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## **I. INTRODUCTION**

Richard Chambers (hereinafter referred to as “Richard”) died from exposure to the elements a few blocks from the licensed care facility of Defendant McGee Guest Home, Inc. (hereinafter referred to as “Defendant McGee”), which was being paid to care for Richard as a resident of that facility. Richard left the facility around breakfast time, evidently seen by some of the other residents but undetected by Defendant McGee’s paid caregivers, in winter weather wearing a short-sleeved shirt and only one shoe. Defendant McGee knew and had documented before it accepted Richard as a resident that he had significant cognitive and psychological impairments, was unfamiliar with the area, tended to wander, was likely to get lost if unattended outside the facility, and could not safely leave the facility on his own. Nevertheless, Defendant McGee, despite its limited resources, accepted Richard as a resident yet made no plan and took no action to monitor Richard’s whereabouts or to prevent him from leaving the facility unattended. Consequently, Richard did wander out of the facility, did get lost, and, tragically, died of exposure to the elements.

Richard’s son, Plaintiff Robert Chambers, in his capacity as the personal representative of Richard’s estate, brought suit against Defendant McGee in Grays Harbor County.

Richard had been residing in another licensed care facility,

Westhaven Villa in Grays Harbor County, just prior to being taken, against his will, to live in Defendant McGee's licensed care facility.

Defendant McGee, prior to taking Richard as a resident, was required by law to do a pre-admission assessment to determine, among other things, whether it could safely and adequately meet Richard's needs. In the process of performing that mandatory pre-admission assessment of Richard, who at the time was residing in Grays Harbor County, Defendant McGee received necessary documents from the Grays Harbor County office of DSHS and from the Grays Harbor County facility where Richard was then residing (Westhaven Villa). Defendant McGee also participated in telephone conferences with these same Grays Harbor County entities in the process of performing its mandatory pre-admission assessment of Richard, and it even initiated at least one of those telephone conversations.

The claims asserted by Plaintiff against Defendant McGee in this action include claims that Defendant McGee's performance of the pre-admission assessment was negligent, that it was negligent for Defendant McGee to take Richard into its facility as a resident at all, and that Defendant McGee in its pre-admission assessment and planning failed to devise a plan to address the known risks it discovered during the pre-admission assessment process.

Defendant McGee filed two separate motions to change venue and

remove this case from Plaintiff's chosen forum of Grays Harbor County. Both of those motions were denied by the trial court.

In response to the motions, Plaintiff pointed out that at least part of the cause of action arose in Grays Harbor County, namely, Defendant McGee's gathering of information in the performance of its mandatory but negligent pre-admission assessment and planning. Plaintiff also pointed out that Defendant McGee's correspondence and telephone conferences with Grays Harbor County entities during this process constituted doing business in Grays Harbor County. These grounds adequately support Plaintiff's choice of venue in Grays Harbor County; therefore, the decision of the trial court denying removal of the case from Grays Harbor County must be affirmed. The trial court's decision certainly did not constitute an abuse of discretion under the circumstances.

## **II. STATEMENT OF THE ISSUE**

Plaintiff partially agrees with Defendant McGee's statement of the issue on appeal found in its "Assignments of Error" section of its opening brief. Plaintiff agrees with the following portion of Defendant McGee's statement of the issue: "Did the trial court abuse its discretion when it denied McGee's request to change venue to Pierce County?"

Plaintiff does not agree with the remaining portion of Defendant McGee's statement because it presents an incomplete and inaccurate

statement of the facts. It is not “undisputed that the torts alleged in the underlying suit occurred in Pierce County.” Furthermore, it is not true that “there is no evidence that McGee conducted substantial business transactions in furtherance of its business in Grays Harbor County.” In addition, Defendant McGee’s statement of the issue fails to note that Plaintiff’s claims include negligence in Defendant McGee’s mandatory pre-admission assessment of Richard and that in performing that mandatory pre-admission assessment of Richard, who was then and had for many years been residing in Grays Harbor County, Defendant McGee received necessary materials for that assessment by facsimile transmission from Grays Harbor County entities and had telephone conversations, at least one of which Defendant McGee initiated, with persons in Grays Harbor County.

