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SUPREME COURT
OF THE STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION I
No: 70830-9-I

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRF

STEVEN W. HYDE and SANDRA D. BROOKE, husband and wife

Petitioners,

vs.

THE ASSOCIATION OF UNIVERSITY PHYSICIANS d/b/a UW
PHYSICIANS, a Washington corporation,

Respondent.

PETITION FOR REVIEW

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1. IDENTITY OF PETITIONERS. Petitioners Steven W. Hyde and Sandra D. Brooke are husband and wife. They were plaintiffs in the Superior Court action and respondents in the Court of Appeals. They seek review of the Court of Appeals decision terminating review designated in Part 2 of this Petition.

2. CITATION TO COURT OF APPEALS DECISION. Petitioners seek review of the published opinion in Steven W. Hyde and Sandra D. Brooke, husband and wife v. University of Washington Medical Center, State of Washington, and the Association of University Physicians, d/b/a UW Physicians, Cause No. 70830-9-1. The published opinion was filed April 13, 2015. The only defendant involved in the Court of Appeals case is The Association of University Physicians d/b/a UW Physicians, which is a private corporation. A copy of the published opinion is in Appendix A at pages 1 through 12.

3. ISSUES PRESENTED FOR REVIEW

A. Is a significant question of constitutional law presented where Article 1, Section 12 of the Washington Constitution provides: “No law shall be passed granting to any . . . corporation other than municipal, privileges or immunities which upon the same terms shall not belong equally to all . . . corporations” and the Court of Appeals finds the claim filing requirement of RCW 4.92.110 applies to private corporations created by the

state even though the legislature did not include such a requirement in the statute?

B. Is a significant constitutional issue related to separation of powers presented where Article 2, Section 26 of the Washington Constitution provides the legislature shall direct “in what manner, and in what courts, suit may be brought against the state” and the Court of Appeals, not the legislature, adds private corporations created by the state to the claim presentation statute.

C. RCW 4.92.110 imposes a claim presentation requirement prior to commencement of tort actions “against the state, or against the state’s officers, employees, or volunteers, acting in such capacity.” Is the Court of Appeals decision, which adds private corporations established by the state to the list enumerated by the legislature in conflict with longstanding Supreme Court precedent which states the courts will not add words to an unambiguous statute?

D. Is there a substantial public interest in having those entities which are subject to the claim filing requirement of RCW 4.92.110 clearly and unambiguously identified by the statute?

4. STATEMENT OF THE CASE.

The Association of University Physicians dba UW Physicians (hereinafter referred to as “the Association”) is a private, non-profit

corporation created under Chapter 24.03 RCW. CP 145. It is not a municipal corporation; it is not a “public corporation” created pursuant to RCW 35.21.730. Nevertheless, it seeks application of the claim filing requirement of RCW 4.92.110 to achieve dismissal of Steven Hyde’s medical negligence claim against it.

The purpose of the Association is to provide patient care, among other things. CP 146. The Association pays its physicians for medical services rendered. CP 147. All patient care services rendered by physician members of the Association are billed for and collected on behalf of the Association. CP 149. The Association has no claim upon the University salary of any of its members. CP 149. Association funds are kept in accounts or investments separate from those of the School of Medicine and the University of Washington. CP 149. The Association is required to reimburse the University of Washington for expenses directly attributable to the generation or collection of physician fee income by physician members of the Association. CP 151. The Association reimburses the University for its share of the cost of professional liability insurance and the risk management program administered by the University of Washington. CP 151.

Dr. Virany Hillard was apparently the physician whose negligence led to Steven Hyde’s injuries. Dr. Hillard was a physician member of and

employed by the Association. CP 143. She is not a party to this action. She is an employee of the Association. Her faculty appointment letter states: “As a faculty member you will have membership and employment with the University of Washington Physicians” CP 143. University of Washington Physicians is the Association.

The Association billed Steven Hyde for medical care rendered him by Dr. Hillard. CP 160. The Association bill stated: “IMPORTANT: This statement reflects Physician services only. You may receive a separate statement for hospital/clinic charges.” CP 157.

Steven Hyde filed suit against the Association for alleged negligence by its employee, Dr. Hillard. CP 1. He did not file an RCW 4.92.110 claim before filing suit against the Association. The Association moved for dismissal on that basis. The superior court denied the motion. CP 79 and 92.

Because the issue involved was one of first impression with potentially dispositive impact, both sides and the superior court supported discretionary review, which was granted. The Court of Appeals reversed the order denying summary judgment in an opinion which was filed April 13, 2015. Appendix A. No motion for reconsideration was made.

