No. 103079-7

SUPREME COURT
OF THE STATE OF WASHINGTON

DANIELLE STERLING and DARREN STERLING,

Petitioners,

v.

STATE OF WASHINGTON, by and through THE UNIVERSITY OF WASHINGTON, d/b/a "UW Medicine", "UW Physicians" and "Harborview Medical Center",

Respondent.

ANSWER TO PETITION FOR REVIEW

LARSON HEALTH ADVICATES, PLLC

By: Jane J. Liu
WSBA No. 49649
Levi S. Larson
WSBA No. 39225

1700 7th Avenue, Suite 2100
Seattle, WA 98101
(206) 658-4690

SMITH GOODFRIEND, P.S.

By: Howard M. Goodfriend
WSBA No. 14355
Ian C. Cairns
WSBA No. 43210
Jonathan B. Collins
WSBA No. 48807

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Special Assistant Attorneys General for Respondent

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A. Introduction.

Petitioner Danielle Sterling sued Harborview Medical Center and other University of Washington Medicine affiliates (UW) for medical negligence under chapter 7.70 RCW. However, Ms. Sterling failed to provide any notice to the office of risk management at the Department of Enterprise Services (DES) in Olympia before filing her complaint, as required by RCW 4.92.100 and .110.

Division One's decision affirming dismissal of her claims presents no issues for this Court's review. The unpublished decision conflicts with no authority from this Court or from the Court of Appeals. Division One correctly held that Ms. Sterling did not substantially comply with chapter 4.92 RCW when she filed a UW Claim Form with UW Claims Services Office, thereby failing to provide *any* notice to the office of risk management at DES in Olympia and thus failing to satisfy the statute's fundamental goal of

facilitating a centralized review of all claims against state agencies.

Ms. Sterling misplaces her reliance on cases that apply chapter 4.96 RCW, which governs lawsuits against local government agencies as opposed to the State of Washington and its agencies, like UW. Indeed, she concedes that statutory scheme is substantially different and thus the cases she cites are inapposite.

Nor does Ms. Sterling's claim that she was misled by the UW form present a significant question of law or an issue of substantial public interest. To the contrary, the UW Claim Form expressly provided that the form did not satisfy the statutory notice requirement under RCW 4.92.100.

As Ms. Sterling fails to identify any basis for review under RAP 13.4(b), the Court should deny the petition.

B. Restatement of Issue Presented by Petitioner.

Can a plaintiff substantially comply with the claim notification statutes RCW 4.92.100 and .110 despite her failure to provide *any* notice to the Department of Enterprise Services in Olympia before filing her complaint for negligence against a state agency, contravening the statutes' plain language and the Legislature's primary goal to centralize review of all claims against state agencies?

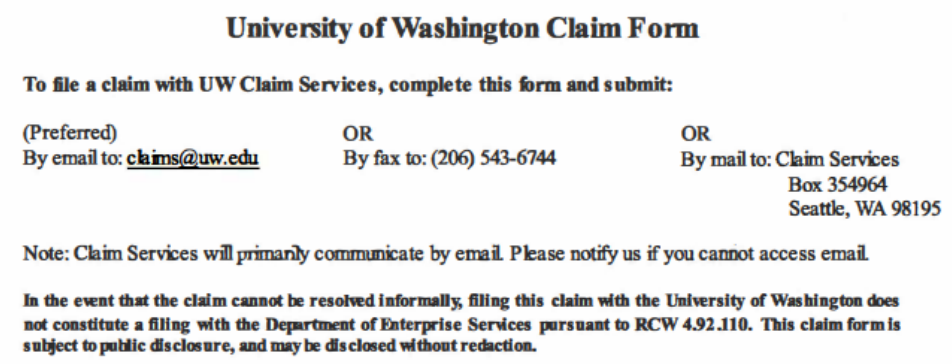
C. Restatement of the Case.

In December 2019, petitioner Danielle Sterling was admitted to Evergreen Health hospital and put into a medically induced coma after developing complications from pancreatitis. *Sterling v. Univ. of Wash.*, No. 85448-8-I (April 15, 2024) (Slip Op. at 1).[1] In January 2020, Ms. Sterling was transferred to Harborview Medical Center—a

[1] The Court of Appeals slip opinion is cited as "Slip Op. at ___."

hospital operated by the University of Washington (UW)—where providers later discovered "she had developed a sacral pressure ulcer on the base of her spine," which ultimately required surgery. Slip Op. at 2.

