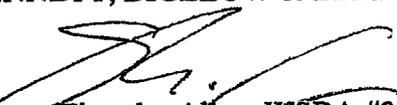
6 FLOYD, PFLUEGER & RINGER

7

8 By: 
David Corey, WSBA #26683
9 Attorneys for Defendants Virginia Mason Medical Center
10 and Richard Thirlby, M.D.

11 BENNETT, BIGELOW & LEEDOM, P.S.

12

13 By: 
Timothy Allen, WSBA #35337
14 Attorney for Defendant Michael K. Hori, M.D.

15 FAIN ANDERSON VANDERHOEF, PLLC

16

17 By: 
Philip J. VanDerhoef, WSBA #14564
18 Susan E. Wassell, WSBA #42783
19 Attorneys for Defendants St. Francis Hospital/
Franciscan Health System

20 OGDEN MURPHY WALLACE PLLC

21

22 By: Doug Yoshida, WSBA #17365
23 Attorney for Defendant Michelle Pulling, M.D.

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THE HONORABLE JAY V. WHITE
DATE OF HEARING: NOVEMBER 9, 2012
TIME OF HEARING: 9:00AM
WITH ORAL ARGUMENT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PATRICIA GRANT,

Plaintiff,

vs.

CLAUDIO GABRIEL ALPEROVICH, ST.
FRANCIS HOSPITAL-FRANCISCAN
HEALTH SYSTEM, VALLEY MEDICAL
CENTER, TRIET M. NGUYEN, MICHAEL
K. HORI, PACIFIC MEDICAL CENTER
INC., LISA OSWALD, SHOBA
KRISHNAMURTHY, MICHELE PULLING,
WM. RICHARD LUDWIG, U.S. FAMILY
HEALTH PLAN @PACIFIC MEDICAL
CENTER INC., VIRGINIA MASON
HEALTH SYSTEM, RICHARD C.
THIRLBY, AND UNKNOWN JOHN AND
JANE DOES,

Defendant.

NO. 12-2-20677-5

~~PROPOSED~~ ORDER
GRANTING DEFENDANT
MICHAEL K. HORI, M.D.'S
MOTION FOR SUMMARY
JUDGMENT DISMISSAL

Clerk's Action Required*

THIS MATTER HAVING COME on to be heard before the undersigned judge of the
above-titled Court on Defendant Michael K. Hori, M.D.'s Motion for Summary Judgment
Dismissal, and the Court having reviewed the motion, along with the supporting Declaration of
Timothy E. Allen and the exhibits attached thereto, the ~~Opposition of Plaintiff, if any, together~~
Plaintiff's Response
Ed supporting Declaration of Patricia A. Grant
~~with any supporting declarations and/or attached exhibits, the Opposition of any other named~~
defendant, if any, along with any supporting declarations and/or attached exhibits, and the

~~PROPOSED~~ ORDER GRANTING DEFENDANT
MICHAEL K. HORI, M.D.'S MOTION FOR
SUMMARY JUDGMENT DISMISSAL

ORIGINAL
BENNETT BIGELOW & LEEDOM, P.S.
1700 Seventh Avenue, Suite 1900
Seattle, Washington 98101
(206) 622-5511

1 Reply of Defendant Michael K. Hori, M.D., ~~if any~~, together with any supporting declarations
2 and/or attached exhibits, ^{including CDR pleadings (KRAE is the companion order) Hoda} along with the records and file herein, and being fully advised in the
3 premises, and having heard oral argument, now, therefore,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Michael K.
5 Hori, M.D.'s Motion for Summary Judgment Dismissal is GRANTED. All of Plaintiff's claims
6 in this matter against Defendant Michael K. Hori, M.D., are dismissed, with prejudice. *

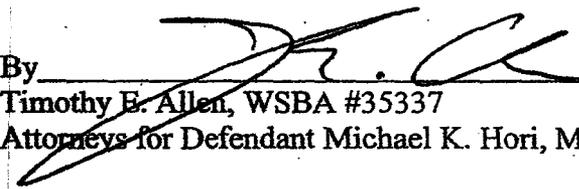
7 DATED this 9 day of November, 2012.

