97694-5

No. 96087-9

THE SUPREME COURT, OF THE STATE OF WASHINGTON

Roxanne Jones Pro Se

Appellant

v.

Robert Berecz M.D. and Bruce Kuhlmann D.O.

Respondents

Petition for Review

By Roxanne Jones Pro Se
Appellant Attorney

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Identity of Petitioner

Roxanne Jones Pro Se, the Appellant from Washington State Court of Appeals, Division 1, am Petitioning the Supreme Court of the State of Washington.

I Citation to the Appellant Decision to be Reviewed

Petitioner requests Washington Supreme Court to review the Washington State Court of Appeals, Division 1, Unpublished Opinion of *Roxanne Jones, Appellant v. Robert Berecz M.D. and Bruce Kuhlmann D.O., Respondents*, No. 78693-8-1, filed August 5th, 2019; and Order Denying Motion for Reconsideration, filed September 5th, 2019.

II Issues Presented for Review

II A. Because RCW 4.16.180 states this: *Statute Tolled by absence from state, concealment, etc.* ... RB 9-10 then the statute is tolled for me because both Respondents moved out of WA State to avoid me and others, I presume.

II B. The new RCW 4.16.350 concerning sec. 3, being used in WA Courts, contrasted to RCW 4.16.350 sec. 3 of 1994, because when I became totally disabled by a fatal 50 mph head-on MVA, with my pre-cious Mom dying inside my car from it upon a rural road, July 5, 1996, only 3 ¼ months after the pretentious end of my WA Medical Disciplinary Board investigation,

done by a well-known meth drug manufacturer, ped-dler, and addict, this disrupted my life and time permanently for normal function; with also the extreme employment harassment I went through prior to it, while trying to work within Chehalis/Centralia. disrupting my life immensely. The people were jealous.

Issues C. & D. & E. are describing, connecting extremely important time events during this new accrual that I am being held to, above justice, by the new, wrong RCW 4.16.350(3) and onward until today, for the clarity of my Civil Lawsuit. There is immense Merit interwoven within all of my Issues, in connection to my Civil Lawsuit relative to WA State's Public Interest.

II C. A blackballing employment harassment (BR 3, 7-9) of which I felt, Respondent Kuhlmann D.O. and his associate, Tim Rodgers D.O. were a part of, within my employment in Chehalis/Centralia, WA, which made me petrified for my life and my family, occurring from 1993 to 1994. It caused me so much mental and emotional harm that I had to put my home up for sale and be-gan packing, after I found a way to support myself and my two minor children again, because I could not function businesswise in town to make a living.

II D. WA State Medical Disciplinary Board and Office Investigation (Dec. 1994 to March 1996) and included, Intentional Fraudulent Con-cealment

Cover-up for both Respondents, but who instead, should have protected me, because I, as a harmed, devastated patient, was representing each of WA State's public by my Complaint to them, for the fraud surgery and sexual misconduct that these two Respondents did upon me, deliber-ately and viscously. This supposed for the public-patient investigation, de-liberately concealed many extremely important facts from me that I needed to know to even exist as a person. If WA State Medical Disciplin-ary Board and Office would of did their job (42 U.S.C. Sec. 1983. Sec. 502. Sec. 1, ch. 80, Laws of 1971 as amended by sec. I, ch. 56, Laws of 1975-'76 2nd ex. sess), these employees who were being paid at the ex-pense of taxpayer's moneys, to represent and to protect our public from being harmed deliberately and knowingly by bad doctors, then I would have re-gained my dignity that these two Respondents, grown men with families took from me, by trying to deceive me, and thereby deliberately destroyed my body and mind and life. I was not hurting them. P.S. I had wanted into Hollywood.

II E. On top of the above RCW 4.16.180 protecting me, so should RCW 4.16.190 Statute Tolled by Personal Disability should also still be protect-ing me because I am disabled. On July 5, 1996, approximately 3 ¼ months after the end of the WA State Medical Disciplinary Board investigation, my precious Mom and I were put through an ugly head-on, high speed fa-tal MVA created by a well-known meth drug manufacturer, peddler, and

addict, whereby my Mom died within my car on the road and I almost did. This fatal MVA occurred upon the only two lane, 50 mph rural road that I had to travel upon daily to get into and out of Chehalis, WA, by. Just because I ended up within a doctor's care that I felt knew the two Respondents that I had just turned into WA State Medical Disciplinary Board's office and all were buddies, and I was severely mistreated by him and fled his care as soon as I could, didn't substantiate that I did not qualify for a Guardian under this disability law because I should have been given a Guardian. I have immense proof that I should have. Again, this Doctor should have told me about this, arranged for it to occur, and cared for the situation that I and my two, still minor children were in, by living ex-tremely rural, closest neighbor approximately 1 mile away. I was in ex-treme physical, mental, and emotional pain and anguish, when I was sent home way too early from the hospital. The pain medication given to me to use at home, would not dull the excruciating pain I was in 24/7, one bit. I am trying to paint a picture here, so that this Court can see that I was being extremely mistreated, and deliberately not given all the needed care that I needed by this doctor's mind. I was not able to rise up to commence this lawsuit until recently because of the Fatal MVAs hurt that it caused me and is momently present within my mind.

Statement of the Case

III A. Issue Since RCW 4.16.180 tolls time for me, Appellant Roxanne Jones, Pro Se (RB 9 and Denied Motion for Reconsideration 8-9) here are the facts that substantiate this: Respondent Berecz M.D. left WA State after the medical murder of a woman in Chehalis, WA, June 1986 (CP 240 - 245) who he had operated on approximately 1 year after these two monsters fraudulently butchered upon me, which was March 1985. CP 184-189 And Respondent Kuhlmann D.O. left WA State during the WA Medical Disciplinary Board investigation because it states through the Minnesota Physician Licensing Dept., that he obtained a license to prac-tice medicine in 9/16/1995, that I just recently discovered online. AP 25 This, WA State RCW's authority upon both Respondents, settles this case, and I am asking WA Supreme Court to remand back my extremely important Civil Lawsuit to Superior Court for trial so I can have my equal citizen's right to a trial and prove both Respondent's crimes deliberately instigated upon me, my life.

