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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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BARBARA KANTA,

PETITIONER,

V.

STATE OF WASHINGTON, DEPARTMENT OF  
LICENSING,

RESPONDENT.

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**DEPARTMENT'S ANSWER TO PETITION FOR  
REVIEW**

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## I. INTRODUCTION

Both the Legislature and this Court have adopted a well-established framework for evaluating the admissibility of blood alcohol test results in civil and criminal DUI proceedings. The Department of Licensing (in an administrative hearing) or State (in a criminal prosecution) must show prima facie evidence of compliance with the state toxicologist's specific foundational requirements for admissibility codified in chapter 448-14 WAC. Once that is done, then any other challenges to the reliability and accuracy of the test results "may be considered by the trier of fact in determining what weight to give the test result," but they "shall not preclude the admissibility." RCW 46.61.506(4)(c).

In affirming the admission of Barbara Kanta's blood alcohol test results at an administrative DUI hearing, the Court of Appeals simply followed this framework. *Kanta v. Dep't of Licensing*, No. 58434-4-II (Wash. Ct. App., Jan. 14, 2025). The Court correctly observed that the state toxicologist's codified requirements for proper blood sample preservation "do[] not

require that the blood in the test tubes be tested prior to the expiration of the tubes.” *Kanta*, slip op. at 11. Accordingly, Kanta’s arguments concerning the blood vials having expired after her blood was collected but before it was tested “go to the weight rather than the admissibility of the evidence, and are for the trier of fact to decide.” *Id.* at 8.

Because the Department’s hearing examiner correctly followed this framework, and because the Department offered prima facie evidence of compliance with each of the admissibility requirements for blood test results, the Court of Appeals properly affirmed the admission of Kanta’s test results and the suspension of her driver’s license. The published decision of the Court of Appeals, coupled with a second published decision reaching the same result in a criminal case, *State v. Leer*, No. 86863-2-I (Wash. Ct. App., Dec. 30, 2024), provide ample guidance for lower courts and tribunals. Accordingly, this case does not involve an issue of substantial



public interest that should be determined by this Court. RAP 13.4(b)(4). The Court should deny review.

## **II. ISSUE PRESENTED FOR REVIEW**

Did the Department's hearing examiner properly admit Kanta's blood test results and consider Kanta's arguments regarding the blood vial expiration in terms of the weight to give the results, when the Department made a prima facie showing of compliance with the codified requirements in chapter 448-14 WAC for blood sample preservation, which do not include any reference to an expiration date for the sample container?

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

### **A. Washington's Implied Consent Statute**

Washington drivers impliedly consent to a test of their breath or blood, "subject to the provisions of RCW 46.61.506," if lawfully arrested for driving under the influence (DUI). RCW 46.20.308(1). When a driver is arrested on suspicion of DUI, a law enforcement officer can, either with a warrant or the driver's consent, obtain a sample of the driver's blood to test for alcohol,

cannabis, or any drug. RCW 46.20.308(4). If the test results indicate that the driver's blood alcohol concentration was at least 0.08, then the officer must immediately notify the Department of Licensing. RCW 46.20.308(5). The Department is then required to suspend or revoke the driving privileges of the driver. RCW 46.20.308(6); RCW 46.20.3101.

A driver can request an administrative hearing with a Department hearing examiner to challenge the suspension. RCW 46.20.308(7). The scope of the hearing is limited to a narrow set of issues, including whether the test results "indicated that the alcohol concentration of the person's breath or blood was 0.08 or more . . . ." *Id.* "At the hearing, the law enforcement officer's sworn [or certified] report is prima facie evidence of a valid arrest and compliance with the requirements of the implied consent statute." *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 51, 50 P.3d 627 (2002).