5. SUMMARY OF ARGUMENT

The issue of whether the claim presentation statute can be

expanded beyond the language of the statute to include private corporations is an issue of first impression. The Court of Appeals should not have added a category of entity to which the claim presentation requirement of RCW 4.92.110 applies that is not listed in the statute. In particular the Court of Appeals should not have added a new category and then applied it retroactively to dismiss this cause. Further, the Court of Appeals interpretation is at odds with the Washington State Constitution's prohibition of special privileges and immunities to non-municipal corporations and, also, usurps the power of the legislature conferred by the Constitution with respect to suit against the state, thereby creating a violation of separation of powers.

6. ARGUMENT

- A. The Court of Appeals' interpretation of RCW 4.92.110 creates a violation of the Washington State Constitution.

The addition of private corporations to the RCW 4.92.110 claim presentation requirement by the Court of Appeals constitutes an interpretation of the statute which would render it unconstitutional on two grounds. First, it would violate Article I, Section 12 by conferring special privileges and immunities on a private corporation which do not belong equally to all corporations. Second, it would violate separation of powers by usurping the role of the legislature, which under Article II, Section 26

is given the power to direct “in what manner, and in what courts, suit may be brought against the state.”

The Association of University Physicians is a private, nonprofit corporation set up under Chapter 24.03 RCW. It is not a municipal corporation; it is not a “public corporation” set up under RCW 35.21.730. The Washington State Constitution prohibits the Association from being treated differently from any other corporation. The special claim filing requirement of Chapter 4.92 RCW cannot be applied to the Association without violating Art. 1, §12 of the Washington State Constitution.

Art. 1, §12 prohibits special privileges and immunities. It states:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not belong equally to all citizens, or corporations.

Constitution of the State of Washington, Art. 1, §12. The Constitution at Article 1, §29 states: “The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.” *Id.*

Ockletree v. Franciscan Health System, 179 Wn.2d 769, 317 P.3d 1009 (2014) analyzes Article I, Section 12 of the Washington Constitution. Ockletree pointed out that section 12 was passed “during a period of distrust toward laws that served special interests.” *Id.* at 775.

The Supreme Court pointed out that “the purpose of Article I, Section 12 is to limit the sort of favoritism that ran rampant during the territorial period.” In particular Ockletree notes:

Although the text of the clause was modeled after a similar provision in Oregon’s 1859 Constitution, Washington’s framers explicitly broadened the reach of the clause by including “corporations” in the language of Article I, Section 12.

Id.

Ockletree outlines a two step analysis for determining whether Article I, Section 12 is violated:

The first step is to analyze whether the law in question involves a privilege or immunity. If there is no privilege or immunity involved, then Article I, Section 12 is not implicated. If, on the other hand, the law involves a privilege or immunity, the second step in the analysis asks whether the legislature had a “reasonable ground” for granting the privilege or immunity.

Id. at 776 [citations omitted].

As interpreted by the Court of Appeals, RCW 4.92.110 confers a privilege or immunity to non-municipal private corporations established by the State not available to other corporations. “Claims filing laws serve the important function of fostering inexpensive settlement of tort claims.” Daggs v. City of Seattle, 110 Wn.2d 49, 53, 750 P.2d 626 (1988). Claim filing statutes further provide a waiting period for the state to investigate a

case prior to suit being filed. “It is generally accepted that one of the purposes of the claim filing provisions is to allow government entities time to investigate, evaluate and settle claims.” Medina v. Public Utility Dist. No. 1 of Benton County, 147 Wn.2d 303, 310, 53 P.3d 993 (2002). The Court of Appeals with its decision has extended the privilege of time to investigate, evaluate and settle claims prior to commencement of an action to private corporations established by the state. This privilege does not exist for other private corporations. The first prong of the analysis is met.

The second prong of the analysis requires inquiry into whether “the legislature” had a reasonable ground for granting the privilege or immunity. In the case at bar the legislature did not grant the privilege at all. The Court of Appeals granted the privilege. Since the application of the claim presentment requirement to private corporations is a creation of the Court of Appeals in this case, it cannot be said the legislature had reasonable grounds for granting it.

