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Supreme Court No. 1039905
Court of Appeals No. 59455-2-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

TREENA MILLETT,

Appellant/Plaintiff,

v.

OLYMPIC MEDICAL CENTER AND DR. ALEXA YAGER, DO,

Respondent/Defendant,

ANSWER TO PETITION FOR REVIEW
OLYMPIC MEDICAL CENTER

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I. INTRODUCTION

This is a medical malpractice case arising from medical care Ms. Millett received at Olympic Medical Center between 07/21/2019 and 07/22/2019. Counsel for Ms. Millett later served a written demand for mediation on Olympic Medical Center dated 07/18/2022. Just shy of one year later, counsel for Ms. Millett served a Standard Tort Claim Form on Olympic Medical Center, dated 07/10/2023.

Ms. Millet filed a claim in Clallam County Superior Court on 09/22/2023. Her attorney later produced a certificate of service showing service on Bruce Skinner at 1015 Georgiana St., Port Angeles, WA 98362 on 11/16/2023. Mr. Skinner is not an Olympic Medical Center employee, and the service address is not that of Olympic Medical Center—rather, that of a separate nonprofit, the Olympic Medical Center Foundation.

Counsel for Olympic Medical Center filed a notice of appearance on 11/28/2023 and an Answer, in which it asserted

an affirmative defense of "[f]ailure to file within statute of limitations or properly serve defendants," on 12/07/2023. On 02/23/2024, it filed a Motion to Dismiss pursuant to CR 56.

In response, Ms. Millett argued any service error should be forgiven because she believes there is no statute dictating how to serve a public hospital district and that Olympic Medical Center waived its right to claim improper service.

After considering all materials submitted and the oral argument of the parties, the trial court granted the motion and dismissed all claims. Later, the Court of Appeals affirmed the order.

The trial court properly dismissed Ms. Millett's claims, concluding she failed to properly serve Olympic Medical Center within the statute of limitations and rejecting her waiver arguments. The Court of Appeals properly affirmed this ruling. None of the arguments raised by Plaintiff in her Petition for Review meet the requirements of RAP 13.4(b). The Petition for Review should be denied.

II. IDENTITY OF THE ANSWERING PARTY

Olympic Medical Center, by and through its attorney of record, respectfully asks the Court to deny this Petition for Review.

III. RESTATEMENT OF THE CASE

The trial court did not err when it determined Treena Millett failed to serve Olympic Medical Center within the statute of limitations, rejected her waiver arguments, and dismissed her claim with prejudice.

A. Ms. Millett Demanded Mediation and Submitted a Standard Tort Claim Form in Connection with Care in July 2019.

Medical records show Ms. Millett received medical care at Olympic Medical Center (OMC) between 07/21/2019 and 07/22/2019. Clerk's Papers (CP) at 54–57. Counsel for Ms. Millett later served a written mediation demand dated 07/18/2022, just shy of three years from the medical care at issue. CP at 59.

Mr. Williams stated in his declaration that he mailed a

Standard Tort Claim Form to OMC on 07/10/2023 at the address clearly stated on the form, 939 Caroline Street. CP at 7. He included a copy of the form submitted in the declaration. CP at 23–24.

B. Ms. Millett Filed Suit on 09/22/2023, but Never Served the Summons and Complaint on Olympic Medical Center.

Ms. Millett filed a Complaint in Clallam County Superior Court on 09/22/2023. CP at 83–84. She later produced a Return of Service declaration, dated 02/15/2024, stating Emily Carpenter served a copy of the Summons and Complaint on "JEREMY GILCREST, C.O.O AUTHORIZED TO ACCEPT" for "OLYMPIC MEDICAL CENTER C/O BRUCE SKINNER, 1015 GEORGIANA ST, PORT ANGELES, WA 98362" on 11/16/2023. CP at 35.

According to his 03/15/2024 declaration, Jeremy Gilchrist is Chief Operations Officer for Olympic Medical Center Foundation, a nonprofit operating at 1015 Georgiana St. CP at 92–93. This is a separate entity from Olympic Medical Center,

which is at 939 Caroline Street, and it does not provide any healthcare. *Id.* Olympic Medical Center Foundation is not authorized to accept service for OMC as they are different entities *Id.* Mr. Gilchrist recalls speaking with the process server and telling her Olympic Medical Center Foundation was not authorized to accept service for OMC. *Id.*

On 11/28/2023, Counsel for OMC filed a notice of appearance, which explicitly reserved the defenses of insufficiency of service of process and insufficiency of proof of service of process. CP at 113–15. On 12/07/2023, OMC filed its answer, which asserted an affirmative defense of "*[f]ailure to file within statute of limitations or properly serve defendants*." CP at 72–76. OMC never served discovery on Ms. Millett, and Ms. Millett never served discovery on OMC. She also never asked OMC to confirm service was proper.

