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WASHINGTON STATE
SUPREME COURT

NO. 93916-1

SUPREME COURT OF THE STATE OF WASHINGTON

DALE ALSAGER, D.O., Ph.D.,

Appellant,

v.

BOARD OF OSTEOPATHIC MEDICINE and SURGERY; WASHINGTON STATE DEPARTMENT OF HEALTH; STATE OF WASHINGTON; JOHN WIESMAN, Dr. PH, MPH and CATHERINE HUNTER, D.O.,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This is Dr. Dale Alsager's third request for this Court to take review and to overturn well-settled principles regarding the nature of civil licensing proceedings. "Quasi-criminal" civil enforcement actions are civil in nature because they are remedial. *United States v. Ward*, 448 U.S. 242, 251-55, 100 S. Ct. 2636 (1980). This Court has held "quasi-criminal" civil licensing actions may warrant heightened due process protections. *Nguyen v. State Dep't of Health Med. Quality Assurance Comm'n,* 144 Wn.2d 516, 527-29, 20 P.3d 689 (2001)(requiring intermediate burden of proof). But Washington has never applied the Fifth Amendment to a civil licensing action as if it were a criminal case. *E.g.*, *Nguyen,* 144 Wn.2d at 516; *In re Johnston,* 99 Wn.2d 466, 663 P.2d 457 (1983).

Even when described as "quasi-criminal," criminal protections are afforded only when proceedings are "so far criminal in their nature" that the defendant cannot be compelled to testify "to matters involving, or that may involve, his being guilty of a criminal offense." *Ward,* 448 U.S. at 253. Traditionally, in civil actions, Washington law recognizes that the Fifth Amendment may be invoked in a civil proceeding "to protect the witness from compulsory disclosure of criminal liability." *Ikeda v. Curtis*, 43 Wn.2d 449, 457-58, 261 P.2d 684 (1953). This Court has consistently

provided such guidance and there is no split among the Washington Courts of Appeal on these issues.

Dr. Alsager attempts to create issues by arguing that "quasi-criminal" means criminal and that, therefore, he is entitled to the full protection of the Fifth Amendment's privilege against self-incrimination. He also argues that the Court of Appeals decision in this case rejecting that argument conflicts with a prior decision of the Court of Appeals. Both of his arguments fail. The Court of Appeals has consistently applied the analysis in *Ward* to determine whether the Fifth Amendment must be applied in a given case. The Court of Appeals in this matter correctly determined by applying the *Ward* analysis that civil licensing actions are not criminal cases for purposes of the Fifth Amendment. *Alsager v. Bd. of Osteopathic Med. & Surgery*, 196 Wn. App. 653, 384 P.3d 641, 647, 650, (2016). Because these arguments lack merit, they raise no significant issue of public importance

Dr. Alsager also argues that Article 1, § 7 and the Fourth Amendment required the Board to obtain a search warrant to procure prescription records because they were his private affairs. This argument also fails because it was previously rejected by the Court of Appeals in *Murphy v. State,* 115 Wn. App. 297, 312-13, 62 P.3d 533 (2003). Thus the Board acted within constitutional bounds in procuring prescription

records. Again, because this argument lacks merit, it raises no significant issue of public importance.

For these reasons, this Court should deny review under RAP 13.4(b).

II. COUNTERSTATEMENT OF THE ISSUES[1]

1. Are the protections of the Fifth Amendment and article I, § 9 of the Washington constitution afforded in criminal cases inapplicable in remedial, civil licensing proceedings which are not designed to punish licensees for criminal conduct?

2. RCW 70.02.050(2) and 70.225.040(3) authorize access to patient medical records, including prescription information, without a search warrant in the course of a properly authorized investigation. Did the Court of Appeals correctly rule that these statutes do not violate the privacy protections and search and seizure requirements of article I, § 7 of the Washington constitution and the Fourth Amendment?

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[1] Dr. Alsager includes two issues in his statement of the issues section which relate only to the procedural rulings on his interlocutory Uniform Declaratory Judgment action. The Court of Appeals addressed these issues in unpublished dicta. Because Dr. Alsager does not address them in his briefing, the Department considers them waived and does not propose counter issues or argument on those topics. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (assignment of error not argued is waived; court does not consider issue without citation to authority).

