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NO. 97835-2

SUPREME COURT OF THE STATE OF WASHINGTON

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SAID FARZAD, individually,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF HEALTH-MEDICAL  
QUALITY ASSURANCE COMMISSION; WASHINGTON  
PHYSICIANS HEALTH PROGRAM, a Washington non-profit  
corporation doing business in Washington State, LARRY BERG AND  
“JANE DOE” BERG, and the marital community composed thereof,  
CHRIS BUNDY AND “JANE DOE” BUNDY, and the marital  
community composed thereof; MOLINA HEALTHCARE OF  
WASHINGTON, a Washington corporation, JOHN AND JANE DOES 1-  
10,

Respondents.

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RESPONDENTS CHRIS BUNDY, M.D.,  
AND WASHINGTON PHYSICIANS HEALTH PROGRAM'S  
ANSWER TO AMENDED PETITION FOR REVIEW

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. <u>IDENTITY OF RESPONDENTS</u> .....	1
II. <u>COURT OF APPEALS DECISION</u> .....	1
III. <u>COUNTERSTATEMENT OF THE ISSUE</u> .....	3
IV. <u>COUNTERSTATEMENT OF THE CASE</u> .....	3
A. WPHP Is an Impaired Physician Program.....	3
B. MQAC Initiates Disciplinary Proceedings against Dr. Farzad for Alleged Boundary Violations .....	3
C. MQAC Summarily Suspends Dr. Farzad’s License .....	4
D. MQAC Issues a Final Order Indefinitely Suspending Dr. Farzad’s License and Imposing Conditions Before Consideration of Reinstatement.....	4
E. The Pierce County Superior Court Denies Dr. Farzad’s Petition for Judicial Review.....	6
F. Dr. Farzad Undergoes Evaluation at the Gabbard Center.....	6
G. WPHP Assists Dr. Farzad in Accordance with the Final Order .....	6
H. Dr. Isenberg Believes Dr. Farzad Is Suffering from Frontotemporal Lobar Degeneration .....	8
I. WPHP Informs Dr. Farzad It Cannot Endorse His Return to Practice .....	8
J. WPHP Advises MQAC of Its Opinion that Dr. Farzad Is Not Safe to Return to Practice .....	10
K. Dr. Farzad Independently Seeks Out Additional	

	Medical Evaluations but Withholds His Full History .....	11
L.	Dr. Bundy and WPHP Decline to Reopen Dr. Farzad’s Case.....	12
M.	Dr. Farzad Files Suit Against MQAC, Mr. Berg, WPHP, Dr. Bundy and Molina .....	12
N.	The Trial Court Summarily Dismissed Dr. Farzad’s Claims Against Dr. Bundy and WPHP .....	13
V.	<u>REASONS WHY REVIEW SHOULD BE DENIED</u> .....	14
A.	Considerations Governing Acceptance of Review .....	14
B.	Dr. Farzad Failed to Identify Any Circumstances Warranting Acceptance of Review .....	15
C.	No Circumstances Exist Warranting Review .....	16
VI.	<u>CONCLUSION</u> .....	17

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Bercier v. Kiga*,  
127 Wn. App. 809, 103 P.3d 232 (2004),  
*review denied*, 155 Wn.2d 1015 (2005) .....2

*State v. Watson*,  
155 Wn.2d 574, 122 P.3d 903 (2005).....17

**Statutes**

RCW 4.24.510 .....2

RCW 18.71.0195 ..... 13-14

RCW 18.130.070 ..... 13-14

RCW 18.130.300 .....2, 13

**Court Rules**

RAP 13.4..... 2, 14-16

## I. IDENTITY OF RESPONDENTS

Respondents Chris Bundy, M.D., and Washington Physicians Health Program (“WPHP”) respectfully submit this Answer to the Amended Petition for Review.

## II. COURT OF APPEALS DECISION

This case arises out of Petitioner Said Farzad, M.D.’s dissatisfaction with the suspension of his medical license. Following a disciplinary hearing, Respondent State of Washington, Department of Health—Medical Quality Assurance Commission (“MQAC”) concluded that Dr. Farzad could not safely practice medicine. MQAC indefinitely suspended Dr. Farzad’s license and imposed certain conditions including requiring that he submit to a neuropsychological examination, discuss the results of that evaluation with Respondent Washington Physicians Health Program (“WPHP”) (an impaired physician program), and comply with any requests by WPHP for further evaluation. MQAC also directed WPHP to report its opinion to MQAC concerning whether Dr. Farzad was safe to return to practice.