On 02/29/2024, OMC filed a motion to dismiss pursuant to CR 56 because Ms. Millett failed to properly file and serve her complaint within the statute of limitations. CP at 64–69. In

response, Ms. Millett made arguments similar to those before this Court. On 03/22/2023, the trial court dismissed Ms. Millett's claim with prejudice. CP at 90–91.

On direct appeal, Division II of the Court of Appeals affirmed dismissal of Ms. Millett's claims. The unpublished Court of Appeals decision is attached to Ms. Millett's Petition for Review as **Appendix A**. This Petition for Review followed.

IV. ANSWER TO PETITION FOR REVIEW

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) if the Decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

A. The Court of Appeals Decision Affirming Summary Dismissal Was Correct and Not in Conflict with Any Decision by This Court or the Court of Appeals.

Ms. Millett failed to allege any error in fact or law that would warrant reversal or remand. *Pet. For Rev.* She continues to erroneously argue the law is ambiguous, requesting the Court clarify the requirements of the law. Her argument is erroneous, as the law on service and the statute of limitations is clear.

1. Law on the Statute of Limitations is Clear.

The statute of limitations for a medical negligence claim against a governmental entity is set and tolled accordingly by the following statutes:

1. Typically, medical negligence personal injury claims have a **three-year statute of limitations**. RCW 4.16.350 (emphasis added).
2. The making of a written, good faith request for mediation of a dispute related to damages for injury occurring as a result of health care prior to filing a cause of action tolls

the statute of limitations for **one year**. RCW 7.70.110 (emphasis added).

3. Filing of a Tort Claim Form tolls the statute of limitations for a "**sixty calendar day period**. For the purposes of the applicable period of limitations, an action commenced within **five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period has elapsed**. RCW 4.96.020(4) (emphasis added).

4. Regarding the statute of limitations, "action shall be deemed commenced when the complaint is filed or summons is served, whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, **the plaintiff shall cause one or more of the defendants to be served personally**, or commence service by publication **within ninety days from the date of filing the complaint**. … If, following service, the complaint is not so filed, or **following filing, service is not**

so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations. RCW 4.16.170 (emphasis added).

The last day the care at issue took place was 07/22/2019. Under RCW 4.16.350, Ms. Millett had until 07/22/2022 to bring a claim. Assuming her attorney mailed the written mediation demand on 07/18/2022 (a Monday), service was accomplished on 07/21/2022, one day before the end of the limitations period. CR 5(b)(2)(A). This extended the limitations period to 07/22/2023. RCW 7.70.110. A Standard Tort Claim Form mailed to OMC on 07/10/2023 would have been timely and would have extended the limitations period for sixty days to 09/20/2023. RCW 4.96.020(4). Under the five-day grace period in that statute, a complaint filed on 09/22/2023 would have been timely. *Id.*

Ms. Millett had 90 days to serve the Summons and Complaint on a defendant, lest her case "be deemed to not have been commenced for purposes of tolling the statute of

limitations." RCW 4.16.170. The 90-day window expired on 12/21/2023. She never completed the service.

2. Standards for Service are Unambiguous.

While Ms. Millett is correct that RCW 4.28.080 does not specifically set guidelines for service of public hospital districts, public hospital districts are "municipal corporations." RCW 70.44.010. Service on a company or corporation other than those enumerated in subsections 1–8 of RCW 4.28.080 may be made on: "the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent." RCW 4.28.080(9). This is the standard applicable to all municipal corporations.

Ms. Millett successfully served documents on Olympic Medical Center twice. He served his written mediation demand on Olympic Medical Center at 939 Caroline Street in July 2022:

LAW OFFICE OF
DAVID A. WILLIAMS
Nine Lake Bellevue Drive, Suite 104 Bellevue Washington 98005

July 18, 2022

JUL 21 2022

Olympic Medical Center
939 Caroline Street
Port Angeles, WA 98362

CP at 46. She later served the Standard Tort Claim Form on Olympic Medical Center at the same address:

Standard Tort Claim Form
General Liability Claim Form

Pursuant to Chapter 4.92 RCW, this form is for filing a tort claim against Clallam County Public Hospital District No. 2 dba Olympic Medical Center. Some of the information on this form is required by RCW 4.92.100 and may be subject to public disclosure. Pursuant to law, Standard Tort Claim forms cannot be submitted electronically (via e-mail or fax).