III. COUNTERSTATEMENT OF THE CASE

Dr. Alsager has a long history of prescribing dangerously addictive drugs without determining whether the drugs are medically necessary. The Board's discipline of Dr. Alsager began in 2006, when the Board obtained information indicating that Dr. Alsager was prescribing addictive and potentially dangerous drugs without first conducting a physical exam or ordering the necessary tests. AR 1817-20.[2] After a full hearing in 2008, the Board determined that seven patients were placed at risk of harm by Dr. Alsager's prescription practices. AR 1845-47. In the resulting 2008 order, the Board held that this disregard for patient safety constituted unprofessional conduct and restricted his license, including his authority to prescribe drugs listed in schedules II and III of the Uniform Controlled Substances Act until he completed a Board approved training course or residency program regarding pain management.[3] AR 1821-49, AR 1846-47. The 2008 order was affirmed in an unpublished opinion. *Alsager v. Wash. State Bd. of Osteopathic Med. & Surgery*, 155 Wn. App. 1016, rev. denied, 169 Wn.2d 1024 (2010) (unpublished).

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[2] "AR" refers to the Administrative Record in this case. This brief cites to the AR because the index to the clerk's papers was prepared prior to submission of the administrative record. RAP 9.7(c).

[3] The Uniform Controlled Substances Act establishes a "schedule" or classification system for drugs. *See* RCW 69.50. Drugs are placed in Schedules II and III upon a finding that their abuse could lead to psychological or physical dependence. RCW 69.50.205(3), RCW 69.50.207(3).

While Dr. Alsager's license was restricted, in 2012 the Board received a new complaint regarding Dr. Alsager's treatment of one of his patients. After notifying Dr. Alsager of the complaint, the Board exercised its statutory authority to commence an investigation. AR 1857-62; AR 1442-51; RCW 18.130.080(2).

While investigating the complaint, the Board investigator requested that Dr. Alsager provide copies of the patient's medical records and a response to the complaint. AR 1142-44. Dr. Alsager did not answer the request or provide the information. Instead, he petitioned the Board for a declaratory order "to quash the demand to produce records" and declare certain statutes unconstitutional or inapplicable. AR 1711; AR 1442-45; AR 1864-84. The Board denied the petition. AR 1885 -88.

Although Dr. Alsager refused to cooperate, the investigator obtained information from the State's prescription monitoring program, a database which tracks all prescriptions issued in Washington for controlled substances. AR 1922-28. The database revealed that Dr. Alsager prescribed Schedule III drugs to himself and his patients in violation of the 2008 order. AR 1921-28.

The Board authorized additional investigation into Dr. Alsager's violation of the 2008 order. AR 2069; AR 1890. The investigator sent Dr. Alsager a second notification letter and requested medical records for

patients for whom Dr. Alsager had prescribed Schedule II or III controlled substances. AR 1889-93. The investigator also gathered prescription information from pharmacies. AR 1929-55. Dr. Alsager responded by claiming that the Fourth and Fifth Amendments allowed him to refuse to answer questions or provide patients' records because they were his personal, private records. AR 1894-98.

Dr. Alsager sought a second declaratory order with the Board, seeking clarification of whether the 2008 order, prohibiting prescription of schedule II and schedule III controlled substances, "applies only to scheduled opioids used in pain management." AR 1909. The Board again declined to issue a declaratory order, stating that "the Board finds that Petitioner has not demonstrated any uncertainty necessitating resolution exists with regard to the language of the Final Order dated August 14, 2008." AR 1919.

Dr. Alsager then petitioned the superior court under the UDJA for declaratory judgment, contending that the statutes requiring him to testify or produce records were facially unconstitutional. CP1, 4-53.[4] The superior court granted the Board's motion to dismiss under CR 12(b)(1)

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[4] In this consolidated case there are two sets of clerk's papers. References therefore are to CP1 and CP2. CP1 citations refer to the Uniform Declaratory Judgement Action in Thurston County Superior Court Cause No. 13-2-02089-8. CP2 citations refer to the Judicial Review of the Boards Final Order in Thurston County Superior Court Cause No. 14-2-01809-3. These two cases were consolidated for review in the Court of Appeals, Division II, as case no. 47367-4-II. *Alsager,* 384 P.3d at 645.

and (6), finding that the UDJA cannot grant relief on actions governed by the APA and that Dr. Alsager had to utilize the judicial review process under the APA. Dr. Alsager appealed seeking direct review by this Court, this Court denied review and transferred the appeal to the Court of Appeals.

Meanwhile, Dr. Alsager also sued in federal court seeking a declaration that his compelled cooperation with the Board's investigation violated his constitutional rights. The federal court denied relief. *Alsager v. Bd. of Osteopathic Med. & Surgery,* noted at 573 Fed.Appx. 619 (9th Cir. 2014).