Not only has the Court of Appeals created a privilege not available to other private corporations, but it has created a circumstance where it is difficult to even determine whether a claim has to be presented before filing suit. Under the Court of Appeals decision a trap is created for individuals who bring actions against private corporations established by

the state. It is not necessarily clear that a private corporation is in fact a creation of the state. For example Appendix D contains a copy of the Secretary of State website filing for The Association. There is nothing to indicate that the state is in any way involved with the corporation. Tort victims would be placed in a circumstance where they may not be able to know whether or not the corporation is one for which a claim needs to be presented until after discovery is conducted. This would be too late, since claim presentation is required before commencement.

The Court of Appeals, by adding private corporations created by the State to the claim presentation statute, also, violates separation of powers doctrine. “The Washington State Constitution does not contain a formal separation of powers clause, but the very division of our government into different branches has been presumed throughout our state’s history to give rise to a vital separation of powers doctrine.”

Putnam v. Wenatchee Valley Medical Center, 166 Wn.2d 974, 980, 216 P.3d 374 (2009) [internal quotation marks omitted].

Article II, Section 26 of the Washington Constitution states: “The legislature shall direct by law, in what manner, and in what courts, suit may be brought against the state.” In the case at bar the Court of Appeals has added an entity to the claim presentation statute which was not included in that statute by the legislature.

The Court of Appeals by adding private corporations to the list of entities requiring RCW 4.92.110 claim presentation invades the province of the legislature by adding private corporations to the list of entities subject to the claim presentation requirement and by doing so violates separation of powers doctrine. The determination of entities subject to the claim presentation requirement is for the legislature, not the Court of Appeals.

The Association cannot receive the benefit of Chapter 4.92 RCW's claim presentation requirement without violation of the state constitution. It is neither municipal corporation nor "public" corporation, and, if it were to receive the benefit of the claim filing requirement of Chapter 4.92 RCW, it would be recipient of a privilege or immunity which does not exist for other corporations. Further, the legislature, not the Court of Appeals has the power to determine what entities are subject to the claim presentation requirement.

B. RCW 4.92.110 is unambiguous and adding language to the statute by the Court of Appeals was error.

The language of RCW 4.92.110 is unambiguous. It requires claim presentation prior to commencement of actions "against the state, or against any state officer, employee, or volunteer." It does not name private corporations set up by the state. There is nothing ambiguous about

any of the listed categories. The Court of Appeals has chosen to add private corporations established by the state to the statute.

The Washington Supreme Court has stated: “We cannot add words or classes to a statute when the legislature has chosen not to include that language.” Dot Foods, Inc. v. Washington Dept. of Revenue, 166 Wn.2d 912, 920, 215 P.3d 185 (2009).

“Statutory interpretation begins with the statute’s plain meaning. . . while we look to the broader statutory context for guidance, we must not add words where the legislature has chosen not to include them. . . if the statute is unambiguous after a review of the plain meaning, the court’s inquiry is at an end.”

Lake v. Woodcreek Homeowners Ass’n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). [citations and quotation marks omitted].

Applying these principals to the case at bar, it is clear the Court of Appeals has improperly added language to an unambiguous statute. The legislature did not choose to include private corporations in its list of entities requiring claim presentation prior to lawsuit commencement. It only includes the state and the state’s officers, employees or volunteers. RCW 4.92.110. The statute would have to be expanded beyond its plain language to impose a claim filing requirement on actions against the Association, a private corporation.

The legislature in RCW 4.92.110 passed legislation requiring claim presentation prior to commencement of lawsuits against the state. The legislature did not legislate that private corporations were subject to the claim filing requirement, and it is not as if this was oversight, since the legislature specifically included municipal corporations and quasi-municipal corporations in RCW 4.96.010, the claim presentation statute applicable to local government entities.

The Association cited Good v. Associated Students, 86 Wn.2d 94, 542 P.2d 762 (1975) as support for its contention a claim must be filed pursuant to Chapter 4.92 RCW before an action can be commenced against it. The Association's argument was that, despite its own corporate status, it is in effect the State of Washington.

Good involved suit by some disgruntled students. The Supreme Court described the issues before it as follows:

Plaintiffs raise two primary issues: (1) Does the University have the authority to allocate funds to the ASUW? (2) Are students' first amendment rights violated by (a) the requirement that they be members of the ASUW; (b) that they are charged a fee to support the ASUW?

Id. at 96. The case had nothing to do with the claim filing statute.

Chapter 4.92 RCW was in no way involved and was not discussed in the opinion.

Good should not be used to expand the claim filing requirement of Chapter 4.92 RCW to include non-municipal corporations when the statute does not plainly so state. There is no case applying the claim filing requirement as advocated by the Association. The claim statute should not be so expanded.

