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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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RAYMOND GROVE,

Petitioner,

v.

PEACEHEALTH ST. JOSEPH HOSPITAL,

Respondent.

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**SUPPLEMENTAL BRIEF OF PETITIONER**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

INTRODUCTION AND SUMMARY .....1

ISSUE PRESENTED FOR REVIEW .....2

STATEMENT OF THE CASE.....2

    I.    Grove underwent a surgery that required his surgeons to monitor him postoperatively for compartment syndrome.....2

    II.   PeaceHealth surgeons Drs. Leone, Zech, and Douglas were successively responsible for Grove’s postoperative care following surgery.....4

    III.  Each PeaceHealth surgeon failed to monitor for or timely diagnose compartment syndrome, resulting in Grove’s injury. ....5

        A.    Dr. Leone .....5

        B.    Dr. Zech .....6

        C.    Dr. Douglas .....7

    IV.  Grove’s experts testified to the standard of care of the surgeons in charge of Grove’s care.....8

    V.   The jury returned a verdict in Grove’s favor, but the trial court and Court of Appeals overturned it. ....10

ARGUMENT .....11

    I.   The verdict against PeaceHealth must be upheld because the jury could reasonably find that at least one of the three employee surgeons had violated RCW 7.70.040.....11

A.	The jury could reasonably find that all three surgeons had breached the standard of care that governs a surgeon monitoring a patient postoperatively.....	13
B.	The jury could reasonably find that Drs. Leone, Zech, or Douglas proximately injured Grove.....	15
C.	Having reasonably found that at least one of the three surgeons had violated RCW 7.70.040, the jury could reasonably return a verdict against PeaceHealth.....	17
D.	The Court of Appeals erred by relying on possible <i>nonsurgeon</i> negligence to overturn the verdict.....	17
II.	PeaceHealth is not entitled to relitigate the facts.....	19
	CONCLUSION.....	20

**TABLE OF AUTHORITIES**

**CASES**

*Burnside v. Simpson Paper Co.*,  
123 Wn.2d 93, 864 P.2d 937 (1994)..... 19

*Dickinson v. Edwards*,  
105 Wn.2d 457, 716 P.2d 814 (1986)..... 17

*Douglas v. Freeman*,  
117 Wn.2d 242, 814 P.2d 1160 (1991)..... 12, 20

*Faust v. Albertson*,  
167 Wn.2d 531, 222 P.3d 1208 (2009)..... 14

*Grove v. PeaceHealth St. Joseph Hosp.*,  
177 Wn. App. 370, 312 P.3d 66 (2013)..... 2, 13, 18

*Hansch v. Hackett*,  
190 Wash. 97, 66 P.2d 1129 (1937)..... 18, 19

*Hizey v. Carpenter*,  
119 Wn.2d 251, 830 P.2d 646 (1992)..... 15

*Mohr v. Grantham*,  
172 Wn.2d 844, 262 P.3d 490 (2011)..... 17

*Thompson v. Grays Harbor Cmty. Hosp.*,  
36 Wn. App. 300, 675 P.2d 239 (1983)..... 19

**STATUTES**

RCW 7.70.040 ..... passim

RCW 7.70.040(1)..... 12, 13

RCW 7.70.040(2)..... 12

**OTHER AUTHORITIES**

WPI (Civ.) 105.02.01 ..... 17

## INTRODUCTION AND SUMMARY

After his surgery, Petitioner Raymond Grove received care from three successive cardiothoracic surgeons, all employed by Respondent PeaceHealth. The evidence at trial showed that none of them did what was necessary to monitor Grove for compartment syndrome, a known complication from Grove's surgery, until it was too late. The jury returned a verdict against PeaceHealth on Grove's medical negligence claim. Trying to exploit the fact that it treated Grove using a "team" of health care providers, PeaceHealth has argued that the verdict must be overturned. According to PeaceHealth, because Grove asserted that all three surgeons dropped the ball, he failed to inculcate a single specific health care provider—which then magically transformed his claim into one against the "team" of providers as a unit. And, PeaceHealth argues, a team of providers, as a unit, cannot be held liable.