8 

9 HONORABLE JAY V. WHITE

10 Submitted by:

11 BENNETT BIGELOW & LEEDOM, P.S.

12 By 
13 Timothy E. Allen, WSBA #35337
14 Attorneys for Defendant Michael K. Hori, M.D.

15 * The letter dated 11/7/12
16 of Dr. Elliot R Goodman
17 is stricken for reasons
18 stated in a
19 companion order. D

20 {1242.00541/M0696487.DOCX; 1}

The Honorable Jay White
Hearing: November 9, 2012 @ 9:00 a.m.
With Oral Argument

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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

PATRICIA GRANT,

Plaintiff,

v.

CLAUDIO GABRIEL ALPEROVICH, MD;
ST FRANCIS HOSPITAL- FRANCISCAN
HEALTH SYSTEM; VALLEY MEDICAL
CENTER, TRIENT M. NGUYEN, D.O.;
MICHAEL K. HORI; PACIFIC MEDICAL
CENTER, INC.; LISA OSWALD; SHOBA
KRISHNAMURTHY; MICHELE PULLING;
WM. RICHARD LUDWIG; U.S. FAMILY
HEALTH PLAN @PACIFIC MEDICAL
CENTER INC.; VIRGINIA MASON
HEALTH SYSTEM; RICHARD C.
THIRLBY,

No. 12-2-20677-5 KNT

[~~PROPOSED~~] ORDER ON DEFENDANT
ST. FRANCIS HOSPITAL -
FRANCISCAN HEALTH SYSTEM'S
JOINDER IN DEFENDANT'S CLAUDIO
GABRIEL ALPEROVICH, M.D.
MOTION FOR SUMMARY JUDGMENT
AND MOTION FOR SUMMARY
JUDGMENT OF DISMISSAL OF ALL
CLAIMS AGAINST ST. FRANCIS
HOSPITAL - FRANCISCAN HEALTH
SYSTEM

Clerk's Action Required*

Defendants.

THIS MATTER came on before the Honorable Jay White on November 9, 2012 upon St. Francis Hospital - Franciscan Health System's Joinder In Defendant's Claudio Gaberial Alperovich, M.D. Motion For Summary Judgment And Motion For Summary Judgment Of Dismissal Of All Claims Against St. Francis Hospital - Franciscan Health System. The Court has reviewed the pleading and file herein and has considered the documents filed on the motion, including the following:

- 1. Defendant's Claudio Gaberial Alperovich, M.D. Motion for Summary Judgment;

~~PROPOSED~~ ORDER ON DEFENDANT ST. FRANCIS HOSPITAL - FRANCISCAN HEALTH SYSTEM'S JOINDER IN DEFENDANT'S CLAUDIO GABRIEL ALPEROVICH, M.D. MOTION FOR SUMMARY JUDGMENT AND MOTION FOR SUMMARY JUDGMENT OF DISMISSAL OF ALL CLAIMS AGAINST ST. FRANCIS HOSPITAL - FRANCISCAN HEALTH SYSTEM - I

Fain Anderson VanDerhoef, PLLC
701 Fifth Avenue, Suite 4650
Seattle, WA 98104
(206) 749-0094
Fax: (206) 749-0194



1 DONE IN OPEN COURT this 9 day of November, 2012.

2
3 

4 The Honorable Jay White

5 Presented by:

6 Fain Anderson VanDerhoef, PLLC

7
8 

9 Philip J. VanDerhoef, WSBA #14564
10 Susan E. Wassell, WSBA #42783
11 Attorneys for Defendant
St. Francis Hospital - Franciscan Health System

12 Approved as to form;
13 Notice of presentation waived.

14 

15 Patricia A. Grant, Plaintiff Pro Se

Honorable Jay White
Summary Judgment Motion
November 9, 2012 @ 9:00 a.m.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PATRICIA A. GRANT,

Plaintiffs,

v.

CLAUDIO GABRIEL ALPEROVICH, MD,
ST. FRANCIS HOSPITAL - FRANCISCAN
HEALTH SYSTEM, VALLEY MEDICAL
CENTER, TRIENT M. NGUYEN, DO,
MICHAEL K. HORI, PACIFIC MEDICAL
CENTER, INC., LISA OSWALD, SHOBA
KRISHNAMURTHY, MICHELE PULLING,
WM. RICHARD LUDWIG, U.S. FAMILY
HEALTH PLAN @PACIFIC MEDICAL
CENTER, INC., VIRGINIA MASON
HEALTH SYSTEM, RICHARD C. THIRLBY,

Defendants.

