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No. 93729-0

SUPREME COURT  
OF THE STATE OF WASHINGTON

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SHERRIE LENNOX, as Personal Representative of the  
ESTATE OF VIOLA WILLIAMS,

Plaintiff/Respondent,

v.

LOURDES HEALTH NETWORK, a Washington non-profit corporation,

Defendant/Petitioner.

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Court of Appeals No. 33201-2-III

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**RESPONDENT SHERRIE LENNOX'S MOTION TO STRIKE  
PETITIONER'S UNAUTHORIZED REPLY**

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## **1. IDENTITY OF MOVING PARTY**

Respondent Sherrie Lennox, as Personal Representative of the Estate of Viola Williams, asks for the relief designated in Part 2.

## **2. STATEMENT OF RELIEF SOUGHT**

Lennox moves to strike Petitioner Lourdes Health Network's Reply as outside the strict limitation of RAP 13.4(d).

## **3. FACTS RELEVANT TO MOTION**

On November 7, 2016, Lennox filed her Answer to Lourdes' Petition for Review, without seeking review of any "new issues" that were absent from Lourdes' Petition. Nevertheless, contrary to RAP 13.4(d), on November 18, 2016, Lourdes filed a Reply on its Petition.

## **4. GROUNDS FOR RELIEF AND ARGUMENT**

RAP 13.4(d) prohibits a party from filing a reply on a petition for review unless the answer to the petition seeks review of new issues that were not raised in the petition:

A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.

The drafters' comment to this portion of the rule (amended in 2006) explains that the amendment was intended to clarify the limitation:

**Purpose:** ... [T]he amendment limits the scope of a reply to an answer to petition for review. Under the current rule, a

party may not file a reply to an answer to a petition for review unless “the answer raises a new issue.” This provision has been subject to abuse by petitioning parties who attempt to cast an answering party's arguments in response to a petition for review as “new issues” in order to reargue issues raised in the petition. The proposed amendment is intended to clarify the rule's purpose by more clearly prohibiting a reply to an answer that is not strictly limited to responding to an answering party's request that the Court review an issue that was not raised in the initial petition for review.

RAP 13.4, Drafters' Comment, 2006 amend., 3 *Wash. Prac., Rules Practice* RAP 13.4 (7th ed.).

Lourdes does not even attempt to argue that Lennox seeks review of any new issues not raised in its petition, to which it could properly reply under RAP 13.4(d). The Reply should be stricken.

DATED November 28, 2016.

Respectfully submitted,

SCHROETER GOLDMARK & BENDER



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REBECCA J. ROE, WSBA #7560  
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WSBA #14120 (Of Counsel)  
Counsel for Respondent Lennox

CERTIFICATE OF SERVICE

On the 28th day of November, 2016, I caused to be served upon the following, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

Jerome R. Aiken, WSBA #14647 Erin E. Moore, WSBA #44779 Meyer Fluegge & Tenney 230 S. Second St. P.O. Box 22680 Yakima, WA 98907 <i>Attorney for Petitioner Lourdes Health Network</i>	<input type="checkbox"/> Via Hand Delivery – ABC Legal <input checked="" type="checkbox"/> Via U.S. Mail, 1 <sup>st</sup> Class, Postage Prepaid <input type="checkbox"/> Via CM/ECF System <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email
West H. Campbell, WSBA #9049 Thorner Kenedy & Gano 101 S. 12 <sup>th</sup> Ave. P.O. Box 1410 Yakima, WA 98907 <i>Attorney for Former Defendant Benton &amp; Franklin County</i>	<input type="checkbox"/> Via Hand Delivery – ABC Legal <input checked="" type="checkbox"/> Via U.S. Mail, 1 <sup>st</sup> Class, Postage Prepaid <input type="checkbox"/> Via CM/ECF System <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 28th day of November, 2016.

*s/ Darla Moran*

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 Darla Moran, Legal Assistant