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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN DOE G, JOHN DOE I, JOHN DOE J, and JOHN DOE K,
as individuals and on behalf of others similarly situated,

Respondents,

v.

DEPARTMENT OF CORRECTIONS,

Petitioner,

and

DONNA ZINK,

Petitioner.

ANSWER TO PETITIONS FOR REVIEW

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IDENTITY OF RESPONDENTS

Respondents John Does G, I, J, and K—Plaintiffs below—ask the Court to deny Donna Zink's and the Department of Corrections' petitions for review.

STATEMENT OF THE ISSUES

(1) Are Special Sex Offender Sentencing Alternative (SSOSA) evaluations in the Department of Corrections' custody exempt from production under the Public Records Act?

(2) If SSOSA evaluations are exempt from production under the Public Records Act, did the Court of Appeals rightly decline to order redaction *sua sponte*, and instead allow further proceedings in the trial court on the question of redaction?

(3) After concluding that an exemption applied, did the Court of Appeals act within its discretion by declining to address the propriety of the trial court's injunction under RCW 42.56.540?

(4) Did the Court of Appeals correctly conclude that Article I, section 10 of the Washington Constitution does not apply to litigant pseudonymity?

(5) Did the Court of Appeals correctly conclude that the Public Records Act allows class certification under CR 23?

STATEMENT OF THE CASE

Plaintiffs respectfully refer this Court to the Court of Appeals' statement of the case. *See* Court of Appeals opinion ("slip op.") 2–7.

ARGUMENT

I. The Court of Appeals correctly concluded that SSOSA evaluations are exempt from public inspection and copying under the Public Records Act.

The Public Records Act (PRA) allows the production of public records, but also provides a number of exemptions to production. Some of these "are contained within the PRA itself." *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn.2d 363, 371, 374 P.3d 63 (2016). One of these internal exemptions is for "[c]hapter 70.02 RCW"—also known as the Uniform Health Care Information Act, or UHCIA—which "applies to" production of the "health care information of patients." RCW 42.56.360(2). The PRA also provides that records are exempt from production if they fall within any "other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). Here, the Court of Appeals correctly concluded that SSOSA evaluations are confidential under the PRA and chapter 70.02 RCW.

A. The Court of Appeals correctly concluded that SSOSA evaluations are the "health care of information of patients," and therefore exempt from production under the Public Records Act.

The PRA protects the "health care information of patients," as defined in chapter 70.02 RCW, from production. RCW 42.56.360(2). Under the meaning that chapter 70.02 RCW gives to that term, SSOSA evaluations are exempt from production under the PRA.

1. <u>SSOSA evaluations are "health care information."</u>

"Health care information" is defined by reference to "health care." "Health care information" includes "any information . . . that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care." RCW 70.02.010(16).[1] "Health care," in turn, includes "any care, service, or procedure provided by a health care provider . . . [t]o diagnose, treat, or maintain a patient's physical or mental condition." RCW 70.02.010(14). Putting these definitions together, we see that "health care information" includes information that directly relates to (1) any care, service, or procedure provided by a health care provider (2) to diagnose, treat, or maintain a patient's physical or mental condition, and (3) that identifies or can readily be associated with the identity of a patient. Here, SSOSA evaluations are conducted by a health care provider, directly relate to both diagnosis and treatment, and identify offenders by name.

First, SSOSA evaluations are always "provided by a health care provider." RCW 70.02.010(14); *see* RCW 70.02.010(18). SSOSA evaluations can be performed only by health care professionals who have been licensed to evaluate and treat sex offenders. *See* RCW 9.94A.820(1),

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[1] The version of RCW 70.02.010 that applies to this action, and that is quoted throughout this filing, was enacted by Laws of 2014, ch. 220, § 4. This version took effect July 1, 2014. *See id.* § 17. Zink requested SSOSA evaluations from the DOC on July 28, 2014, CP 33, and this action was filed on September 16, 2014, CP 1.

18.155.020(1)–(2). These professionals must "possess an underlying credential as a licensed health care professional," and must "have extensive training in a mental health field," and "specialty training in the evaluation and treatment of sexual offense behavior." CP 389, ¶ 12.

Next, SSOSA evaluations always include, and therefore directly relate to, a health care provider's "diagnos[is]" of an offender's "mental condition." RCW 70.02.010(14)(a). The statutorily declared purpose of SSOSA evaluations is to determine whether offenders are "amenable to treatment"—i.e., diagnose whether the offender's mental condition is amenable to health care. RCW 9.94A.670(3). And indeed, among the "conclusions and recommendations" that must be included in a SSOSA evaluation are assessments of the offender's mental condition—namely, "the evaluator's diagnostic impressions," and a "specific assessment of relative risk factors." WAC 246-930-320(2)(f)(ii), (iii). Because its very purpose is to diagnose an offender's mental condition and its level of seriousness, a written SSOSA evaluation directly relates to "any care, service, or procedure provided . . . [t]o diagnose, treat, or maintain" an offender's "mental condition." RCW 70.02.010(14).