III B. Issue Page 2-3 of Division One No.78693-8-1 Unpublished Opinion states that the three Judges disagree that the Statute of Limitation should be tolled for this case. But the RCW 4.16.350(3) of 1985 wasn't considered, which is at the time of the Fraud Surgery performed by both Respondents upon me, it states this: and RCW 4.16.350 are each amended to read as follows: Any civil action for damages for injury occurring as a result of

health care which is provided after June 25, 1976 against: ... (3) PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic diagnostic purpose or effect. RB 6-8; Answer to Motion to Dismiss Appellant's Timely Appeal 7-10 And at the time that I acquired my first bit of knowledge that this surgery should have had a referral to a Gastro-intestinal Doc first, before these two unqualified doctors fraudulently butchered upon me, 1994, reads as: 1, ch. 212, Laws of 1987 and RCW 4.16.350 are each amended to read as follows: 559 1 Ch. 144 WASHINGTON LAWS, 1988 Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against: ...(3)PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the pre-sence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect. RB 6-8 There is no time limit attached to begin a Civil lawsuit and one has to go into Court to Trial to prove fraud, intentional concealment, deliberately leaving an object inside their patient from surgery.

So, I have read this statement within each of these years, 1986, 1987, 1988, 1998, and so on, that there were amended parts of RCW 4.16.350:

AN ACT Relating to actions for injuries resulting from health care; 2 amending RCW 4.16.350; and creating a new section. 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: Sec. 1. RCW 4.16.350 and 1988 c 144 s 2 are each amended to read 5 as follows: 6 Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

So, this is where the discrimination is happening to individual patients, but should not be, because our 14th Amendment to our U.S. Constitution, Section 1 states: ... *No State shall make or enforce any law which* ...RB 3

WA State Legislature cannot just retroact this law, RCW 4.16.350 back to 1976 each time it makes an amends to it. There have been Civil Lawsuits issued in WA Courts using this RCW 4.16.350 as defense, in-between each of these amends; as such was the case for Duke v Boyd 1997, RB 5- 14, which won her re-entry back into Superior Court for jury trial to prove the fraud issued upon her by the doctor. RCW 4.16.350 stated at this time that there was no time attached to commencing a Civil Lawsuit. I should have the same equality of the law and Div. 1 Court of Appeals should have remanded my Civil Lawsuit for justice back to the proper Superior Court for jury trial so I can have the equal opportunity to prove both Re-spondents blatant fraud, intentional concealment, leaving a clip inside my body. This

Division 1 Court of Appeals clearly discriminated against me by enforcing the latest amend to RCW 4.16.350 upon my predicament, but should not. I am totally innocent in filing this Civil Lawsuit against both Respondents in Jan, 2018 and I am on time, and because of what I just ex-plained concerning my right to equality of our U.S. Law by our Federal Constitution's 14th Amendment's Equal Protection of the law. RB 3

Also, I am wondering and worried if each Judge on this panel of Division 1 Court of Appeals, even read my Notice of Appeal CP 354-362 or Brief or Reply Brief in entirety and let its truth sink in, because if they each had, there is no way they each could state that this extremely important Civil Lawsuit for re-establishing humane effects by WA State Medical Society upon myself and upon the public of WA State is without Merit, when it is full of Merit. Demanding that doctors, etc., not to be able to continue to de-fraud their patient-peers and by not having any blocks put upon the vic-tim/patients, namely Statute of time barring them each to commence a Civil Lawsuit within a WA Court for their needed justice and to expose certain doctors' deliberate frauds. This goal is full of Merit for the people of WA State matter and the crimes of intentional fraud and intentional concealment or leaving a foreign object inside an innocent patient/victim, hurts immensely, should be exposed, is no joke, and stopped completely by the Judges of WA State Courts, WA State Legislators, and the Innocent Public.

The very innocent, uneducated, gullible, trusting patient should be put first and restitution enforced for them each by the Court for the uncon-scionable, deliberate astronomical harm issued upon an innocent coerced victim patient; not a time bar. Time should not bar justice, the way it used to be and still should, before RCW 4.16.350(3) was changed in 1998; for People and People's health are what life is all about for everyone upon Earth. and this is only one aspect of "We the People, For the People, and By the People".

Issues C. & D. & E.

III C. Issue A blackballing employment harassment (BR 3, 7-9) of which Respondent Kuhlmann D.O. and his associate were a part of, within my employment in Chehalis/Centralia, WA, which made me petrified for my life and my family, occurring from 1993 to 1994. The mental effect that this had on me, made me want to flee these side by side towns, Chehalis-Centralia, WA, completely. This is why I wrote my Complaint Letter to WA State Medical Disciplinary Dept. This is why I put our home up for sale. This is why I could not re-enter to do business with Chehalis-Centralia, WA businesses. Get the picture.