In the course of performing their official duties and in compliance with MQAC’s directives, WPHP and its agents assessed that Dr. Farzad could not practice medicine with reasonable safety and conveyed that opinion to MQAC. Dr. Farzad disagreed with WPHP’s assessment. Having

appealed MQAC's suspension of his license to no avail, Dr. Farzad filed the underlying lawsuit against the Respondents including MQAC, WPHP, and Chris Bundy, M.D, WPHP's medical director. On defendants' motions for summary judgment, the trial court concluded that all defendants, including Dr. Bundy and WPHP, were immune from suit as a matter of law.

On September 24, 2019, Division II filed its unpublished opinion (copy attached as Appendix A) affirming the trial court's order. In so ruling, the Court of Appeals reasoned as follows:

Farzad provides no citation to relevant legal authority related to the immunity claims argued by defendants. In fact, Farzad fails to even cite to the statutes granting immunity to the defendants in this case, RCW 18.130.300 and RCW 4.24.510. Instead of addressing the legal issues regarding the defendants' immunity from suit, Farzad simply provides a litany of factual assumptions he believes were perpetuated by defendants and which he disputes.

Farzad highlights the factual disputes and disregards the issue of legal immunity, to which the superior court determined the defendants were entitled. But factual disputes regarding the underlying facts of a case are not relevant if the defendants are immune from suit. Because Farzad does not provide any argument or citation to authority regarding the defendants' claims of immunity, we decline to consider his assignment of error relating to immunity. *Bercier*, 1274 Wn. App. at 824. Therefore, we affirm the superior court's orders granting the defendants' motions for summary judgment.

*See* Appendix A. Dr. Farzad now seeks review of Division II's unpublished decision.

### III. COUNTERSTATEMENT OF THE ISSUE

Should review be denied where no basis exists under RAP 13.4(b) warranting acceptance of review?

### IV. COUNTERSTATEMENT OF THE CASE

#### A. WPHP Is an Impaired Physician Program.

WPHP is an impaired physician program which provides education, assessment, intervention, referral, client support, and reporting for physicians and other medical providers who are potentially impaired. CP 851-54, 855-59. Notably, WPHP is not a medical clinic and does not diagnose or treat impaired physicians. CP 851-54, 855-59. WPHP contractually agreed to provide services to MQAC from July 1, 2009, through June 30, 2021. CP 851-54, 855-59.

#### B. MQAC Initiates Disciplinary Proceedings against Dr. Farzad for Alleged Boundary Violations.

In 2013, MQAC investigated two complaints against Dr. Farzad, then a licensed psychiatrist. CP 723. The complaints accused him of boundary violations with two female patients, one of whom was a minor. CP 723. Respondent Larry Berg was the Department of Health staff attorney assigned to the case. CP 627. Dr. Farzad did not deny the behavior he was accused of. CP 628. Instead, he insisted that his behavior was appropriate. CP 628. At the conclusion of the investigation, MQAC authorized an informal settlement of the disciplinary matter via a Statement

of Allegations and a Stipulation to Informal Disposition (“STID”). CP 628.

Dr. Farzad rejected the proposed STID. CP 628.

C. MQAC Summarily Suspends Dr. Farzad’s License.

While the initial investigation was occurring, MQAC learned that Dr. Farzad was wanted by the Bothell Police Department for threatening to bomb and shoot staff at Molina HealthCare on May 5, 2014. CP 628-29, 655. He was subsequently arrested on five felony charges of threatening to bomb and telephonic harassment. CP 781. Thereafter, MQAC ordered a summary suspension of Dr. Farzad’s license pending a formal hearing. CP 629.

D. MQAC Issues a Final Order Indefinitely Suspending Dr. Farzad’s License and Imposing Conditions before Consideration of Reinstatement.

After a formal hearing, MQAC concluded that the Department had proved, by clear and convincing evidence, that Dr. Farzad’s ability to practice with reasonable skill and safety was sufficiently impaired by a mental condition. CP 790. Accordingly, MQAC issued a Final Order suspending Dr. Farzad’s license indefinitely and imposing conditions before reinstatement of his license would be considered. CP 792-94. The Final Order stated in part:

the ongoing “inability to practice with reasonable skill and safety” issue in this case can be seen in regular conversation with the Respondent and was clearly apparent to the Commission: It is the manner in which the Respondent attempts to dominate and manipulate everyone with whom



he interacts in a constant effort to gain their attention and admiration, whether it is through his grandiose presentation of self; his misleading and hyperbolic answers; his contemptuous and impatient dismissal of others; blame-shifting; launching into lengthy stories that overestimate his accomplishments or abilities; or his flagrant attempts to control every discourse to prove his superiority. The Respondent's demeanor and presentation during his testimony was simply and fundamentally manipulative, controlling, and grandiose, and indicates some type of underlying mental condition that does interfere with his ability to practice as a physician with reasonable skill and safety. The Respondent's testimony, the testimony of all the witnesses, the transcripts of the Respondent's text messages to patients, and the transcripts of the interviews with Molina employees were all consistent in portraying someone whose behavior and mental state are destructively contaminated by a sense of personal entitlement.

