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Supreme Court No. (to be set)  
Court of Appeals No. 36492-1-II  
**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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In re the Detention of:  
**Jake Hawkins**  
Appellant/Petitioner

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Lewis County Superior Court  
Cause No. 06-2-00225-1  
The Honorable Judge H. John Hall  
**PETITION FOR REVIEW**

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## **I. IDENTITY OF PETITIONER**

Petitioner Jake Hawkins, the appellant below, asks this Court to review the decision of Division II of the Court of Appeals referred to in Section II below.

## **II. COURT OF APPEALS DECISION**

Jake Hawkins seeks review of the Court of Appeals Opinion entered on February 12, 2009. A copy of the opinion is attached. *See* Appendix.

## **III. ISSUES PRESENTED FOR REVIEW**

**ISSUE 1:** Did the trial court exceed its authority by ordering Mr. Hawkins to submit to a pretrial polygraph examination not authorized under RCW 71.09?

**ISSUE 2:** Do the regulations developed by DSHS to implement RCW 71.09.040 permit SVP respondents to refuse pretrial polygraph examinations?

**ISSUE 3:** If the regulations developed to implement RCW 71.09.040 are interpreted to require a pretrial polygraph examination, did DSHS exceed its authority by promulgating those regulations?

#### **IV. STATEMENT OF THE CASE**

##### **A. Prior Proceedings**

The state filed a Petition alleging that Jake Hawkins is a sexually violent predator. CP 8-9. Prior to trial, the superior court ordered Mr. Hawkins to submit to a pretrial sexual history polygraph. CP 6-7. The Court of Appeals granted Mr. Hawkins' Motion for Discretionary Review, and upheld the trial court's order. Court of Appeals Opinion, Appendix.

##### **B. Statement of Facts**

While in custody of the Department of Corrections, Jake Hawkins successfully completed a 13-month sex offender treatment program. RP (2/23/06) 8, 11, 15-17. Prior to his release, the state filed a Petition seeking his involuntary commitment as a sexually violent predator (SVP) under RCW 71.09. CP 8-9. While the Petition was pending, the state sought an order compelling Mr. Hawkins to submit to a sexual history polygraph examination. Petitioner's Motion Compelling Polygraph Examination, CP 11-12. Mr. Hawkins objected. RP (5/10/07) 43-48. The trial court ruled that the examination was required and entered an Order Compelling Polygraph. CP 6-7.

Mr. Hawkins sought and was granted discretionary review.<sup>1</sup> On February 12, 2009, the Court of Appeals issued an unpublished Opinion affirming the trial court's order. Court of Appeals Opinion, Appendix.

**V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

A. This Court should accept review and hold that RCW 71.09 does not authorize trial courts to compel polygraph examinations prior to trial. The Court of Appeals' decision conflicts with a decision of the Supreme Court, involves a significant question of law under the federal and state constitutions, and raises an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1)-(4).

The Supreme Court has held that RCW 71.09 must be strictly construed to its terms. *In re Detention of Martin*, 163 Wn.2d 501, 508, 182 P.3d 951 (2008). Furthermore, civil incarceration under RCW 71.09 violates due process when achieved by means other than strict compliance with the statute. *Martin*, at 511, (citing U.S. Const. Amend. XIV; Wash. Const. Article I, Section 3). In keeping with this approach, the Supreme Court has held that RCW 71.09.040 provides the exclusive means for evaluating a person for commitment as a sexually violent predator. *In re*

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<sup>1</sup> The Commissioner initially denied the request, but later the Petitioner's Motion to Modify was granted.

*Detention of Williams*, 147 Wn.2d 476, 55 P.3d 597 (2002); see also *In re Audett*, 158 Wn.2d 712, 718-719, 147 P.3d 982 (2006).

1. RCW 71.09, when strictly construed to its terms, prohibits compelled polygraph examinations prior to trial.

Under RCW 71.09, a respondent may not be compelled to submit to a pretrial polygraph examination.