III D. Issue This supposed for the public-patient investigation, of WA State Medical Disciplinary Board and office staff, all paid employees by

taxpayer's moneys, deliberately concealed many extremely important facts from me, along with both Respondents doing, during this investigation (DeLuna v Burciaga, 857 N.E.2d 229, 245-46 (ILL.2006)) that I needed to know to even exist. BR 2,5,11, and 13; CP 212-233 If WA State Medical Disciplinary Board and Office would of did their job (42 U.S.C. Sec. 1983. Sec. 502. Sec. 1, ch. 80, Laws of 1971 as amended by sec. I, ch. 56, Laws of 1975-'76 2nd ex. sess) BR 4-14 these employees who were being paid at the expense of taxpayer's moneys, to represent our public then I would have regained my dignity that these two, Respondents grown men with families took from me, by trying to deceive me. The needed charges would have been filed against them and I would have gained the solid in-formation that I still needed to enter a court with. The only information that I had when I wrote a letter to WA State Medical Disciplinary Division (CP 213-216) was the knowledge that Respondent Kuhlmann D.O. sex-ually molested me (and which he denied) and that the surgery that they both performed upon me did not heal me one bit. As far as discovery, the information that I had concerning the surgery at the time my complaint letter was submitted to WA Medical Disciplinary Office was this: a major gastrointestinal bypass surgery should have had a referral to a gastro-intestinal doctor, which they didn't do. I did not know anything about initiating a Civil Lawsuit for the crimes that these two grown men pur-posely did upon me during this

investigation, Dec. 1994, and ending March 1996; and nevertheless, the statute is tolled by RCW 4.16.180, when both Respondents had moved out of WA State prior to the end of this investigation, to hide, conceal themselves from me or whoever else that they each had destroyed by their lies to their patient/peers faces, whether verbally or upon paper. CP 240-250; Because of this response that I received from this Medical Board and staff, for they stated that Re-spondent Kuhlmann D.O. didn't do any harm to me, when he had, I still had no awareness that I should pursue a Civil Lawsuit against both Re-spondents. This Medical Board and staff did not even investigate Re-spondent Robert Berecz M.D. but were required to by this RCW 18.130.080 (3)(b). RB 18. This Medical Board cover-up for these two criminally minded men is sickening when considering that the doctors and nurses that go to school in our nation, the U.S., that they would betray the public's trust because our health and wellbeing is essential for each of our human survival, and they know this. Does anyone reading my words understand that I believe that what each Respondent deliberately did to me was criminal? That the police needed to act against and upon them, but they wouldn't. This WA Medical Disciplinary Board needed to press charges against them both for their extreme harm against me and my family and against the entire U.S. for their sickening, debased reflection upon us each. This should never have occurred, but it did, and still is occurring.

During this public Medical Disciplinary Board Investigation, I should have been invited to be seated with this Board at their table, to ex-amine my claims that I had made in writing by letter against both of the Respondents. For if I had been, I know the result of this extremely impor-tant investigation would have turned out differently. I know that Respon-dent Robert Berecz M.D. would have then been investigated right along-side Respondent Bruce Kuhlmann D.O., instead of him not being investi-gated by this Board and the office staff. I would have then been informed that he had left the state after the medical murder of a Chehalis woman by his gastrointestinal surgery he performed CP 240-250 shortly after he per-formed another fraudulent gastrointestinal butchering surgery upon me. But none of this extremely important information was given to me by this Medical Disciplinary Board or office staff. This Medical Board did not check off the offenses, RCWs 18.130.180 and WACs 246-16-100(CP 138 – 141) that both Respondents did to me. They had the list of the above RCWs and WACs that these two Respondents were and still are supposed to practice their medicine under within their businesses, upon the public. These offenses were criminal and this Medical Board should have con-tacted the Prosecuting Attorney over. But they didn't, Instead, this entire WA Medical Disciplinary Board and office staff, covered-up (Answer to Motion to Dismiss Appellant's Timely Appeal 7-10) for these two grown

men and their crimes that they intentionally imposed upon me. Does anyone reading this statement, grasp the seriousness of what this Medical Review Board and office employees did to me as a person or to the entire public of WA? This investigation did not end until March 1996. I had no information from this office until it was mailed to me. Again during the time period of this investigation, I was in hiding from the individual people who had harassed me within my employment, petrified of certain people, Respondent Kuhlmann D.O. was one of them, and trying to move my family back home to CA because I could not function in Chehalis-Centralia, WA businesswise because of it. I have proof of this harass-ment. And, I was waiting upon WA Medical Disciplinary Board and Office to file charges against both of these men because my Complaint Letter to them was asking questions concerning the surgery and sexual misconduct. CP But now, Div. 1 Court of Appeals Judges are stating that even in the midst of this severe harassment, whereby I was petrified for my life and my family members, so much so, that I was packing, that I should have filed a Civil Lawsuit against these two Respondents. How? I had no money and I had no means; nor did I know anything about Civil Lawsuits being attached to medical doctors committing deliberate fraud procedures and sexual misconduct upon their patient/peers, within a bus-iness. But nevertheless, both Respondents had left WA State prior, un-known to me, and RCW

4.16.180 covers that time, tolls until I was able to commence my WA Civil Lawsuit against them both.

III E. Issue Also, RCW 4.16.190 Statute Tolled by Personal Disability (BR 3, 12; RB 9) should also still be protecting me because I am disabled, and it took time to heal. On July 5, 1996, approximately 3 1/4 months after the end of the WA State Medical Disciplinary Board investigation, my precious Mom and I were put through an ugly head-on, high speed fatal MVA created by a well-known meth drug manufacturer peddler, and addict, whereby my Mom died within my car on the road and I almost did. CP 234-235 This fatal MVA occurred upon the only two lane, 50 mph rural road that I had to travel upon daily to get into and out of Che-halis, WA, by. Just because I ended up within a doctor's care that I felt knew the two Respondents that I had just turned into WA State Medical Disciplinary Board's office and all were buddies, and I was severely mis-treated by him and fled his care as soon as I could, didn't substantiate that I did not qualify for a Guardian under this disability law because I should have been given a Guardian. Again, this Doctor should have told me about this, arranged for it to occur, and cared for the situation that I and my two, still minor children were in, by living extremely rural, closest neighbor approximately 1 mile away. I was in extreme physical, mental, and emotional pain when I was sent home way too early from the hospi-tal. The pain medication given to

me to use at home, would not dull the excruciating pain I was in 24/7, one bit. I am trying to paint a picture here, so that this Court can see that I was being extremely mistreated, and deliberately not given all the needed care that I needed by this doctor's mind. I was not able to rise up to commence this lawsuit until recently mentally, emotionally, and physically, or I would of before. Because of the Fatal MVA's devastation hurt that it caused me and is momently present within my mind, which caused my peri-menopause-menopause to put me out of normal. I could not function for I was in too much pain for years going through it; then, on top of, the untimely medical murders by doctors of my two oldest sisters in 2000 and 2005; and my youngest sister being in a coma from a motorcycle accident, overseas, 2005.