**B. Kanta Was Arrested for DUI, and the Results of a Blood Alcohol Analysis Showed She Had Been Driving Well Over the Legal Limit for Alcohol**

In July 2021, after driving her vehicle into a ditch, Kanta was arrested for DUI. CP 3-4, 48. She consented to a test of her blood, and a blood draw was performed by a certified phlebotomist using a Washington State Patrol blood draw kit. CP 4, 48. The arresting sheriff's deputy attested that the vials used for the blood draw were in good condition, were not expired at the time of the draw, and that a white preservative anticoagulant powder was present in them. CP 4, 48. A certificate from the vial manufacturer stated that the vials used for the blood draw were sterilized, vacuum sealed, and contained the required anticoagulant and enzyme poison. CP 54. According to the certificate, the vials were set to expire on November 30, 2021. *Id.* The deputy transmitted the blood sample to the Washington State Toxicology Laboratory for analysis. CP 4, 48.

In September 2022, Forensic Scientist Darlene Valencia tested Kanta's blood sample. Valencia completed a signed report

in which she certified that she “reviewed all relevant pages of testing documentation in the case record. The tests were administered according to testing methods approved by the State Toxicologist pursuant to WAC 448-14-010, -020, -030 and/or RCW 46.61.506(3) by an analyst possessing a valid permit issued by the state toxicologist.” CP 4, 43-44. The analysis was then reviewed by a second forensic scientist, Elizabeth Gough, who also signed off on the results. CP 44. Neither Valencia nor Gough made note of any irregularities in the blood indicating adulteration of the sample. CP 43-44. The results showed a blood alcohol concentration of 0.18—which is more than twice the legal limit—and the presence of THC. CP 43.

**C. Kanta Challenged the Admissibility of her Blood Test Results Based on the Blood Vial Manufacturer’s Suggested Expiration Date**

Per RCW 46.20.308(5), the arresting officer transmitted the arrest report with the blood alcohol test results to the Department of Licensing. RCW 46.20.308(6); RCW 46.20.3101. The Department then notified Kanta of its intent to suspend her

driving privileges under the implied consent statute. CP 33; RCW 46.20.308(6); RCW 46.20.3101.

Kanta requested an administrative hearing. CP 33-34. At the hearing, Kanta challenged the admissibility of the blood test results based solely on the fact that the expiration date provided by the manufacturer for the blood vials had passed after her blood was drawn but before the sample was analyzed. CP 13-19. To refute the results' reliability, Kanta offered two documents: a sworn declaration from the vial manufacturer, and an unsworn, unsigned letter written by an unnamed "technical specialist" for the vial manufacturer. CP 20-22, 30. The declaration from the manufacturer stated, among other things, that the manufacturer could not make any representation or guarantee about the efficacy of their blood vials after the suggested expiration date because the declarant lacked the qualifications and knowledge to offer such an opinion. CP 21-22. The declaration also stated that the "expiration date, alone, likely cannot be the only factor to their efficacy," and additional testing or expert analysis would be

necessary to determine the efficacy of any given vial. CP 22. The unsigned letter stated that the manufacturer did not recommend using its products past the expiration date. CP 30.

**D. The Hearing Examiner Admitted the Test Results and Found Kanta's Evidence Did Not Undermine the Results' Reliability**

The hearing examiner considered all of the evidence—the trooper's sworn report, the forensic scientist's report, the manufacturer's certificate of compliance, the phlebotomist's credentials, and the two documents Kanta introduced—and concluded that Kanta's blood was drawn and analyzed in compliance with RCW 46.61.506 and the State Toxicologist's protocols in chapter 448-14 WAC. CP 5. The hearing examiner found that the manufacturer's declaration and letter did not rebut the Department's prima facie evidence of compliance or establish that Kanta's blood test results were compromised. CP 5-6 n.3. The hearing examiner admitted the blood test results and sustained the suspension of Kanta's driver's license. CP 5-6.

**E. The Superior Court and Court of Appeals Both Affirmed the Admissibility of the Blood Test Results and the Suspension of Kanta's Driver's License**

Kanta appealed the hearing examiner's order to Kitsap County Superior Court, which affirmed the admission of the blood test results and the suspension of Kanta's driver's license. CP 60-61. Kanta then sought and obtained discretionary review by the Court of Appeals Division II.