This argument founders because Grove asserted that all three *individual* surgeons, in succession, failed to timely diagnose his compartment syndrome. His evidence was sufficient to permit the jury to find that one or more of the PeaceHealth surgeons failed to meet the standard of care of their profession and proximately injured Grove, thereby committing medical negligence under RCW 7.70.040. And the jury was entitled, under the law and its instructions, to return a verdict

against PeaceHealth if it found that any PeaceHealth employee committed medical negligence. “Team negligence” is thus beside the point, and the jury’s verdict must be upheld.

### **ISSUE PRESENTED FOR REVIEW**

When a plaintiff identifies a number of health care providers, supplies expert testimony on the common standard of care that applies to all of them, and adduces evidence that one or more of them breached that standard of care and proximately caused the plaintiff’s injury, may a jury find the providers’ employer vicariously liable under RCW 7.70.040?

### **STATEMENT OF THE CASE**

**I. Grove underwent a surgery that required his surgeons to monitor him postoperatively for compartment syndrome.**

Grove had heart surgery at PeaceHealth on December 21, 2006. *Grove v. PeaceHealth St. Joseph Hosp.*, 177 Wn. App. 370, 372, 312 P.3d 66 (2013). Compartment syndrome is a known complication from a long surgery of this kind. Ghidella RP 13:23–14:12. Compartment syndrome occurs when, due to injury, fluid flows into a compartment within a limb, causing the pressure in that compartment to rise. *Id.* at 15:14–17. That pressure prevents fluid from flowing out of the compartment, further increasing pressure until the blood supply is cut off and the tissue dies. *Id.* at 15:18–16:8. If caught early, compartment syndrome is completely reversible; if not, the damage is irreversible and can be catastrophic. *Id.* at

16:5–7; Zech RP 41:4–23.

Grove presented two experts who testified on the standard of care, Dr. Carl W. Adams and Dr. Sean Ghidella. To catch compartment syndrome at an early stage, surgeons are required to monitor patients like Grove after surgery. This monitoring, as expert testimony explained, requires surgeons to do two simple things. First, the surgeon must talk to the patient “[w]hen he [is] awake, alert, cognizant, and not too heavily medicated,” and ask whether he is experiencing any of the symptoms often associated with compartment syndrome (pain, for example). Ghidella RP 9:24–10:2. Second, a surgeon must perform “at least the simple act of squeezing the leg to test for how firm or tense the compartments [are], and ranging the leg for responses to passive motion.” *Id.* at 10:6–8; *see also id.* at 26:9–27:7. This second test is critical when the first becomes impossible—when, for example, the patient is sedated or intubated and thus unable to fully communicate, as Grove was for some time after surgery. *Id.* at 10:11–17. If physicians who observe symptoms of compartment syndrome want confirmation, they can use a handheld manometer, which uses a needle to measure the pressure in a compartment—“a very quick and easy,” not to mention “effective,” way to confirm compartment syndrome. *Id.* at 27:23–25. These monitoring practices are required of “any clinician that is involved in work where”

compartment syndrome is “a potential complication.” *Id.* at 18:17–20.

**II. PeaceHealth surgeons Drs. Leone, Zech, and Douglas were successively responsible for Grove’s postoperative care following surgery.**

After surgery, Grove remained at the hospital. There, three surgeons, Dr. Richard Leone, Dr. Edward Zech, and Dr. James Douglas, all employed by PeaceHealth, acted in succession as Grove’s primary physician. Leone RP 2:7–8; Zech RP 4:3–4; Douglas RP 2:18–24. The primary physician was in charge of monitoring Grove. As Dr. Douglas testified, the primary physician was “in charge and ultimately has the deed to say yes or no.” Douglas RP 12:10–11. If the primary physician went out of town, another surgeon “would take over seeing his patients.” Zech RP 5:2–3. This “designated hitter” would then have “responsibility” for all the patients. *Id.* at 5:6–8. Thus, when Dr. Douglas took over as primary physician, he “followed [Grove] clinically,” “examined him,” “look[ed] at his labs,” “discuss[ed] things with his consultants,” “wr[o]te orders as appropriate,” and more generally was “one of the primary care givers for the patient.” Douglas RP 76:15–18.