Plaintiff submits that a more fair statement of the issue is as follows:

Did the trial court abuse its discretion when it denied Defendant McGee’s motion for a change of venue from Grays Harbor County when Plaintiff’s claims include a claim of negligence on the part of Defendant McGee in its performance of its mandatory pre-admission assessment of Richard, conducted while Richard was residing in Grays Harbor County, which assessment included Defendant McGee receiving necessary documents by facsimile transmission from Grays Harbor County entities and Defendant McGee engaging in telephone conversations, at least one of which was initiated by Defendant McGee, with

persons in Grays Harbor County?

### **III. STATEMENT OF THE CASE**

On March 28, 2008, Richard was found dead in a field a few blocks from the state-licensed care facility owned and operated by Defendant McGee in which he had been residing in Pierce County for only about ten days. (CP 74, 196, 238, and 242). Richard had been taken against his will from a licensed facility in Aberdeen in Grays Harbor County, Washington, and admitted into Defendant McGee's facility on March 17, 2008. (CP 75, 78, 85, and 86). Richard had been living in Grays Harbor County for many years prior to being taken against his will to Defendant McGee's facility. (CP 122).

As a licensed facility, Defendant McGee was required to perform a pre-admission assessment of Richard to determine his needs and whether Defendant McGee was capable of meeting those needs with available resources and staffing. See, RCW18.20.180, 70.129.030(3), WAC 388-78A-2050. In the course of that mandatory pre-admission assessment, Defendant McGee obtained necessary documents on which it relied from the Aberdeen office of DSHS and from the Aberdeen facility in which Richard had been residing. (CP 66-78, 106, 110, 115, 121-146, 148-159, 161-192, 199-231, 275, 278-279, 282-286, and 243-271). Also in the course of the mandatory pre-admission assessment, Defendant McGee had

telephone conversations with Aberdeen DSHS personnel and staff at the Aberdeen facility in which Richard had been residing. (CP 44-45, 47-49, 68-69, 71-73, 115-117, 119, 243-245, 275, 277-280, and 284-288). At least one of the telephone conversations with staff at the Aberdeen facility was initiated by Defendant McGee's Administrator. (CP 44-45, 116-117, 119, 275, 279-280, 284, 286, and 288).<sup>1</sup>

Defendant McGee, by its own admission, in performing its mandatory pre-admission assessment of Richard Chambers relied heavily (if not exclusively) upon the information gathered from the Grays Harbor County entities and the telephone conferences with the Grays Harbor County entities. Defendant McGee made the following statements in its response to a motion for partial summary judgment in this case

- "McGee justifiably relied upon the information provided by DSHS and Westhaven to complete its assessment of Richard." (CP 272).
- "Ms. Anderson is the administrator for McGee and she is a qualified assessor....Ms. Anderson received a written assessment from DSHS on March 14<sup>th</sup> and 17<sup>th</sup> regarding Richard....Assessments are commonly used in the boarding home industry to provide information regarding potential residents....Upon reviewing an assessment, if Ms. Anderson has any questions or concerns, she routinely speaks with the potential resident's current facility to seek clarification of the information contained within the assessment....Based upon

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<sup>1</sup> In fact, in response to an interrogatory, Defendant McGee stated that it conversed with the Westhaven Villa staff in Aberdeen, Grays Harbor County, "on more than one occasion" in the process of performing its mandatory pre-admission assessment of Richard Chambers. CP 116 (response to interrogatory number 37).