The Court of Appeals affirmed. *Kanta*, No. 58434-4-II, slip op. at 11. The Court reviewed the Department's evidence and held that the Department "met its burden of providing prima facie evidence that Kanta's blood test complied with necessary requirements as designated by the state toxicologist and outlined in WAC 448-14-020." *Id.* Importantly, the Court recognized that "[t]he WAC does not require that the blood in the test tubes be tested prior to the expiration of the tubes." *Id.* The Court acknowledged that, once the Department met its burden, Kanta was permitted to attack the accuracy and reliability of the test

results, but that argument went to weight of the evidence and was for the trier of fact to decide. *Id.*

While motions to publish were pending in *Kanta*, Division I of the Court of Appeals published another opinion addressing the same issue in a criminal case—*State v. Leer*, No. 86863-2-I (Wash. Ct. App. Dec. 30, 2024)—and reached the same result. Like *Kanta*, *Leer* argued that his blood test results should not have been admitted at trial because his blood sample was tested after the vial manufacturer’s expiration date. *Id.* at 1. As in *Kanta*, Division I noted that the “standards for the collection, preservation, and storage of blood evidence intended for use in criminal prosecutions are carefully, and exclusively, set out in RCW 46.61.506(3) and the WAC provisions[.]” *Leer*, slip op. 10. The Court held that the State met its prima facie burden for admissibility of the blood test results and affirmed their admission. *Id.* at 14-15.

*Kanta* and *Leer* both seek this Court’s review of the Court of Appeals opinions.



#### IV. ARGUMENT

The Court of Appeals properly followed the Legislature's and this Court's framework for evaluating the admissibility of blood test results. The Court correctly held that the "department met its burden of providing prima facie evidence that Kanta's blood test complied with necessary requirements as designated by the state toxicologist and outlined in WAC 448-14-020," which "do[] not require that the blood in the test tubes be tested prior to the expiration of the tubes." *Kanta*, slip op. at 11. This is consistent with the Legislature's direction in RCW 46.61.506(4)(c) that challenges to the reliability and accuracy of tests after the Department has made its prima facie showing "shall not preclude the admissibility" but instead "may be considered by the trier of fact in determining what weight to give to the test result." And it is consistent with decades of case law from this Court, which has repeatedly held that once the Department meets its burden of establishing compliance with the codified admissibility requirements for blood alcohol tests, the

test results are admissible and any further challenges go to the weight of the evidence, not its admissibility. *E.g.*, *City of Seattle v. Allison*, 148 Wn.2d 75, 80, 59 P.3d 85 (2002); *State v. Straka*, 116 Wn.2d 859, 875, 810 P.2d 888 (1991). Further review by this Court is unwarranted.

Kanta's petition is grounded in the flawed assertion that this Court should take review under RAP 13.4(b)(4) because lower courts and tribunals have previously made inconsistent rulings on the admissibility of blood test results from expired vials. Pet. for Review at 14. But the Court of Appeals has now provided clear guidance in the form of two consistent published decisions in both a criminal case and a civil implied consent case, both following the clear direction from the Legislature and this Court for how to evaluate the admissibility of blood test results. That some lower tribunals previously misapplied or misunderstood that direction does not make further review warranted under RAP 13.4(b)(4). There should be no confusion now. This Court should deny review.

**A. Once the Foundational Requirements for Blood Test Validity Are Met, the Results Are Admissible, and Any Other Challenges Go to Weight**

- 1. The Legislature and state toxicologist have established the foundational requirements for admitting blood alcohol test results, and all other challenges go to weight, not admissibility**

The “Legislature has made clear its intention to make BAC test results fully admissible once the State has met its prima facie burden.” *City of Fircrest v. Jensen*, 158 Wn.2d 384, 399, 143 P.3d 776 (2006). To that end, the Legislature has codified a set of foundational requirements and, “once the prosecution or department has made a prima facie showing” of those requirements, the test results are admissible. RCW 46.64.506(4)(c); *State v. Brown*, 145 Wn. App. 62, 184 P.3d 1284 (2008).