Trial testimony established when primary responsibility for Grove’s care shifted among the three surgeons. Dr. Leone, who performed Grove’s surgery, said he was Grove’s primary physician from December 21, the date of the surgery, until he left for vacation on Christmas. Leone

RP 9:1–3, 19:4–10. Once Dr. Leone left for vacation, Dr. Zech took over as Grove’s primary physician, until Dr. Douglas assumed that role on December 29. Zech RP 6:1–12; Douglas RP 27:1–2, 32:23–25.

These dates were established through testimony at trial, because the PeaceHealth records themselves did not consistently document who was in charge when. Dr. Zech, for example, admitted that he was “chagrined” about the fact that “there’s no progress notes from [him] during those days that [he was] supposedly at the helm for Mr. Grove.” Zech RP 22:6–10. He claimed he had “agonized” over not leaving any record that he had monitored Grove. *Id.* at 44:4–7. Much the same goes for Dr. Douglas: as one of Grove’s expert witnesses observed, “there’s nothing written in the chart that he did anything.” Adams RP 48:18–19.

### **III. Each PeaceHealth surgeon failed to monitor for or timely diagnose compartment syndrome, resulting in Grove’s injury.**

#### **A. Dr. Leone**

Dr. Leone was Grove’s first postoperative primary physician. Evidence indicated that Dr. Leone simply did not know how to diagnose compartment syndrome. At trial, he testified that he could diagnose it, but he was impeached by his deposition testimony. Leone RP 27:13–20. In that testimony, he had said that “[c]ompartment syndrome is something that needs to be treated, but I really don’t remember the specifics of how to diagnose and treat it.” *Id.* at 26:18–20.

Unsurprisingly, then, Dr. Leone's chart notes did not indicate that Dr. Leone had ever examined Grove's legs, as is required to monitor for compartment syndrome—strong evidence that he never performed the examination, since he maintained that he and other PeaceHealth employees “make a big effort to try to document anything accurately” in their notes. *Id.* at 24:24–25. The absence of effective examination is further confirmed by chart notes indicating that Dr. Leone had simply touched Grove's *feet* and noted that they were warm with a pulse. *See id.* at 34:3–35:25. That is not the monitoring that the standard of care requires.

**B. Dr. Zech**

Dr. Zech, who took over from Dr. Leone on December 25, admitted that there was “nothing in the records” to show that he had actually performed a physical examination of Grove. Zech RP 17:16–18. Nevertheless, he claimed that whenever he visited patients like Grove, he would typically examine and touch the patient's extremities. *Id.* at 14:17–15:10. But he, like Dr. Leone, was impeached by his deposition testimony, where he testified merely that he “would have *laid eyes* on everybody,” and otherwise accepted the contemporaneous notes as accurate. *Id.* at 18:5–19:9 (emphasis added).

### C. Dr. Douglas

Dr. Douglas took over from Dr. Zech on December 29. By that date, Dr. Douglas had become aware that Grove's left calf had swollen to two to five centimeters larger than the right, and had become painful to the touch and visibly reddened. Douglas RP 35:25–36:11, 38:10–39:3. On the same day, Dr. Sara Mostad, an infectious disease specialist who was treating Grove, found that it had become harder for Grove to bend his left ankle than his right, and that Grove had an elevated white blood cell count and persistent fever. *Id.* at 52:2–6, 52:24–53:4. Dr. Mostad shared information with Dr. Douglas about Grove's condition. *Id.* at 48:11–16.

One of Grove's expert witnesses, Dr. Carl Adams, testified that these were "significant findings" that "should have given rise to a suspicion of compartment syndrome" on December 29, and thus prompted Dr. Douglas to test the pressure in Grove's left calf—something he failed to do. Adams RP 37:17–38:2, 40:18–42:1. Instead, Dr. Douglas approved an ultrasound, which looks for a different problem: deep vein thrombosis, the formation of a blood clot in Grove's leg. Douglas RP 44:16–45:19.

Two days later on December 31, Dr. Mostad noticed that Grove was unable to bend his foot and was dragging his left toe when he walked. Mostad RP 15:24–16:25. The pressure in Grove's left calf was tested, and it was more than three times normal. Douglas RP 70:21–71:25. Surgery to

relieve the pressure was performed the same day. Adams RP 40:12–17.  
At that point it was too late; Grove’s muscles had died for lack of oxygen. Ghidella RP 11:25–12:8; *see also id.* at 39:22–25. Both of Grove’s expert witnesses testified that if Grove’s compartment syndrome had been diagnosed in a timely fashion, he would not have sustained the injuries he did. *Id.* at 41:1–4; Adams RP 40:12–17.