CP 789.

The Final Order required Dr. Farzad to submit to a neuropsychological examination conducted by the Gabbard Center in Texas. CP 792-93. It also required Dr. Farzad to provide a copy of the neurological evaluation to WPHP, make an appointment with WPHP to discuss the evaluation, and comply with any request by WPHP for further evaluation. CP 793-94. Upon completion of its assessment, the Final Order required WPHP to provide a report to MQAC with an opinion of whether Dr. Farzad was safe to return to practice. CP 794. Ultimately, however, the decision whether to reinstate Dr. Farzad's medical license rests solely with MQAC. The Final Order precludes Dr. Farzad from seeking modification of its terms and conditions. CP 794.

E. The Pierce County Superior Court Denies Dr. Farzad's Petition for Judicial Review.

On September 25, 2014, Dr. Farzad petitioned for judicial review of the Final Order. CP 370-77. The Pierce County Superior Court ultimately denied Dr. Farzad's petition. CP 797-98.

F. Dr. Farzad Undergoes Evaluation at the Gabbard Center.

From September 30 to October 1, 2014, while his appeal from the Final Order was pending, Dr. Farzad underwent a two-day multidisciplinary evaluation at the Gabbard Center in Texas. CP 800-12. The Gabbard Center diagnosed Dr. Farzad with Major Depressive Disorder, Cognitive Disorder, and Narcissistic Personality Disorder with Obsessive-Compulsive Features. CP 811-12. The Gabbard Center recommended that Dr. Farzad: (i) undergo neurological evaluation with MRI scan; and (ii) undergo long-term psychotherapy. CP 812.

G. WPHP Assists Dr. Farzad in Accordance with the Final Order.

On November 3, 2014, WPHP interviewed and assessed Dr. Farzad in accordance with the Final Order. CP 831. Thereafter, WPHP staff had multiple telephone interactions with Dr. Farzad. CP 814. On November 14, 2014, Dr. Charles Meredith, WPHP's then Medical Director, sent a letter to Dr. Farzad advising him that WPHP was unable to make any decision regarding his safety to return to medical practice until (1) he completed a neurology evaluation as recommended by the Gabbard Center

and (2) there was a resolution of the criminal proceedings against him. CP 814. In the meantime, Dr. Meredith recommended that Dr. Farzad work with a psychotherapist. CP 814.

Dr. Meredith also addressed concerning behavior Dr. Farzad exhibited toward WPHP staff:

Because of your recent behaviors with our office staff in multiple phone interactions, several of them have become intimidated by you. Thus I am directing you *not* to contact us by phone or in person any further. When you need to initiate contact with our organization, you are encouraged to do so by emailing you[r] case manager.... If you are unable to follow our directive to abstain from contacting us by phone as I've described, we may be unable to serve you in your attempts to return to clinical practice.

CP 814.

In an effort to guide his expectations, Dr. Meredith provided Dr. Farzad with the following information about the possible outcomes of WPHP's assessment:

- It is possible that WPHP may never endorse your return to practice
- It is also possible that WPHP may endorse your return to practice, but despite this recommendation to the MQAC at that time, they may choose not to accept it and continue your suspension nonetheless
- In past cases similar to your own, the physician in question was unable to return until completing 1-2 years of intensive psychotherapy, which led to demonstrable improvements in insight and interpersonal style.

CP 815.

H. Dr. Isenberg Believes Dr. Farzad Is Suffering from Frontotemporal Lobar Degeneration and Recommended a PET Scan.

On December 19, 2014, Dr. Farzad was evaluated by Dr. Isenberg, a well-respected behavioral neurologist. CP 817-20, 831. Dr. Isenberg found that Dr. Farzad:

demonstrates disinhibition, poor insight and lack of judgment, with relative preservation of encoding of memory, visuospatial processing. He has mild sensory neuropathy and no sign of motor neuron dysfunction. I am concerned that he has a frontotemporal lobar degeneration, and I am requesting an MRI of the brain with blood work to include CBC, CMP, HIV, homocysteine, fasting lipid profile, methylmalonic acid, syphilis testing, TSH, B12 and vitamin D.