Ms. Anderson's 28 years of experience as an administrator, this is a common practice among boarding homes....Due to the representations in the assessments, Ms. Anderson determined that she needed additional information to clarify Richard's restrictions and needs, specifically his supervision requirements, to determine whether he was an appropriate resident for McGee....It was important for Ms. Anderson to determine the level of supervision Richard actually required while at the facility....In order to perform a complete assessment, Ms. Anderson spoke with a nurse/administrator from Westhaven who had knowledge of Richard's needs....Based on these representations, Ms. Anderson determined that she could accept Richard as a resident." (CP 278-280).

- "The information Ms. Anderson is required to consider to conduct her pre-admission assessment of potential residents is commonly provided in the assessment document from DSHS. Ms. Anderson received such an assessment regarding Richard from Derald Harp at DSHS." (CP 283).
- "Ms. Anderson determined that she needed additional information to clarify Richard's supervision requirements. Ms. Anderson spoke with a nurse at Westhaven to discuss Richard's needs and complete her pre-admission assessment." (CP 284).
- "McGee is required by law to assess all potential residents....It is standard practice to use the information provided by DSHS in its assessment and any materials provided by the prior facility." (CP 284).
- "**Westhaven received specific inquiries from McGee regarding Richard.**" (CP 286)(Emphasis added.).
- "The statement made by Westhaven to Ms. Anderson was made for the purpose of...assessing whether McGee could meet Richard's needs after identification of known behaviors that may cause concern or require special care. This information was required as part of McGee's preadmission assessment of Richard under Washington law. *See* WAC 388-78A-2060. The statements obtained by (*sic*) Westhaven were intended to promote Richard's safety and McGee reasonably relied on the statements in completing the pre-admission

assessment.” (CP 288).

During its pre-admission assessment, Defendant McGee learned that Richard had significant psychological and cognitive issues, had a tendency to wander, and was easily confused and lost. (CP 170, 175, 184, 189-191, 222, 224, and 226-227). Defendant McGee noted in its written pre-admission assessment that it would be unsafe for Richard to be outside the licensed care facility unsupervised because he was easily confused and did not know the area. (CP 189 and 191). However, Defendant McGee accepted Richard as a resident and then developed no plan and made no effort to assure Richard did not leave the facility unsupervised or even to monitor his whereabouts within the facility. (Id.).

Subsequently, Richard walked out of Defendant McGee’s facility undetected by any of Defendant McGee’s paid caregivers in winter weather wearing a short-sleeved shirt and only one shoe. (CP 74, 196, 238, and 242). He got lost and was found the next day in a field a few blocks away dead from exposure to the elements. (Id.).

Plaintiff, who is Richard’s son, filed suit against Defendant McGee in Grays Harbor County in his capacity as the Personal Representative of Richard’s estate. (CP 18-24). The complaint asserts claims for health care negligence, neglect of a vulnerable adult, and wrongful death. (Id.). The claims are based in part on Defendant McGee’s deficient assessment of

Richard, which led it to improperly admit Richard into its facility when it was incapable of safely and appropriately serving Richard's needs with available resources and staffing, and Defendant McGee's negligent pre-admission failure to plan for Richard's known and assessed inability to safely leave the facility. (Id.)(See particularly, CP 21 at paragraphs 3.1 A and B of the Complaint).

Prior to answering the complaint, Defendant McGee filed a motion to change venue from Grays Harbor County to Pierce County. (CP 1). That motion was denied. (Id.).

Defendant McGee, after some discovery had been completed, filed a "renewed" motion to change venue. (CP 1-11). Plaintiff opposed the "renewed" motion, pointing out that part of the tort arose in Grays Harbor County and that Defendant McGee had transacted business in Grays Harbor County. (CP 54-65). The part of the tort that arose in Grays Harbor County included Defendant McGee, during its pre-admission assessment of Richard, soliciting and/or receiving information from the Aberdeen office of DSHS and the Aberdeen care facility where Richard had been residing. (Id.). The related pre-admission assessment correspondence and telephone calls with these Aberdeen persons and entities also constituted the transaction of business within Grays Harbor County. (Id.). Plaintiff also pointed out that discovery had actually

strengthened the basis for venue in Grays Harbor County because it had revealed that Defendant McGee's Administrator in her pre-admission assessment had actually initiated at least one of the phone calls to the Aberdeen facility at which Richard had resided and because it had also revealed that Defendant McGee had admitted other Grays Harbor County residents into its licensed care facility. (Id.). The court denied the "renewed" motion for change of venue. (CP 104-105).

