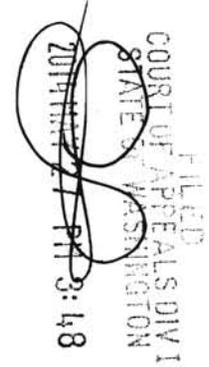


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No: 70830-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON, SEATTLE

STEVEN W. HYDE and SANDRA D. BROOKE, husband and wife

Respondents,

vs.

THE ASSOCIATION OF UNIVERSITY PHYSICIANS dba UW
PHYSICIANS, a non-profit corporation,

Petitioners, and

RESPONDENTS' BRIEF

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I. INTRODUCTION.

The Association of University Physicians dba UW Physicians, a private, non-profit Washington corporation, seeks to expand the claim filing requirement of Chapter 4.92 RCW to include private corporations. The proposed expansion violates Washington's constitution, adds language to an unambiguous statute, and is without precedent.

II. ISSUE.

Whether a claim filing requirement should be imposed on those with claims against private corporations where RCW 4.92.110 imposes no such requirement and where Art. 1, §12 of the Washington State Constitution states no law shall be passed granting any non-municipal corporation privileges or immunities which upon the same terms shall not belong equally to all corporations.

III. STATEMENT OF THE CASE.

The Association of University Physicians dba UW Physicians (hereinafter referred to as "the Association") is a private, non-profit corporation created under Chapter 24.03 RCW. CP 145. It is not a municipal corporation; it is not a "public corporation" created pursuant to RCW 35.21.730. Nevertheless, it seeks application of the claim filing

requirement of RCW 4.92.110 to achieve dismissal of Steven Hyde's medical negligence claim against it.

The purpose of the Association is to provide patient care, among other things. CP 146. The Association pays its physicians for medical services rendered. CP 147. All patient care services rendered by physician members of the Association are billed for and collected on behalf of the Association. CP 149. The Association has no claim upon the University salary of any of its members. CP 149. Association funds are kept in accounts or investments separate from those of the School of Medicine and the University of Washington. CP 149. The Association is required to reimburse the University of Washington for expenses directly attributable to the generation or collection of physician fee income by physician members of the Association. CP 151. The Association reimburses the University for its share of the cost of professional liability insurance and the risk management program administered by the University of Washington. CP 151.

Dr. Virany Hillard was apparently the physician whose negligence led to Steven Hyde's injuries. Dr. Hillard was a physician member of and employed by the Association. CP 143. She is not a party to this action. She is an employee of the Association. Her faculty appointment letter states: "As a faculty member you will have membership and employment

with the University of Washington Physicians” CP 143. University of Washington Physicians is the Association.

The Association billed Steven Hyde for medical care rendered him by Dr. Hillard. CP 160. The Association bill stated: “IMPORTANT: This statement reflects Physician services only. You may receive a separate statement for hospital/clinic charges.” CP 157.

Steven Hyde filed suit against the Association for alleged negligence by its employee, Dr. Hillard. CP 1. He did not file an RCW 4.92.100 claim before filing suit against the Association. The Association moved for dismissal on that basis. The superior court denied the motion. CP 79 and 92.

IV. LEGAL ARGUMENT.

The Association is a private, nonprofit corporation set up under Chapter 24.03 RCW. It is not a municipal corporation; it is not a “public corporation” set up under RCW 35.21.730. The Washington State Constitution prohibits the Association from being treated differently from any other corporation. The special claim filing requirement of Chapter 4.92 RCW cannot be applied to the Association without violating Art. 1, §12 of the Washington State Constitution.

Art. 1, §12 prohibits special privileges and immunities. It states:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not belong equally to all citizens, or corporations.

Constitution of the State of Washington, Art. 1, §12. The Constitution at Article 1, §29 states: “The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.” Id.

The Association cannot receive the benefit of Chapter 4.92 RCW’s claim requirement without violation of the state constitution. It is neither municipal corporation nor “public” corporation, and, if it were to receive the benefit of the claim filing requirement of Chapter 4.92 RCW, it would be recipient of a privilege or immunity which does not exist for other corporations.

Additionally, Chapter 4.92 RCW does not include corporations in the claim filing section. It only includes the state and the state’s officers, employees or volunteers. RCW 4.92.110. The statute would have to be expanded beyond its plain language to impose a claim filing requirement on actions against the Association, a private corporation.

The Association cites Good v. Associated Students, 86 Wn.2d 94, 542 P.2d 762 (1975) as support for its contention a claim must be filed pursuant to Chapter 4.92 RCW before an action can be commenced

against it. The Association's argument is that, despite its own corporate status, it is in effect the State of Washington.

Good involved suit by some disgruntled students. The Supreme Court described the issues before it as follows:

Plaintiffs raise two primary issues: (1) Does the University have the authority to allocate funds to the ASUW? (2) Are students' first amendment rights violated by (a) the requirement that they be members of the ASUW; (b) that they are charged a fee to support the ASUW?

