

NO. 67350-5-1

87811-1

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

AOLANI E. GLOVER, a single individual,

Respondent,

v.

THE STATE OF WASHINGTON d/b/a
HARBORVIEW MEDICAL CENTER; AND LULU M. GIZAW, PA-C,

Petitioners

REPLY IN SUPPORT OF MOTION FOR DISCRETIONARY REVIEW

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A. ARGUMENT IN REPLY

In light of the fact that Respondent Ms. Glover “does not oppose this Court accepting review,” (Respondent’s Answer, at 1), the University replies only briefly in support of its motion. First, the University does not agree with Ms. Glover’s statement of issues, including the mischaracterization of the holding in *Wright v. Group Health*, 103 Wn.2d 192, 691 P.2d 564 (1984), her counterstatement of the case, which asserts a factual narrative that is not and will not be supported by the record, or the argument presented on the merits of the application of the *Loudon* and *Smith* rule to the facts here. As to the primary issue this motion raises—whether this case warrants RAP 2.3(b)(4) discretionary review—the parties are in agreement.

Second, this case warrants appellate review in conjunction with the pending appeal in *Youngs v. Peacehealth*, No. 67013-1-I, because the additional fact considerations presented by this case and not present in the *Youngs* case will greatly assist in informing the court’s analysis in the first appellate presentation of this recurring issue. Unlike here, the care at issue in *Youngs* all took place in a single facility of the defendant. *See Youngs*, No. 67013-1-I, Appendix, at A15, A27-A28. The issue of how the *Loudon* and *Smith* rule will be harmonized with the need to protect the attorney-client privilege for an integrated health care system with multiple

treatment locations—sure to be a recurring issue in Washington under *Loudon* and *Smith* until resolved at the appellate level—is raised by the facts of this case, but not by the facts in *Youngs*.

Further, the superior court order in this case prohibits the University's counsel from engaging in privileged conversations with members of the University's own management.¹ Although the *Loudon* and *Smith* rule was intended to prevent defense counsel's communications with physicians who are both "ex parte" and "treating providers," the superior court's order bars defense counsel from communicating with the University's own management-level physicians including pathologist Dr. Murry and cardiac surgeon Dr. Verrier, neither of whom likely ever met Ms. Glover, and neither of whom have any continuing relationship with her or her care.

Because of the significant issues raised by this case and not presented in *Youngs*, a grant of discretionary review and consolidation of the two appeals is appropriate. Resolution of these issues in a combined appeal will result in judicial efficiency and in needed clarity on issues of

¹ Respondent's motion continues to frame the issue here in terms of whether the University may use the University's own physicians as medical experts at trial. *See, e.g.*, Answer, at 4. As set forth in the motion, the larger issue to be addressed is whether the University may confidentially consult with its own management in order to use their expertise and judgment to evaluate and defend the University in this action, or whether a court can prohibit them from carrying out their normal roles for the University and its counsel.

continuing and substantial significance to the Washington health care community.

B. CONCLUSION

For the reasons set forth in the motion and above, the University asks the Court to grant discretionary review under RAP 2.3(b)(4).

Respectfully submitted this 8 day of August, 2011

BENNETT BIGELOW & LEEDOM, P.S.

By: 

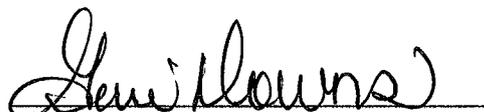
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CERTIFICATE OF SERVICE

I certify under penalty under the laws of the State of Washington that on August 9, 2011, I caused a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION FOR DISCRETIONARY REVIEW to be delivered as follows:

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