First, the statute does not contain any provision allowing the court to compel polygraph testing prior to trial. The sections relating to pretrial procedures—including the section relating to pretrial evaluation—do not mention polygraphy. See RCW 71.09.040. Applying the rule of strict construction set forth in *Martin, supra*, the absence of specific authorization for compelled pretrial polygraph examinations must be interpreted to prohibit courts from ordering SVP respondents to submit to polygraphs prior to trial. *Martin, supra*.

Second, the statute *does* specifically allow compelled polygraph examinations *after* adjudication. In contrast to RCW 71.09.040, 71.09.096(4) specifically authorizes the court to order polygraph testing as a condition of release to a less restrictive alternative. Where the legislature uses different language in the same statute, different meanings are intended. *State v. Costich*, 152 Wn.2d 463, 475-476, 98 P.3d 795 (2004). The absence of any reference to polygraphy in RCW 71.09.040

suggests that the legislature did not intend to authorize courts to compel pretrial polygraph examinations; had they wished to grant such authority, they would have explicitly said so, as they did in RCW 71.09.096(4). *Costich, supra*. Accordingly, the statute must be interpreted to preclude trial courts from compelling pretrial polygraph testing. *Martin*, at 508, 510.

2. Division II's holding (that the civil rules authorize trial courts to compel pretrial polygraph examinations) directly conflicts with the Supreme Court's 2002 decision *In re Williams*.

The Court of Appeals incorrectly held that trial courts may compel pretrial polygraph examinations under the civil rules. According to Division II, “[A]s the State argues, SVP actions are civil in nature and thus CR 26(a) [sic] provides an additional basis for ‘physical and mental examinations’ ordered by the trial court.” Opinion, p. 3.<sup>2</sup> This holding directly conflicts with *In re Detention of Williams, supra*. In *Williams*, the Supreme Court unequivocally held that RCW 71.09.040 provides the exclusive authority for pretrial evaluations, and explicitly rejected the civil rules as a basis for additional mental or physical examinations. *Williams*, at 491.

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<sup>2</sup> Although the Opinion refers to CR 26(a), the reference is apparently meant to include CR 35, the rule that actually governs physical and mental evaluations.

3. The Supreme Court should accept review under RAP 13.4(b)(1)-(4), reverse the Court of Appeals' decision, and vacate the trial court's order compelling Mr. Hawkins to submit to a pretrial polygraph examination.

The Supreme Court should accept review of this case, hold that RCW 71.09 does not authorize compelled polygraph testing prior to trial, and reiterate that CR 35 may not be used as a basis for additional mental or physical examinations of SVP respondents. The Court of Appeals' Opinion conflicts with a decision of the Supreme Court, first because it relies on the civil rules as authority for compelled pretrial polygraph examinations in violation of *Williams, supra*, and second because it fails to strictly construe RCW 71.09, as required under *Martin, supra*. RAP 13.4(b)(1).

Furthermore, the case involves a significant question of law under the federal and state constitutions. Failure to strictly comply with RCW 71.09 violates due process; interpretation of the statute is critical to the constitutional functioning of civil commitments for sexually violent predators. *Martin*, at 511; U.S. Const. Amend. XIV; Wash. Const. Article I, Section 3; RAP 13.4(b)(2).

Finally, the case raises an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

- B. This Court should accept review and hold that RCW 71.09.040 does not authorize DSHS to compel polygraph examinations prior

to trial. The Court of Appeals Opinion conflicts with a decision of the Supreme Court and it raises an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1), (4).

1. DSHS regulations governing pretrial SVP evaluations do not require respondents to submit to polygraph examinations.

Absent a contrary legislative intent, language in an unambiguous regulation is given its plain and ordinary meaning. *Tesoro Ref. & Mktg. Co. v. Dep't of Revenue*, 164 Wn.2d 310, 322, 190 P.3d 28 (2008).

Furthermore, the rules of statutory construction apply to agency regulations. *Tesoro*, at 322.