Based on the 2012 complaint and investigation, the Board in 2013 summarily suspended Dr. Alsager's license and charged him with unprofessional conduct for: (1) prescribing Schedule III drugs in violation of the Board's 2008 order under RCW 18.130.180(9); and (2) failing to provide the requested patient records under RCW 18.130.180(8). AR 4-10.

In June 2014, the Board conducted a full hearing on the 2013 charges against Dr. Alsager. During the hearing, the Board considered the prescription records from the state prescription monitoring database, pharmacy records, and copies of prescriptions. AR 1921-28; 1929-55. It

also considered the direct and cross-examination of the Board investigator. AR 2007-2125.

Dr. Alsager refused to testify, claiming that the Fifth Amendment protected him from being compelled to testify against himself in a Board disciplinary matter. AR 2056; *see also* AR 2037-46. He also declined to present evidence on his own behalf. The Presiding Officer ruled that the Fifth Amendment protection did not apply and stated he would instruct the panel that they could draw negative inferences from Dr. Alsager's refusal to testify. Following case law that the Fifth Amendment must be invoked question by question and inferences drawn therefrom, the Presiding Officer allowed the Department to pose specific questions to the empty witness stand relying on *Ikeda v. Curtis*, 43 Wn.2d 449, 457-58, 261 P.2d 684 (1953). Dr. Alsager provided no individual responses or invocation of his rights. AR 2056-64.

After the hearing, the Board issued an order that concluded that Dr. Alsager violated RCW 18.130.180(9) by prescribing controlled substances in violation of the Board's 2008 order, and violated RCW 18.130.180(8) by refusing to cooperate with the Board's investigations. In response to Dr. Alsager's refusal to comply with the 2006 and 2008 orders suspending and restricting his prescribing authority,

the Board permanently revoked his osteopathic medical license. AR 1701-17.

The Board denied Dr. Alsager's motion for reconsideration. AR 1808-13. Dr. Alsager appealed to the superior court, which upheld the Board's action. CP2 3-54; CP2 67-68. He then appealed, seeking direct review from this Court of the Board's Final Order, the Order Denying Request for Reconsideration, several prehearing rulings, and the superior court's denial of the petition for judicial review. CP2 69-103. This Court denied and transferred review to the Court of Appeals. The Court of Appeals, in the now consolidated action, affirmed. *Alsager,* 384 P.3d 641. Dr. Alsager timely sought discretionary review in this Court.

IV. REASONS WHY THIS COURT SHOULD DENY REVIEW

This case meets none of the limited circumstances where this Court may choose to accept review. The decision in this case does not conflict with any established precedent; it does not raise any significant constitutional question of law or issue of substantial public interest. Dr. Alsager has thus failed to meet his burden for obtaining review under RAP 13.4(b) and this Court should deny the petition for review.

A. The Board and the Court of Appeals Correctly Followed State And Federal Precedent In Applying The Fifth Amendment

1. The Fifth Amendment's Applicability In Civil Proceedings Is Well-Settled

Washington medical disciplinary proceedings have been considered civil actions since statehood. Laws of Washington, (1889-90), 114-120 §§ 4, 6 (in medical discipline, "all proceedings had therein shall be as prescribed by law in civil cases..." and on appeal from revocation of a physician's license to superior court, "the clerk of the court shall thereupon docket such appeal causes, and they shall stand for trial in all respects as ordinary civil actions ..."). This Court has held that medical disciplinary proceedings are "quasi-criminal" and therefore must employ a heightened burden of proof. *E.g., Nguyen v. State Dep't of Health Med. Quality Assurance Comm'n,* 144 Wn.2d 516, 527-29, 20 P.3d 689 (2001). The Court's application of a heightened burden of proof in a civil proceeding does not convert the proceeding into a criminal case, or entitle the licensee to the full panoply of protections enjoyed by a defendant in a criminal case. *See id.* (clear and convincing evidence required to revoke license to practice medicine, not the beyond a reasonable doubt criminal standard); *In re Johnston,* 99 Wn.2d 466, 474, 663 P.2d 457 (1983) ("quasi-criminal" medical discipline requires due process protections because it involves property interests within the meaning of the Fifth and

Fourteenth Amendments).