A SSOSA evaluation also directly relates to the offender's health care because it includes a "proposed treatment plan." RCW 9.94A.670(3)(b). A care, service, or procedure that is provided by a health

care provider[2] to "treat" a patient constitutes "health care," RCW 70.02.010(14), and a proposed treatment plan "directly relates" to the treatment that it envisions, RCW 70.02.010(16).

Finally, SSOSA evaluations identify offenders by name. *E.g.*, CP 416, ¶ 4(b). Hence, they "identif[y] or can readily be associated with the identity of" an offender. RCW 70.02.010(16).

2. <u>An offender receiving a SSOSA evaluation is a "patient."</u>

The remaining question is whether the offenders are "patients." RCW 42.56.360(2). The answer to this question is determined largely by the foregoing discussion about health care and health care information. That is because a "patient" is simply anyone "who receives or has received health care." RCW 70.02.010(31). Because the act of evaluating an offender under the SSOSA statute qualifies as health care, an offender who is evaluated under that statute qualifies as a patient.

The record also proves that offenders are "patients" where SSOSA evaluations are concerned. The Washington Association for the Treatment of Sexual Abusers (WATSA), through its leadership, testified that a SSOSA evaluation is no different from any other clinical evaluation by a

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[2] Under any SSOSA treatment plan, the treatment will be provided by a health care provider. *See* RCW 9.94A.670(13)(b)(ii) (providing that SSOSA treatment must comply with Department of Health guidelines); WAC 246-930-020, 246-930-330 (providing that only credentialed health professionals may provide treatment).

mental health care provider. An evaluator's "clinical approach" to a SSOSA evaluation "is the same as the clinical approach of an evaluator conducting an intake for a non-criminal justice involved person seeking mental health treatment for a sexual behavior problem." CP 387–88, ¶ 9. Two certified sex offender treatment providers also testified that SSOSA evaluations contain the offender's psychological test results, and the offender's medical, mental health, and psychosexual history. CP 410–11, ¶¶ 6–7; CP 416, ¶ 4(b). Both providers testified that they treat SSOSA evaluations just as they would treat any other patient's protected health information, which they keep confidential. CP 410, ¶ 6; CP 416, ¶ 4(c).

B. The Public Records Act makes the "health care information of patients" confidential, and—contrary to Petitioners' newly raised argument—does not merely incorporate the independent confidentiality requirements of chapter 70.02 RCW.

In response to this straightforward application of chapter 70.02 RCW to SSOSA evaluations, Petitioners raise an argument they have not raised previously. *See* Appellant Dep't of Corr. Opening Br. ("DOC Br.") 11–17; Br. of Appellant Donna Zink ("Zink Br.") 37–39. They now argue that even if SSOSA evaluations are the "health care information of patients" under chapter 70.02 RCW, they are not exempt from production under the PRA because chapter 70.02 RCW requires only health care providers, and not others, to keep the health care information of patients

confidential. DOC Pet. 11; Zink Pet. 11–13; *see* RCW 70.02.020 (requiring health care providers to keep health care information confidential). Petitioners, in other words, are now arguing that when the PRA states that chapter 70.02 RCW "applies to public inspection and copying of health care information of patients," RCW 42.56.360(2), it does not make the health care information of patients exempt from public inspection and copying. Instead, they now assert that this provision of the PRA incorporates only those confidentiality requirements that independently exist in chapter 70.02 RCW. This, again, is a new argument. *See* DOC Br. 11–17; Zink Br. 37–39.

Even if this belatedly raised argument were considered, it would have to be rejected. If Petitioners' argument were correct, the relevant PRA exemption, RCW 42.56.360(2), would become superfluous. For the PRA's "other statute" exemption *already* incorporates confidentiality requirements that exist independently of the PRA. *See* RCW 42.56.070(1). Washington courts shun interpretations that make statutory provisions "meaningless or unnecessary." *Cornu-Labat v. Hosp. Dist. No. 2 Grant Cty.*, 177 Wn.2d 221, 231, 298 P.3d 741 (2013). For that reason, the relevant PRA exemption, which states that "[c]hapter 70.02 RCW applies to public inspection and copying of health care information of patients," must be interpreted to provide that the confidentiality protections of

chapter 70.02 RCW "appl[y]" depending solely on whether a public record qualifies as the "health care information of [a] patient[]." RCW 42.56.360(2).