CP 819.

On January 29, 2015, Dr. Farzad saw Dr. Isenberg again to review the results of his MRI. CP 822-24. Dr. Isenberg documented that:

The MRI demonstrates very subtle atrophy of the right greater than left frontal lobe. It was recommended that he pursue a PET scan to further delineate this, however, he does not wish to pursue. In light of his absence of any self monitoring insight and judgment, he would not be safe working as a physician. These recommendations have been communicated to team at WPHP, including Dr. Charles Meredith and Jason Green, LMHC.

CP 823.

I. WPHP Informs Dr. Farzad It Cannot Endorse His Return to Practice.

In February 2015, Dr. Farzad's concerning behavior continued. The Gabbard Center informed MQAC that Dr. Farzad was leaving threatening telephone messages with two doctors involved in his evaluation. CP 826.

Thereafter, Dr. Meredith had at least two telephone conversations with Dr. Farzad. CP 828. Dr. Farzad asked Dr. Meredith to compile a “treatment plan” that Dr. Farzad could present to the Snohomish County Superior Court to assist him in his criminal proceedings. CP 828. Dr. Farzad also communicated his refusal to undergo the recommended PET scan to confirm Dr. Isenberg’s diagnosis. CP 828.

On March 17, 2015, Dr. Meredith sent Dr. Farzad a letter stating as follows:

Dr. Isenberg is concerned that you are suffering from a progressive neurodegenerative condition called frontal temporal lobar degeneration (FTLD), behavioral variant. She recommended that you undergo a PET scan to confirm this diagnosis but you have stated you do not intend to do this. Despite that, she believes you are demonstrating a number of behavioral signs of this syndrome such as worsening executive function, significant grandiosity and worsening anosognosia with little insight into these symptoms...Currently, there are no effective pharmacological or behavioral treatments that can modify the progression of this condition. There is some evidence that SSRI medications may provide some symptom relief on a case by case basis, particularly mitigating behavioral disinhibition and problems with declining impulse control ... Given this diagnosis and what we have observed to be your current level of functioning, WPHP is unable to endorse your return to clinical practice as safe and does not believe it is a realistic goal for your future ... In terms of treatment planning, I strongly encourage you to enter into care with a geriatric psychiatrist and to provide them with the treatment record that Dr. Isenberg produced. Hopefully, through an SSRI trial, they can offer you symptomatic relief from some of the aspects of this progressive neurological condition.

CP 829.

J. WPHP Advises MQAC of Its Opinion that Dr. Farzad Is Not Safe to Return to Practice.

On March 24, 2015, as required by the Final Order, Dr. Meredith provided a report to MQAC regarding Dr. Farzad's safety to return to practice. CP 831-32. The report stated in part:

At the direction of the Commission, Dr. Farzad completed a fitness for duty evaluation at the Gabbard Center in October of 2014. That evaluation team concluded that Dr. Farzad was suffering from narcissistic personality disorder as well as cognitive disorder not otherwise specified. The latter was primarily identified by multiple abnormalities on the neurocognitive testing battery performed.

After meeting with us, we directed Dr. Farzad to complete a neurological assessment with Dr. Nancy Isenberg, a well-respected behavioral neurologist. Based on her assessment, we have concluded that Dr. Farzad's level of functioning is impaired to the extent that he cannot practice medicine with reasonable safety to patients at this time. There is not a therapeutic intervention that can significantly improve his level of functioning, given his underlying health condition and its underlying progressive and irreversible nature. Return to clinical practice is not a realistic or safe goal for this individual.

Subsequently, we are communicating to you that we have completed our assessment, and that there is no utility to Dr. Farzad in working further with WPHP.

Despite requests that he refrain from such behavior, Dr. Farzad has been periodically calling our office and interacting with me on the phone in a way that could be considered telephone harassment. This involves making threats and yelling profane insults at me. It's important to note I believe this behavior is at least in part due to his underlying neurodegenerative condition.

CP 831-32. Having satisfied MQAC's directives in the Final Order, and not being a medical clinic that provides diagnosis and treatment, WPHP closed its file. CP 832.