**IV. Grove’s experts testified to the standard of care of the surgeons in charge of Grove’s care.**

Grove’s expert Dr. Adams testified that he was testifying to the standard of care of a cardiovascular surgeon:

Q. Doctor, is the medical standard of care you reviewed in our case for any of your opinions different for the *physicians* practicing under the same or similar circumstances in the state of Washington?

A. No.

Q. Are you familiar with the standard of care in the state of Washington?

A. Yes, I would say that the standard of care for every *cardiovascular surgeon* practicing across the United States.

Adams RP at 3:15–24 (emphasis added). When Dr. Adams was asked for his ultimate conclusion about this case, he testified: “I believe that the *cardiovascular surgeon who is in charge of the patient’s care* failed to meet the standard of care that one would expect.” Adams RP 9:14–16 (emphasis added). Later, he explicitly stated that, while he was aware that

the PeaceHealth medical providers worked as a team, his standard-of-care testimony was directed at the surgeon in charge:

Q. Various times you named individual Dr. Leone and then Dr. Douglas and then apparently Dr. Zech was at the helm at some point; is that correct?

A. That's correct.

Q. In terms of your statement as to the relative liability, is it the head of the team that you're critiquing or each individual member?

A. *It's always the head of the team.*

Adams RP 36:15–22 (emphasis added).

Grove's other expert, Dr. Ghidella, also explained that his standard-of-care testimony related to the surgeon in charge, even if PeaceHealth's records did not always disclose which surgeon that was. Based on those records, Dr. Ghidella had earlier identified Dr. Leone as "ultimately responsible" for failing to diagnose compartment syndrome. Ghidella RP 22:17–21; *see also id.* at 23:7–13 (noting the "lack of clarity" and "the type of documentation that I had available" at the time of deposition). Since that time, though, he had learned that Dr. Leone was not the only one in charge. And so he testified that his standard-of-care testimony related to whatever surgeon was in charge of Grove's care at a given time, including Drs. Douglas and Zech:

Q. And why [at your deposition] did you identify Dr. Leone as opposed to someone else?

A. I was aware that there were multiple providers involved, that there was a team approach. At the time I was asked, I was not certain entirely as to who was to blame, but I do know that one person that at least shared in the responsibility would be the surgeon of record. He is ultimately responsible for that admission and the patient's care under that admission.

....

Q. Now, are you aware at this time that Dr. Douglas was the head of the team on the 29th and 30th of December? Do you understand the question?

A. Yes, I do. Since my discovery deposition, I have clarified this was a team approach, and Dr. Leone wasn't necessarily in charge of this patient at the time that the diagnosis was made.

Q. But in terms of your opinion, he was ultimately responsible as being the doctor in charge at the outset?

A. That would be correct, yes, sir.

Q. Do you see any records in the progress notes that lists Dr. Zech?

A. I've not seen any progress notes from Dr. Zech that I can recall.

Q. If Dr. Zech was the head of the team during a period of time, would your opinion as to his degree of being below the standard of care apply to him, as well as captain of the team at that time?

A. Yes, sir.

*Id.* at 22:22-24:16.

**V. The jury returned a verdict in Grove's favor, but the trial court and Court of Appeals overturned it.**

The trial court instructed the jury that PeaceHealth could act only

through its employees. CP 331. The court also instructed the jury that a “physician, surgeon or health care provider owes to the patient a duty to comply with the standard of care for one of the profession or class to which he or she belongs.” CP 329. Finally, the court instructed the jury that Grove was required to prove that “the defendant” failed to follow the “applicable standard of care.” CP 332; *see also* CP 345 (verdict form asking whether “the defendant,” PeaceHealth, was negligent).