The fact that the ASUW can be considered an arm of the state for purposes of the First Amendment does not mean the Association should be considered an arm of the state for purposes of application of Chapter 4.92 RCW.

There is no case where a private corporation set up pursuant to Chapter 24.03 RCW has been found subject to the claim filing requirement of Chapter 4.92 RCW. It cites Woods v. Bailet, 116 Wn.App. 658, 67 P.3d 511 (2003), but Woods involves a “public corporation” created by the City of Seattle pursuant to RCW 35.21.730, which allows cities or counties to set up public corporations. It does not involve a private corporation set up by the University pursuant to Chapter 24.03.

Additionally, Woods involved a different claim statute which the court recognized was ambiguous, Chapter 4.96 RCW. It noted Chapter 4.96 RCW applied to “quasi municipal corporations,” an undefined term. It found the involved entity qualified under the statute as a “quasi municipal corporation” and that the filing requirement applied.

Chapter 4.92 RCW does not include “quasi municipal corporations” or any other ambiguous term that could give rise to a claim filing requirement applicable here. The Association is not the state, it is not an officer of the state, it is not an employee of the state, and it certainly is not a volunteer. There is no category in Chapter 4.92 RCW, ambiguous or otherwise, which fits the Association. The court would have to change the meaning of unambiguous statutory language for a claim filing requirement to be imposed on actions commenced against the Association.

The Association also cited Kleyer v. Harborview Medical Center, 76 Wn.App. 542, 887 P.2d 468 (1995). In Kleyer the court was not dealing with application of RCW 4.92.110 to a private corporation. Harborview was owned by King County and operated by the University of Washington. The Kleyer plaintiffs tried to argue RCW 28B.20 provided the exclusive method for bringing suit against the University of Washington and that Chapter 4.92 RCW accordingly did not apply. Kleyer simply held RCW 28B.20 does not alter the claim filing requirements of Chapter 4.92 RCW.

Hardesty v. Stenchever, 82 Wn.App. 253, 917 P.2d 577 (1996) was also cited as support for its position by the Association. Hardesty involved a UW doctor who was personally named. The care he provided was within the scope of his employment with the University of

Washington. Under those circumstances a claim pursuant to Chapter 4.92 RCW was deemed necessary. In contrast the physician's care in the case at bar was in the course of her employ by the Association, a separate, private corporation. In that circumstance no claim is required.

The claim filing requirement should not be extended to private corporations where the statute provides it only applies to claims "...commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity. . . ." RCW 4.92.110. The statute is not ambiguous; private corporations, regardless of who established them, are not included

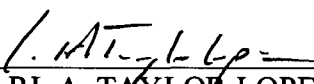
No court has before held the claim filing requirement applicable to the circumstance involved here.

7. CONCLUSION.

The Court of Appeals decision should be reversed. This cause should be remanded for trial.

Dated this 13TH day of May, 2015.

LOPEZ & FANTEL, INC., P.S.



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APPENDIX A

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

STEVEN W. HYDE and)
SANDRA D. BROOKE, husband)
and wife,)
)
Respondents,)
)
v.)
)
UNIVERSITY OF WASHINGTON)
MEDICAL CENTER, STATE OF)
WASHINGTON, and THE)
ASSOCIATION OF UNIVERSITY)
PHYSICIANS, d/b/a UW PHYSICIANS,)
)
Petitioners.)
_____)

No. 70830-9-I

PUBLISHED OPINION

FILED: April 13, 2015

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VERELLEN, A.C.J. — A nonprofit corporation that is functionally an arm of the state is subject to the tort claim filing requirements of RCW 4.92.100 and .110. The Association of University Physicians, d/b/a UW Physicians (UWP), a nonprofit corporation, provides physician services by University of Washington (UW) medical school faculty at hospitals operated by the university. UWP was created to serve the purposes of, and is controlled by, the UW School of Medicine, a state agency. Because UWP functions as an arm of the state and exposes state funds to liability, it constitutes a state entity for purposes of tort claim notice requirements. Accordingly, we reverse the trial court’s denial of summary judgment.

FACTS

On August 27, 2012, Steven Hyde and his wife Sandra Brooke brought a medical malpractice suit alleging that Dr. Virany Hillard was negligent in providing medical care to Hyde at the UW Medical Center in August 2009. Dr. Hillard, a neurosurgeon, was a member of UWP and was on the UW School of Medicine faculty at the time. UWP provides physician services at the UW Medical Center. All its members are physicians who are faculty members at the UW School of Medicine with no independent private practice. The complaint did not name Dr. Hillard as a defendant, but named the State of Washington, the UW Medical Center, and UWP.