K. Dr. Farzad Independently Seeks Out Additional Medical Evaluations but Withholds His Full History.

In the years following the MQAC proceedings, Dr. Farzad independently sought out additional medical evaluations. CP 440-97. These evaluations contain no evidence of any attempt by Dr. Farzad to comply with the conditions MQAC placed on his ability to seek reinstatement of his license—namely, that he satisfy WPHP's requests that he complete the PET scan recommended by Dr. Isenberg to confirm the diagnosis of a neurogenerative condition and that he successfully complete a period of psychotherapy relating to the Gabbard Center's diagnosis of Narcissistic Personality Disorder. CP 440-97, 812, 828-29, 836. Instead, Dr. Farzad withheld and/or misrepresented information from his history in an unsuccessful effort to establish a "track record" that he was safe to practice medicine. CP 440-97. Indeed, the physicians Dr. Farzad sought out repeatedly acknowledged that they did not have the benefit of his full history and that their evaluations were not part of the process for reinstatement of his medical license. CP 440-97.

L. Dr. Bundy and WPHP Decline to Reopen Dr. Farzad's Case.

In or around February 2017, Dr. Farzad called Dr. Bundy, Dr. Meredith's successor, and requested that WPHP reopen his case. CP 861. In response, Dr. Bundy discussed the case with two neurologists who had separately evaluated Dr. Farzad—Dr. Isenberg, the neurologist who determined that Dr. Farzad was suffering from frontal temporal lobar degeneration, behavioral variant, and Dr. Mesher, a neurologist independently sought out by Dr. Farzad. CP 861. In March of 2017, based on his discussions with Dr. Isenberg and Dr. Mesher and his review of various medical records, Dr. Bundy concluded there was no basis for reopening Dr. Farzad's case. CP 861. Dr. Bundy communicated this decision to MQAC and Dr. Farzad. CP 861.

M. Dr. Farzad Files Suit Against MQAC, Mr. Berg, WPHP, Dr. Bundy and Molina.

Dr. Farzad filed the underlying lawsuit against MQAC, Mr. Berg, WPHP, Dr. Bundy, and Molina. CP 12-21. Dr. Farzad's allegations against Dr. Bundy and WPHP relate to their official duties, *i.e.*, conducting an assessment as required by MQAC's Final Order and reporting the outcome of that assessment to MQAC. CP 12-21. Dr. Farzad also accused all defendants, including Dr. Bundy and WPHP, of engaging in a civil conspiracy. CP 19.



N. The Trial Court Summarily Dismissed Dr. Farzad's Claims Against Dr. Bundy and WPHP.

On November 14, 2017, Dr. Bundy and WPHP moved for summary judgment based on the absolute immunity granted to impaired physician programs under RCW 18.130.300(2), RCW 18.71.0195(2), and RCW 18.130.070(3). CP 974-91. MQAC, Larry Berg, and Molina also moved for summary judgment based on their own immunity defenses. CP 573-97, 880-95. In a global response, Dr. Farzad contended that Dr. Bundy and WPHP were not entitled to immunity because “they were not engaging in their statutorily protected duties...in their dealings with him.” CP 90. Dr. Farzad also submitted a declaration which accused Larry Berg of soliciting a \$50,000 bribe and accused Mr. Berg, MQAC and Dr. Bundy of “playing a shell game” with Dr. Farzad’s efforts to acquire reinstatement of his license. CP 82, 124. Dr. Farzad argued, albeit unconvincingly, that “the factual mosaic suggests the operation of ulterior motives” and was sufficient to form the basis of a civil conspiracy claim. CP 82.

The trial court entered summary judgment in favor of all the Respondents, including Dr. Bundy and WPHP. CP 758-60, 874-76, 967-70. The trial court expressly acknowledged that there was no “evidence to support this notion of civil conspiracy....” RP 17. The trial court also stated as follows:

Now, as it relates to Dr. Bundy, I think that the nature and the charter, if you will, of WPHP requires—this is an Impaired Physician Program which is required to comply with directives from the MQAC relating to evaluation, training, monitoring, and treating and so on, Dr. Farzad was subject to that entity's direction. I think that there is Title 18 absolute immunity as it relates to this. And Washington law provides an absolute immunity to the Impaired Physician Program for I think obvious societal reasons. Title 18.71.0195(2) and 18.130.070(3) immunized Dr. Bundy and immunized WPHP. Motion is granted I think they're immune.

RP 19. Dr. Farzad appealed and the Court of Appeals affirmed the trial court's ruling. CP 108-110; Appendix A. This petition for review followed.

#### V. REASONS WHY REVIEW SHOULD BE DENIED

##### A. Considerations Governing Acceptance of Review

A petition for review will be accepted by the Supreme Court only under the following circumstances:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

B. Dr. Farzad Failed to Identify Any Circumstance Warranting Acceptance of Review.

Glaringly absent from Dr. Farzad's Petition for Review is any discussion of the considerations governing the acceptance of review under RAP 13.4(b). This deficiency alone is a sufficient reason for denying Dr. Farzad's Petition. RAP 13.4(c)(7).