The Legislature adopted this framework in 2004 to “provide a degree of uniformity” for the admission of blood and breath tests. Laws of 2004, ch. 68, § 1. The Legislature intentionally sought to “eliminate challenges to . . . test admissibility based on technical deficiencies not shown to

adversely affect the accuracy of the result.” *Ludvigsen v. City of Seattle*, 162 Wn.2d 660, 681, 174 P.3d 43 (2007) (Madsen, J., concurring) (citing *Jensen*, 158 Wn.2d at 399). “Such challenges, while allowed, . . . no longer go to admissibility of test results. Instead, such challenges are to be considered by the finder of fact in deciding what weight to place upon an admitted blood or breath test result.” Laws of 2004, ch. 68, § 1; *see also State v. Keller*, 2 Wn. 3d 887, 894, 545 P.3d 790 (2024).

Under RCW 46.61.506(3), the analysis of a driver’s blood is “to be considered valid” when it is “performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose.” The test results are admissible at an administrative hearing when they comply with the State Toxicologist’s standards. That is because “[w]hen the protocols . . . and existing Code provisions are followed, there is sufficient assurance of accuracy and reliability of the test results . . .” *Straka*, 116 Wn.2d at 870; *Singh v Dep’t of Licensing*, 5 Wn. App. 2d 1, 8, 421 P.3d

504 (2018) (“[t]hese requirements ensure that the blood sample is properly preserved for testing”); *State v. Clark*, 62 Wn. App. 263, 270, 814 P.2d 222 (1991) (the “obvious purpose” of the toxicologist’s approved methods are “to ensure that the blood sample is properly preserved”).

The State Toxicologist has codified the specific foundational standards for blood test validity in chapter 448-14 WAC. WAC 448-14-010 establishes the methods for quantitatively analyzing the alcohol concentration of blood. WAC 448-14-030 sets the qualifications for a person to analyze a blood sample. And, relevant here, WAC 448-14-020 establishes the requirements for preserving a blood sample and analyzing the alcohol concentration. With regard to the blood “[s]ample container and preservative,” the rule requires that:

- (a) A chemically clean dry container consistent with the size of the sample with an inert leak-proof stopper will be used.

(b) Blood samples for alcohol analysis must be preserved with an anticoagulant and an enzyme poison sufficient in amount to prevent clotting and stabilize the alcohol concentration. Suitable preservatives and anticoagulants include the combination of sodium fluoride and potassium oxalate.

WAC 448-14-020(3). Notably, the toxicologist's requirements do not include any reference to the blood vial manufacturer's suggested expiration date.

**2. This Court has consistently held that challenges to a sample's accuracy or reliability based on issues *other than* the codified elements go to weight, not admissibility**

This Court has consistently acknowledged the statutory framework for admitting and challenging breath and blood test results. Its analysis even pre-dates the 2004 amendments. For example, in *Allison*, this Court stated, "Once the foundational requirements are established and the test results are admitted, a

defendant may then attack the test results in a particular case by introducing evidence refuting the accuracy and reliability of the test[.] ”148 Wn.2d at 80. *Accord Straka*, 116 Wn.2d at 875 (deviations from procedures may be introduced to refute the accuracy and reliability of the test results but do not bar its admissibility); *State v. Peterson*, 100 Wn.2d 788, 791–92, 674 P.2d 1251 (1984) (“Any challenge to the reliability of the Breathalyzer reading goes to its weight rather than to its admissibility”); *City of Bremerton v. Osborne*, 66 Wn.2d 281, 282, 401 P.2d 973 (1965) (challenges to breathalyzer operator’s qualifications and sufficiency of breathalyzer maintenance procedures go to weight rather than admissibility).

The Court of Appeals has similarly held that the State must present prima facia proof that “blood sample analysis is admissible to show intoxication . . . only when it is performed according to WAC requirements.” *State v. Hultenschmidt*, 125 Wn. App. 259, 265, 102 P.3d 192 (2004). But, “[o]nce a prima showing is made, it is for the jury to determine the weight to be

attached to the evidence.” *Brown*, 145 Wn. App. at 70 (criminal case). *Accord Clark*, 62 Wn. App. at 270.

Most recently in *State v. Keller*, this Court considered a challenge to the admissibility of breath test results where the device performing the test did not calculate the results according to the methods approved by the state toxicologist. *Keller*, 2 Wn.3d at 901-02. The Court concluded that because nothing in plain language of the relevant statutes or WACs governing breath test admissibility required the breath testing instrument to calculate the results itself, the instrument’s programming error did not render the results inadmissible. *Id.* at 913.