The defendants moved for summary judgment based on Hyde's failure to submit a notice of tort claim before commencing the action as required by RCW 4.92.100 and .110 for tort claims against a state entity. The trial court granted the motion as to the State of Washington and the UW Medical Center, but denied it as to UWP. The court concluded that UWP is not a municipal corporation, but is a nonprofit corporation dealing with the public at large and therefore, RCW 4.92.110 does not apply. This court granted UWP's motion for discretionary review.

DISCUSSION

UWP contends that it is a state entity subject to the tort claim filing requirements of RCW 4.92.100 and .110. We agree.

When reviewing an appeal from summary judgment, we engage in the same inquiry as the trial court to determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law.¹ Here, the

¹ Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

issue is solely whether, as a matter of law, UWP constitutes a state entity subject to the tort claim filing requirements. We hold that it does.

By enacting chapter 4.92 RCW, the legislature abrogated state sovereign immunity and established procedures for suing the state. Among these are the filing requirements provided in RCW 4.92.100 and .110, which preclude tort claims against the state unless the plaintiff first files a tort claim with the state's risk management office at least 60 days before commencing the action:

All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, must be presented to the office of risk management.^[2]

No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim is presented to the office of risk management.^[3]

Dismissal is the proper remedy for failure to comply with these tort claim filing requirements.⁴

As both parties acknowledge, our courts have not addressed the precise question of whether an entity such as UWP, which provides physician services in hospitals owned and operated by the university and whose members are UW faculty members, constitutes a state entity for purposes of triggering the tort claim filing requirements of RCW 4.92.100 and .110. But there is case law consistent with recognizing UWP as a functional arm of the state.

² RCW 4.92.100.

³ RCW 4.92.110.

⁴ Oda v. State, 111 Wn. App. 79, 87, 44 P.3d 8 (2002).

Generally, an entity operated and managed by a state agency for a state purpose is considered an arm of the state. For example, in Hontz v. State, the court recognized that, for purposes of immunity from 42 U.S.C. § 1983 civil rights lawsuits, Harborview hospital “is an arm of the State” because it is operated and managed by UW, a state agency.⁵ The court concluded, “It is clear that, in the context of this case, a § 1983 suit against Harborview is in legal effect a suit against the State and cannot, therefore, be maintained.”⁶

Specifically, tort claim notice requirements for state entities extend to those who function on behalf of the state, especially if that activity exposes state funds to liability. In Hardesty v. Stenchever, this court addressed the applicability of the tort claim filing statutes to a doctor employed by the UW Medical Center.⁷ There, a patient brought a medical negligence claim against the state, UW Medical Center, and a doctor employed by the UW Medical Center. The trial court dismissed the claims against the state and the UW Medical Center because the plaintiff failed to comply with the tort claim filing requirements. But the trial court allowed the claim to go forward against the doctor, finding that he was acting in his individual capacity when he made decisions about the patient’s medical care.⁸ This court reversed, concluding that the doctor’s actions were performed within the scope of his official duties at UW.⁹ As the court explained:

⁵ 105 Wn.2d 302, 310, 714 P.2d 1176 (1986).

⁶ Id.

⁷ 82 Wn. App. 253, 917 P.2d 577 (1996).

⁸ Id. at 261.

⁹ Id.

As a physician at the UW, treating patients is his “official” duty. He has no others. Under RCW 4.92, the attorney general is required to defend him and satisfy any judgment against him. The suit, therefore, exposes state funds to liability, making this precisely the type of case to which RCW 4.92 applies.¹⁰

The character and function of UWP are evidenced by its articles of incorporation, bylaws, and operating agreement with the university. UWP is a nonprofit corporation created under chapter 24.03 RCW “for the benefit of the University of Washington School of Medicine exclusively for charitable, educational and scientific purposes, and to aid in performing certain functions of and to carry out certain purposes of the University of Washington School of Medicine.”¹¹ Its principal and income are devoted exclusively to these purposes. UWP is managed and directed by a board of trustees, which includes the chairs of each department of the UW medical school, plus 12 at-large trustees who are voting members of UWP elected by their colleagues and three community members who are appointed by the dean of the medical school. Upon dissolution, UWP’s remaining assets will transfer to the university.