In addition, the portion of the Petition designated "Issues Presented for Review" is directed solely at MQAC, not at Dr. Bundy or WPHP, and concedes applicability of the immunity defense:

Dr. Farzad knows that MQAC is immune to a litigation, and he is not challenging the suspension of his license. He however wants to know that [sic] why MQAC fabricated lies about him, and stated that he had Degenerative Brain Disease and did not accept testimony from expert neurologist, psychiatrist and psychologist that he is in full mental and physical health. Even after his charges of Bomb Threat was totally dismissed by the Federal Court with the help from a federal Public Defender Mr. Allan Zarkey Esquire.

Petition for Review at pp. 1-3. A desire to know why an admittedly immune defendant purportedly fabricated lies about Dr. Farzad is hardly a justification for Supreme Court review of Dr. Bundy and WPHP's entitlement to immunity.

Moreover, and as recognized by the Court of Appeals in connection with his previous briefing, Dr. Farzad provides no argument or citation to relevant legal authority. He "simply provides a litany of factual

assumptions he believes were perpetuated by the defendants and which he disputes.” See Appendix A at p. 6. Indeed, as the sole “[a]rgument why review should be accepted,” Dr. Farzad states as follow:

In 2014 Dr. Farzad was a well known psychiatrist and Child & Adolescent Psychiatrist. He was married, had two houses, and half a million Dollars in retirement, long and short term savings. After this severe injustice on his behalf done by MQAC due to protecting his patients and the public from the Wrath of the Molina Insurance Company, he lost all his wealth, went through a divorce and bankruptcy, and remains a destitute.

Petition for Review at p. 19. Because Dr. Farzad has failed to offer any legal argument or authority establishing that he is entitled to review, much less addressed the considerations enumerated in RAP 13.4(b), his Petition for Review should be denied.

C. No Circumstance Exists Warranting Review.

Dr. Farzad’s failure to articulate a basis warranting review is hardly surprising since none of the bases enumerated in RAP 13.4(b) are present in this case. There is no Court of Appeals or Supreme Court authority which conflicts with Division II’s decision. Furthermore, Division II’s decision involved the Respondents’ entitlement to statutory immunity and Dr. Farzad’s failure to address the legal issues regarding the same, not a question of law under the Washington or United States Constitutions. Moreover, Dr. Farzad’s Petition does not involve an issue of public interest,

much less substantial public interest. A substantial public interest exists where the Court of Appeals' decision will affect numerous other individuals. *See, e.g., State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (recognizing that case before it “presents a prime example of an issue of substantial public interest” because “[t]he Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where a DOSA sentence was or is at issue”). Division II's unpublished decision will not affect anyone other than the parties to this case. It relates solely to Dr. Farzad's dissatisfaction with the circumstances surrounding the loss of his medical license and the Respondents' immunity from suit for their involvement in same. Because no circumstance warranting acceptance of review exists, Dr. Farzad's Petition for Review should be denied.

## VI. CONCLUSION

For the foregoing reasons, this Court should deny Dr. Farzad's Amended Petition for Review.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of February, 2020.

MULLIN, ALLEN & STEINER, PLLC



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Attorneys for Respondents Chris Bundy, M.D., and  
Washington Physicians Health Program

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically served a true and correct copy of the foregoing in Supreme Court No. 97835-2 upon the following parties:

**Appellant:**

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

DATED this 10<sup>th</sup> day of February, 2020.

MULLIN, ALLEN & STEINER PLLC



Emily Boehmer  
Paralegal

# APPENDIX A

September 24, 2019

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SAID FARZAD, Individually,

Appellant,

v.

STATE OF WASHINGTON DEPARTMENT  
OF HEALTH-MEDICAL QUALITY  
ASSURANCE COMMISSION;  
WASHINGTON PHYSICIANS HEALTH  
PROGRAM, a Washington non-profit  
Corporation doing business in Washington  
State; LARRY BERG AND “JANE DOE”  
BERG, and the marital community composed  
thereof; CHRIS BUNDY AND “JANE DOE”  
BUNDY, and the marital community  
composed thereof; MOLINA HEALTHCARE  
OF WASHINGTON, a Washington  
Corporation, John and Jane Does 1-10,

Defendants.