Argument

A.My Appellant request of Petition for Review should be accepted under RAP 13.4(b)(3) because: these WA State RCWs of 4.16.180, 4.16.190, and 4.16.350(3), along with the U.S. Constitution's 14th Amendment sec. 1, all are being ignored by WA, Division 1, Court of Appeals, and shouldn't be. So, because RCW 4.16.180 states this: *Statute Tolled by absence from state, concealment, etc.* RB 9-10 then the statute is tolled for me because both Respondents moved out of WA State. First, Respondent Berecz M.D. left

WA State after the medical murder of a woman in Che-halis, WA, June 1986 (CP 240 - 245) who he had operated on approxi-mately 1 year after these two monsters deliberately fraudulently butchered upon me, which was March 1985 (CP 184-189). And Respondent Kuhlmann D.O. left WA State during my WA Medical Disciplinary Board Investigation (which began December 1994, ending March 1996) because it states through the Minnesota Physician Licensing Dept., that he obtained a license to practice medicine in 9/16/1995, so during that new accrual. AP 25 Also, RCW 4.16.190, should also toll the statute to commence my Civil Lawsuit against both Respondents from July 5, 1996 on. CP 234-235 I have proof of this. Although I had no representative to enforce this for me and because I lived alone with my two minor children and ex-tremely rural, the doctor who treated me for the aftermath of this fatal MVA, July 5, 1996, that I was involuntarily involved in along with my precious Mom, should have had a Guardian appointed for me and did not. A now ex-attorney, who is now a psychologist, and who treated and tried to help me in 2011, enlightened me of all the good care that was deliber-ately withheld to me by this doctor. One of these cares was a Guardian because of my total body injuries and closed head injury that I sustained from the fatal MVA of July 1996, and because of my isolation of living extremely rural, a half an hour out of Chehalis, with my closest neighbor, approximately 1 mile away and no

other adult living in my home, only my two still minor children, with no internet nor cell phone during this time either. And again, I lost our paid for home on acreage because of my head and body injuries. Something I wouldn't have done, if normal.

B. And under RAP 13.4(b)(4) because: I believe this changed law in-volves an issue of substantial public interest that should be determined by the Supreme Court because equal protection with due process is being distorted by it. RCW 4.16.350(3), being changed to now include only a 1-year time period, from discovery of fraud, intentional concealment, or leaving an object inside a patient from surgery, done in 1998, to com-mence a civil lawsuit is ridiculous. At the time of my deliberate fraud, excruciatingly painful gallbladder surgery done with a knife across my delicate abdomen with sexual misconduct, of 1985 to 1987 done by the Respondents, and at the time I mailed my Complaint Letter to WA Med-ical Disciplinary Division of Dept. Of Health, which was December 1994 with their investigation lasting until March 1996, this RCW 4.16.350(3) did not have any time limit attached to commence a Civil Lawsuit in Court (Duke v Boyd 1997) RB 5-14; and of which I have ex-pressed that under our 14th U.S. Constitution's Amendment, that I am to be given equal pro-tection of the law; that this time limit of 1 year to rise up to commence a Civil Lawsuit after any discovery of fraud, intentional concealment or leaving a foreign

object inside a victimized patient, is a fraud instigated law, intended to advance doctor greed, not for the best interest of the health and wellbeing of every patient, which is why we as Americans have a health system to begin with; and by it is depriving all the public, in-cluding myself of this promised equal protection of the laws, leading to not securing life, liberty, or property because due process of law is now blocked. I am blatantly stating that this having a 1-year time limit attached to part 3 of RCW 4.16.350 has been and is now discriminating against the entire public of WA State, because others before 1998 enjoyed and experienced the life given to them by the prior RCW 4.16.350 law, which by it enabled each patient to commence their Civil Lawsuit against any so-called doctor that has hurt them deliberately, when they were all together and ready to do so. And in deep contrast to deliberate doctor fraud, which is abundant, every doctor's business should only exist to hold a fiduciary attitude toward each patient/peer that enters their business (Answer to Motion to Dismiss Appellant's Timely Appeal 7-10; BR 3,12,13,16) But because the criminally minded crimes committed by both Respondents upon me, my person, and my life occurred when there was no time limit attached when any so-called doctor commits fraud, intent-ional concealment, and leaving an object inside their victimized patient from a surgery, so that my timely and also for the sake of our public's humanity concerning the reality of a

fiduciary doctor – patient relationship taking place, but which is being severed by dishonest so-called doctors, who are devastating individual people's lives and carrying over to all as-pects of each of their lives, not to be ignored but exposed. My extremely important Civil Lawsuit could be remanded back to Superior Court for Jury Trial against the two Respondents that deliberately, intentionally, fraudulently butchered upon my body in pretense of a drastic need of a gallbladder surgery when they both knew that I didn't. They did this surgery upon me with a knife CP 145-147, by which I could have easily died by, to disfigure my body internally and externally, and for their kicks, and for their greed; and sweet talked me, performed sexual misconduct upon me by unnecessary and unwanted procedures, all along the way, leaving my mind with a gape because of Respondent's Kuhlmann D.O.'s pretense, the day I left his clinic, CP 213-216 when I had only, very inno-cently, entered both of their pretentious businesses located in Centralia-Chehalis, WA, for help with the proper medications for my menstrual mi-graines which one could not buy O.T.C.; and also, either writing a pre-scription for bloating or even pointing me to GasX which is O.T.C., which decreases bloat, which neither of the Respondents did.