Almost three years later, on December 30, 2022, Ms. Sterling filed a "University of Washington Claim Form" with UW Claims Services, alleging UW providers negligently caused the ulcer. Slip Op. at 2; CP 27-29. The first page of the claim form expressly provides—in bold font—that **"filing this claim with [UW] does not constitute a filing with the Department of Enterprise Services pursuant to RCW 4.92.110":**



University of Washington Claim Form

To file a claim with UW Claim Services, complete this form and submit:

(Preferred)	OR	OR
By email to: claims@uw.edu	By fax to: (206) 543-6744	By mail to: Claim Services Box 354964 Seattle, WA 98195

Note: Claim Services will primarily communicate by email. Please notify us if you cannot access email.

In the event that the claim cannot be resolved informally, filing this claim with the University of Washington does not constitute a filing with the Department of Enterprise Services pursuant to RCW 4.92.110. This claim form is subject to public disclosure, and may be disclosed without redaction.

CP 27; Slip Op. at 5 n.4. Ms. Sterling's form included contact information for Ms. Sterling's counsel, who signed the form. *Compare* CP 27-29 *with* CP 49.

On January 5, 2023, Harborview acknowledged receipt of Ms. Sterling's UW Claim Form, informing her that "the correspondence should not be considered as an admission, consent to jurisdiction, or waiver of any defense or relief available to" UW. CP 68-71; Slip Op. at 2.

On January 19, UW Claims Services acknowledged its receipt of Ms. Sterling's claim form, stating that UW intended to "investigate the claim and provide a written response" within 60 to 90 days. CP 73; Slip Op. at 2. UW Claims Services similarly emphasized that the

"correspondence should not be construed as an acknowledgement of the timeliness or merits of the claim" and that "[n]o defenses are waived." CP 73.

On February 3, Ms. Sterling sent a demand letter to UW Claims Services, seeking $2.5 million to settle her claims. CP 48; Slip Op. at 2. She informed UW that "[a]ny counter offer will be deemed a rejection" and that she intended to "immediately proceed to litigation" if the demand was not accepted in 15 days. CP 48; Slip Op. at 2.

On March 1, Ms. Sterling filed this action in King County Superior Court against the State of Washington, UW Medicine, UW Physicians, and Harborview Medical Center, alleging medical negligence under chapter 7.70 RCW. CP 1-3; Slip Op. at 2.

On April 3—one month *after* filing her complaint, and over two months after the statute of limitations expired under RCW 4.16.350—Ms. Sterling sent the UW Claim Form to the office of risk management at the Department

of Enterprise Services (DES) in Olympia. CP 51-57; Slip Op. at 2.

On April 28, UW filed a motion for summary judgment seeking dismissal of Ms. Sterling's complaint because she failed to present the standard tort claim form to the office of risk management at DES 60 days prior to filing her lawsuit, as RCW 4.92.110 requires. CP 13-20; Slip Op. at 2. The trial court agreed and dismissed Ms. Sterling's claim with prejudice. CP 144-46; Slip Op. at 2.

On April 15, 2024, the Court of Appeals, Division One, affirmed dismissal in an unpublished decision, holding that Ms. Sterling never filed the standard tort claim form with the office of risk management as RCW 4.92.100(1) and .110 require. The court held that Ms. Sterling did not substantially comply with the statute by filing a UW Claim Form with UW Claims Services because she failed to "carry out the [L]egislature's intentions" to place the office of risk management "on notice of her

claim," and deprived the state office of its ability to "track, value, and delegate the claim as part of its centralized system" for managing claims against state agencies. Slip Op. at 4-5.

Ms. Sterling now seeks review.

D. Why Review Should be Denied.

The Court of Appeals correctly held that Ms. Sterling did not substantially comply with the letter or purpose of chapter 4.92 RCW. None of her arguments justifies this Court's review under RAP 13.4(b). Division One's decision does not conflict with this Court's authority requiring lower courts to avoid absurd results. The decision does not conflict with a published Court of Appeals decision addressing substantial compliance under a *different* statutory scheme, RCW 4.96. And it does not present a significant question of law or an issue of substantial public interest. This Court's review is unwarranted.

1. The decision does not conflict with this Court's authority and does not warrant review under RAP 13.4(b)(1).

Ms. Sterling claims Division One's decision conflicts with this Court's authority because it results in "unlikely, absurd, or strained consequences." Pet. at 8 (citing *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002)). But Division One correctly applied the statute in precisely the manner the Legislature directed. The court rejected Ms. Sterling's contention she "substantially complied" with RCW 4.92.100 and .110, recognizing that a plaintiff cannot achieve the underlying statutory purpose without—at a minimum—providing *some* notice to the office of risk management at DES in Olympia. *See* Slip Op. at 4-5. Ms. Sterling's argument to the contrary undermines the Legislature's intent to establish a centralized process for investigating and managing tort claims against State agencies.