The jury returned a special verdict in favor of Grove, answering “Yes” to both “Was the defendant negligent?” and “Was the negligence a proximate cause of injury to the plaintiff Mr. Grove?” CP 347. The trial court, however, set aside the verdict, and the Court of Appeals affirmed, stating that Grove had to implicate a particular individual, not the PeaceHealth “team.” *Grove*, 177 Wn. App. at 384–85. Grove moved for reconsideration. PeaceHealth responded that his motion’s arguments had already been raised and rejected: “There is nothing new about [Grove’s] claim; it has been raised previously.” Resp. to Mot. for Recons. at 3. The motion was denied.

## ARGUMENT

- I. **The verdict against PeaceHealth must be upheld because the jury could reasonably find that at least one of the three employee surgeons had violated RCW 7.70.040.**

RCW 7.70.040 establishes two elements that must be proven in a

medical negligence case. First, the health care provider must have breached the standard of care by failing to exercise the “care, skill, and learning” of a reasonably prudent health care provider of the same “profession or class” in Washington, “acting in the same or similar circumstances.” RCW 7.70.040(1). “Once the applicable standard of care is established by experts, further expert testimony is not required to prove a breach of that standard.” *Douglas v. Freeman*, 117 Wn.2d 242, 251, 814 P.2d 1160 (1991). Second, there must be proximate causation—proof that the provider’s breach “was a proximate cause of the injury complained of.” RCW 7.70.040(2). The question here is whether the jury had “any justifiable evidence” on those elements “upon which reasonable minds might reach conclusions that sustain the verdict.” *Douglas*, 117 Wn.2d at 247 (quotation and citation omitted). Because the jury did have such evidence, its verdict must be sustained.

PeaceHealth, however, relies on the fact that it cared for its patients using a “team” of health care providers. *See, e.g.*, Zech RP 4:12–16. It has maintained that because Grove did not implicate one specific individual on the team that cared for him, he must have implicated the team as a unit. But PeaceHealth sets up a false dichotomy between implicating one specific individual and implicating a team as an undifferentiated unit. The evidence at trial implicated neither one specific

individual nor the team as a unit. It implicated *more than one* individual surgeon on the team, all three of whom were in the same “profession or class,” RCW 7.70.040(1), and were bound by the same standard of care.

**A. The jury could reasonably find that all three surgeons had breached the standard of care that governs a surgeon monitoring a patient postoperatively.**

Grove’s two experts testified about the standard of care that applied to Grove’s surgeons; they did not testify about the standard of care that applied to anyone else. *See supra* pp. 8–10. Thus, as the Court of Appeals noted, Grove’s expert testimony established the standard of care governing the “profession or class” to which Drs. Leone, Zech, and Douglas all belonged. RCW 7.70.040(1); *see Grove*, 177 Wn. App. at 384 (assuming that “Grove’s articulation of the standard of care covered some members of the ‘team,’ the surgeons for example”). PeaceHealth never objected to the qualifications of Grove’s experts to testify about the standard of care of a surgeon monitoring a patient after a long surgery.

The jury also had evidence that all three surgeons failed to abide by that standard of care because they had not examined Grove’s legs postoperatively. Dr. Leone, in fact, had testified at his deposition that he did not know “how to diagnose and treat” compartment syndrome. Leone RP 26:20. The jury was within its rights to believe that Dr. Leone had been telling the truth then—and that he was *not* telling the truth at trial

when he claimed, without support from contemporaneous notes, that he had examined Grove's legs. *See Faust v. Albertson*, 167 Wn.2d 531, 538, 222 P.3d 1208 (2009) (reviewing court must defer to factfinder on conflicting testimony and witness credibility). The jury was entitled to believe that Dr. Zech too was impeached by his deposition testimony, where he had merely claimed that he had "laid eyes" on Grove—and that he was *not* telling the truth at trial when he claimed, again without support from contemporaneous notes, that he had actually touched Grove's extremities. Zech RP 14:17–15:10, 18:5–19:9. And finally, the jury had ample evidence from which it could reasonably find that Dr. Douglas had overlooked "significant findings" that "should have given rise to a suspicion of compartment syndrome" on December 29. Adams RP 37:17–38:2.