DSHS has promulgated rules relating to RCW 71.09. Those rules are set forth in WAC 388-880, and include criteria for conducting evaluations under RCW 71.09.040. *See* WAC 388-880-030. WAC 388-880-034 is captioned "Evaluator – Pretrial evaluation responsibilities," and requires that evaluations be based on

- (1) Examination of the resident, including a forensic interview and a medical examination, if necessary;
- (2) Review of the following records, tests or reports relating to the person:
  - (a) All available criminal records, to include arrests and convictions, and records of institutional custody, including city, county, state and federal jails or institutions, with any records and notes of statements made by the person regarding criminal offenses, whether or not the person was charged with or convicted of the offense;

- (b) All necessary and relevant court documents;
- (c) Sex offender treatment records and, when permitted by law, substance abuse treatment program records, including group notes, autobiographical notes, progress notes, psycho-social reports and other material relating to the person's participation in treatment;
- (d) Psychological and psychiatric testing, diagnosis and treatment, and other clinical examinations, including records of custody in a mental health treatment hospital or other facility;
- (e) Medical and physiological testing, including plethysmography and polygraphy;
- (f) Any end of sentence review report, with information for all prior commitments upon which the report or reports were made;
- (g) All other relevant and necessary records, evaluations, reports and other documents from state or local agencies;
- (h) Pertinent contacts with collateral informants;
- (i) Other relevant and appropriate tests that are industry standard practices;
- (j) All evaluations, treatment plans, examinations, forensic measures, charts, files, reports and other information made for or prepared by the SCC which relate to the resident's care, control, observation, and treatment.

The regulation thus divides the evaluation into two parts: (1) examination of the resident and (2) review of records. WAC 388-880-034. The examination includes a forensic interview and medical examination (if necessary). Unlike the records review, it does not include "Medical and physiological testing, including plethysmography and polygraphy;" nor does it authorize "Other relevant and appropriate tests that are industry standard practices."

Because the regulation uses different language when describing the two phases of the evaluation, different meanings are presumed. *Costich, supra*. Thus the phrases “forensic interview” and “medical examination” cannot be stretched to include polygraph testing. *Costich*.

Furthermore, the maxim *expressio unius est exclusio alterius* compels the same interpretation. *Martin*, at 510. Under this rule, omissions are deemed to be exclusions. *Adams v. King County*, 164 Wn.2d 640, 650, 192 P.3d 891 (2008). Thus the omission of “polygraphy” and “physiological testing” from a list that includes a “forensic interview” and a “medical examination” compels the conclusion that the regulation does not authorize pretrial polygraph testing. *Martin*, at 508, 510.

The regulation cannot justify the trial court’s order compelling Mr. Hawkins to submit to a pretrial polygraph examination.

2. The Court of Appeals’ decision ignores the plain language of WAC 388-880-034, in violation of the Supreme Court’s decision in *Tesoro*.

The Court of Appeals interprets the regulation to mean the opposite of what it actually says. According to Division II, “[i]t would be unreasonable to read WAC 388-880-034(2)(e) as allowing an evaluator to consider polygraph records but not allowing the trial court to order the examination.” Opinion, p. 4. This reading is incorrect.

The Court of Appeals' interpretation ignores the plain language of the regulation, in violation of *Tesoro*. The regulation authorizes an examination (consisting of a "forensic interview" and a "medical examination") and a review (of records and test results, including polygraph test results). The regulation does not authorize or require a polygraph test prior to trial. WAC 388-880-034.

3. DSHS lacks authority to develop rules requiring SVP respondents to submit to pretrial polygraph examinations.

Questions of statutory construction are addressed *de novo*. *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005); *State Owned Forests v. Sutherland*, 124 Wn.App. 400, 409, 101 P.3d 880 (2004). The court's inquiry "always begins with the plain language of the statute." *State v. Christensen*, 153 Wn.2d 186, 194, 102 P.3d 789, (2004). If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Sutherland*, at 409; *see also State v. Punsalan*, 156 Wn.2d 875, 133 P.3d 934 (2006) ("Plain language does not require construction;" *Punsalan*, at 879, *citations omitted*).