The Legislature conditioned the State's waiver of its sovereign immunity on a plaintiff's compliance with RCW 4.92.100 and RCW 4.92.110. *See Hyde v. Univ. of Wash. Med. Ctr.*, 186 Wn. App. 926, 929, 347 P.3d 918, *rev. denied*, 184 Wn.2d 1005 (2015); Slip Op. at 3. These statutes preclude tort claims against the State, including any of its agencies or employees, unless the plaintiff first files the standard tort claim form with the office of risk management at DES at least 60 days before commencing the action:

> All claims against the state . . . for damages arising out of tortious conduct, must be presented to the office of risk management. A claim is deemed presented when the claim form is delivered . . . to the office of risk management . . . [A]ll claims for damages must be presented on the standard tort form that is maintained by the office of risk management. The standard tort claim form must be posted on the department of enterprise services' website.

RCW 4.92.100(1).

An earlier version of RCW 4.92.100 provided that "substantial compliance will be deemed satisfactory" "[w]ith respect to the *content* of such claims [under] this section." *See Levy v. State*, 91 Wn. App. 934, 941-42, 957 P.2d 1272 (1998) (emphasis added). In 2009, the Legislature amended RCW 4.92.100(3), extending the substantial compliance exception to both the content and "all procedural requirements in this section." *See* Laws of 2009, ch. 433, § 2; RCW 4.92.100(3).

A separate section of chapter 4.92 RCW requires a plaintiff to notify DES of their claim 60 days before filing their complaint:

> No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced . . . until sixty calendar days have elapsed after the claim is presented to the office of risk management in the department of enterprise services.

RCW 4.92.110. This section was not amended as part of the 2009 revisions to chapter 4.92 RCW.

The claim filing requirements of chapter 4.92 RCW are jurisdictional and operate as a condition precedent to any suit against the government. *Levy*, 91 Wn. App. at 941-42. A plaintiff's failure to comply with these requirements mandates dismissal, even when that result "may seem unduly harsh." *Kleyer v. Harborview Med. Ctr. of Univ. of Wash.*, 76 Wn. App. 542, 547-48, 887 P.2d 468 (1995) (quoting *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993))[2]; *see also Hyde,* 186 Wn. App. at 926 ("Dismissal is the proper remedy for failure to comply with" chapter 4.92 RCW). The Court of Appeals adhered to this precedent. Slip Op. at 4-5.

It is undisputed that Ms. Sterling did not file *anything*—let alone the "standard tort claim form"

[2] When relevant, Washington courts continue to rely on authority decided before the 2009 amendment to RCW 4.92.100. *See, e.g., McDevitt v. Harbor View Med. Ctr.*, 179 Wn.2d 59, 64-68, 316 P.3d 469 (2013) (affirming constitutionality of pre-suit notification requirement under RCW 4.92.110).

required under RCW 4.92.100(1)—at the office of risk management at DES before filing her complaint, as both RCW 4.92.100 and RCW 4.92.110 require. She instead filed a UW Claim Form with UW Claims Services. Pet. at 3; Slip Op. at 1-2.

As Division One correctly recognized, the "purpose of RCW 4.92.100(1) and .110 is to provide notice of claims to the state so that [the office of risk management] can maintain a centralized claim tracking system," "provide agencies with accurate and timely data on the status of liability claims," and "delegate to the appropriate office to investigate, negotiate, compromise, and settle the claim[s], or to retain that responsibility on behalf of and with the assistance of the affected state agency." Slip Op. at 4-5 (quoting RCW 4.92.210(1)-(4)). This statutory scheme also "serves the reasonable purpose of fostering negotiation and settlement without substantially burdening tort

claimants." Slip Op. at 5 (quoting *Hall by Hall v. Niemer*, 97 Wn.2d 574, 581, 649 P.2d 98 (1982)).

Moreover, while the 2009 amendment allows a plaintiff to show substantial compliance as to both the content and "procedural requirements" under RCW 4.92.100, that exception is expressly limited to that "*section.*" RCW 4.92.100(3) (emphasis added). The Legislature did not extend substantial compliance to RCW 4.92.110, a separate section that unambiguously requires a plaintiff to present their claim to the office of risk management at DES. RCW 4.92.110; *see HomeStreet, Inc. v. State, Dept. of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009) (Courts must apply statutes according to their plain language, and the inquiry ends if "the plain language is subject to only one interpretation[.]"). While substantial compliance might forgive some procedural deficiencies, a plaintiff still must file *something* with the office of risk

management at DES in Olympia to provide the bare minimum of notice.