C. Even if Petitioners' newly raised argument were correct, the DOC would still have to keep SSOSA evaluations confidential, because it is a health care provider.

Even if Petitioners' new interpretation of the relevant PRA exemption were correct, they would still be wrong to argue that SSOSA evaluations are not exempt. They argue—also for the first time—that the DOC is not a health care provider and therefore not bound by RCW 70.02.020(1), which provides that, unless otherwise allowed, a health care provider must keep health care information about a patient confidential.

This argument ignores the fact that the DOC *is* a health care provider. A "health care provider" means "a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business." RCW 70.02.010(18). That describes the DOC nicely. For starters, the DOC is a "person." *See* RCW 70.02.010(33) ("person" includes "governmental subdivision or agency"). And Washington law explicitly authorizes—indeed *requires*—the DOC to provide health care to inmates in the

ordinary course of its business of providing correctional services.[3] *See, e.g.*, RCW 72.10.005, 72.10.020; WAC 137-91-010, 137-91-080; *see also McNabb v. Dep't of Corr.*, 163 Wn.2d 393, 406–07, 180 P.3d 1257 (2008).

Petitioners apparently assume, however, that a health care provider need not keep a patient's health care information confidential unless the patient is the health care provider's *own* patient. *See* Zink Pet. 12, 16. This assumption reads a nonexistent requirement into the statute. *See Densley v. Dep't of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007) ("Statutory construction cannot be used to read additional words into the statute."). The statute says that a "health care provider," or its "agent and employee[,] . . . may not disclose health care information about ***a*** patient to any other person without the patient's written authorization." RCW 70.02.020(1) (emphasis added). The statute does not say that the "patient" in question must be the health care provider's *own* patient. Rather, the statute uses the indefinite article—"a"—to refer to the patient whose health care information a health care provider may not disclose. This term broadens the statute to refer to *any* patient—not just a patient of the provider. *See State v. Sweat*, 180 Wn.2d 156, 161–62, 322 P.3d 1213

[3] In fact, it is the DOC's *constitutional duty* to provide basic health care to inmates. *See, e.g.*, *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

(2014) (reading a reference to "a victim" to refer to any victim, rather than just the victim of the currently charged offense). Indeed, when the legislature wanted to pick out a particular patient, it did so by referring, in the same sentence, to "*the* patient's written authorization," RCW 70.02.020(1) (emphasis added), which refers back to the patient that is identified in the "health care information" that the health care provider cannot disclose without authorization.[4] *See Sweat*, 180 Wn.2d at 161. Thus, a health care provider must keep any patient's health care information confidential; the only requirement for confidentiality is that the "health care information" in question be "about" the patient, a requirement that is satisfied here.

Petitioners' reading of RCW 70.02.020(1) conflicts not only with its unambiguous language, but also with its purpose. In enacting chapter 70.02 RCW, the legislature found that "health care providers have an

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[4] The legislature also knows how to pick out a health care provider's *own* patient. It has done so in many different statutes. For just a few examples, see the testimonial privilege statute, which enacts a physician-patient privilege by providing that a physician "shall not, without the consent of *his or her* patient, be examined in a civil action as to any information acquired in attending such patient," RCW 5.60.060(4) (emphasis added); the statute providing that prescription information is confidential, but including a narrow exception allowing disclosure of data to prescribers "for the purpose of providing medical or pharmaceutical care for *their* patients," RCW 70.225.040(3)(a) (emphasis added); or the statute providing that a "physician or hospital" is immune from liability for failing to obtain informed consent "where *its* patient is unable to give his or her consent," RCW 18.71.220 (emphasis added). It chose not to use any of these possessive terms in RCW 70.02.020(1), so "a patient" in RCW 70.02.020(1) does not refer only to a patient of the health care provider. *See, e.g.*, *State v. Flores*, 164 Wn.2d 1, 14, 186 P.3d 1038 (2008) (noting that "when the legislature uses different words in statutes relating to a similar subject matter, it intends different meanings").

interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information." RCW 70.02.005(3). Requiring a health care provider to safeguard any patient's health care information sets a "clear and certain" rule. The duty to keep records confidential thus depends on the records themselves (whether they are "health care information") and who their custodian is (whether it is a "health care provider"). These facts are easily ascertained. Petitioners' position, on the other hand, would require a custodian to figure out what kind of relationship exists or has existed between it and the patient—which may be far harder to determine.

D. Even if Petitioners' newly raised argument were correct—and further, even if the DOC were not a health care provider—the DOC would still have to keep SSOSA evaluations confidential, because SSOSA evaluations are "information or records compiled in the course of providing mental health services."