Prior to Defendant McGee's filing of the "renewed" motion for change of venue, Plaintiff had filed the above-referenced motion for partial summary judgment seeking to dismiss Defendant McGee's "empty chair" affirmative defenses against the Aberdeen DSHS office and the Aberdeen facility where Richard had been residing. (CP 106-107). (The hearing on that motion occurred after the hearing on the "renewed" motion to change venue. CP 297.) It is apparent from Defendant McGee's response to the motion for partial summary judgment that its theory of the case is based primarily upon information it allegedly solicited and received from these two Aberdeen entities during the course of performing its mandatory pre-admission assessment of Richard. (CP 274-295). Indeed, although granting partial summary judgment dismissing the affirmative defenses, the court left open the possibility of Defendant McGee filing third-party claims against these Aberdeen entities later in the

case. (CP 297-299).

#### IV. ARGUMENT

A. **Venue in Grays Harbor County is proper because part of the tort cause of action arose in Grays Harbor County.** RCW 4.12.020(3) provides that in actions “for the recovery of damages for injuries to the person” the plaintiff, at his option, may sue “in the county in which the cause of action or some part thereof arose.” Likewise, RCW 4.12.025(3) provides that an action against a corporation may, at the option of the plaintiff, be brought in the county where the tort was committed.

Plaintiff’s claim is based in part upon Defendant McGee’s failure to properly assess Richard’s condition prior to admitting him to its facility, negligent action in admitting him at all given his condition and the lack of adequate staff and resources to properly care for him, and negligent pre-admission planning that failed to include any plan to address the known risk of Richard unsafely leaving the facility. In the process of admitting Richard, Defendant McGee solicited and/or received information from the DSHS office in Grays Harbor County and records from the Grays Harbor County boarding home where Richard Chambers was residing prior to being taken against his will to Defendant McGee’s facility. Defendant McGee also participated with the Grays Harbor County DSHS staff and

the Grays Harbor County boarding home staff in removing Richard Chambers against his will from the Grays Harbor County boarding home to the facility of Defendant McGee in Pierce County.

Indeed, in the process of assessing Richard prior to his admission, the defendant actually had a number of conversations with Aberdeen staff of the facility in which Richard was then residing concerning the propriety of admitting Richard Chambers. In fact, the defendant's chief defense argument is that its assessment was based on these conversations, which might have included misinformation or undisclosed information from the Aberdeen facility's staff leading to an improper assessment and admission. Likewise, the defendant has argued that conversations with the Aberdeen DSHS staff might have included similar misinformation or undisclosed information that also might have led to an improper assessment or admission. While the trial court has granted a motion for partial summary judgment dismissing these arguments as affirmative defenses, the trial court also ruled on that motion that Defendant McGee may assert third-party claims against these Aberdeen entities if discovery reveals a non-frivolous basis to do so.

It is noteworthy that at least one of the telephone calls to the Aberdeen facility where Richard was residing was initiated by Defendant McGee's Administrator. This dispenses with Defendant McGee's

argument that “McGee cannot control who decides to call or fax them.” Even if that were true, Defendant McGee can certainly control who it through its own Administrator chooses to call. Moreover, the calls and faxes from the Aberdeen DSHS office and the Aberdeen facility where Richard was residing were not random or junk-mail communications. They were invited and accepted and followed-up on by Defendant McGee as part of its business as a licensed facility assessing and accepting clients and as part of its pattern of working directly with DSHS in the placement of clients with specific needs. They were a normal part of the mandatory process of performing pre-admission assessments as required by law and, by Defendant McGee’s own admission, were heavily relied upon by Defendant McGee.