With respect to Dr. Douglas, PeaceHealth has taken one comment that expert witness Dr. Adams made at his deposition and ripped it from its context. At his deposition, Dr. Adams commented that he had no "specific criticism of Dr. Douglas." *Id.* at 26:14–15. But Dr. Adams explained that he had no specific criticism of Dr. Douglas because he had access to no written record indicating any specific action that Dr. Douglas had or had not taken. *Id.* at 48:18–20. As Dr. Adams made clear, his comment simply pointed out that there was no evidence of an affirmative

act to be critical of. Most importantly, Dr. Adams testified that failing to diagnose Grove's compartment syndrome on December 29 fell below the standard of care, and that this standard-of-care opinion related to "the cardiovascular surgeon in charge"—i.e., Dr. Douglas. *Id.* at 9:14–16, 36:21–25, 40:22–25. The trial court correctly concluded that any discrepancy in Dr. Adams' testimony was a matter for cross examination, which PeaceHealth then exploited. *Id.* at 33:7–22; 48:11–20.

Because the jury was presented with evidence about the surgeons' breaches of care, the Court of Appeals had no reason to conclude that the jury could have found PeaceHealth liable only on a theory of "team" negligence. Making the Court of Appeals' conclusion even less plausible are the jury instructions, which nowhere hint at, let alone endorse, a theory of team negligence. *See* CP 329–35. In concluding that the jury must not have followed these instructions, the Court of Appeals erred. *See, e.g., Hizey v. Carpenter*, 119 Wn.2d 251, 269–70, 830 P.2d 646 (1992) (jury is presumed to follow instructions).

**B. The jury could reasonably find that Drs. Leone, Zech, or Douglas proximately injured Grove.**

The jury had substantial evidence that all three physicians had failed to abide by the standard of care that applied to each. The jury also had evidence of proximate cause as to each of the three surgeons.

Dr. Ghidella testified that the “more likely” period when the compartment syndrome developed was when Grove “was intubated and . . . ventilated with an altered sensorium.” Ghidella RP 54:9–12. That period included the immediate postoperative period when Dr. Leone was primary physician, and extended into December 26, by which time Dr. Zech had become primary physician. *Id.* at 54:13–15. The jury also knew that the compartment syndrome had developed, at the latest, by December 29, the day Dr. Douglas took over. Douglas RP 35:25–36:11, 38:10–39:3.

This evidence allowed the jury to find that the syndrome began sometime during the date range identified by Grove’s expert, Dr. Ghidella. If the jury found that the syndrome began near the beginning of the range—when Dr. Leone was in charge of Grove’s care—then it was entitled to find that Dr. Leone, Dr. Zech, and Dr. Douglas *all* proximately caused some portion of Grove’s developing compartment syndrome injury by failing to timely diagnose it. If the jury concluded that the syndrome developed near the end of Dr. Ghidella’s date range—when Dr. Zech was in charge—then it was entitled to find that Dr. Zech and Dr. Douglas both proximately caused Grove’s injury. Finally, if the jury decided that the evidence pointed toward the syndrome first developing on December 29, then it was entitled to find that Dr. Douglas alone proximately caused the injury. Whichever route the jury took, it had sufficient evidence to find

that at least one of the three PeaceHealth surgeons breached the standard of care that applied to him and thereby proximately caused Grove's injury.

**C. Having reasonably found that at least one of the three surgeons had violated RCW 7.70.040, the jury could reasonably return a verdict against PeaceHealth.**

Under respondeat superior, employers are liable for torts committed by employees who are acting in the scope and course of their employment. *Dickinson v. Edwards*, 105 Wn.2d 457, 466, 716 P.2d 814 (1986). Respondeat superior applies to medical negligence actions. *See Mohr v. Grantham*, 172 Wn.2d 844, 860–62, 262 P.3d 490 (2011).

PeaceHealth has never disputed that Drs. Leone, Zech, and Douglas were acting within the scope and course of their employment. And the jury received an instruction on respondeat superior, patterned on WPI (Civ.) 105.02.01: "Any act or omission of an employee is the act or omission of the hospital corporation." CP 331. PeaceHealth has not challenged or assigned error to this or any other instruction. Because the jury could reasonably find that at least one of the three employee surgeons had violated RCW 7.70.040, it reasonably found PeaceHealth liable.