Conclusion

The relief that I, Appellant Roxanne Jones, Pro Se am asking is for WA Supreme Court to remand my extremely important, with immense Merit,

Civil Lawsuit against Respondents, back to King County Superior Court for a trial, so that I could exercise my equal rights to prove that both Respondents deliberately put me through an unnecessary, unwanted sexual misconduct, and a very unnecessary, intentional fraud body disfiguring surgery that almost murdered me, done with a knife; for our human rights being protected.

October 4th, 2019

Respectfully,

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APPENDIX

FILED
8/5/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROXANNE JONES,

Appellant,

v.

ROBERT BERECZ, M.D., and BRUCE KUHLMANN, D.O,

Respondents.

DIVISION ONE

No. 78693-8-I

UNPUBLISHED OPINION

FILED: August 5, 2019

DWYER, J. — Roxanne Jones appeals from the dismissal of her medical malpractice claims against Dr. Robert Berecz and Dr. Bruce Kuhlmann. She contends that the trial court erred when it concluded that her claims are barred by the statute of limitation and dismissed her claims with prejudice. We disagree, and now affirm.

I

In 1985, Jones received medical care from Dr. Berecz and Dr. Kuhlmann, including a cholecystectomy.[1] Subsequently, she came to suspect that the doctors' treatment was improper and obtained a copy of her medical file. After reviewing the file, she believed that the doctors had scammed her and performed unnecessary surgery, prompting her to submit a complaint with the Washington Medical Quality Assurance Commission (Medical Board) in 1994. As a result,

[1] A cholecystectomy is a surgical procedure to remove a gallbladder.

AP 1

the Medical Board conducted an investigation of Dr. Kuhlmann, which concluded two years later without discipline.[2]

Then, on January 2, 2018, Jones filed a complaint in King County Superior Court, asserting claims against Dr. Berecz and Dr. Kuhlmann premised on the medical treatment she received from them in 1985.[3] Therein, Jones alleged that, in 1994, she saw the doctors' "dishonest scam" and "tried to turn them both in to the WA Medical Disciplinary Board." In her complaint, Jones sought monetary damages, demanded that the doctors be forced to undergo gallbladder surgery performed on them "by a knife," and demanded that the doctors "receive prison time for their crimes, never ever to practice medicine again upon the innocent public."

Dr. Berecz filed a motion to dismiss under CR 12(b)(6) for failure to state a claim for which relief can be granted and Dr. Kuhlmann filed a motion to dismiss on summary judgment. After oral argument, the trial court granted both motions "because the statute of limitations has run" and dismissed all of Jones's claims with prejudice.

Jones appeals.

II

Jones appears to contend that the statute of limitation has not yet run on her claims against Dr. Berecz and Dr. Kuhlmann because the statute of limitation

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[2] The Medical Board took no action against Dr. Berecz.

[3] In her complaint, Jones asserts that she attempted to file this lawsuit in the Thurston County Superior Court in 2011, but was "blocked" from doing so. The record, however, indicates that the suit she attempted to file in Thurston County was directed against the Department of Health, not Dr. Berecz and Dr. Kuhlmann individually.

AP2

was permanently tolled when Dr. Berecz and Dr. Kuhlmann engaged in deliberate fraud and concealment.[4] We disagree.

We review de novo dismissals for failure to state a claim for which relief can be granted pursuant to CR 12(b)(6). Wash. Trucking Ass'ns v. State Emp't Sec. Dep't, 188 Wn.2d 198, 207, 393 P.3d 761 (2017). "Under CR 12(b)(6), dismissal is appropriate only when it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, which would justify recovery." San Juan County v. No New Gas Tax, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). On review, we presume "the truth of the allegations [of the complaint] and may consider hypothetical facts not included in the record." Wash. Trucking Ass'ns, 188 Wn.2d at 207.

Similarly, we review summary judgment rulings de novo. Lyons v. U.S. Bank Nat'l Ass'n, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014). On review, we engage in the same inquiry as the trial court, viewing the evidence in the light most favorable to the nonmoving party. Lyons, 181 Wn.2d at 783. "Summary judgment is appropriate only if the record demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Lyons, 181 Wn.2d at 783.

RCW 4.16.350 provides:

> Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 . . .
>
> . . .

[4] In her briefing on appeal, Jones also appears to assert that the Medical Board engaged in improper conduct on numerous occasions and that criminal charges must be brought against the two doctors. None of these allegations have any bearing on whether the statute of limitation has run on Jones's claims against Dr. Berecz and Dr. Kuhlmann.

AP3

> (3) . . . shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later.

In cases of fraud or concealment the limitation period is also tolled until the patient "has actual knowledge of the act of fraud or concealment" at which point the patient "has one year from the date of the actual knowledge in which to commence a civil action for damages." RCW 4.16.350(3). The "discovery" rule set forth in RCW 4.16.350 tolls the running of the statutory limitation period until the plaintiff has knowledge of the factual basis for an action, regardless of whether the plaintiff has knowledge of the legal basis for an action. Adcox v. Children's Orthopedic Hosp. & Med. Ctr., 123 Wn.2d 15, 35, 864 P.2d 921 (1993).

Jones's complaint asserts that Dr. Berecz and Dr. Kuhlmann fraudulently provided improper medical treatment to her in 1985. It is thus apparent that, unless the statutory limitation period was tolled, her claims have long since passed their expiration date under RCW 4.16.350. Jones, however, appears to assert that the statutory limitation period has been permanently tolled because the doctors engaged in fraud.[5] But even if true, Jones also admitted, in both her

[5] In her reply brief, Jones quotes extensively from Duke v. Boyd, 133 Wn.2d 80, 942 P.2d 351 (1997), presumably, although she never states this, for the proposition that fraud or concealment on the part of the doctors permanently tolled the statutory limitation period on her claims. Regardless of whether Jones could actually prove fraud, Duke is no longer applicable. In Duke, the court interpreted a long outdated version of RCW 4.16.350, wherein there was no one year discovery period for the commencement of actions when the plaintiff proves fraud or intentional concealment. 133 Wn.2d at 85; former RCW 4.16.350, LAWS OF 1988, ch. 144, § 2. Less than a year after Duke, however, the legislature amended the statute to provide for a limited (one year) time period from the date of the discovery of fraud or concealment to commence a civil action. LAWS OF 1998, ch. 147, § 1.