NO. 12-2-20677-5 KNT

ORDER GRANTING SUMMARY
JUDGMENT ~~DISMISSING~~
~~ALL CLAIMS AGAINST~~
~~(PROPOSED)~~

CLAUDIO GABRIEL
ALPEROVICH MD

Clerk's Action Required*

THIS MATTER came before the Court upon Defendant Claudio Gabriel Alperovich, M.D.'s Motion for Summary Judgment. The Court is familiar with the records and files herein and has considered argument of counsel, if any, as well as the following documents:

1. Defendant Claudio Gabriel Alperovich M.D.'s Motion for Summary Judgment;
2. Plaintiff's Complaint;

ORDER GRANTING SUMMARY JUDGMENT - Page 1

ORIGINAL

Williams, Kastner & Gibbs PLLC
1301 A Street, Suite 900
Tacoma, Washington 98402-4200
(253) 593-5620 Tacoma
(206) 628-2420 Seattle

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- 3. Plaintiff's Response to Motion for Summary Judgment; *al supports*
- 4. Defendant Claudio Gabriel Alperovich, M.D.'s Reply to Response;
- 5. *Declaration of Patricia A. Grant*
- 6. *All pleadings listed with computer orders*
attached to by JW; and
- 7. _____

Now, therefore,

IT IS HEREBY ORDERED that Defendant Claudio Gabriel Alperovich, M.D.'s Motion for Summary Judgment is GRANTED as there has been no evidence put forth by any party that Defendant Claudio Gabriel Alperovich M.D. is at fault for violating the standard of care and/or proximately causing any of Plaintiff's alleged injuries and plaintiff's claims against this defendant are dismissed with prejudice and without costs or fess. *The letter dated 11/7/12 of Dr. Elbert R. Gossman is stricken per reasons stated in a computer order*

DATED this 1 day of November, 2012.

Jay White JW

Honorable Jay White

Presented by:

WILLIAMS, KASTNER & GIBBS PLLC

By *Michelle M. Garzon*

Scott M. O'Halloran, WSBA #25236
Michelle M. Garzon, WSBA #31558

Attorneys for Franciscan Health System d/b/a St. Joseph Medical Center

Approved as to form:

By: *Patricia Grant*

Patricia Grant, Plaintiff Pro Se

1 JOHNSON, GRAFFE, KEAY, MONIZ & WICK

2
3 By: _____

4 Donna M. Moniz, WSBA # 12762
5 Attorneys for King Co. Public Hospital District #1
6 and Nguyen

7 FLOYD, PFLUEGER & RINGER

8 By: _____

9 David Corey, WSBA # 26683
10 Attorneys for Defendant Virginia Mason and
11 Thirlby

12 MERRICK HOFSTEDT & LINDSEY, P.S.

13 By: _____

14 Nancy Elliott, WSBA # 11411
15 Attorneys for Defendant PacMed Clinics, Lisa Oswald, M.D.,
16 Shoba Krishnamurthy, M.D., William Richard Ludwig, M.D.,
17 US Family Health Plan

18 BENNETT, BIGELOW & LEEDOM, P.S.

19 By: _____

20 Timothy Allen, WSBA # 35337
21 Attorney for Defendant Michael K. Hori, M.D.

22 FAIN ANDERSON VANDERHOEF, PLLC

23 By: _____

24 Philip J. VanDerhoef, WSBA #14564
25 Susan E. Wassell, WSBA #42783
Attorneys for Defendant Franciscan Health System

ORDER GRANTING SUMMARY JUDGMENT - Page 3

Williams, Kastner & Gibbs PLLC
1301 A Street, Suite 900
Tacoma, Washington 98402-4200
(253) 593-5620 Tacoma
(206) 628-2420 Seattle

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Honorable Judge Jay White

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PATRICIA A. GRANT,

Plaintiff,

vs.

CLAUDIO GABRIEL ALPEROVICH, MD, et
all,

Defendants.