An administrative agency has only those powers expressly granted or necessarily implied by statute. *S. Tacoma Way, LLC v. State*, 146 Wn. App. 639, 650, 191 P.3d 938 (2008); *Kaiser Aluminum & Chem. Corp. v.*

*Dep't of Labor & Indus.*, 121 Wn.2d 776, 787, 854 P.2d 611 (1993).

Furthermore, as noted above, RCW 71.09 must be strictly limited to its terms. *Martin*, at 508.

Under the plain language of the statute, DSHS may not compel an SVP respondent to submit to a polygraph examination prior to trial.

First, no provision of RCW 71.09 authorizes DSHS to compel polygraph examinations as part of the evaluation process. Under a strict reading of the statute, the absence of specific authority means that the Department may not compel a pretrial polygraph examination. *Martin*, *supra*.

Second, the statute does not authorize DSHS to develop rules regarding the *conduct* of pretrial evaluations. Instead, the statute directs DSHS to develop rules regarding the professional qualifications of evaluators: “[t]he evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services.” RCW 71.09.040(4).

Third, the statute *does* specifically authorize DSHS to develop rules for the conduct of evaluations (and treatment) of *adjudicated* respondents who are conditionally released to a less restrictive alternative. *See* RCW 71.09.350(1)(c)(ii). As noted previously, different language

used in the same statute implies that different meanings are intended.

*Costich*, at 475-476. Because the statute specifically authorizes rules for the conduct of post-trial evaluations (prior to release on LRA), but does not authorize such rules for pretrial evaluations, DSHS may not develop rules regulating the conduct of pretrial evaluations. *Costich*.

For all these reasons, the Department exceeded its authority under RCW 71.09 if its rules are interpreted to require pretrial polygraph testing.

4. The Court of Appeals Opinion rests on a misunderstanding of RCW 71.09.040.

The Court of Appeals erroneously relied on RCW 71.09.040(4) in holding that DSHS had authority to develop rules regulating the conduct of pretrial evaluations. Specifically, Division II relied on the following language: “[t]he evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services.” RCW 71.09.040(4). *See* Opinion, p. 2-3.

The prepositional phrase “pursuant to rules developed by the department of social and health services” could apply to the verb “deemed” (as an adverb) or to the noun “evaluation” (as an adjective). The sentence is therefore ambiguous. Applying rules of statutory construction, the former interpretation (where the phrase is an adverb

modifying the verb deemed) should be preferred over the latter for two reasons.

First, the statute does not include a clear and unambiguous grant of authority empowering the Department to develop rules governing the conduct of evaluations. Had the legislature intended the Department to promulgate such rules, it could have made its intent clear, using language such as the following: “The Department shall develop rules governing the conduct of evaluations under this section.” RCW 71.09.040 contains other directives phrased in this manner, for example in subsection (1) (“[T]he judge shall determine...”), subsection (2) (“[T]he court shall provide...”), subsection (3) (“[T]he person shall have...”), and even in subsection (4) itself (“[T]he judge shall direct... [T]he evaluation shall be conducted...”). RCW 71.09.040. In addition, the legislature has clearly directed the Department to exercise its rulemaking authority elsewhere in RCW 71.09. *See, e.g.*, RCW 71.09.265 (“The department shall develop policies...”). These differences in phrasing suggest that a different meaning was intended when the legislature drafted RCW 71.09.040.

Second, the statute must be strictly construed, under *Martin*. A strict construction would limit the authority granted to DSHS. If the phrase “pursuant to...” modifies the word “deemed” as an adverb, the Department is limited to rulemaking that addresses the professional

qualifications of the evaluators. On the other hand, if the phrase “pursuant to...” modifies the word evaluation (as an adjective), the Department has more expansive authority—not only to “deem” a person professionally qualified, but also to promulgate rules governing the conduct of evaluations. Thus strict construction favors interpreting the phrase “pursuant to...” as an adverb that modifies the word “deemed.”