Accordingly, Division One did not reach "an absurd result" when it held that Ms. Sterling failed to substantially comply with chapter 4.92 RCW because "[n]otifying UW Claim Services of her claim did not sufficiently carry out the legislature's intentions behind RCW 4.92.100(1) and .110"—specifically, she "did not put [the office of risk management] on notice of her claim, so it could not track, value, and delegate the claim as part of its centralized system." Slip Op. at 5; *see, e.g., City of Seattle v. Pub. Emp't. Relations Comm'n*, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991) ("Substantial compliance has been defined as actual compliance in respect to the substance essential to every reasonable objective of a statute.") (quoted source omitted).

In holding that Ms. Sterling failed to carry out the Legislature's intent, Division One applied chapter 4.92

RCW's statutory scheme consistent with this Court's guidance; there is no conflict warranting review under RAP 13.4(b)(1). While this Court has recognized that dismissal in these circumstances "may seem" like an "unduly harsh" result, *Geschwind*, 121 Wn.2d at 841, it is not an absurd one.

2. Cases applying chapter 4.96 RCW are inapposite and do not establish any conflict warranting review under RAP 13.4(b)(2).

Ms. Sterling's wrongly contends that Division One's decision conflicts with Division Two's published decision in *Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 335 P.3d 1014 (2014). As Ms. Sterling concedes—and as Division One held—*Lee* involved RCW 4.96.020, which governs lawsuits against "local government entities," not chapter 4.92 RCW, which governs lawsuits against state agencies like UW. *See* Pet. at 9 ("[W]e agree with the court of appeals that UW is not a local agency."); Slip Op. at 6 ("[C]hapter

4.96 RCW governs the procedure for claims against local government entities . . . Harborview is not a local government entity. Rather, it is an arm of the state."); *Hontz v. State*, 105 Wn.2d 302, 310, 714 P.2d 1176 (1986) ("Because the University of Washington is a state agency, Harborview, as operated and managed by the University, is an arm of the state.").

Further, as Ms. Sterling again concedes, Pet. at 7, Division One's decision is consistent with *Lee*, where Division Two refused to find substantial compliance with the notice and 60-day waiting period required under RCW 4.96.020(4). *Lee*, 183 Wn. App. at 965. The *Lee* court affirmed dismissal of a complaint filed only 14 days after the plaintiff filed her tort claim, well before the local park district could have "completed its investigation and evaluation, decided whether to accept or reject her claim, or engaged in settlement negotiations." 183 Wn. App. at 968.

Lee is consistent with Division One's decision here, both of which hold that substantial compliance must be determined with an eye to "[t]he purpose of claim filing statutes . . . to 'allow government entities time to investigate, evaluate, and settle claims.'" *Lee,* 183 Wn. App. at 968 (*quoting Medina v. Public Util. Dist. No. 1 of Benton Cnty.*, 147 Wn.2d 303, 310, 53 P.3d 993 (2002)); *see* Slip Op. at 4-5.

Indeed, Ms. Sterling's reliance on chapter 4.96 RCW highlights the key difference between statutory claim filing requirements for local governmental entities under chapter 4.96 RCW and state agencies under chapter 4.92 RCW. Unlike local jurisdictions, which operate independently under RCW 4.96.020, the Department of Enterprise Services is responsible for managing claims against *all* state agencies. *See* RCW 4.92.100(1), .110, .210(1)-(4). In contrast, local government entities have no need for a "centralized" process beyond their own internal

procedures. *See* RCW 4.96.020(2) ("The governing body of *each* local governmental entity shall appoint *an agent* to receive any claims made under this chapter.") (emphasis added). The Court of Appeals correctly distinguished between chapter 4.92 RCW and chapter 4.96 RCW. Op. at 5-6.

3. Division One's unpublished decision does not present any issue of substantial public interest warranting this Court's review under RAP 13.4(b)(4).

This Court should similarly reject Ms. Sterling's argument that Division One's decision presents an issue of substantial public interest by purportedly allowing state agencies to "set[ ] up a confusing and misleading process." Pet. at 9. Ms. Sterling cites repeatedly to UW's discussion of its internal claims process on its website, which refers claimants to the "UW Liability Claim Form," Pet. at 9, but she ignores the plain language in the form itself: that filing a claim with the University of Washington "does not

constitute a filing with the Department of Enterprise Services pursuant to RCW 4.92.110." CP 27. She provides no basis for excusing her counsel's failure to follow the instructions on the claim form itself or the plain requirements of RCW 4.92.110 on the ground that the UW has "significantly more resources than the Sterlings." Pet. at 9.