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complaint and during oral argument before the trial court, that she was aware of the alleged fraud and her alleged injuries back in 1994, when she filed a complaint about Dr. Berecz and Dr. Kuhlmann with the Medical Board. Furthermore, Jones provided to the trial court, in a filing entitled "Declaration of Atrocities Committed by Robert Berecz MD and Bruce Kohlmann DO upon Roxanne Jones, Pro Se," the complaint letter that she sent to the Medical Board in 1994, in which she complains about her 1985 gallbladder surgery. It is clear that Jones knew about Doctors Berecz and Kuhlmann's allegedly fraudulent surgery in 1994, given that she filed a complaint about it with the Medical Board. Therefore, it follows that the limitation period on her claims expired, at the latest, in 1995.[6] See RCW 4.16.350(3). The trial court did not err by dismissing Jones's claims.

III

Dr. Berecz and Dr. Kuhlmann seek an award of attorney fees and costs on appeal. The doctors assert that they are entitled to fees and costs for this appeal pursuant to RAP 18.9, as a sanction on Jones for filing a frivolous appeal. We agree.

"RAP 18.9(a) permits an appellate court to award a party attorney fees as sanctions, terms, or compensatory damages when the opposing party files a

[6] Jones also appears to assert that she became disabled in 1996 as the result of a car accident, and that this also tolled the statutory limitation period. But the limitation period had already run in 1995, prior to Jones's accident. Therefore, even if she was disabled and such disability tolled any limitation periods for claims she might wish to pursue following the end of her disability, such status would have had no impact on the already expired limitation period for her claims against the doctors.

AP5

frivolous appellate action."[7] Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010) (citing Reid v. Dalton, 124 Wn. App. 113, 128, 100 P.3d 349 (2004)). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal." Advocates for Responsible Dev., 170 Wn.2d at 580 (citing Tiffany Family Trust Corp. v. City of Kent, 155 Wn.2d 225, 241, 119 P.3d 325 (2005)).

Jones's appeal is plainly frivolous. She raises no debatable issues on appeal, the statutory limitation period on her claims having plainly expired well over 20 years ago. She cites to no applicable Washington authority in her briefing to support her apparent contention that the limitation period has not yet run. Her appeal is so totally devoid of merit so as to warrant the imposition of sanctions under RAP 18.9.[8] Upon proper application, a commissioner of this

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[7] RAP 18.9(a) states in full:
The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

[8] Jones appears to assert that we may not award fees against her because we waived her fee to file this appeal. She cites to no authority to support such a proposition. RAP 18.9 clearly authorizes the awarding of fees and costs as a sanction for the filing of a frivolous appeal, and it does not condition such an award on whether an appellant was required to pay a filing fee. A claim of indigence is not a defense to appellate misconduct.

APP

court will enter individual orders awarding Dr. Berecz and Dr. Kuhlmann their reasonable attorney fees and costs on appeal, consistent with this opinion.[9]

Affirmed.

WE CONCUR:

[9] The award of fees to Dr. Kuhlmann should be commensurate with the one page brief filed by Dr. Kuhlmann's counsel, which simply joined in the briefing submitted by Dr. Berecz's counsel.

AP 7

FILED
9/5/2019
Court of Appeals
Division I
State of Washington

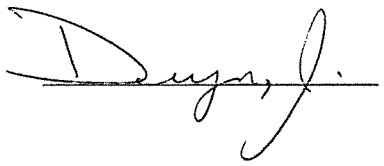
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROXANNE JONES, Appellant, v. ROBERT BERECZ, M.D., and BRUCE KUHLMANN, D.O, Respondents.	DIVISION ONE No. 78693-8-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Roxanne Jones, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

For the Court:



APR

property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 7.33 RCW to which the wage earner may be entitled.

PART V
LIMITATION OF ACTIONS

NEW SECTION. Sec. 501. A new section is added to chapter 4.24 RCW to read as follows:

It is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony, if the felony was causally related to the injury or death in time, place, or activity. However, nothing in this section shall affect a right of action under 42 U.S.C. Sec. 1983.

Sec. 502. Section 1, chapter 80, Laws of 1971 as amended by section 1, chapter 56, Laws of 1975-'76 2nd ex. sess. and RCW 4.16.350 are each amended to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

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(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic diagnostic purpose or effect.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age or eighteen years. Any action not commenced in accordance with this section shall be barred((~~: PROVIDED, That the limitations in this section shall not apply to persons under a legal disability as defined in RCW 4.16.190~~)).

PART VI
INDEMNIFICATION AGREEMENTS

Sec. 601. Section 2, chapter 46, Laws of 1967 ex. sess. and RCW 4.24.115 are each amended to read as follows:

A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property:

(1) Caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable;

(2) Caused by or resulting from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees, and (b) the indemnitor

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(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age ((~~or [of]~~)) of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of the effective date of this 1987 section, to persons under the age of eighteen years.

PART XV
ACCELERATED WAIVER OF THE PHYSICIAN-PATIENT PRIVILEGE

Sec. 1501. Section 294, page 187, Laws of 1854 as last amended by section 101, chapter 305, Laws of 1986 and RCW 5.60.060 are each amended to read as follows:

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NEW SECTION. Sec. 1304. The judicial council shall study the feasibility of instituting mandatory discovery conferences in specified civil actions. The study shall include, but not be limited to, the following issues relating to mandatory discovery conferences:

(1) The existing use of discovery conferences under superior court Civil Rule 26(f) and any associated benefits, deficiencies, and costs.