No. 51340-4-II

UNPUBLISHED OPINION

LEE, A.C.J. — Said Farzad appeals the superior court’s order granting all the defendants’ motions for summary judgment. The superior court agreed that all the defendants were entitled to immunity and dismissed Farzad’s claims. We affirm the superior court’s orders granting the defendants’ motions for summary judgment.



## FACTS

Farzad was a licensed psychiatrist. The Medical Quality Assurance Commission (MQAC), as the disciplinary authority for medical practitioners, received complaints regarding alleged boundary violations Farzad committed with two of his patients. Larry Berg, an MQAC staff attorney, was assigned to work on the investigation and subsequent disciplinary proceedings. Farzad did not deny any of the allegations; instead, Farzad insisted that his behavior was appropriate. Because Farzad admitted to the conduct alleged in the complaints, MQAC decided to pursue a Stipulation to Informal Disposition regarding the boundary violations. MQAC sent Farzad a Statement of Allegations, Summary of Evidence, and the Stipulation to Informal Disposition. However, Farzad rejected the Stipulation to Informal Disposition.

While this initial investigation was occurring, MQAC learned that Farzad had been arrested for making telephone threats to Molina Healthcare. Molina employees had called 911 to report that Farzad had called Molina and threatened to shoot everyone and bomb the building.<sup>1</sup> Based on Farzad's arrest, MQAC summarily suspended Farzad's medical license pending a hearing.

After a hearing regarding Farzad's license to practice medicine, MQAC determined that Farzad's attitude regarding his conduct was indicative of an underlying mental condition which rendered him unable to practice with reasonable skill and safety. Specifically, MQAC found,

the ongoing "inability to practice with reasonable skill and safety" issue in this case can be seen in regular conversation with the Respondent and was clearly apparent to the Commission: It is the manner in which the Respondent attempts to dominate and manipulate everyone with whom he interacts in a constant effort to gain their

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<sup>1</sup> The State later charged Farzad with telephone harassment and threats to bomb or injure property. A jury found Farzad guilty of telephone harassment. After the superior court granted summary judgment in this case, Farzad's conviction was reversed by the Ninth Circuit Court of Appeals. *Farzad v. Snohomish County Superior Court*, 769 Fed. Appx. 499 (2019).

attention and admiration, whether it is through his grandiose presentation of self; his misleading and hyperbolic answers; his contemptuous and impatient dismissal of others; blame-shifting; launching into lengthy stories that overestimate his accomplishments or abilities; or his flagrant attempts to control every discourse to prove his superiority. The Respondent's demeanor and presentation during his testimony was simply and fundamentally manipulative, controlling, and grandiose, and indicates some type of underlying mental condition that does interfere with his ability to practice as a physician with reasonable skill and safety. The Respondent's testimony, the testimony of all the witnesses, the transcripts of the Respondent's text messages to patients, and the transcripts of the interviews with Molina employees, were all consistent in portraying someone whose behavior and mental state are destructively contaminated by a sense of personal entitlement.

Clerk's Papers (CP) at 639-40 (internal footnotes omitted).

MQAC suspended Farzad's license. MQAC's order required Farzad to submit to a neuropsychological evaluation. After completing the neuropsychological evaluation Farzad was required to do the following:

1. Sign all releases necessary to allow the evaluators to speak to MQAC and Washington Physicians Health Program (WPHP).
2. Provide a copy of the evaluation to MQAC and WPHP.
3. Make an appointment with WPHP to discuss the evaluation.
4. Follow WPHP's referrals for further examination and assessment.
5. Obtain a report from WPHP regarding whether Farzad is safe to return to practice or whether further treatment is necessary.

The order stated that Farzad could not apply for reinstatement of his license until WPHP provided MQAC with a final assessment indicating that Farzad is safe to return to practice. WPHP was contracted with the Washington Department of Health, through MQAC, "to obtain the services of a qualified provider for potentially impaired physicians, physician assistants, osteopathic

No. 51340-4-II

physicians, osteopathic physician assistants, podiatric physicians, veterinarians, and dentists.” CP at 851 (emphasis omitted) (boldface omitted). Under the contract, WPHP was required to provide “education, assessment, intervention and referral, client support, administration and reporting.” CP at 851 (emphasis omitted) (boldface omitted). Chris Bundy was the director of WPHP at the time of Farzad’s lawsuit.

Farzad appealed MQAC’s order to the superior court. While judicial review of MQAC’s order was pending, Farzad completed the neuropsychological evaluation. Following receipt of the neuropsychological evaluation, WPHP recommended that Farzad obtain a neurology evaluation and begin psychotherapy. Farzad completed the neurology evaluation, which raised concerns that Farzad was suffering from a “neurodegenerative condition called frontal temporal lobar degeneration (FTLD), behavioral variant.” CP at 828. At the same time, Farzad’s relationship with WPHP became strained because Farzad engaged in threatening and aggressive communications with WPHP staff.