No. 12-2-20677-5 KNT
Order (~~Proposed~~) *Deny*
PLAINTIFF'S MOTION
FOR ADVERSE
INFERENCE

This matter having come before the Court upon plaintiff's "Motion for Adverse Inference," and the court having considered the evidence filed in support and opposition of the motion, including:

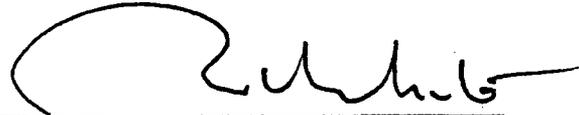
- 1. Plaintiff's motion and her declaration and motion exhibits.
- 2. Defendants Valley Medical Center and Nguyen's opposition and exhibit.
- 3. *Plaintiff's Reply and supporting declaration of Patricia A. Grant*
- 4.

And being fully apprised of the undisputed facts and the law and being otherwise advised in the premises, the Court

ORDERS that plaintiff's Motion for Adverse Inference is **DENIED**, *The* ~~and that~~

1 plaintiff's complaint against defendants Valley Medical Center and Dr. Nguyen is, ^{WCS}
2 ~~Dismissed by separate order for lack of jurisdiction.~~
3 ~~for lack of jurisdiction, DISMISSED.~~

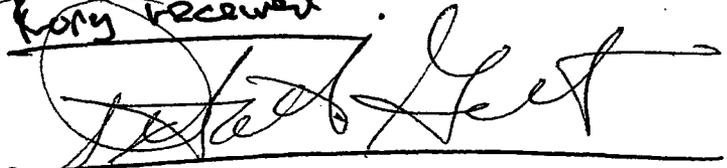
4 DATED this 22 day of MARCH, 2013.

5 
6 JUDGE JAY WHITE

7 Presented by:

8 JOHNSON, GRAFFE, KEAY,
9 MONIZ & WICK, LLP

10 JCS
11 By _____
12 Donna M. Moniz, WSBA #12762
13 Eugene A. Studer, WSBA #20175
14 Attorneys for Defendants

15 Kory received:

16 _____
17 Patricia Grant

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Honorable Judge Jay White

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PATRICIA A. GRANT,

Plaintiff,

vs.

CLAUDIO GABRIEL ALPEROVICH, MD, et
all,

Defendants.

*Check's Action
REQUIRED*

No. 12-2-20677-5 KNT

Order (~~Proposed~~)

DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND

DISMISSING PLAINTIFF'S
CLAIMS AS TO
DEFENDANT'S KING COUNTY
PUBLIC HOSPITAL DISTRICT NO. 1
VALLEY MEDICAL CENTER

D/b/c AND TRIET N. NGUYEN. DU

This matter having come before the Court upon plaintiff's "Motion
Summary Judgment," and the court having considered the evidence filed in
support and opposition of the motion, including:

1. Plaintiff's motion and her declaration and motion exhibits.
2. Defendants Valley Medical Center and Nguyen's opposition and exhibit.
3. *Plaintiff's Reply*
- 4.

And being fully apprised of the undisputed facts and the law and being
otherwise advised in the premises, the Court

1 ORDERS that plaintiff's Motion for Summary Judgment is DENIED, and
2 that plaintiff's complaint against defendants Valley Medical Center and Dr. Nguyen
3 is, for lack of jurisdiction, DISMISSED. ^{at}

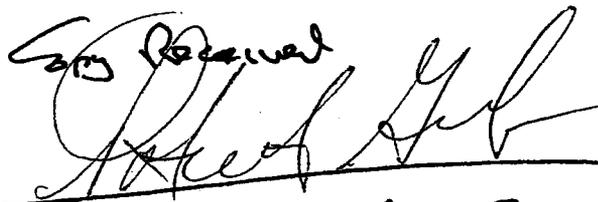
4 DATED this 22 day of March, 2013.

5
6 
7 JUDGE JAY WHITE

8 Presented by:

9 JOHNSON, GRAFFE, KEAY,
10 MONIZ & WICK, LLP

11 By 
12 Donna M. Moniz, WSBA #12762
13 Eugene A. Studer, WSBA #20175
14 Attorneys for Defendants

15
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18 PATRICIA A. GRANT

19 ^{at} The lawsuit was filed
20 June 15, 2012. Defendants
21 ~~filed~~ signed a notice of
22 appearance on June 22,
23 2012, filed June 25, 2012,
24 without waiving objections
25 to lack of service or
26 improper service.
On July 12, 2012,
Plaintiff filed a "Response
to Defendants' Appearance
Defenses", acknowledging in
section 1(c) that the
form of service was by
certified mail. Defendants
sent a letter to plaintiff on
November 16, 2012, pointing out
the improper service. Exhibit A
to Defendants' Response. No further
attempt at service over has been
made.