The Court of Appeals has consistently rejected plaintiffs' arguments to excuse compliance with statutory claim filing requirements on grounds that the University's claim filing process was "misleading." And this Court has consistently denied review of those decisions. *See Hardesty v. Stenchever*, 82 Wn. App. 253, 258-59, 917 P.2d 577 (affirming dismissal where the plaintiff filed a complaint at UW's office of risk management but failed to file a tort claim form with DES in Olympia), *rev. denied*, 130 Wn.2d 1005 (1996); *Jones v. Univ. of Wash.*, 62 Wn. App. 653, 662, 814 P.2d 1236 (1991) (rejecting appellant's

argument that UW "misled him" by failing to inform him of his noncompliance with RCW 4.92.110), *rev. denied*, 118 Wn.2d 1026 (1992); *Amo v. Harborview Med. Ctr.*, No 79479-5-I, 2020 WL 1917461 (April 20, 2020) (holding that plaintiff's "communications with Harborview staff and administrators before she filed her complaint" did not substantially comply with statutory notice requirements and that "[t]here is not authority for the proposition that Harborview was required . . . to take affirmative steps to ensure [plaintiff's] compliance with statutory requirements for filing suit."), *rev. denied*, 196 Wn.2d 1010 (2020) (unpublished, cited per GR 14.1).

Ms. Sterling's contention that she substantially complied with chapter 4.92 RCW by filing the UW Claim Form with UW Claim's Services would rewrite RCW 4.92.110 altogether—eliminating the Legislature's primary goal of ensuring all potential claims against state agencies are subject to a uniform process overseen by a centralized

authority and instead allowing compliance whenever the plaintiff "submit[s] an appropriate form to an appropriate party," as Ms. Sterling envisions. Pet. at 8.

This Court cannot "rewrite unambiguous statutory language under the guise of interpretation." *Portugal v. Franklin Cnty.*, 1 Wn.3d 629, 652, 530 P.3d 994 (2023) (quoted source omitted), *cert. denied*, 144 S. Ct. 1343 (2024). Nor can it adopt such a broad interpretation of "substantial compliance" as to render much of the statutory scheme superfluous. *See, e.g., Jongeward v. BNSF R. Co.*, 174 Wn.2d 586, 601 278 P.3d 157 (2012) ("[A] court must not interpret a statute in any way that renders any portion meaningless or superfluous.").

Ms. Sterling's failure to read the express instruction on the UW Claim Form directing her to comply with chapter 4.92 RCW does not create an issue of substantial

public interest warranting this Court's review under RAP 13.4(b)(4).[3]

E. Conclusion.

Division One correctly applied chapter 4.92 RCW in holding that Ms. Sterling's failure to provide *any* notice to the office of risk management at DES did not satisfy the statute's fundamental goal of ensuring all claims against state agencies are managed in a centralized process. Its unpublished decision does not conflict with any authority from this Court or the Court of Appeals, or present any issue of substantial public interest. The Court should deny the petition.

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[3] Ms. Sterling also claims—in a single sentence—that Division One's decision "involves a significant question of law," but provides no support or *any* authority that Division One's decision presents a significant question of constitutional law justifying review under RAP 13.4(b)(3). *See Matter of Rhem*, 188 Wn.2d 321, 328, 394 P.3d 367 (2017) ("[M]ere naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.") (internal quotation omitted).

I certify that this answer is in 14-point Georgia font and contains 3,340 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 8th day of July, 2024.

LARSON HEALTH ADVOCATES, PLLC

By: */s/ Jane J. Liu*
Jane J. Liu
WSBA No. 49649
Levi S. Larson
WSBA No. 39225

SMITH GOODFRIEND, P.S.

By: */s/ Jonathan B. Collins*
Howard M. Goodfriend
WSBA No. 14355
Ian C. Cairns
WSBA No. 43210
Jonathan B. Collins
WSBA No. 48807

Special Assistant Attorneys General for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 8, 2024, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-File
Jane J. Liu Levi S. Larson Larson Health Advocates, PLLC 1700 7th Avenue, Suite 2100 Seattle, WA 98101 1360 jane@lhafirm.com levi@lhafirm.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail
Falin M. McKenzie Dubin Law Group PO Box 30947 Seattle, WA 98113-0947 falin@dubinlawoffice.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail

DATED at Seattle, Washington this 8th day of July, 2024.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

SMITH GOODFRIEND, PS

July 08, 2024 - 10:38 AM

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Comments:

Sender Name: Victoria Vigoren - Email: victoria@washingtonappeals.com
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Address:
1619 8th Avenue N
Seattle, WA, 98109
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