UWP provides physician services only at hospitals owned or managed by UW and other practice sites approved by the medical school dean. The physicians who provide these services must be faculty members of the UW School of Medicine, have no independent private medical practice, and, unless otherwise approved by the medical school dean, must be licensed to practice medicine in Washington. All records of care provided by UWP members at UW facilities are the property of UW.

¹⁰ Id.

¹¹ Clerk’s Papers (CP) at 38.

UWP is responsible for billing for the services rendered by its members and retains payments received as its property. Members are compensated by UWP in addition to their salary as UW faculty employees.¹² Member compensation agreements with UWP are subject to the dean's approval. UWP retains all funds in excess of the annual operating expenses "for the benefit of the School of Medicine, as an Academic Support Fund to be used through the University by the School of Medicine for the educational, research and other institutional needs of the School of Medicine."¹³

As provided in the operating agreement, UWP members are deemed agents of UW for professional liability purposes:

Members of the University's faculty, house staff and students involved in providing health care in University facilities shall be deemed employees and agents of the University for professional liability coverage purposes and self-insurance purposes by the University when providing care to patients in facilities owned or managed by or affiliated with the University as a part of an approved University research or other health care program.^[14]

UWP contends that, as with Harborview, which is only managed and operated by UW, UWP is also "an arm of the state." UWP's analogy to Harborview is persuasive.¹⁵

While Hontz was in the context of state immunity from 42 U.S.C. § 1983 claims, the question there was whether the suit against Harborview was "in legal effect a suit against the State," the same issue presented here.¹⁶ The court concluded that it was a

¹² See CP at 60 ("The Association shall have no claim upon any member's University salary.").

¹³ CP at 70.

¹⁴ CP at 75.

¹⁵ UWP also relies on Kleyer v. Harborview Medical Center, 76 Wn. App. 542, 887 P.2d 468 (1995). Although Kleyer did not analyze whether Harborview was a state entity, it did apply the claim filing requirements to Harborview. Id. at 543.

¹⁶ 105 Wn.2d at 310.

suit against the state because Harborview was operated and managed by UW, a state agency.¹⁷ The court also noted that Harborview's employees are state employees and that claims against UW's operation at Harborview are paid from a fund held by the state treasurer.¹⁸

Similarly, UWP is operated and managed by UW. The operating agreement recites that UWP "has been organized for the purposes of assisting the University School of Medicine in carrying out its charitable, educational, and scientific purposes."¹⁹ Its bylaws recognize UWP is ultimately accountable to the UW School of Medicine: "The functioning of this Association is subject to the policies of the School of Medicine with respect to the practice of medicine in connection with the faculty duties of the members."²⁰ The board of trustees that manages and oversees UWP includes the department heads of the medical school and a minority of community members appointed by the medical school dean. UWP's bylaws state that "[t]he Executive Committee shall be directly accountable to the Board and through it to the Dean."²¹

Additionally, as UW faculty members, all UWP members are also UW employees. Compensation through UWP allows members to provide professional services in conjunction with their role as UW faculty and to be compensated at levels necessary to attract quality physicians, as authorized by the legislature under the single

¹⁷ Id.

¹⁸ Id.

¹⁹ CP at 68.

²⁰ CP at 62.

²¹ CP at 56.

paycheck rule.²² The terms of UWP members' compensation is also subject to the UW medical school dean's approval. Finally, UWP members are deemed agents of UW for professional liability purposes.

Hardesty further supports UWP's position. While Hardesty addressed whether the tort claim filing requirements applied to an individual doctor providing care at UW Medical Center, the reasoning extends to UWP, which fills substantially the same role. In Hardesty, the court held that because the doctor was treating patients at the UW Medical Center in his official duties as a physician at the university, the suit "exposes state funds to liability, making this precisely the type of case to which RCW 4.92 applies."²³ Similarly, UWP acts in its official capacity as the provider of physicians for the UW Medical Center, all of whom are UW faculty employees, and exposes UW funds to liability. As noted above, UW bears financial responsibility for the official acts of UWP physicians as agents of the university.

Further, the use of a separate nonprofit corporation does not preclude the entity from being considered as an arm of the state. UWP contends that it is like UW's student association, Associated Students of the University of Washington (ASUW), which was recognized as an agency of the university in Good v. Associated Students of the University of Washington.²⁴ There, the court rejected the plaintiffs' argument that ASUW, created as a separate nonprofit corporation, was "not an arm and agency of the

²² See RCW 42.52.110 (preventing receipt of additional compensation for performance of official duties except by the state, or "an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency").