**B. Both Divisions I and II of the Court of Appeals Followed the Framework Established by the Legislature and This Court; Additional Guidance from This Court Is Unnecessary**

In both *Kanta* and Division I’s opinion in *Leer*, the Court of Appeals properly followed the Legislature’s and Washington appellate courts’ analysis for determining the admissibility of alcohol test results. Both declined to exclude blood results based



on a factor not contained in the state toxicologist's rules for proper preservation of blood samples—the manufacturer's expiration date for blood vials. *Kanta*, slip op. at 11; *Leer*, slip op. at 9-12. These consistent and complementary published decisions—one civil, one criminal—provide sufficient guidance to lower courts and tribunals such that further guidance from this Court is not needed.

**1. The Court of Appeals considered the challenge to Kanta's blood test results in the correct context and properly affirmed the results' admission**

The Court of Appeals reviewed the Department's evidence and correctly concluded that the Department demonstrated compliance with each of the admissibility requirements for blood alcohol tests. *Kanta*, slip. op. at 9-11. With regard to the vials themselves, the Department offered a certificate of compliance from the manufacturer that established the vials used to store Kanta's blood "met the necessary requirements for preservatives and anticoagulants," were sterile, and otherwise met all

manufacturing regulations. *Id.* at 9-10. Furthermore, the arresting officer attested in his sworn report that the vials were “in good condition, were not expired, and that the white preservative anticoagulant powder was present in the tubes.” *Id.* at 10 (quoting CP 48). The Court of Appeals held that this evidence was sufficient to show compliance with the pertinent regulations. *Id.* at 11. The Court of Appeals decision is consistent with this Court’s holdings in cases such as *Allison* and *Straka* and correctly applied the existing framework from the long line of consistent holdings regarding the admissibility of breath and blood test results.

In reaching this result, the Court of Appeals expressly rejected Kanta’s argument, which she renews in her Petition for Review, that the Department’s evidence is somehow insufficient under *Singh*, 5 Wn. App. 2d 1. *Kanta*, slip. op. at 10, Petition for Review at 12-13. As the Court of Appeals noted, in *Singh*, the hearing examiner had *excluded* the vial manufacturer’s certificate of compliance, the only evidence to demonstrate that

the vials were properly cleaned and contained an acceptable anticoagulant and enzyme poison. *Singh*, 5 Wn. App. 2d at 5-6; *Kanta*, slip op. at 10. *Singh* held that, without that certificate, the Department could not demonstrate compliance with WAC 448-14-020(3); therefore, the results of Singh's blood test were inadmissible. *Id.* at 10-11. But here, as the Court of Appeals recognized, the hearing examiner *admitted* the certificate of compliance. *Kanta*, slip op. at 10. Thus, *Singh* is simply inapposite, and the Court of Appeals properly rejected Kanta's reliance on it. *Id.*

Kanta otherwise relies on various cases where the Court of Appeals affirmed the exclusion of test results because the state did not produce prima facie evidence of one of the codified admissibility requirements. Petition for Review at 7-11 (citing *City of Seattle v. Clark-Munoz*, 152 Wn.2d 39, 93 P.3d 141 (2004); *State v. Baker*, 56 Wn.2d 846, 355 P.2d 806 (1960); *State v. Ryan*, 43 Wn. App. 488, 717 P.2d 1390 (1986); and *State v. Watson*, 51 Wn. App. 947, 756 P.2d 177 (1988)). As she did

below, she states that these cases stand for the proposition that “[e]ven the smallest violation of the foundation requirements requires exclusion.” Pet. for Review at 7; Br. of Appellant at 6. But the Department has never contested that proposition. It has merely argued—consistent with the statute, regulations, and this Court’s case law—that the blood vial expiration date is not a foundational requirement for establishing proper blood sample preservation.