Id. at 96. The case had nothing to do with the claim filing statute.

Chapter 4.92 RCW was in no way involved and was not discussed in the opinion.

Good should not be used to expand the claim filing requirement of Chapter 4.92 RCW to include non-municipal corporations when the statute does not plainly so state. There is no case applying the claim filing requirement as advocated by the Association. The claim statute should not be so expanded.

The fact that the ASUW can be considered an arm of the state for purposes of the First Amendment does not mean the Association should be considered an arm of the state for purposes of application of Chapter 4.92 RCW.

The Association cites no case where a private corporation set up pursuant to Chapter 24.03 RCW has been found subject to the claim filing requirement of Chapter 4.92 RCW. It cites Woods v. Bailet, 116 Wn.App. 658, 67 P.3d 511 (2003), but Woods involves a “public corporation” created by the City of Seattle pursuant to RCW 35.21.730, which allows cities or counties to set up public corporations. It does not involve a private corporation set up by the University pursuant to Chapter 24.03.

Additionally, Woods involved a different claim statute which the court recognized was ambiguous, Chapter 4.96 RCW. It noted Chapter 4.96 RCW applied to “quasi municipal corporations,” an undefined term. It found the involved entity qualified under the statute as a “quasi municipal corporation” and that the filing requirement applied.

Chapter 4.92 RCW does not include “quasi municipal corporations” or any other ambiguous term that could give rise to a claim filing requirement applicable here. The Association is not the state, it is not an officer of the state, it is not an employee of the state, and it certainly is not a volunteer. There is no category in Chapter 4.92 RCW, ambiguous or otherwise, which fits the Association. The court would have to change the meaning of unambiguous statutory language for a claim filing requirement to be imposed on actions commenced against the Association.

The Association also cites Kleyer v. Harborview Medical Center, 76 Wn.App. 542, 887 P.2d 468 (1995). In Kleyer the court was not dealing with application of RCW 4.92.100 to a private corporation. Harborview was owned by King County and operated by the University of Washington. The Kleyer plaintiffs tried to argue RCW 28B.20 provided the exclusive method for bringing suit against the University of Washington and that Chapter 4.92 RCW accordingly did not apply. Kleyer simply held RCW 28B.20 does not alter the claim filing requirements of Chapter 4.92 RCW.

Hardesty v. Stenchever, 82 Wn.App. 253, 917 P.2d 577 (1996) is also cited as support for its position by the Association. Hardesty involved a UW doctor who was personally named. The care he provided was within the scope of his employment with the University of Washington. Under those circumstances a claim pursuant to Chapter 4.92 RCW was deemed necessary. In contrast the physician's care in the case at bar was in the course of her employ by the Association, a separate, private corporation. In that circumstance no claim is required.

The claim filing requirement should not be extended to private corporations where the statute provides it only applies to claims "...commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity. . . ." RCW 4.92.110. The statute is not

ambiguous; private corporations, regardless of who established them, are not included. Further, the construction advocated by the Association would render the statute unconstitutional.

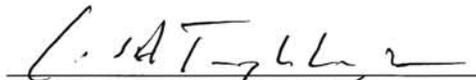
No court has before held the claim filing requirement applicable to the circumstance involved here. The trial court should be affirmed.

V. CONCLUSION

The order of the trial court denying dismissal of the Association of University Physicians dba UW Physicians should be affirmed. This cause should be remanded for trial.

Dated this 27th day of May, 2014.

LOPEZ & FANTEL, INC., P.S.



CARL A. TAYLOR LOPEZ,

WSBA No. 6215

Of Attorneys for Plaintiffs/Respondents

No: 70830-9-I

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CERTIFICATE OF SERVICE - RESPONDENTS' BRIEF

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STATE OF WASHINGTON
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1 I, Cynthia Ringo Palmer, declare and state as follows:

2 1. I am and at all times herein was a citizen of the United States, a resident of
3 Snohomish County, Washington, and am over the age of 18 years.

4 2. On the 27th day of May, 2014, I caused to be served the following document on
5 counsel as follows:

- 6
 - Respondents' Brief; and
 - Certificate of Service7

8 Carol L. Moody
9 Fain Anderson VanDerhoef PLLC
701 Fifth Avenue, Suite 4650
10 Seattle, WA 98104

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12 via ABC legal messenger, special run
 via U.S. regular mail

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15 Seattle, WA 98101

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17 via email
 via Fax: :
18 via ABC legal messenger, regular run
 via U.S. regular mail

19
20 I declare under penalty of perjury under the laws of the State of Washington that the
21 above is true and correct.

22 Dated at Seattle, Washington, this 27th day of May, 2014.

23
24 
Cynthia Ringo Palmer