APPENDIX C

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

PATRICIA A. GRANT,)
)
 Appellant,)
)
 v.)
)
 CLAUDIO GABRIEL ALPEROVICH,)
 M.D.; ST. FRANCIS HOSPITAL-)
 FRANCISCAN HEALTH SYSTEM;)
 VALLEY MEDICAL CENTER; TRENT)
 NGUYEN, DO; MICHAEL K. HORI;)
 PACIFIC MEDICAL CENTER, INC.;)
 LISA OSWALD; SHOBA)
 KRISHNAMURTHY; MICHELE)
 PULLING; WM. RICHARD LUDWIG;)
 U.S. FAMILY HEALTH PLAN AT)
 PACIFIC MEDICAL CENTER, INC.,)
 VIRGINIA MASON HEALTHY SYSTEM;))
 and RICHARD C. THIRLBY,)
)
 Respondents.)

No. 69643-2-1

DIVISION ONE

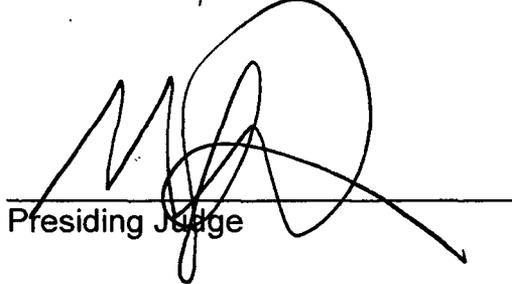
ORDER DENYING APPELLANT'S
MOTION FOR RECONSIDERATION

Appellant Patricia Grant filed a motion for reconsideration of the opinion filed in the above matter on April 28, 2014. A majority of the panel has determined this motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion is denied.

DATED this 29th day of May 2014.



Presiding Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAY 29 AM 10:50

APPENDIX D

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

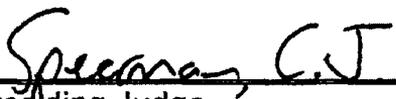
PATRICIA A. GRANT,)
)
 Appellant,) No. 69643-2-1
)
 v.) DIVISION ONE
)
 CLAUDIO GABRIEL ALPEROVICH,) ORDER DENYING APPELLANT'S
 M.D.; ST. FRANCIS HOSPITAL-) MOTION TO PUBLISH
 FRANCISCAN HEALTH SYSTEM;)
 VALLEY MEDICAL CENTER; TRENT)
 NGUYEN, DO; MICHAEL K. HORI;)
 PACIFIC MEDICAL CENTER, INC.;)
 LISA OSWALD; SHOBA)
 KRISHNAMURTHY; MICHELE)
 PULLING; WM. RICHARD LUDWIG;)
 U.S. FAMILY HEALTH PLAN AT)
 PACIFIC MEDICAL CENTER, INC.,)
 VIRGINIA MASON HEALTHY SYSTEM;))
 and RICHARD C. THIRLBY,)
)
 Respondents.)

Appellant Patricia Grant filed a motion to publish the opinion filed in the above matter on April 28, 2014. A majority of the panel has determined this motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion to publish is denied.

DATED this 16th day of June 2014.



Presiding Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUN 16 PM 1:43

CASE #: 69643-2-I

Patricia Grant, Appellant v. Claudio Alperovich, M.D., et al., Respondents

Counsel:

Enclosed please find a copy of the Order Denying Appellant's Motion to Publish entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

Enclosure

c: The Hon. Jay White

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

PATRICIA A. GRANT, PhD
Appellant,

V

CLAUDIO GABRIEL ALPEROVICH, MD;
ST FRANCIS HOSPITAL- FRANCISCAN
HEALTH SYSTEM; VALLEY MEDICAL
CENTER, TRIENT M. NGUYEN, D.O.;
MICHAEL K. HORI; PACIFIC MEDICAL
CENTER, INC.; LISA OSWALD; SHOBA
KRISHNAMURTHY; MICHELE PULLING;
WM. RICHARD LUDWIG; U.S. FAMILY
HEALTH PLAN @PACIFIC MEDICAL
CENTER INC.; VIRGINIA MASON
MEDICAL CENTER; RICHARD C.
THIRLBY, MD'S

Respondents.