In short, at least part of the tort cause of action arose in Grays Harbor County, specifically, the provision and gathering and solicitation of the information that led to the negligent assessment of Richard Chambers and the improper removal of Richard Chambers from his former boarding home to the facility of Defendant McGee in Pierce County. Venue in Grays Harbor County is therefore proper.

**B. Venue in Grays Harbor County is proper because Defendant McGee transacted business in Grays Harbor County.**

RCW 4.12.020 provides that in tort actions the plaintiff may, at his option,

sue “in the county in which the defendant resides.” Similarly, RCW 4.12.025 provides that an action against a corporation may, at the option of the plaintiff, be brought “in the county where the corporation has its residence.” Subsection (1) of RCW 4.12.025 defines the residence of a corporation to include “any county where the corporation...transacts business...[or] transacted business at the time the cause of action arose...”

A corporation transacts business within the meaning of the venue statute when it engages in any transaction that is “a part of its usual and ordinary business.” See, State ex. Rel. Anacortes Veneer, Inc. v. O’Phelan, 23 Wn.2d. 142, 154, 160 P.2d. 515 (1945). One transaction alone is sufficient to constitute “transacting business” within a county for purposes of the venue statute. Id. The test is whether “the corporation engaged in the transaction of that kind of business, or any part thereof, for which it was created and organized.” Id.

Although there is limited case law regarding when a party has transacted business within a county for purposes of application of the venue statutes, there is case law regarding the closely related issue of whether a party has transacted business within the state for purposes of application of the long-arm personal jurisdiction statute. In the context of the issue of personal jurisdiction, Washington’s Supreme Court has held that participating in phone calls and corresponding by mail from another

state with a person in Washington constitutes “transacting business” within the state. See, Griffiths & Sprague Stevedoring Co. v. Bayly, Martin & Fay, Inc., 71 Wn.2d. 679, 430 P.2d. 600 (1967). See Also, Bowlen v. Bateman, 76 Wn.2d. 567, 458 P.2d. 269 (1969)(defendant found to have transacted business when activity was limited generally to advertising, mailing, telephone calls, entering into one agreement, and receiving payments).

Defendant McGee’s business is running a licensed boarding home. It admits that it solicits and accepts residents from all over the state, including Grays Harbor County. (CP 2, 33, 37, and 47-48).<sup>2</sup> These facts alone are sufficient to constitute transacting business in Grays Harbor County under the cases referenced above.

Defendant also admits that as part of this business enterprise, it works with DSHS to get residents for its facility. Furthermore, in the present case, Defendant McGee had direct communications through telephone conferences and fax transmissions with DSHS staff in Grays Harbor County specifically about the forced and unwilling transfer of Richard to Defendant McGee’s facility.

Defendant also had telephone conferences with the Aberdeen staff

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<sup>2</sup> Defendant McGee implies that virtually all of its residents come from Pierce County; however, Defendant McGee admitted in response to an interrogatory that at the time Richard Chambers resided at their facility 18 of the 47 residents came from counties other than Pierce County. CP 33 and 37 (interrogatory number 23 and response).

of the facility where Richard had been residing regarding Richard. This included at least one telephone call to that Aberdeen facility that was initiated by Defendant McGee's Administrator.

Defendant also called the plaintiff in Grays Harbor County in connection with Richard's disappearance. (CP 89 and 195-196).

Moreover, Defendant McGee admits that Richard was not the only person that the defendant brought into its facility from Grays Harbor County.

Clearly, Defendant McGee transacted business in Grays Harbor County, and venue in Grays Harbor County is proper.