This does not mean that the trier of fact ignores the expiration date if the driver or defendant challenges it. Rather, once the Department has shown prima facie evidence of compliance with the foundational requirements and the test results are admitted, the burden shifts to the driver to refute the accuracy of the results, and the hearing examiner considers any evidence in terms of what weight to afford them. *State v. Erdman*, 64 Wn.2d 286, 287-88, 391 P.2d 518 (1964). That is precisely what occurred here. The hearing examiner considered the evidence Kanta offered—the unsworn, unsigned letter

written by an unnamed “technical specialist” for the vial manufacturer, and the declaration from the manufacturer’s representative that stated, among other things, that the vial expiration date “likely cannot be the only factor to [the vials’] efficacy.” CP 20-22, 30. The hearing examiner simply determined that this evidence did not undermine the results’ reliability. CP 5-6 n.3. On appeal, the Court of Appeals appropriately declined to reweigh the evidence. *Kanta*, slip op. at 8; *accord Singh*, 5 Wn. App. 2d at 6 (“reviewing courts should not reweigh evidence”).

The Department offered prima facie evidence showing that Kanta’s blood draw and testing complied with the codified, foundational requirements for admissibility. The Court of Appeals thus properly affirmed the admission of Kanta’s blood test results. *Kanta*, slip. op. at 11. In doing so, the Court of Appeals followed the framework established by the Legislature and Washington Courts. *E.g.*, *Allison*, 148 Wn.2d at 80, *Straka*,

116 Wn.2d at 875, *Osborne*, 66 Wn.2d at 282. There is no need for further review.

**2. This Court's review is not warranted as the published decisions of two divisions of the Court of Appeals provide sufficient guidance**

Kanta's sole argument for review is that this case presents an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4). Pet. for Review at 1, 13-14. She contends that review is needed because lower courts and tribunals have reached inconsistent results regarding the admissibility of blood test results from expired vials. Pet. for Review at 13-14. But two published decisions from the Court of Appeals now adequately address the issue. Further review is unwarranted.

Importantly, both of those decisions followed this Court's case law. In *Kanta*, No. 58434-4-II, slip. op. at 11, the Court of Appeals unambiguously held that, because WAC 448-14-020 "does not require that the blood in the test tubes be tested prior to the expiration of the tubes," any arguments regarding the

expiration date go to weight, not admissibility. As discussed, that is consistent with *Allison*, *Straka*, and numerous other cases. And in *Leer*, No. 86863-2-I, the Court of Appeals relied on this Court's reasoning in *Keller* and *Straka*, in addition to other Court of Appeals decisions, to conclude that "the requirements for establishing the proper foundation for the admission of blood evidence in a criminal conviction are confined to the plain language of the relevant statute and code." *Leer*, slip op. at 9, 11. These two decisions provide sufficient guidance to both trial courts and hearing officers in administrative tribunals. There should be no further confusion or inconsistency on this issue, and Kanta fails to identify any other basis for this Court to take review.

The Court's review of this issue is not warranted under RAP 13.4(b)(4), and the Court should deny review.

## V. CONCLUSION

The Court of Appeals properly affirmed the admission of Kanta's blood test results and the Department's suspension of

Kanta's driver's license. The petition does not involve an issue of substantial public interest that should be determined by this Court because this Court has already provided ample guidance, on which the Court of Appeals relied. RAP 13.4(b)(4). Kanta fails to identify any basis for further review under RAP 13.4(b). This Court should deny review.

I certify that this document contains 4200 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of February, 2025.

NICHOLAS W. BROWN  
Attorney General

A handwritten signature in black ink, appearing to read "Nick Quijas", is written over the typed names of the assistant attorneys general.

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## PROOF OF SERVICE

I, Katherine Ramirez, certify that I caused to be served a copy of **Department's Answer to Petition for Review** on all parties on their counsel of record on the date below as follows:

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THOMAS WEAVER  
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27th day of February 2025, in Olympia, Washington.

  
\_\_\_\_\_  
KATHERINE RAMIREZ, Paralegal

**AGO/LICENSING AND ADMINISTRATIVE LAW DIV**

**February 27, 2025 - 1:51 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,850-0  
**Appellate Court Case Title:** Barbara Kanta v. State of Washington, Department of Licensing  
**Superior Court Case Number:** 22-2-02077-8

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