No. 69643-2

**MOTION TO
PUBLISH OPINION
FILED: April 28, 2014**

REQUESTS:

**ADA ACCOMODATIONS
WAIVER OF MOTION FILING**

RECEIVED
COURT OF APPEALS
DIVISION ONE

JUN - 6 2014

Now come Appellant Patricia A. Grant, PhD, Pro Se, in accordance RAP 12(e) requesting the publication of Court Opinion filed April 28, 2014 and the waiver of motion filing:

This said Courts decision unsettled a question of law concerning court accessibility, with the current synonymous application of the Expert Witness Testimony letter and RCW 7.70.150 Certificate of Merit, which the Washington State Supreme court ruled unconstitutional. John Doe v. Puget Sound Blood Ctr., 117 Wash.2d 772, 780, 819 P.2d 370 (1991) Id. at 782, 819 P.2d 370. Putman v. Wenatchee Valley Medical Center, P.5., 166 Wn.2d 974, 216 P.3d 374 (2009).

This decision raised a new question of constitutional principle of court accessibility. There is an unsettled question of structural mental health discrimination in the application of Title III of the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. § 12181 *et seq.*, 12102; 28 C.F.R. § 36.104. The constitutional question of accommodations for pro

se litigants with mental and behavioral health disabilities in the court procedural process and courtroom proceedings remains unanswered.

This decision reverses an established principle of law, Pro Se litigants not be held to the same standards as Attorney's. Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990); Hulsey v. Ownes 63 F3d 354 (5th Cir 1995); HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991); Puckett v. Cox 456 F2d 233 (1972 Sixth Circuit USCA; Conley v. Gibson, 355 U.S. 41 at 48 (1957); and Rule 8(f) FRCP.

Furthermore, this decision negatively reflects on the rights of individuals with mental and behavioral health disabilities. June 3, 2013, President Obama raised these questions on mental and behavioral health civil rights to a level of major concern, due to public concerns and interest resulting from increases in suicide, homicide, and mass killings prompted by the December 14, 2014 Sandy Hook School Shootings, and others mental health related issues.

Publication of this opinion is of great importance for review by the State of Washington Supreme Court to ensure judicial adherence to federal and state constitutional laws. Dr. Grant wish to file a published opinion before the end her statute of limitations (June 29, 2014).

Dr. Grant ask for ADA accommodations in wavering the filing of her motion, because her health requires her to learn and comprehend the legal process, application of procedural information, and communicate her request at a pace that cannot be equivalent to that of an Attorney.

DATED this 6th day of June, 2014.



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§ 35.130 General prohibitions against discrimination.

Code of Federal Regulations Title 28. Judicial Administration Effective: March 15, 2011 (Approx. 523 pages)

Code of Federal Regulations
 Title 28. Judicial Administration
 Chapter I. Department of Justice
 Part 35. Nondiscrimination on the Basis of Disability in State and Local Government
 Services (Refs & Annos)
 Subpart B. General Requirements

Unconstitutional or Preempted Prior Version Limited on Constitutional Grounds by *Klingler v. Director,*
 Dept. of Revenue, State of Missouri 8th Cir.(Mo.) May 03, 2004

Proposed Regulation

Effective: March 15, 2011

28 C.F.R. § 35.130

§ 35.130 General prohibitions against discrimination.

Currentness

<For statute(s) affecting validity, see: 42 U.S.C.A. § 12101 et seq.>

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability--

- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
- (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
- (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
- (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

- (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
- (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.
- (4) A public entity may not, in determining the site or location of a facility, make selections--
- (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
- (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.
- (5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
- (6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.
- (7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- (8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.
- (c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.
- (d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- (e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.
- (2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.
- (f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
- (g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
- (h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Credits

[Order No. 3180-2010, 75 FR 56178, Sept. 15, 2010]

§ 15.7 Intimidatory or retaliatory acts prohibited.