Curiously, the only case cited by Defendant McGee in support of its argument that it did not transact business in Grays Harbor County is Trans-Northwest Gas v. Northwest Nat. Gas Co., 40 Wn.2d. 35, 240 P.2d. 261 (1952). This is curious because in that case the appellate court actually affirmed the denial of the motion for change of venue and held that the defendant did transact business in the forum county. Defendant McGee in citing Trans-Northwest Gas also noted that case cited Anacortes Veneer, Inc., *supra*. As with Trans-Northwest Gas, the court in Anacortes Veneer, Inc. affirmed the denial of the motion for change of venue and held that the defendant did transact business in the forum county. In short, neither of these cases referenced by Defendant McGee supports its

requested relief.

C. **The trial court did not abuse its discretion under the circumstances.** It is a “well-established principle” under Washington law that “choice of venue ‘lies with the plaintiff in the first instance.’” Hatley v. Saberhagen Holdings, Inc., 118 Wn.App. 485, 488-89, 76 P.3d. 255 (2003)(reversing grant of a motion for change of venue). It has also long been the rule of law in Washington that, “In doubtful cases... the statutes should be liberally construed in favor of the jurisdiction where the suit is instituted.” Carr v. Remele, 74 Wash. 380, 381, 133 P. 593 (1913)(affirming denial of motion for change of venue from one county to another). Thus, under Washington law there is a preference for the plaintiff’s choice of venue and the county in which the action is instituted.

Moreover, “The legislature has placed the matter of a change of venue within the sound discretion of the trial court, and, in the absence of clear abuse” appellate courts may “not interfere with the handling of [such] trial [court] matters.” Baker v. Hilton, 64 Wn.2d. 964, 966, 395 P.2d. 486 (1964)(affirming denial of change of venue). Our Washington Supreme Court explained in Baker, “Concerning proper venue, an ‘abuse of judicial discretion is not shown unless the decision has been exercised upon grounds, or to an extent, clearly untenable or manifestly

unreasonable.” Id.<sup>3</sup>

The trial court clearly did not abuse its discretion in denying the requested change of venue. As discussed above, the trial court’s decision under the law was clearly correct. In any event, its decision certainly was not untenable or unreasonable. Giving Defendant McGee every benefit of any doubt, at best there was a factual question as to whether its conduct constituted the transaction of business in Grays Harbor County and/or established that at least part of the cause of action arose in Grays Harbor County. The trial court’s resolution of that factual issue was neither untenable nor unreasonable. There are solid reasons supported by substantial evidence in favor of a factual determination that venue is proper in Grays Harbor County. Coupling this with the well-established and long-standing preferences under Washington law for honoring the plaintiff’s choice of venue and venue in the place where the action is

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<sup>3</sup> Defendant McGee notes in its opening Brief of Appellant that this may include an instance where the court’s ruling is based on an “erroneous view of the law.” However, Defendant McGee does not identify what “erroneous view of the law” the trial court may have held. Indeed, Defendant McGee does not even identify what it believes was the trial court’s “view of the law.” Defendant McGee failed to provide this appellate court with the transcripts of the hearings concerning the two requests for change of venue, so this court has no record on which it could find that the trial court was operating under an “erroneous view of the law.” The fact of the matter is that the court correctly understood the law and under the facts of the matter concluded that Defendant McGee’s connections and contacts in this matter were sufficient to make venue proper, presumably because they either constituted transaction of business in Grays Harbor County and/or established that at least part of the cause of action arose in Grays Harbor County. In other words, the trial court’s decision was based upon its application of the correct view of the law to the facts presented and not a matter of simply misunderstanding the law. Certainly, Defendant McGee has presented nothing to this appellate court to the contrary. The omission may have been intentional.

instituted makes it abundantly clear that both of the trial court judges who denied the requests for a change of venue had tenable grounds to do so and that their decisions were perfectly reasonable if not absolutely mandatory under the circumstances and the record before them. It would not be appropriate for this court to come in after the fact and second-guess the trial court judges in this discretionary matter by reweighing the evidence presented and determining whether it might have decided the factual matter another way. This court can only reverse if the trial court judges abused their discretion by acting in an untenable or unreasonable manner, which clearly did not occur in this case.