One could argue that the ‘last antecedent’ rule favors the opposite conclusion. Under the last antecedent rule, “qualifying words and phrases refer to the last antecedent, absent a comma before the qualifying phrase.” *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 754, 174 P.3d 60 (2007). But the last antecedent rule is not to be applied inflexibly, and is not always binding. *State v. Wofford*, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_ (2009). Here, application of the last antecedent rule would grant the Department authority that the legislature did not clearly delegate, and would violate the requirement that RCW 71.09 be strictly construed. The last antecedent rule should not be mechanically applied to enlarge the Department’s powers in SVP cases.

RCW 71.09.040(4) does not provide authority for the Department’s rules relating to the conduct of pretrial evaluations. Accordingly, Division II’s reliance on that statute is misplaced.

5. The Supreme Court should accept review under RAP 13.4(b)(1) and (4), reverse the Court of Appeals, and vacate the trial court's order compelling Mr. Hawkins to submit to a pretrial polygraph.

The Supreme Court should accept review and hold that WAC 388-880-034 does not authorize a trial court to compel polygraph testing for pretrial evaluations conducted under RCW 71.09.040. In addition, the Supreme Court should hold that RCW 71.09 does not permit DSHS to develop regulations authorizing compelled pretrial polygraph testing. The Court of Appeals Opinion conflicts with the Supreme Court's decision in *Tesoro*, and it raises an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1), (4).

**VI. CONCLUSION**

For all the reasons outlined above, the Supreme Court should accept review of this case, reverse the Court of Appeals, and vacate the trial court's order compelling Mr. Hawkins to submit to a pretrial polygraph examination.

Respectfully submitted March 4, 2009.

**BACKLUND AND MISTRY**

  
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**APPENDIX**

**Court of Appeals Opinion**

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STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

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

**DIVISION II**

In re the Detention of:

JAKE HAWKINS,

Petitioner.

No. 36492-1-II

Unpublished Opinion

HOUGHTON, J.—Jake Hawkins appeals a trial court order requiring him, as a potential sexually violent predator (SVP), to submit to a sexual history polygraph as part of a pretrial psychological evaluation. He argues that the trial court exceeded its authority in ordering the evaluation and that the Department of Social and Health Services (DSHS) exceeded its authority in promulgating WAC 388-880-034. We affirm.

**FACTS**

On February 21, 2006, the State petitioned the superior court seeking to involuntarily commit Hawkins as a SVP under chapter 71.09 RCW. The petition, filed before his release, stated that he had been convicted in 1993 of second degree rape by forcible compulsion and that he is likely to reoffend as he suffers from voyeurism, paraphilia, alcoholism, dysthymic disorder, and personality disorder.

The State drew these conclusions from the report of Chris North, a psychologist, who wrote an evaluation of Hawkins while he was incarcerated.<sup>1</sup> North testified at the hearing that although Hawkins successfully completed a 13-month sex offender treatment program, "his history of offending is so serious and sexual deviance is so deeply engrained . . . he is likely at some point in the future to commit a new sexually violent predatory offense." Report of Proceedings at 8-9.

After filing the petition, the State moved to compel Hawkins to submit to a polygraph examination as part of his psychological evaluation. He objected to the polygraph and presented his own expert testimony. After reviewing declarations, memoranda, and hearing argument from Hawkins and the State, the court ordered him to submit to a polygraph examination using the "control question technique" limited in scope to his sexual history. Clerk's Papers at 6. He appeals.

#### ANALYSIS

Hawkins first contends that the trial court erred in (1) issuing an order mandating the polygraph evaluation, (2) that it lacked statutory authority to issue such an order, (3) finding RCW 71.09.040(4) allows for polygraphy in evaluation of SVP, (4) finding the polygraphy should focus on sexual history, and (5) finding the "control question technique" should be the questioning method.<sup>2</sup>

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<sup>1</sup> The report does not appear to be a part of the record on appeal, although the State indicated that it was attached to its initial petition to the superior court. However, North's declaration, related to his report, is a part of the record.