(2) The use of mandatory discovery conferences in other states, and any benefits, deficiencies, and costs.

(3) Whether existing discovery practices are being used to unnecessarily delay civil actions or to harass opposing parties.

(4) Whether existing discovery practices are unreasonably expensive for the parties.

(5) Whether mandatory discovery conferences would be an effective use of the time of judges, attorneys, court personnel, and litigants.

(6) Whether mandatory discovery conferences would create cost-savings to the litigants and the courts and allow for a more efficient use of court rooms and court personnel.

(7) Any other relevant factors deemed appropriate by the council.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

NEW SECTION. Sec. 1305. The judicial council shall conduct a study on the benefits and detriments of enacting a comprehensive state statute on offers of settlement. This study shall include, but not be limited to, the following issues:

(1) The type of civil actions applicable to an offer of settlement statute.

(2) The appropriateness of monetary limits, "forgiveness margins," prejudgment interest, and granting discretion to the court to excuse payment of attorneys' fees.

(3) Time limits for issuing or rejecting an offer of settlement by the parties.

(4) The relationship of offers of settlement to reasonableness hearings and multiparty defendants.

The judicial council shall report its findings and recommendations, including proposed legislation, to the judiciary committees of the senate and house of representatives by January 1, 1988.

PART XIV
HEALTH CARE LIMITATIONS

Sec. 1401. Section 1, chapter 80, Laws of 1971 as last amended by section 502, chapter 305, Laws of 1986 and RCW 4.16.350 are each amended to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

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"I am returning herewith, without my approval as to section 22, Substitute House Bill No. 1271 entitled:

"AN ACT Relating to the department of corrections."

Section 22 of this bill clarifies language relating to the tolling of sentences when offenders have absented themselves from supervision or are confined for violations of sentence conditions. Similar language is contained in Engrossed Substitute House Bill No. 1424, section 9, which establishes a program of community placement. The language of that bill is more comprehensive and includes elements of the newly authorized program. In order to avoid confusion, I have vetoed section 22 of this bill.

With the exception of section 22, Substitute House Bill No. 1271 is approved."

CHAPTER 144

[Engrossed Substitute Senate Bill No. 6305]
CHILDHOOD SEXUAL ABUSE—STATUTE OF LIMITATIONS

AN ACT Relating to the statute of limitations for sexual abuse or exploitation of a child; amending RCW 4.16.350; adding a new section to chapter 4.16 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 4.16 RCW to read as follows:

(1) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within three years of the act alleged to have caused the injury or condition, or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever period expires later.

(2) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(3) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen years.

(4) For purposes of this section, "child" means a person under the age of eighteen years.

(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

Sec. 2. Section 1, chapter 80, Laws of 1971 as last amended by section 1401, chapter 212, Laws of 1987 and RCW 4.16.350 are each amended to read as follows:

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Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in section 1(5) of this act.

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RCW 4.16.350

Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976, against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his or her employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

[2011 c 336 § 88; 2006 c 8 § 302. Prior: 1998 c 147 § 1; 1988 c 144 § 2; 1987 c 212 § 1401; 1986 c 305 § 502; 1975-'76 2nd ex.s. c 56 § 1; 1971 c 80 § 1.]

NOTES:

Purpose—Findings—Intent—2006 c 8 §§ 301 and 302: "The purpose of this section and section 302, chapter 8, Laws of 2006 is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW 4.16.350.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW 4.16.350 with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302, chapter 8, Laws of 2006 be applied to actions commenced on or after June 7, 2006." [2006 c 8 § 301.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Application—1998 c 147: "This act applies to any cause of action filed on or after June 11, 1998." [1998 c 147 § 2.]

Application—1988 c 144: See note following RCW 4.16.340.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Severability—1975-'76 2nd ex.s. c 56: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 56 § 15.]

Actions for injuries resulting from health care: Chapter 7.70 RCW.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW 4.24.240.

Proof and evidence required in actions against hospitals, personnel and members of healing arts: RCW 4.24.290.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

RCW 4.16.180

Statute tolled by absence from state, concealment, etc.

If the cause of action shall accrue against any person who is a nonresident of this state, or who is a resident of this state and shall be out of the state, or concealed therein, such action may be commenced within the terms herein respectively limited after the coming, or return of such person into the state, or after the end of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself or herself, the time of his or her absence or concealment shall not be deemed or taken as any part of the time limit for the commencement of such action.

[2011 c 336 § 84; 1927 c 132 § 1; Code 1881 § 36; 1854 p 364 § 10; RRS § 168.]

RCW 4.16.190

Statute tolled by personal disability.

(1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to *chapter **11.88** RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW **4.16.350**.

[**2006 c 8 § 303; 1993 c 232 § 1; 1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74;** Code 1881 § 37; **1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11;** RRS § 169.]

NOTES:

Reviser's note: *(1) Chapter **11.88** RCW was repealed in its entirety by 2019 c 437 § 801, effective January 1, 2021.

(2) As to the constitutionality of subsection (2) of this section, see *Schroeder v. Weighall*, 179 Wn.2d. 566, 316 P.3d 482 (2014).

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW **5.64.010**.

Purpose—Intent—1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter **11.88** RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [**1977 ex.s. c 80 § 1.**]

Severability—1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [**1977 ex.s. c 80 § 76.**]

Severability—1971 ex.s. c 292: See note following RCW **26.28.010**.

*Adverse possession, personal disability, limitation tolled: RCW **7.28.090.***

RCW 18.130.180

Unprofessional conduct. *(Effective until January 1, 2020.)*

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) Except when authorized by *RCW 18.130.345, the possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers, documents, records, or other items;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;

(9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards;

(26) Violation of RCW 18.130.420;

(27) Performing conversion therapy on a patient under age eighteen.