#### **V. CONCLUSION**

Venue is clearly proper in Grays Harbor County.

Defendant McGee had numerous contacts with Grays Harbor County DSHS staff and staff at the Grays Harbor County facility where Richard was then actually residing in the process of performing the pre-admission assessment of Richard that Defendant McGee is absolutely required by law to perform before admitting a person into its licensed care facility. Those contacts included gathering and obtaining information and documents from these Grays Harbor County entities by phone and by fax. At least one and probably more of these communications were actually initiated by Defendant McGee itself.

Part of Plaintiff's cause of action includes claims that Defendant McGee negligently performed this pre-admission assessment which led it to negligently admit Richard into its facility and that Defendant McGee negligently failed during its pre-admission process to adequately plan for the known risks it discovered in the process of gathering the information and documents from the Grays Harbor County entities.

Under these facts and circumstances, it is clear that at least part of the cause of action arose in Grays Harbor County. It is equally clear that Defendant McGee conducted business in Grays Harbor County. Under Washington law, even one contact can constitute the transaction of business within a county for purposes of the venue statute. Similarly, under Washington law, correspondence or telephone conferences with persons within a county can constitute transaction of business within that county even if the defendant itself is not physically located within that county.

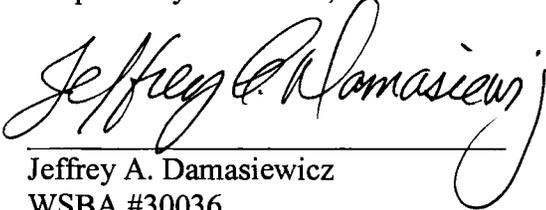
This court cannot reverse the trial court unless it finds that the trial court abused its discretion in denying the change of venue. That would require a finding that the trial court judges' decisions were untenable or unreasonable. That is simply not the case. The trial court was faced with preferences under the law for honoring the plaintiff's choice of forum and the forum where the action was instituted and presented with solid

evidence of substantial connections between Defendant McGee's conduct and Grays Harbor County all in the context of the very cause of action at issue in this case. The trial court's decision was thus tenable and reasonable – and Plaintiff submits absolutely required under these facts and the existing law – and was clearly not an abuse of discretion.

The trial court must be affirmed in this case.

Dated: 12/30/10

Respectfully Submitted,



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WSBA #30036  
Attorney for Respondent

## **APPENDIX**

Archive

**Washington Statutes**

**Title 4. Civil procedure**

**Chapter 4.12. Venue - Jurisdiction**

*Current through 2010SP1 Legislation*

**§ 4.12.020. Actions to be tried in county where cause arose**

Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute;

(2) Against a public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of his or her office, or against a person who, by his or her command or in his or her aid, shall do anything touching the duties of such officer;

(3) For the recovery of damages for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

**History.** 2001 c 45 § 2; 1941 c 81 § 1; Code 1881 § 48; 1877 p 11 § 49; 1869 p 12 § 49; 1860 p 7 § 16; 1854 p 133 § 14; Rem. Supp. 1941 § 205.

Archive

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**Washington Statutes**

**Title 4. Civil procedure**

**Chapter 4.12. Venue - Jurisdiction**

*Current through 2010SP1 Legislation*

**§ 4.12.025. Action to be brought where defendant resides - Optional venue of actions upon unlawful issuance of check or draft - Residence of corporations - Optional venue of actions against corporations**

(1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

(2) An action upon the unlawful issuance of a check or draft may be brought in any county in which the defendant resides or may be brought in any division of the judicial district in which the check was issued or presented as payment.

(3) The venue of any action brought against a corporation, at the option of the plaintiff, shall be: (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence.

**History.** 1998 c 56 § 1; 1985 c 68 § 2; 1983 c 31 § 1; 1965 c 53 § 168; 1927 c 173 § 1; RRS § 205-1. Prior: 1909 c 42 § 1; Code 1881 § 49; 1877 p 11 § 50; 1869 p 13 § 50; 1860 p 101 § 488; 1854 p 220 § 494.