²³ 82 Wn. App. at 261.

²⁴ 86 Wn.2d 94, 542 P.2d 762 (1975).

university, but an independent entity.”²⁵ The issue was whether UW had the authority to allocate funds comprised of mandatory student fees to the ASUW, an organization that was created as a separate nonprofit corporation.²⁶ The court held that UW did have the authority to do so, recognizing that it was within UW’s power “to provide student activities and services through a separate nonprofit corporation, so long as that entity is in essence an agency of the university and [is] subject to ultimate control by the board [of regents].”²⁷ Citing statutes granting broad authority to UW and ASUW bylaws and board of regent policy statements recognizing that authority, the court concluded that ASUW was an agency and arm of UW and subject to the board’s ultimate control.²⁸

The trial court here distinguished Good, concluding that UWP “is not a municipal corporation. It is a nonprofit corporation dealing with the public at large, unlike the [ASUW] in Good.”²⁹ But Good did not analyze ASUW as a municipal corporation. It simply recognized that ASUW was created as a nonprofit corporation and “maintains a corporate identity separate from (though intimately connected with) the university.”³⁰ Good concluded that, although created as a separate corporation, ASUW is still an arm and agency of UW because it is subject to ultimate control by the board of regents.³¹ As described above, this is analogous to the function of UWP.

²⁵ Id. at 99.

²⁶ Id. at 96-97.

²⁷ Id. at 97.

²⁸ Id. at 97-98.

²⁹ CP at 83.

³⁰ 86 Wn.2d at 97.

³¹ Id. at 97-98.

Woods v. Bailet further supports applying the tort claim filing requirements to UWP.³² Woods held that the claims filing statute for suits against local governments applied to PacMed, a public corporation created by the city, even though the city provided no funds to PacMed. The court concluded that PacMed, a public corporation created by the city to provide free and low cost health care, fell within the definition of “local government entity,” to which the local government claims filing statute applied.³³ Noting that the legislature intended to cover any corporation created by a local government to provide a public purpose, the court concluded that PacMed was created for such a purpose.³⁴ UWP was not created by a municipality under the same statute at issue in PacMed, but UWP’s purpose and function are nonetheless similar to that of PacMed’s. By analogy, UWP is a state entity to which the tort claim filing statutes apply.

Hyde argues, without citation to authority, that applying the tort claim filing statutes to a corporation like UWP would be unconstitutional under the privileges and immunities clause, article I, section 12 of the state constitution.³⁵ Hyde contends that because UWP is neither a municipal corporation nor a public corporation, “if it were to receive the benefit of the claim filing requirement of Chapter 4.92 RCW, it would be a recipient of a privilege or immunity which does not exist for other corporations.”³⁶ This

³² 116 Wn. App. 658, 67 P.3d 511 (2003).

³³ Id. at 665.

³⁴ Id.

³⁵ “No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not belong equally to all citizens, or corporations.” WASH. CONST. art. I, § 12.

³⁶ Br. of Resp’t at 4.

contention lacks legal and logical basis. As UWP points out, statutes requiring presuit notice of claims against the state are constitutionally authorized by article II, section 26 of the state constitution,³⁷ and have been upheld against constitutional challenge.³⁸ Thus, so long as the entity at issue constitutes an instrumentality of the state for purposes of applying the statute, as is the case with UWP, there is no violation of the privileges and immunities clause.

Hyde also contends that the statute refers only to the state or persons, i.e., “officer, employee or volunteer,” not corporations such as UWP.³⁹ But again, this ignores the essence of UWP’s argument and authority that it is an instrumentality or “arm” of the state, which is necessarily encompassed by the statute’s reference to “the state.”

CONCLUSION

UWP was created by a state entity, UW, to provide public health care on behalf of that entity and to support the public university. UWP was created “for the benefit of” the UW medical school “exclusively for charitable, educational and scientific purposes” and “to aid in performing certain functions of and to carry out certain purposes of” the UW medical school.⁴⁰ UWP is also required “to devote its income to the support of the University” and must retain all of its funds in excess of its annual operating expenses

³⁷ “The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.” WASH. CONST. art. II, § 26.

³⁸ See McDevitt v. Harborview Med. Ctr., 179 Wn.2d 59, 68-69, 316 P.3d 469 (2013) (finding 90-day presuit notice requirement of former RCW 7.70.100(1) (2006) did not violate equal protection).