Consistent with this Court's decisions, the United States Supreme Court has recognized that "quasi-criminal" civil enforcement actions are civil in nature because they are remedial. *E.g.*, *United States v. Ward*, 448 U.S. 242, 251-55, 100 S. Ct. 2636 (1980). In *Ward*, the Court explained that the civil or criminal nature of the action, not the adjectives with which it is described, determine a litigant's rights under the Fifth Amendment. *Id.* Even when described as "quasi-criminal," criminal protections are afforded only when proceedings are "so far criminal in their nature" that the defendant cannot be compelled to testify "to matters involving, or that may involve, his being guilty of a criminal offense." *Id.* at 253. The Supreme Court stated that *penal* "quasi-criminal" actions are those which impose a penalty of imprisonment or forfeiture of property and have "absolutely no correlation to any damages sustained by society or the cost of enforcing the law," citing *Boyd v. United States*, 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746 (1886). It is only those penal "quasi-criminal" actions which receive criminal protections. *Ward*, 448 U.S. at 253-54.

In this case, Dr. Alsager's licensing proceeding did not trigger the Fifth Amendment because it was a remedial action. The potential penalties were all directly related to the damages caused to the public and focused on ensuring safe and adequate medical care and trust in the medical

profession. Criminal sanctions were not an option as the Board lacks authority to impose any. RCW 18.130.160.

Dr. Alsager is also incorrect in contending that the Court of Appeals decision conflicts with *In re Ruffalo*, 390 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968) and *Spevack v. Klein*, 385 U.S. 511, 87 S. Ct. 625, 17 L. Ed. 2d 574 (1967).

In *Ruffalo*, the United States Supreme Court held that heightened due process and advance notice of disciplinary charges is required in attorney disbarment proceedings. *Ruffalo*, 390 U.S. at 550. This is entirely consistent with the heightened due process the Washington Supreme Court has determined is due in medical disciplinary actions. *See, e.g.*, *Nguyen,* 144 Wn.2d 516. Dr. Alsager received this heightened due process, including notice of the disciplinary charges. AR 04-10.

The United States Supreme Court's decision in *Spevack* is also consistent with this Court's case law. In *Spevack*, the Court reversed a decision disbarring an attorney for merely invoking the Fifth Amendment during bar disciplinary proceedings. *Spevack*, 385 U.S. at 514-16. But in that case, the attorney raised the Fifth Amendment in response to a subpoena demanding tax and financial records and requiring him to testify on issues that could subject him to criminal liability. That fact, not the quasi-criminal nature of the disciplinary action, brought the matter within

the scope of the Fifth Amendment. *Id.* at 516-19. Like *Spevack*, Washington also recognizes that the Fifth Amendment may be invoked in a civil proceeding "to protect the witness from compulsory disclosure of criminal liability." *Ikeda v. Curtis*, 43 Wn.2d 449, 457-58, 261 P.2d 684 (1953). The privileged may be claimed as to each question that may be incriminatory. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 351-69, 16 P.3d 45 (2000), *rev. denied*, 143 Wn.2d 1012 (2001).

The Court of Appeals decision is consistent with Washington and federal case law. The Court of Appeals applied state and federal precedent to conclude that the Board's proceedings to revoke Dr. Alsager's medical license did not violate Dr. Alsager's Fifth Amendment rights. The right against testifying in a civil proceeding "necessarily attaches only to the question being asked and the information sought by that particular question" and "therefore, a person invoking his Fifth Amendment right against self-incrimination to avoid testifying in a civil action must assert that right specifically in response to particular questions or requests for information." *Alsager,* 384 P.3d at 648-49[5], *citing Doe ex. Rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1265 (9th Cir. 2000). Dr. Alsager was required to assert the Fifth Amendment rights

[5] Pin Citations for the November 15, 2016, Alsager opinion by the Court of Appeals are to the Pacific Reporter as there are not pin citation page numbers available at the time of this filing for the Washington Appellate Reports version.

"specifically in response to particular questions or requests for information," not by "invoking blanket constitutional protection to avoid participating in the proceedings." *Alsager,* 384 P.3d at 649, *citing Eastham v. Arndt*, 28 Wn. App. 524, 532, 624 P.2d 1159 (1981).

2. There Is No Split Among the Divisions Of The Court Of Appeals

Consistent with this Court and the United States Supreme Court, the Courts of Appeal have also recognized that "quasi-criminal," civil licensing actions do not give rise to the full scope of constitutional protections applicable in criminal cases.