There is a second reason that the Petitioners are wrong when they argue, for the first time, that SSOSA evaluations are not confidential under the PRA because it incorporates only those confidentiality requirements that independently exist in chapter 70.02 RCW. *See supra* pp. 6–7. Even if that new argument were correct—and even if one also assumes, counterfactually, that the DOC is *not* a health care provider—chapter 70.02 RCW would still require the DOC to keep SSOSA evaluations confidential. That is because SSOSA evaluations fall under another

independent confidentiality requirement in chapter 70.02 RCW: the confidentiality requirement for "information or records compiled . . . in the course of providing mental health services," which binds *every* entity with such information or records in their possession. RCW 70.02.230(1).[5]

1. <u>RCW 70.02.230 imposes confidentiality on *anyone* who possesses "information and records compiled, obtained, or maintained in the course of providing mental health services."</u>

RCW 70.02.230 makes SSOSA evaluations confidential, no matter who has them. RCW 70.02.230's first subsection states that "the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential." RCW 70.02.230(1). This subsection makes confidentiality turn on the *nature* of the "information and records" themselves—i.e., whether they were "compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients . . . at public or private agencies." It does not make confidentiality turn on who holds the information and records. It follows that anyone who holds such information and records must keep them confidential.

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[5] Plaintiffs relied on RCW 70.02.230 below, *see* Corrected Br. of Resp'ts 24, 25-26, but the Court of Appeals did not reach whether it applied here, *see* slip op. 10 n.30.

A later subsection in RCW 70.02.230 reemphasizes that confidentiality here depends on the nature of the records rather than on the nature of the custodian. The last subsection of RCW 70.02.230 provides that "except as provided by RCW 4.24.550, any person may bring an action against *an individual* who has willfully released confidential information or records concerning him or her in violation of the provisions of this section."[6] RCW 70.02.230(6)(a) (emphasis added). This language allows an action against "an individual," and not just against a health care provider or facility. Indeed, if RCW 70.02.230 bound only health care providers or facilities, the subsection providing for a civil remedy would be unnecessary, because a different section *already* creates a civil remedy against "a health care provider or facility who has not complied with" chapter 70.02 RCW. RCW 70.02.170(1).

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[6] As the quote indicates, RCW 70.02.230(6)(a) cross-references RCW 4.24.550, which permits public officials, on their own initiative, to release certain not otherwise confidential information about sex offenders. Presumably, the cross-reference in RCW 70.02.230(6)(a) to RCW 4.24.550 is meant to refer to RCW 4.24.550(7), which generally immunizes public officials from "civil liability for damages" if they release information pursuant to RCW 4.24.550. Note that RCW 4.24.550 explicitly preserves confidentiality requirements found elsewhere, and thus does not call into question the confidentiality of SSOSA evaluations. *See* RCW 4.24.550(9) (the section does not imply that information is confidential "*except as may otherwise be provided by law*" (emphasis added)). This Court recently interpreted RCW 4.24.550 not to forbid the production of sex offender registration forms or the State Patrol's sex offender database; SSOSA evaluations were not at issue. *Doe*, 185 Wn.2d at 380.

2. <u>SSOSA evaluations are information or records compiled in the course of providing mental health services at a public or private agency.</u>

Under RCW 70.02.230, SSOSA evaluations are exempted from production. This is true for two independently sufficient reasons.

First, the plain language of RCW 70.02.230(1) encompasses SSOSA evaluations. When certified sex offender treatment providers evaluate offenders under the SSOSA statute, those offenders thereby become "voluntary . . . recipients of services at public or private agencies."[7] RCW 70.02.230(1). The only remaining question is whether the process of evaluation itself counts as "providing mental health services," such that a written SSOSA evaluation—which is compiled "in the course of" that process—qualifies as information "compiled . . . in the course of providing mental health services." RCW 70.02.230(1). The term "mental health services" is not explicitly defined, *see* RCW 70.02.010, but overlapping language in the definition of "health care" suggests that "mental health services" are a subset of "health care." The term "health care" includes, among other things, a "service . . . provided by a health care provider . . . [t]o diagnose, treat, or maintain a patient's . . . mental condition." RCW 70.02.010(14). As seen above, the process of evaluating

[7] Or, conceivably, "involuntary" recipients. *See* RCW 9.94A.670(3) (providing that a SSOSA evaluation may be ordered on the court's "own motion or the motion of the state," in addition to being ordered on the motion of "the offender").

an offender under the SSOSA statute is a service provided by a health care provider to diagnose a patient's mental condition. *See supra* pp. 3–4. Hence, the written SSOSA evaluation counts as information "compiled . . . in the course of providing mental health services."