<sup>2</sup> RCW 71.09.040(4) provides:

If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a

Hawkins cites *In re Detention of Martin*, to correctly argue that chapter 71.09 RCW must be strictly construed because it has the potential to curtail civil rights. 163 Wn.2d 501, 508, 182 P.3d 951 (2008). But as the statute directs, "The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services." RCW 71.09.040(4).

The DSHS rules to which RCW 71.09.040(4) refers are contained in chapter 388-880 WAC, specifically -030, -033, -034, -035, and -036. WAC 388-880-030(1) restates the legislative mandate under RCW 71.09.040(4) that DSHS shall "provide an evaluation to the court" and make a recommendation regarding the commitment of the potential SVP. WAC 388-880-030(2) clarifies that this "evaluation must be conducted in accordance with the criteria" listed in WAC 388-880-033, -034, -036.<sup>3</sup>

WAC 388-880-034 provides that the evaluation must be based on "(1) Examination of the resident, including a forensic interview and a medical examination, if necessary; (2) Review of the following records, tests or reports relating to the person: . . . (e) Medical and Physiological testing, including plethysmography and polygraphy." Furthermore, as the State argues, SVP actions are civil in nature and thus CR 26(a) provides an additional basis for "physical and mental examinations" ordered by the trial court.

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person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. A witness called by either party shall be permitted to testify by telephone.

<sup>3</sup> WAC 388-880-033 lists the qualifications of any potential evaluator. WAC 388-880-034 lists the evaluator's responsibilities and procedural methods. WAC 388-880-036 describes the form and content of the written evaluation presented to the court.

We review the trial court's order to compel discovery for abuse of discretion. *Clarke v. Office of Attorney Gen.*, 133 Wn. App. 767, 777, 138 P.3d 144 (2006), *review denied*, 160 Wn.2d 1006 (2007). A trial court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *Clarke*, 133 Wn. App. at 777. Here, the trial court directed Hawkins to submit to a polygraph examination after a qualified examiner recommended it. Chapter 71.09 RCW and chapter 388-880 WAC allow for polygraph examinations in the case of a potential SVP. RCW 71.09.040(4); WAC 388-880-030(1), -034. Therefore, the trial court did not abuse its discretion and Hawkins's argument fails.

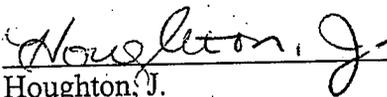
Hawkins next contends that DSHS exceeded its authority in promulgating WAC 388-088-034 and -035. The State argues that he raises this error for the first time on appeal and, therefore, we should decline to review it. He counters that his assignment of error applies to the trial court's order for him to submit to a polygraph examination and, when an agency exceeds its statutory authority, separation of powers concerns lead to a manifest error affecting a constitutional right. Hawkins's argument lacks merit.

Chapter 71.09 RCW and chapter 388-880 WAC allow polygraph examinations in the case of a potential SVP. RCW 71.09.040(4); WAC 388-880-030(1), -034. It would be unreasonable to read WAC 388-880-034(2)(e) as allowing an evaluator to consider polygraph records but not allowing the trial court to order the examination. Thus, DSHS did not exceed its authority granted under RCW 71.09.040(4) by promulgating WAC 388-880-034(2)(e).

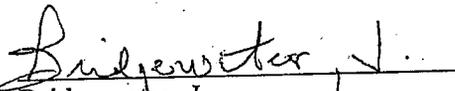
No. 36492-1-II

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

  
Houghton, J.

We concur:

  
Bridgewater, J.

  
Van Deren, C.J.

CERTIFICATE OF MAILING

I certify that I mailed a copy of the Petition for Review, postage pre-paid, to:

Jake Hawkins, DOC #748472  
McNeil Island Corrections Center  
P. O. Box 886000  
Steilacoom, WA 98388

and to

Attorney General's Office  
800 5<sup>th</sup> Ave. Ste. 2000  
Seattle, WA 98104

both on March 4, 2009

and that I mailed the original Petition for Review and one copy, postage pre-paid, to the Court of Appeals, Division II.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 4, 2009.

  
\_\_\_\_\_  
Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

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