**D. The Court of Appeals erred by relying on possible nonsurgeon negligence to overturn the verdict.**

The Court of Appeals overturned the verdict because it was concerned that Grove's standard-of-care evidence did not cover the *nonsurgeons* who worked on the three surgeons' "team." *See Grove*,

177 Wn. App. at 383–84. It does not matter, though, if the jury lacked evidence to inculcate *other* PeaceHealth employees. What matters is that the jury had evidence to find at least one PeaceHealth *surgeon* liable.

This conclusion follows from basic principles governing review of a jury verdict. For example, in *Hansch v. Hackett*, 190 Wash. 97, 66 P.2d 1129 (1937), the patient’s widower sued Dr. Hackett and his employer, a medical clinic. The widower alleged that Dr. Hackett and three other employees—one other physician and two nurses—were guilty of a failure to timely diagnose and treat. The jury returned a verdict exonerating Dr. Hackett but finding the clinic liable. *Id.* at 98–99. The clinic challenged the verdict on the ground that Dr. Hackett had been exonerated. *Id.* at 102. The Court sustained the verdict, explaining that the patient had come under the care of successive providers, and that the evidence could support findings that the other physician was negligent, and that either of the two nurses was negligent. *Id.* at 101–02. Under respondeat superior, the verdict had to be upheld because “the charge and the proof is such as to permit the jury to find any one or more of four employees to be guilty.” *Id.* at 102. Here, because the charge and proof here permitted the jury to find one or more of the three surgeons liable, its verdict must be upheld.

*Hansch* cannot be distinguished simply because it was decided before RCW 7.70.040 was enacted. RCW 7.70.040 is concerned with the

substantive proof that a plaintiff must make, and that proof was satisfied as to one or more of Grove's three surgeons. *Hansch*, by contrast, establishes a procedural rule: a verdict against an employer must be upheld if a jury "might have" or "could have" found that one or more of the employer's employees was negligent. *Id.* at 101–02. This procedural rule is not limited to medical cases. It applies to any substantive tort context. *See Thompson v. Grays Harbor Cmty. Hosp.*, 36 Wn. App. 300, 306–07, 675 P.2d 239 (1983) (applying *Hansch* to uphold a verdict against an employer in a tortious interference case).

The *Hansch* rule, moreover, simply applies a broader principle that derives from the jury trial right, *see* Const. art. I, § 21: in reviewing a jury verdict, a court looks for "evidence which, if believed, would support the verdict rendered." *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994) (citation, emphasis, and quotation omitted). Here, the evidence relating to the three employee surgeons, if believed, would support the verdict against PeaceHealth. The Court of Appeals erred by searching for ways in which the evidence fell short as to *other* employees.

## **II. PeaceHealth is not entitled to relitigate the facts.**

From the moment the jury returned its verdict, PeaceHealth has sought to relitigate the facts. It has argued that the monitoring of Grove was adequate; that compartment syndrome is rare; and that compartment

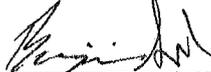
syndrome is usually accompanied by pain, which was not present here. *E.g.*, Br. of Resp't at 10, 20. These arguments are irrelevant. The Court must assume that all of Grove's evidence is true and must draw all reasonable inferences in his favor. *Douglas*, 117 Wn.2d at 247. Under that standard, Grove proved that one or more of his surgeons failed to meet the standard of care of a surgeon monitoring a patient postoperatively, resulting in an untimely diagnosis, *see supra* pp. 5–10; that competent surgeons should be on the lookout after an extensive operation for even a comparatively rare condition like compartment syndrome, Adams RP 9:14–22; that Grove's sedation suppressed the pain of compartment syndrome and his intubation hindered his ability to express whatever pain he was able to feel, *see, e.g., id.* at 38:21–39:11; and that the symptoms of compartment syndrome that showed up by December 29 at the latest were enough for a competent surgeon to diagnose compartment syndrome, *id.* at 40:22–25. PeaceHealth's preferred inferences are beside the point.

### CONCLUSION

This Court should reinstate the jury's verdict.

Respectfully submitted this June 13, 2014.

  
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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury of the laws of the State of Washington that on June 13, 2014, I caused a true and correct copy of the foregoing SUPPLEMENTAL BRIEF OF PETITIONER to be served on the following via email, pursuant to RAP 18.5(a) and CR 5(b)(7):

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Attached is Petitioner Grove's Supplemental Brief for filing.

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