Second, the way that RCW 70.02.230 interacts with other provisions shows that it encompasses SSOSA evaluations. RCW 70.02.230(1) mandates confidentiality for information and records compiled in the course of providing mental health services to recipients of services at public or private agencies, but also includes a number of exceptions. Several of these exceptions authorize the release, in certain limited circumstances,[8] of "[i]nformation and records related to mental health services." RCW 70.02.240, 70.02.250(1), 70.02.260(1)(a)(ii). Thus, the information and records that RCW 70.02.230 makes confidential must encompass *at least* "information and records related to mental health services." Otherwise, there would be no need for RCW 70.02.230 to carve out an exception allowing the release of such information and records in certain circumstances. *See City of Seattle v. State*, 136 Wn.2d 693, 702, 965 P.2d 619 (1998) ("The exception of a particular thing from the operation of the general words of a statute shows that in the opinion of the

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[8] No one argues that these exceptions authorize the production of SSOSA evaluations.

law-maker the thing excepted would be within the general words had not the exception been made." (citation and quotation marks omitted)).

"Information and records related to mental health services," in turn, refers to "a type of health care information that relates to all information and records compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional to persons who are receiving or have received services for mental illness." RCW 70.02.010(21). Thus, "information and records related to mental health services" has three elements. First, the information and records must be health care information. Second, they must "relate[] to" information and records compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional. Third, those services must have been or must be provided to persons who have received or are receiving services for mental illness.

SSOSA evaluations satisfy all three of these statutory elements. First, SSOSA evaluations are health care information. *See supra* pp. 3–5. Second, they "relate[] to"—indeed, *actually are*—information and records compiled in the course of a mental health professional's provision of

services to an offender. *See supra* pp. 14–15. Mental health professionals[9] compile SSOSA evaluations while providing services, and for those offenders that receive SSOSA sentences, the evaluations also relate to the provision of services that the offenders receive as part of their treatment. Third and last, these services are provided to persons who are receiving or have received services for mental illness. A SSOSA evaluation is itself a service for mental illness, so a recipient of a SSOSA evaluation receives a service for mental illness. Unrebutted evidence in the record indicates that a SSOSA evaluation employs the same clinical approach that would be applied to anyone with a mental disorder that impairs the ability to control sexual behavior. CP 387–88, ¶ 9; *see also* CP 439, ¶ 13 (SSOSA evaluation "examines whether the individual suffers from a sexual deviancy"). This evidence shows that SSOSA evaluations are designed to assess mental illness. In sum, SSOSA evaluations are information and records related to mental health services, and therefore confidential under RCW 70.02.230.

[9] The definition of "[m]ental health professional," RCW 70.02.010(27), plainly includes the professionals that prepare SSOSA evaluations. *See* WAC 246-930-030(1) (educational requirements for professionals that prepare SSOSA evaluations); *see also* WAC 388-865-0238 (further defining "mental health professional").

E. Contrary to DOC's false dichotomy, otherwise confidential health care information is not excluded from the protections of chapter 70.02 RCW just because it is also used in sentencing.

Although the plain language of chapter 70.02 RCW makes SSOSA evaluations confidential, the DOC argues that SSOSA evaluations are not confidential under chapter 70.02 RCW because they are used in sentencing. DOC Pet. 10–15. The DOC is creating a false dichotomy. SSOSA evaluations have more than one purpose. One of them is to aid a court in sentencing. Another is to diagnose an offender and propose a plan of health care. *See Koenig v. Thurston Cty.*, 175 Wn.2d 837, 847, 287 P.3d 523 (2012) (noting that "a SSOSA evaluation serves *many* important functions" (emphasis added)). The two purposes coexist.

DOC's false dichotomy also conflicts with the language of chapter 70.02 RCW, under which "health care" includes "any care, service, or procedure provided by a health care provider . . . [t]o diagnose, treat, or maintain a patient's physical or mental condition." RCW 70.02.010(14). Nothing indicates that the legislature intended the word "[t]o" to mean "for the sole purpose of." Slip op. 12. And the word "to," when paired with a verb, typically denotes *a* purpose without excluding others. When someone says that she "went to the restaurant to meet a friend," nobody will accuse her of lying if she *also* went there to get a bite to eat. That a SSOSA evaluation may be used for a different purpose down the line does

not negate its immediate purpose as health care. *See also* CP 388, ¶ 9 (expert testimony stating that "the fact that findings and progress are documented in a record provided to the courts and law enforcement does not change the essential nature of the [SSOSA evaluation] process.").