Dr. Alsager mistakenly contends that the ruling in his case conflicts with the holding in *State v. Ankney,* 53 Wn. App. 393, 766 P.2d 1131 (1989). In reality, *Ankney* supports the decision of the Court of Appeals in this matter. In *Ankney*, Division I examined King County's animal control regulations under the equal protection clause. The regulations permitted authorities to sanction animal control violations with civil penalties or punish them as misdemeanors. Applying *Ward*, the Court of Appeals concluded that the animal control regulations' "civil penalty" was not substantively criminal. *Id.* at 398. *Ankney* did not concern the Fifth Amendment, and mentioned *Boyd* once without analysis:

> *Ward* distinguished between "civil penalties" that are truly civil and those that are criminal in character because the

> Fifth Amendment privilege against compulsory self-incrimination applies 'in any criminal case', U.S. Const. amend. 5, as well as in quasi-criminal cases, *Boyd v. United States,* 116 U.S. 616, 663-34, 6 S. Ct. 524, 533-34, 29 L.Ed, 746 (1886), but not in civil enforcement proceedings. *Ward,* 448, U.S. at 248, 251-55, 100 S.Ct. at 2641- 2642-45.

Ankney, 53 Wn. App. at 397. After applying the *Ward* analysis, the Court held the animal control civil regulations were remedial in nature, and therefore civil, and affirmed that they did not violate equal protection. *Ankney,* 53 Wn. App. at 395-96.

Just as in *Ankney*, the Court of Appeals in this case properly applied the *Ward* analysis to explain why proceedings against Dr. Alsager under the Uniform Disciplinary Act, chapter 18.130 RCW, are not a penal action that triggers criminal rights against compelled self-incrimination. The purpose of the disciplinary sanctions, the Court explained, are primarily remedial and regulatory rather than punitive or for vengeance. *Alsager,* 384 P.3d at 647.

There is no conflict between the Division I and Division II regarding the interpretation of *Ward* or *Boyd.* The holding in *Ankney* is entirely consistent with the Court of Appeals decision in Dr. Alsager's case.

B. The Board Acted Within Constitutional Bounds in Procuring Prescription Records

The Washington legislature, within the constraints of federal HIPAA legislation, enacted a comprehensive set of rules to govern the handling and privacy of personal health information. Chapter 70.02 RCW. To facilitate public health and safety, these laws authorize access to patient medical records, including prescription information, without a search warrant in the course of a properly authorized investigation into alleged unprofessional conduct. RCW 70.02.050(2), RCW 70.225.040(3). As the Court of Appeals properly held, these statutes do not violate the Fourth Amendment or article I, § 7 privacy protections because Dr. Alsager held no privacy interest in the prescription records at issue.

Interpretation of article I, § 7 and the Fourth Amendment both begin "by determining whether the action complained of constitutes a disturbance of one's private affairs. If there is no private affair being disturbed, no article I, section 7 violation exists." *State v. Miles*, 160 Wn.2d 236, 244, 156 P.3d 864 (2007). Only if such an intrusion is found is there an inquiry whether "authority of law" justifies the intrusion. *Id.*

In the present matter, the Court of Appeals determined that the Department did not intrude into Dr. Alsager's private affairs because existing case law holds that there is no privacy interest in prescription

records as to the government. *Alsager*, 384 P.3d at 650, citing, *State v. Young*, 123 Wn.2d 173, 181, 867 P.2d 593 (1994); *Murphy v. State*, 115 Wn. App. 297, 312-13, 62 P.2d 533 (2003).

For example, in *Murphy*, the Court of Appeals addressed whether a patient has a privacy interest in his own prescription records, which would require the government to obtain a search warrant before acquiring the records. The Court of Appeals acknowledged that article I, § 7 provides broader safeguards than the Fourth Amendment, but determined that neither provision provides comprehensive privacy safeguards concerning prescription records. *Murphy*, 115 Wn. App. at 312-13. The Court explained that while patients have long enjoyed an expectation of privacy against public disclosure of their prescription records, the government has enjoyed a long tradition of access and oversight thereof. *Id.* The *Murphy* Court thus held that prescription records are not private affairs where the government is concerned and are not protected by article I, § 7 or the Fourth Amendment because of the long history of government scrutiny of controlled substance prescribing. *Murphy*, 115 Wn. App. at 313.

In Dr. Alsager's case, the Court of Appeals followed this rational, citing state and federal laws which demonstrate that "scheduled controlled substances have been subject to robust governmental regulation at the state

and federal levels for decades, based on the danger they can pose to the public." *Alsager*, 384 P.2d at 650.