Code of Federal Regulations Title 7. Agriculture (Approx. 3 pages)

Code of Federal Regulations

Title 7. Agriculture

Subtitle A. Office of the Secretary of Agriculture

Part 15. Nondiscrimination (Refs & Annos)

Subpart A. Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture--Effectuation of Title VI of the Civil Rights Act of 1964 (Refs & Annos)

7 C.F.R. § 15.7

§ 15.7 Intimidatory or retaliatory acts prohibited.

Currentness

No recipient or other person shall intimidate, threaten, coerce, or **discriminate** against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or the regulations in this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulations in this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of the regulations in this part, including the conduct of any hearing or judicial proceeding arising thereunder. SOURCE: 29 FR 16274, Dec. 4, 1964; 29 FR 16966, Dec. 11, 1964, unless otherwise noted.

AUTHORITY: 78 Stat. 252; 80 Stat. 379; 87 Stat. 394, as amended by 92 Stat. 2955; 42 U.S.C. 2000d-1; 5 U.S.C. 301, 29 U.S.C. 794, unless otherwise noted.

LAW REVIEWS

Jim "USDA" Crow: Symptomatic **discrimination** in agriculture. 8 Drake J. Agric. L. 237 (Spring, 2003).

Current through June 19, 2014; 79 FR 35278.

Putman v. Wenatchee Valley Medical Center, P.S.

Supreme Court of Washington, En Banc. September 17, 2009 166 Wash.2d 974 216 P.3d 374 (Approx. 16 pages)

Declined to Follow by Hebert v. Hopkins, Tex.App.-Austin, March 1, 2013

166 Wash.2d 974
 Supreme Court of Washington,
 En Banc.

Kimme PUTMAN, Appellant,

v.

WENATCHEE VALLEY MEDICAL CENTER, P.S., a Washington
 professional service corporation; Patrick J. Wendt, M.D.; David B.

Levitsky, M.D., Respondents,

and

Shawn C. Kelley, M.D.; John Doe No. 1; John Doe No. 2; Jane Doe No. 1;

and Jane Doe No. 2, Defendants.

No. 80888-1. Argued Feb. 24, 2009. Decided Sept. 17, 2009.

Synopsis

Background: Patient brought medical malpractice action against doctors and **medical center**, alleging defendants negligently failed to diagnose her ovarian cancer. The Superior Court, Chelan County, John E. Bridges, J., dismissed action for failing to file certificate of merit from a medical expert. Patient appealed.

Holdings: The Supreme Court, Owens, J., held that:

- 1 certificate of merit statute violated patient's right of access to courts;
- 2 medical malpractice claims were not exempt from civil rules;
- 3 statute conflicted with civil rules regarding pleadings; and
- 4 statute violated separation of powers.

Reversed and remanded.

Madsen, J., concurred and filed opinion joined by J. Johnson, J.

West Headnotes (19)

Change View

- 1 **Appeal and Error**  Cases Triable in Appellate Court
 Supreme Court reviews the constitutionality of a statute de novo.
 4 Cases that cite this headnote
- 2 **Civil Rights**  Due process of law and equal protection
 The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury; one of the first duties of government is to afford that protection.
 2 Cases that cite this headnote
- 3 **Constitutional Law**  Right of access to the courts and a remedy for injuries in general
 The people have a right of access to courts; indeed, it is the bedrock foundation upon which rest all the people's rights and obligations.
 1 Case that cites this headnote
- 4 **Pretrial Procedure**  Right to Discovery and Grounds for Allowance or Refusal
 Right of access to courts includes the right of discovery authorized by the civil rules.

RELATED TOPICS

Traditional Doctrine of Separation of Powers of Three Branches of Government

Health

Malpractice, Negligence, or Breach of Duty
 Medical Malpractice Plaintiff Expert Report

Establishment, Organization, and Procedure

Rules of Procedure of the Supreme Court

8 Cases that cite this headnote

5 Pretrial Procedure  Nature and Purpose

Extensive discovery is necessary to effectively pursue either a plaintiff's claim or a defendant's defense.