Ultimately, WPHP determined that Farzad would not likely be able to safely return to the practice of medicine. WPHP provided MQAC with notice of its recommendation. As a result, MQAC denied Farzad’s repeated requests to reinstate his medical license.

Farzad filed a civil complaint for damages against MQAC, WPHP, and Molina. Farzad also individually named Larry Berg and Chris Bundy as defendants. The complaint related to MQAC’s decision to suspend Farzad’s medical license and alleged negligence, gross negligence, civil conspiracy, disparate treatment, unlawful retaliation, negligent and intentional infliction of emotional distress, libel, slander, false light, and defamation.

No. 51340-4-II

MQAC and Berg filed a motion for summary judgment, asserting absolute immunity from suit under RCW 18.130.300(1)<sup>2</sup> and the common law quasi-judicial immunity doctrine.<sup>3</sup> WPHP and Bundy filed a motion for summary judgment, alleging immunity from suit under RCW 18.130.300(2).<sup>4</sup> Molina filed a motion for summary judgment, asserting immunity for making reports to law enforcement under RCW 4.24.510.<sup>5</sup> The superior court granted all the defendants' motions for summary judgment based on their respective claims of immunity.

Farzad appeals.

#### ANALYSIS

Farzad appeals the superior court's orders granting the defendants' motions for summary judgment. Farzad's arguments focus on whether the superior court erred in granting summary judgment because there were genuine issues of material fact as to the factual issues he raised.

Farzad assigns error to the superior court's order granting the defendants' motions for summary judgment and presents four issues related to his assignment of error. One issue is

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<sup>2</sup> RCW 18.130.300(1) provides, "The secretary, members of the boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties."

<sup>3</sup> *Janaszak v. State*, 173 Wn. App. 703, 718-19, 297 P.3d 723 (2013).

<sup>4</sup> RCW 18.130.300(2) provides, "A voluntary substance abuse monitoring program or an impaired practitioner program approved by a disciplining authority, or individuals acting on their behalf, are immune from suit in a civil action based on any disciplinary proceedings or other official acts performed in the course of their duties."

<sup>5</sup> RCW 4.24.510 provides, "A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization."

No. 51340-4-II

dispositive of this case—whether the superior court erred in concluding that the defendants were immune from suit as a matter of law.

With regard to immunity, Farzad included the following issue: “Did the trial court err when it dismissed this case on summary judgment by giving absolute immunity to the State of Washington and MQAC and the other defendants?” Br. of App. at 4. However, Farzad provides no argument or authority supporting this issue. We will not consider issues or assignments of error that are not supported by argument or citation to authority. RAP 10.3(a)(6); *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004), *review denied*, 155 Wn.2d 1015 (2005). “Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290, *review denied*, 136 Wn.2d 1015 (1998).

Here, Farzad cites only to legal authority for the fundamental standard of review for summary judgment. However, these well-established legal principles are unrelated to the specific issues regarding immunity that were decided on summary judgment.

Farzad provides no citation to relevant legal authority related to the immunity claims argued by the defendants. In fact, Farzad fails to even cite to the statutes granting immunity to the defendants in this case, RCW 18.130.300 and RCW 4.24.510. Instead of addressing the legal issues regarding the defendants’ immunity from suit, Farzad simply provides a litany of factual assumptions he believes were perpetuated by the defendants and which he disputes.

Farzad highlights the factual disputes and disregards the issue of legal immunity, to which the superior court determined the defendants were entitled. But factual disputes regarding the underlying facts of a case are not relevant if the defendants are immune from suit. Because Farzad

No. 51340-4-II

does not provide any argument or citation to authority regarding the defendants' claims of immunity, we decline to consider his assignment of error relating to immunity. *Bercier*, 127 Wn. App. at 824. Therefore, we affirm the superior court's orders granting the defendants' motions for summary judgment.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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Lee A.C.J.

We concur:

  
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Worswick, J.

  
\_\_\_\_\_  
Cruser, J.

**MULLIN ALLEN AND STEINER PLLC**

**February 10, 2020 - 1:45 PM**

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**Appellate Court Case Number:** 97835-2  
**Appellate Court Case Title:** Said Farzad v. State of WA, Dept. of Health-Medical Quality Assurance, et al.  
**Superior Court Case Number:** 17-2-07459-0

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