The DOC also argues that because health care information must "directly relate" to a patient's health care, a written SSOSA evaluation's use in the sentencing process disqualifies it as health care information. This gets things backwards. A SSOSA evaluation *directly* relates to diagnosis and treatment of the offender, and only *indirectly* relates to a sentencing decision. A SSOSA evaluation's immediate purpose is to assess the offender's amenability for treatment, RCW 9.94A.670(3), and it is only *after* a court scrutinizes the SSOSA evaluation that it may make its sentencing decision. A court, after all, cannot make a SSOSA decision "without first knowing whether the offender is amenable to treatment." *State v. Young*, 125 Wn.2d 688, 696, 888 P.2d 142 (1995).

II. By declining to order redaction, the Court of Appeals was simply applying well-established rules of waiver.

Petitioners complain that the Court of Appeals did not order redaction of exempt information and the production of nonexempt information. But neither Petitioner asked, in the alternative, for the Court of Appeals to remand for further proceedings if it agreed that SSOSA

evaluations contained exempt information. The court acted well within its discretion when it declined to order that relief *sua sponte*. Appellate courts normally do not order relief for which a party does not ask. *See, e.g.*, *Pearce v. G.R. Kirk Co.*, 92 Wn.2d 869, 875, 602 P.2d 357 (1979) (the Court would not correct damages calculation because issue was waived). Because this issue was waived, review of it is unwarranted.

What makes Petitioners' complaints particularly misplaced is that the Court of Appeals explicitly allowed the trial court, on Zink's motion, to hold further proceedings on redaction. Slip op. 15 n.44. This makes review of the redaction issue doubly unnecessary—not only did Petitioners waive the issue, but the trial court also has the Court of Appeals' blessing to hold further proceedings on redaction after remand.

III. Because Zink failed to challenge the trial court's injunction under RCW 42.56.540, she cannot raise that issue now.

Zink criticizes the Court of Appeals for not analyzing whether the trial court properly entered a permanent injunction under RCW 42.56.540, the provision of the PRA that authorizes injunctions against production. Zink Pet. 17–19. The Court of Appeals did not reach that issue because the injunction's propriety under RCW 42.56.540 was not properly before it.

Neither Petitioner properly challenged the injunction's propriety under RCW 42.56.540. The DOC's opening brief assigned error to the

trial court's injunction, DOC Br. 2, but principally on the ground that the SSOSA evaluations were not exempt from production, not because the trial court misapplied RCW 42.56.540. *See id.* at 3.[10] Zink's opening brief assigned error to a vast slew of matters, including the trial court's permanent injunction and the findings of fact that supported it. Zink Br. 13–14. As Plaintiffs pointed out below, however, Zink failed to support these assignments of error with any argument at all. *See* Corrected Br. of Resp'ts 34 n.11. Because "[a]ssignments of error unsupported by citation of authority or legal argument will not be considered," the Court of Appeals simply followed well-established law when it declined to address the propriety of the trial court's injunction under RCW 42.56.540. *Riksem v. City of Seattle*, 47 Wn. App. 506, 513, 736 P.2d 275 (1987).

IV. Review of the pseudonymity issue is unnecessary.

Zink seeks review of the Court of Appeals' ruling that litigant pseudonymity does not implicate Article I, section 10 of the Washington Constitution. There is no conflict on the issue in the Court of Appeals. This Court, in passing, has already approved pseudonymity. *N. Am.*

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[10] The DOC assigned error to three of the subsidiary findings of fact that the trial court entered. The Court of Appeals explicitly rejected one of these assignments of error. *Compare* DOC Br. 2 (assignment of error 2), *with* slip op. 13 & n.41. As for the DOC's two other assignments of error challenging findings of fact, the Court of Appeals noted that the testimony supporting the challenged findings of fact was "unrebutted." *See* slip op. 13. In any event, Zink cannot rely here on *another* appellant's assignments of error.

Council on Adoptable Children v. Dep't of Soc. & Health Servs., 108 Wn.2d 433, 440, 739 P.2d 677 (1987). Nor does Zink identify any genuine conflict between the decision below and this Court's precedents. Zink cites *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015), but that case not only concerned a different issue—juvenile records—but also held that that issue did *not* implicate Article I, section 10. It is difficult to see how this holding could conflict with a ruling that pseudonymity, too, does not implicate Article I, section 10. Zink also quotes broad legal principles from *Hundtofte v. Encarnacion*, 181 Wn.2d 1, 330 P.3d 168 (2014), but identifies nothing in its holding that conflicts with the decision below.[11]

V. Precedent bars the argument that CR 23 does not apply here.

In challenging the Court of Appeals' decision that the PRA allows class actions, Zink argues that the Public Records Act is an "express procedural rule" that supersedes the general civil rules. Zink Pet. 24. As the Court of Appeals recognized, precedent forecloses Zink's argument. *See Neighborhood All. of Spokane Cty. v. Cty. of Spokane*, 172 Wn.2d 702, 716, 261 P.3d 119 (2011). Review of this settled issue is unnecessary.