The Court went on to note that "we must consider patients' general interest in privacy in light of the State's vital interest in controlling the distribution of dangerous drugs." *Id. citing Whalen v. Roe*, 429 U.S. 589, 598, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977). Because of that "vital interest, patients should reasonably expect prescriptions for such records to be subject to some governmental scrutiny, 'subject,' as noted in *Murphy*, 'to safeguards against unauthorized further disclosure' by officials.'" *Alsager,* 384 P.3d at 650.

Finally, the Court rejected Alsager's reliance on privacy interests of the prescribing physician, noting that physicians, "allowed by law to prescribe controlled substances under RCW 69.50.308, should be even more aware than patients that the government exercises tight regulatory oversight of these controlled substances." *Alsager*, 384 P.3d at 650; *see also Jeckle v. Crotty*, 120 Wn. App. 374, 380-82, 85 P.3d 931 (2004), *rev. denied*, 152 Wn.2d 1029 (2004) (patient records are not the *doctor's* private affair and doctor lacks standing to assert his patients' privacy rights against disclosure of medical records).

The Court of Appeals properly concluded that the statutes which authorized the Board to obtain the records were not facially

unconstitutional. *Alsager*, 384 P.3d at 649-50. Therefore, the Board in this matter did not intrude into a zone of privacy protected by either state or federal constitutions by obtaining prescription records and prescription monitoring plan data. The prescriptions were not Dr. Alsager's private affairs. *Alsager,* 384 P.3d at 649-50. The Court of Appeals properly concluded that records of prescriptions for scheduled controlled substances "are subject to legitimate oversight by appropriate agents of the State if reasonably tailored to the enforcement of state law and if effective safeguards against unauthorized further disclosure are present." *Alsager*, at 17-18; *see, e.g.*, *Whalen*, 429 U.S. 589 (limits on and penalties for further disclosure of prescription records important to constitutionality of statutory scheme).

Dr. Alsager, however, contends that the Court of Appeals' article I, § 7 analysis is flawed because it failed to properly perform a *Gunwall* analysis concerning physician prescription records. *See State v. Gunwall*, 106 Wn.2d 54, 58, 720 P.2d 808 (1986) (establishing non-exclusive criteria for "determining whether, in a given situation, the Washington State Constitution should be considered as extending broader rights to its citizens than the United States Constitution"). But his argument is nothing more than dissatisfaction with the *Gunwall* analysis in *Murphy* concerning article I, § 7's application in the same "given situation" or context. His disagreement with *Murphy* is not enough to prevail on his *Gunwall*

argument. Washington Courts need not engage in a new *Gunwall* analysis each time the same "given situation" or context is presented for review. *See State v. Russell*, 125 Wn.2d 24, 62, 882 P.2d 747 (1994) (Court performed truncated *Gunwall* analysis because party presented novel context; art. 1, § 9 co-extensive with Fifth Amendment).

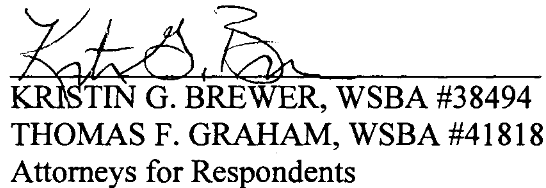
Because his argument lacks merit, Dr. Alsager has failed to meet his burden for obtaining review.

V. CONCLUSION

Nothing in the Court of Appeals decision conflicts with prior case law, raises a significant constitutional question, or involves an issue of substantial public interest. Therefore, discretionary review should be denied.

RESPECTFULLY SUBMITTED this 3rd day of February, 2017.

ROBERT W. FERGUSON
Attorney General



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SUPREME COURT OF THE STATE OF WASHINGTON

DALE E. ALSAGER, D.O., Ph.D., Appellant, v. BOARD OF OSTEOPATHIC MEDICINE and SURGERY; WASHINGTON STATE DEPARTMENT OF HEALTH; STATE OF WASHINGTON, JOHN F. KUNTZ, JOHN WIESMAN, Dr. PH, MPH; and CATHERINE HUNTER, D.O., Respondents.	DECLARATION OF SERVICE

I, Julie Feser, make the following declaration:

1. I am over the age of 18, a resident of Pierce County, and not a party to the above action.

2. On February 3, 2017, I deposited via U.S. mail, postage prepaid, a copy of the Respondents' Answer to Petition for Review to:

RHYS STERLING
PO BOX 218
HOBART, WA 98025-0218

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

DATED this 3rd day of February, 2017 at Olympia, Washington.

JULIE FESER
Legal Assistant