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**Washington Statutes**

**Title 18. Businesses and professions**

**Chapter 18.20. Boarding homes**

*Current through 2010SP1 Legislation*

**§ 18.20.180. Resident rights**

RCW 70.129.005 through 70.129.030, 70.129.040(1), and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter.

**History.** 1994 c 214 § 21.

**Note:**

***Severability -- Conflict with federal requirements -- Captions not law -- 1994 c 214: See RCW 70.129.900 through 70.129.902.***

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## Washington Statutes

### Title 70. Public health and safety

#### Chapter 70.129. Long-term care resident rights

*Current through 2010SP1 Legislation*

#### § 70.129.030. Notice of rights and services - Admission of individuals

(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or his or her representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under **RCW 70.129.140(2)**. Each resident and his or her representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under **RCW 70.129.040** ;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

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(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them.

**History.** 1998 c 272 § 5; 1997 c 386 § 31; 1994 c 214 § 4.

**Note:**

**Effective date -- 1998 c 272 § 5:** "Section 5 of this act takes effect July 1, 1998." [1998 c 272 § 23.]

**Application -- Effective date -- 1997 c 386:** See notes following **RCW 13.50.010**.

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**Washington Administrative Code**

**Title 388. Social and Health Services, Department of**

**AGING AND ADULT SERVICES**

**Chapter 388-78A. Boarding home licensing rules**

**GENERAL**

*All regulations passed and filed through February 17, 2010*

**§ 388-78A-2050. Resident characteristics**

The boarding home may admit and retain an individual as a resident in a boarding home only if:

(1) The boarding home can safely and appropriately serve the individual with appropriate available staff providing:

(a) The scope of care and services described in the boarding home's disclosure information, except if the boarding home chooses to provide additional services consistent with **RCW 18.20.300(4)** ; and

(b) The reasonable accommodations required by state or federal law, including providing any specialized training to caregivers that may be required according to WAC 388-78A-2490 through 388-78A-2510;

(2) The individual does not require the frequent presence and frequent evaluation of a registered nurse, excluding those individuals who are receiving hospice care or individuals who have a short-term illness that is expected to be resolved within fourteen days as long as the boarding home has the capacity to meet the individual's identified needs; and

(3) The individual is ambulatory, unless the boarding home is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents.

**History.** Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2050, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2050, filed 7/30/04, effective 9/1/04.

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**Washington Administrative Code**

**Title 388. Social and Health Services, Department of**

**AGING AND ADULT SERVICES**

**Chapter 388-78A. Boarding home licensing rules**

**ASSESSMENT AND MONITORING**

*All regulations passed and filed through February 17, 2010*

**§ 388-78A-2060. Preadmission assessment**

The boarding home must conduct a preadmission assessment for each prospective resident that includes the following information, unless unavailable despite the best efforts of the boarding home:

- (1) Medical history;
- (2) Necessary and contraindicated medications;
- (3) A licensed medical or health professional's diagnosis, unless the individual objects for religious reasons;
- (4) Significant known behaviors or symptoms that may cause concern or require special care;
- (5) Mental illness diagnosis, except where protected by confidentiality laws;
- (6) Level of personal care needs;
- (7) Activities and service preferences; and
- (8) Preferences regarding other issues important to the applicant, such as food and daily routine.

**History.** Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2060, filed 7/30/04, effective 9/1/04.

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**CERTIFICATE OF SERVICE**

I certify that on December 30, 2010, I caused a true and correct copy of this Brief of Respondent to be served on Jenny M. Churas, attorney for Petitioner, by mailing said copy to Jenny M. Churas, Esq., Johnson Andrews & Skinner, P.S., 200 W. Thomas Street, Suite 500, Seattle, Washington 98119.

DATED: December 30, 2010

M. Bates  
Molly Bates

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