[11] Zink claims that Plaintiffs have identified "no 'privacy interest'" in support of pseudonymity. Zink Pet. 22. That is false. CP 378–79, 404, 411, 416, 429, 434, 762.

CONCLUSION

The petitions for review should be denied. Should the Court decide to grant review, Plaintiffs respectfully request that it specify the issue or issues on which review is granted, since the petitions raise distinct issues.

RESPECTFULLY SUBMITTED this 23rd day of March, 2017.

KELLER ROHRBACK L.L.P.	ACLU OF WASHINGTON
By: *s/ Benjamin Gould*	By: *s/ Prachi Dave*
Benjamin Gould, WSBA #44093	Prachi Dave, WSBA #50498

Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on March 23, 2017, I caused a true and correct copy of this document, along with its Appendix, to be served on Donna and Jeff Zink (dlczink@outlook.com) and Timothy John Feulner (TimF1@atg.wa.gov; cherriek@atg.wa.gov; correader@atg.wa.gov) via email, pursuant to RAP 18.5(a) and CR 5(b)(7).

s/ Cathy A. Hopkins
Cathy A. Hopkins
Seattle, Washington
March 23, 2017

APPENDIX OF RELEVANT STATUTES

RCW 70.02.010

Definitions (as amended by 2014 c 220). (*Effective until April 1, 2018.*)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" has the same meaning as in RCW **71.05.020**.

(2) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(3) "Commitment" has the same meaning as in RCW **71.05.020**.

(4) "Custody" has the same meaning as in RCW **71.05.020**.

(5) "Deidentified" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

(6) "Department" means the department of social and health services.

(7) "Designated mental health professional" has the same meaning as in RCW **71.05.020** or **71.34.020**, as applicable.

(8) "Detention" or "detain" has the same meaning as in RCW **71.05.020**.

(9) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(10) "Discharge" has the same meaning as in RCW **71.05.020**.

(11) "Evaluation and treatment facility" has the same meaning as in RCW **71.05.020** or **71.34.020**, as applicable.

(12) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(13) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(14) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(15) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(16) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(17) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of nonhealth care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset for the benefit of the health care provider, health care facility, or third-party payor.

(18) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(19) "Human immunodeficiency virus" or "HIV" has the same meaning as in RCW **70.24.017**.

(20) "Imminent" has the same meaning as in RCW **71.05.020**.

(21) "Information and records related to mental health services" means a type of health care information that relates to all information and records((~~, including mental health treatment records,~~)) compiled, obtained, or maintained in the course of providing services by a mental health service agency((~~, as defined in this section~~)) or mental health professional to persons who are receiving or have received services for mental illness. The term includes mental health information contained in a medical bill, registration records, as defined in RCW **71.05.020**, and all other records regarding the person maintained by the department, by regional support networks and their staff, and by treatment facilities. ((~~This may~~)) The term further includes documents of legal proceedings under chapter **71.05**, 71.34, or **10.77** RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW **70.41.020** or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community mental health program as defined in *RCW **71.24.025**(6). The term does not include psychotherapy notes.

(22) "Information and records related to sexually transmitted diseases" means a type of health care information that relates to the identity of any person upon whom an HIV antibody test or other sexually

transmitted infection test is performed, the results of such tests, and any information relating to diagnosis of or treatment for any confirmed sexually transmitted infections.

(23) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(24) "Legal counsel" has the same meaning as in RCW **71.05.020**.

(25) "Local public health officer" has the same meaning as in RCW **70.24.017**.

(26) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(27) "Mental health professional" ((~~has the same meaning as in RCW 71.05.020~~)) means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of social and health services under chapter **71.05** RCW, whether that person works in a private or public setting.

(28) "Mental health service agency" means a public or private agency that provides services to persons with mental disorders as defined under RCW **71.05.020** or **71.34.020** and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW **71.34.020**, community mental health service delivery systems, or community mental health programs, as defined in *RCW **71.24.025**, and facilities conducting competency evaluations and restoration under chapter **10.77** RCW.

(29) ((~~"Mental health treatment records" include registration records, as defined in RCW 71.05.020, and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staff, and by treatment facilities. "Mental health treatment records" include mental health information contained in a medical bill including, but not limited to, mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. "Mental health treatment records" do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.~~

~~(30)~~)) "Minor" has the same meaning as in RCW **71.34.020**.