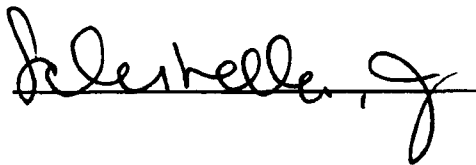
³⁹ Br. of Resp’t at 4.

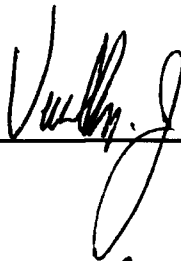
⁴⁰ CP at 38.

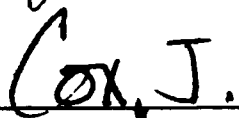
“for the benefit of the School of Medicine, as an Academic Support Fund to be used throughout the University by the School of Medicine for the education, research and other institutional needs of the School of Medicine.”⁴¹ Undisputed facts establish that UWP is operated and managed by the UW School of Medicine, an entity of the state. The activities of UWP subject state funds to liability. Thus, the tort claim filing requirements of RCW 4.92.100 and .110 apply to UWP.⁴²

Accordingly, we reverse the order denying summary judgment and remand for an order dismissing Hyde’s claims against UWP.

WE CONCUR:







⁴¹ CP at 69-70.

⁴² UWP’s reliance on McDevitt, a medical negligence suit brought against the State, Harborview, and UWP, is not persuasive. McDevitt addressed only the constitutionality of the 90-day presuit notice requirement of former RCW 7.70.100(1) as applied to lawsuits against the State. It did not directly or indirectly implicate whether UWP was subject to the tort claim filing requirements. McDevitt, 179 Wn.2d at 68-69.

APPENDIX B



CONSTITUTION OF THE STATE OF WASHINGTON

Legislative Information Center

Revised 01-12-11

ARTICLE I

DECLARATION OF RIGHTS

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

ARTICLE II

LEGISLATIVE DEPARTMENT

SECTION 26 SUITS AGAINST THE STATE. The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

APPENDIX C

RCW 4.92.110**Tortious conduct of state or its agents—Presentment and filing of claim prerequisite to suit.**

*** CHANGE IN 2015 *** (SEE 5024.SL) ***

No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim is presented to the *risk management division. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed. [2009 c 433 § 3; 2006 c 82 § 2; 2002 c 332 § 13; 1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.

[2009 c 433 § 3; 2006 c 82 § 2; 2002 c 332 § 13; 1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.]

NOTES:

***Reviser's note:** The "risk management division" was changed to the "office of risk management" by 2011 1st sp.s. c 43 § 511.

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

RCW 4.96.010**Tortious conduct of local governmental entities — Liability for damages.**

(1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agencies under RCW 39.34.030, or public hospital.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035.

[2011 c 258 § 10; 2001 c 119 § 1; 1993 c 449 § 2; 1967 c 164 § 1.]

Notes:

Short title -- Purpose -- Intent -- 2011 c 258: See RCW 39.106.010.

Purpose -- 1993 c 449: "This act is designed to provide a single, uniform procedure for bringing a claim for damages against a local governmental entity. The existing procedures, contained in chapter 36.45 RCW, counties, chapter 35.31 RCW, cities and towns, chapter 35A.31 RCW, optional municipal code, and chapter 4.96 RCW, other political subdivisions, municipal corporations, and quasi-municipal corporations, are revised and consolidated into chapter 4.96 RCW." [1993 c 449 § 1.]

Severability -- 1993 c 449: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 449 § 15.]

Purpose -- 1967 c 164: "It is the purpose of this act to extend the doctrine established in chapter 136, Laws of 1961, as amended, to all political subdivisions, municipal corporations and quasi municipal corporations of the state." [1967 c 164 § 17.]

Severability -- 1967 c 164: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 164 § 18.]

APPENDIX D

THE ASSOCIATION OF UNIVERSITY PHYSICIANS

UBI Number 600526816
Category REG
Profit/Nonprofit Nonprofit
Active/Inactive Active
State Of Incorporation WA
WA Filing Date 08/30/1983
Expiration Date 08/31/2015
Inactive Date
Duration Perpetual
Registered Agent Information
Agent Name Margaret Peyton
Address 701 5TH AVE #700

City SEATTLE
State WA
ZIP 98104
Special Address Information
Address
City
State
Zip

Governing Persons

Title	Name	Address
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Secretary	FOY, M.D., HUGH	501 EASTLAKE AVE E STE 400 SEATTLE, WA 98109
Vice President	MCGOUGH, M.D., PETER	501 EASTLAKE AVE E STE 400 SEATTLE, WA 98109