4 Cases that cite this headnote

6 Constitutional Law  Conditions, Limitations, and Other Restrictions on Access and Remedies

Health  Validity

Statute requiring medical malpractice plaintiffs to submit a certificate of merit from a medical expert prior to discovery violates their right of access to courts; obtaining the evidence necessary to obtain a certificate of merit may not be possible prior to discovery, when health care workers can be interviewed and procedural manuals reviewed. West's RCWA 7.70.150.

11 Cases that cite this headnote

7 Courts  Nature of judicial determination

It is the duty of the courts to administer justice by protecting the legal rights and enforcing the legal obligations of the people.

8 Constitutional Law  Separation of Powers

The doctrine of separation of powers divides power into three co-equal branches of government: executive, legislative, and judicial.

9 Constitutional Law  Separation of Powers

The doctrine of separation of powers does not depend on the branches of government being hermetically sealed off from one another, but ensures that the fundamental functions of each branch remain inviolate.

1 Case that cites this headnote

10 Constitutional Law  Encroachment in general

If the activity of one branch of government threatens the independence or integrity or invades the prerogatives of another, it violates the separation of powers.

1 Case that cites this headnote

11 Constitutional Law  Nature and scope in general

Some fundamental functions are within the inherent power of the judicial branch, including the power to promulgate rules for its practice.

12 Courts  Operation and Effect of Rules

If a statute appears to conflict with a court rule, the Supreme Court will first attempt to harmonize them and give effect to both, but if they cannot be harmonized, the Court rule will prevail in procedural matters and the statute will prevail in substantive matters.

7 Cases that cite this headnote

13 Attachment  Nature and purpose of remedy

Certiorari  Jurisdiction

Courts  Matters Subject to Regulation

Mandamus  Jurisdiction and authority

Workers' Compensation  Nature and form in general

"Special proceedings," which are exempt from civil rules, include only those proceedings created or completely transformed by the legislature; this would include actions unknown to common law such as attachment, mandamus, or certiorari, as well as those where the legislature has exercised its police power and entirely changed the remedies available such as the workers'

compensation system. CR 81(a).

1 Case that cites this headnote

- 14 Health**  Malpractice, Negligence, or Breach of Duty
Medical malpractice claims are fundamentally negligence claims, rooted in the common law tradition.

2 Cases that cite this headnote

- 15 Health**  Actions and Proceedings
Medical malpractice suits do not qualify as special proceedings and are not exempt from the civil rules. CR 81(a).

1 Case that cites this headnote

- 16 Health**  Affidavits of merit or meritorious defense; expert affidavits
Statute that required patient in medical malpractice action to submit a certificate of merit from a medical expert with pleadings directly conflicted with civil rule, which stated that attorneys did not have to verify pleadings in medical malpractice actions, as well as rule, which detailed system of notice pleading. West's RCWA 7.70.150; CR 8, 11.

4 Cases that cite this headnote

- 17 Pleading**  Sufficiency of allegations in general
Under "notice pleading," plaintiffs use the discovery process to uncover the evidence necessary to pursue their claims. CR 8.

5 Cases that cite this headnote

- 18 Courts**  Operation and Effect of Rules
If a court rule and a statute cannot be harmonized, the court rule will prevail in procedural matters and the statute will prevail in substantive matters; "substantive law" creates, defines, and regulates primary rights, while "procedures" involve the operations of the courts by which substantive law, rights, and remedies are effectuated.

5 Cases that cite this headnote

- 19 Health**  Affidavits of merit or meritorious defense; expert affidavits
Statute that required patient in medical malpractice action to submit a certificate of merit from a medical expert with pleadings was a procedural statute that conflicted with court rules regarding notice pleading and verification of pleadings, and thus, it violated separation of powers and did not prevail over conflicting court rules; the statute did not address the primary rights of either party, but rather dealt only with the procedures to effectuate those rights. West's RCWA 7.70.150; CR 8, 11.

7 Cases that cite this headnote

West Codenotes

Held Unconstitutional

West's RCWA 7.70.150

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington that the following is true and correct: That on the date indicated below, I have sent Dr. Grant's State of Washington Supreme Court Petition for Review as follows:

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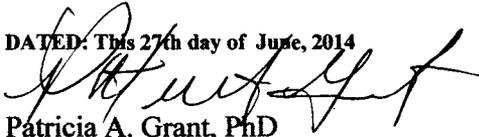
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