[2018 c 300 § 4; 2018 c 216 § 2; 2010 c 9 § 5; 2008 c 134 § 25; 1995 c 336 § 9; 1993 c 367 § 22. Prior: 1991 c 332 § 34; 1991 c 215 § 3; 1989 c 270 § 33; 1986 c 259 § 10; 1984 c 279 § 18.]

NOTES:

Reviser's note: *(1) RCW 18.130.345 was repealed by 2015 c 205 § 5.

(2) This section was amended by 2018 c 216 § 2 and by 2018 c 300 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Finding—2018 c 300: "(1) The legislature intends to regulate the professional conduct of licensed health care providers with respect to performing conversion therapy on patients under age eighteen.

(2) The legislature finds and declares that Washington has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy." [2018 c 300 § 1.]

Construction—2018 c 300: "This act may not be construed to apply to:

WAC 246-16-100

Sexual misconduct.

(1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient, client or key party;

(j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the health care provider;

(l) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient, client or key party;

(p) Discussing the sexual history, preferences or fantasies of the health care provider;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(3) A health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(4) A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the provider-patient/client relationship ends.

(5) After the two-year period of time described in subsection (4) of this section, a health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether a health care provider is prohibited from engaging, or attempting to engage, in sexual misconduct, the secretary will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the health care provider;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(7) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

[Statutory Authority: RCW 18.130.050, 18.130.062, and Executive Order 06-03. WSR 15-24-087, § 246-16-100, filed 11/30/15, effective 12/31/15. Statutory Authority: RCW 18.130.050 (1), (12) and 18.130.180. WSR 06-18-045, § 246-16-100, filed 8/30/06, effective 9/30/06.]

14th Amendment

The Fourteenth Amendment addresses many aspects of citizenship and the rights of citizens. The most commonly used -- and frequently litigated -- phrase in the amendment is "equal protection of the laws", which figures prominently in a wide variety of landmark cases, including Brown v. Board of Education (racial discrimination), Roe v. Wade (reproductive rights), Bush v. Gore (election recounts), Reed v. Reed (gender discrimination), and University of California v. Bakke (racial quotas in education). See more...

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

42 U.S. Code § 1983. Civil action for deprivation of rights

U.S. Code Notes

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Minnesota Health Licensing Boards

Minnesota Board of Medical Practice

Professional Profile

Profile Details

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Professional Profile: Bruce William Kuhlmann New Search

License: Physician and Surgeon - #38231 Print

Licensure Designated Address: CentraCare Clinic- Becker
12800 Rolling Ridge Rd
Becker, MN 55308

Web Site:

E-mail: kuhlmannb@centracare.com

Birth Year: 1949

Gender: Male

License Number:	38231	**License Type:**	Physician and Surgeon
Expiration Date:	08-31-2018	**Grant Date:**	09-16-1995
License Status:	Inactive		
Disciplinary Action:	No		
Corrective Action:	No		

Disciplinary Actions by Other States (Reported to the Board since July 1, 2013): No

Public - Other: No

Medical School:	CHICAGO COLLEGE OF OSTEOPATHIC MEDICINE, CHICAGO, DOWNERS GROVE, MIDWESTERN UNIV. (A/K/A CHICAGO COL OF OSTEOPATHY) USA	**Degree:**	D.O.
Location:	Downers Grove, IL USA	**Date:**	06/04/1978

Primary Location:	CentraCare Clinic - Becker 12800 Rolling Ridge Road Becker, MN 55308	**Secondary Location:**	N/A
Phone:	763-261-7000	**Phone:**	320-240-3182

Program	Specialty	Start Date	End Date	Completed
Lansing General Hospital, Lansing Mich	Rotating internship	07/01/1978	07/01/1979	Y

Source	Board	Certification / Sub-Certification
AOA	Family Medicine	Family Practice

Type	Crime Description	Conviction Date	Court of Jurisdiction	Sentence/Comment

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Telephone: (612) 617-2130 e-mail: medical.board@state.mn.us

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Supreme Court of Washington, County of Thurston

Plaintiff(s):

Roxanne Jones Pro Se

No. 96087-9

v.

CERTIFICATE OF SERVICE

Defendant(s):
Robert Berecz M.D. and
Bruce Kohlmann D.O.

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

On the 7th day of October, 2019, I [*strike out what doesn't apply*] mailed ~~by regular and certified mail U.S. Mail, postage prepaid / hand delivered~~ electronic portal a true copy of the Petition for Review [*name of paper(s) served*] in the above-entitled matter to Attorney Mark B Melter FAVROS [*Name of Plaintiff or Plaintiff's Attorney*] at the following address: 701 5th Ave. STE 4750 Seattle, WA 98104

Dated: Oct. 7th, 2019

Roxanne Jones Pro Se
Signature

Roxanne Jones Pro Se
Print or Type Name

Folsom, CA 95630
Place signed

Supreme Court of Washington, County of Thurston

Plaintiff(s):

Roxanne Jones Pro Se

No. 96087-9

v.

CERTIFICATE OF SERVICE

Defendant(s):
Robert Bereza M.D. and
Bruce Kuhlmann D.O.

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

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Dated: Oct. 7th 2019

Roxanne Jones Pro Se
Signature

Roxanne Jones Pro Se
Print or Type Name

Folsom, CA 95630
Place signed

Supreme Court of Washington, County of Thurston

Plaintiff(s):

Roxanne Jones Pro Se No. 96087-9

v. CERTIFICATE OF SERVICE

Defendant(s):
Robert Berecz M.D. and
Bruce Kuhlmann D.O.

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

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Dated: Oct. 7th 2019

Roxanne Jones Pro Se
Signature

Roxanne Jones Pro Se
Print or Type Name

Folsom, CA 95630
Place signed

ROXANNE JONES - FILING PRO SE

October 07, 2019 - 12:24 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Roxanne Jones, Appellant v. Robert Berecz M.D., et ano., Respondents (786938)

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