((~~(31)~~)) (30) "Parent" has the same meaning as in RCW **71.34.020**.

((~~(32)~~)) (31) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

((~~(33)~~)) (32) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

((~~(34)~~)) (33) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

((~~(35)~~)) (34) "Professional person" has the same meaning as in RCW **71.05.020**.

((~~(36)~~)) (35) "Psychiatric advanced registered nurse practitioner" has the same meaning as in RCW **71.05.020**.

((~~(37)~~)) (36) "Psychotherapy notes" means notes recorded, in any medium, by a mental health professional documenting or analyzing the contents of conversations during a private counseling session or group, joint, or family counseling session, and that are separated from the rest of the individual's medical record. The term excludes mediation prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

(37) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(38) "Release" has the same meaning as in RCW **71.05.020**.

(39) "Resource management services" has the same meaning as in RCW **71.05.020**.

(40) "Serious violent offense" has the same meaning as in RCW **71.05.020**.

(41) "Sexually transmitted infection" or "sexually transmitted disease" has the same meaning as "sexually transmitted disease" in RCW **70.24.017**.

(42) "Test for a sexually transmitted disease" has the same meaning as in RCW **70.24.017**.

(43) "Third-party payor" means an insurer regulated under Title **48** RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan, excluding fitness or wellness plans; or a state or federal health benefit program.

(44) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

[**2014 c 220 § 4; 2013 c 200 § 1; 2006 c 235 § 2; 2005 c 468 § 1; 2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.**]

RCW 70.02.020

Disclosure by health care provider.

(1) Except as authorized elsewhere in this chapter, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of disclosures of health care information made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

(a) To carry out treatment, payment, and health care operations;

(b) To the patient of health care information about him or her;

(c) Incident to a use or disclosure that is otherwise permitted or required;

(d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;

(e) Of directory information;

(f) To persons involved in the patient's care;

(g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;

(h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient.

[**2014 c 220 § 5; 2013 c 200 § 2; 2005 c 468 § 2; 1993 c 448 § 2; 1991 c 335 § 201.**]

RCW 70.02.230

Mental health services, confidentiality of records—Permitted disclosures. (*Effective until April 1, 2018.*)

(1) Except as provided in this section, RCW **70.02.050**, **71.05.445**, * **70.96A.150**, **74.09.295**, **70.02.210**, **70.02.240**, **70.02.250**, and **70.02.260**, or pursuant to a valid authorization under RCW **70.02.030**, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter **71.34** RCW, may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter **71.05** RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

(i) Employed by the facility;

(ii) Who has medical responsibility for the patient's care;

(iii) Who is a designated mental health professional;

(iv) Who is providing services under chapter **71.24** RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter **10.77** RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts as necessary to the administration of chapter **71.05** RCW or to a court ordering an evaluation or treatment under chapter **10.77** RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter **71.05** RCW.

(ii) To a court or its designee in which a motion under chapter **10.77** RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW **71.05.150**, **10.31.110**, or **71.05.153**, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW **71.05.330**(2), **71.05.340**(1)(b), and **71.05.335**. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW **71.05.425** for the purposes described in those sections;

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW **70.02.140**;

(l) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce **RCW **9.41.040**(2)(a)(ii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW **9.41.047**(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating **RCW **9.41.040**(2)(a)(ii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of behavioral health organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the mental health service agency where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;

(s) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(t) Consistent with the requirements of the federal health information portability and accountability act, to a licensed mental health professional or a health care professional licensed under chapter **18.71**, 18.71A, 18.57, 18.57A, 18.79, or **18.36A** RCW who is providing care to a person, or to whom a person has been referred for evaluation or treatment, to assure coordinated care and treatment of that person. Psychotherapy notes may not be released without authorization of the person who is the subject of the request for release of information;

(u) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (t) of this subsection;

(v) To a facility that is to receive a person who is involuntarily committed under chapter **71.05** RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(w) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter **71.05** RCW;

(x) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(y) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW **70.02.050**(1)(d). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient

psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(z)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, ..., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . ."

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services under RCW *** **71.05.280**(3) and **** **71.05.320**(3)(c) after dismissal of a sex offense as defined in RCW **9.94A.030**, is governed by RCW **4.24.550**.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter **71.05** RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW **70.02.260**, in a subsequent criminal prosecution of a person committed pursuant to RCW *** **71.05.280**(3) or **** **71.05.320**(3)(c) on charges that were dismissed pursuant to chapter **10.77** RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter **71.09** RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter **71.05** RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW **4.24.550**, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW **70.02.170**.

[**2014 c 225 § 71; 2014 c 220 § 9; 2013 c 200 § 7.**]