PLEASE TYPE OR PRINT IN INK
Mail or Deliver Original Claim to:
Olympic Medical Center
Attention: Darryl Wolfe, CEO
939 Caroline Street
Port Angeles, WA 98362

For Official Use only
No.

CP at 23–24. For the Summons and Complaint, she elected to serve a different legal entity at a different address. According to the declaration of Mr. Gilchrist, he "told the female [process server] that [he] could take the documents for Bruce Skinner, but explained that OMCF was a **separate entity** from OMC. [He] never told her that [he] could accept service for OMC." CP at 92–93. Ms. Carpenter's declaration does not contradict this

account, nor does Ms. Millett present any other facts to create a material issue of fact on this issue. CP at 32–35. There is absolutely no basis in law to deem service sufficient when it is made upon an entity that is not a party to litigation, especially when the entity is not related to the defendant entity, and in this situation, is not even a healthcare provider.

Ms. Millett cites one case as to the sufficiency of service, which has no bearing on the dispute before this Court. In *Wichert v. Cardwell*, 117 Wn.2d 148, 812 P.2d 858 (1991), this Court held service was sufficient when a summons and complaint were served on the adult daughter of the defendants at the house of the defendants' usual abode. While the *Wichert* Court did adopt the "*Mullane* test," stating "the means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it," this Court's finding of sufficiency was based in two key facts: (1) service was made at the home of the defendant; and (2) service was made on the adult child of a defendant who was staying overnight at the home in their

absence. *Id.* at 151–53 ("Service upon a defendant's adult child who is an overnight resident in the house of defendant's usual abode, and then the sole occupant thereof, is reasonably calculated to accomplish notice to the defendant.")

The facts of this case differ from *Wichert* on both key points: (1) service was not made at the address of the defendant; and (2) service was not made upon someone who is reasonably believed to be authorized to accept service for the defendant, as Mr. Gilchrist told the process server.

3. No Waiver of Insufficient Service of Process.

Ms. Millet argues OMC waived its defense of insufficient service of process because it filed a notice of appearance, a jury demand, and an answer to the complaint. The only authority cited is *Lybbert v. Grant County*, 141 Wn.2d 29, 1 P.3d 1124 (2000). This case does not support Ms. Millett's position on the issue.

The *Lybbert* Court sets clear guidelines for when a defendant has waived this defense. A timeline illustrates how the facts of *Lybbert* materially differ from those before this Court:

1. On 08/30/1995, the Lybberts filed their complaint against Adams County. They served the summons and complaint on the wrong person, meaning proper service did not occur. *Id.* at 32.
2. The County filed a notice of appearance that did not waive objection to improper service or jurisdiction. *Id.*
3. Shortly thereafter, the County served written discovery on the plaintiff, and a sheriff called the plaintiff to confirm they understood what information the County sought. *Id.*
4. The County began settlement discussions with the plaintiff. *Id.*
5. Plaintiffs served the County with written discovery on 02/29/1996. One question asked whether the County would rely on the defense of insufficient service of process. *Id.* at 33. The County did not respond. *Id.*
6. On 06/21/1996, almost nine months after filing and shortly after the statute of limitations had run, the County filed an

answer asserting—for the first time—the affirmative defense of insufficient service of process. *Id.*

7. Shortly thereafter, the County filed a motion for summary judgment, seeking dismissal based on the insufficient service of process and because the statute of limitations had run on 05/07/1996. *Id.*

The *Lybbert* Court gave situations where a defendant can waive a defense if insufficient service of process:

- When the defendant's assertion of the defense is inconsistent with past behavior. *Id.* at 39.
- When defense counsel has been dilatory in asserting the defense. *Id.*

The *Lybbert* Court concluded the County did waive the defense, citing the following facts:

- The defense requested the sheriff call the plaintiff to confirm they understood the nature and extent of discovery. *Id.* at 42.

- There were calls between counsel to discuss settlement, during which improper service was not discussed. *Id.*
- The defense ignored discovery regarding the appropriateness of service for several months until after the statute of limitations—and Plaintiff's window to correct its error—had passed. *Id.*
- Perhaps, most importantly, the defense waited nine months, until after the statute of limitations had passed, to assert the defense in its answer. *Id.*

Importantly, the Court noted engaging in discovery, on its own, does not waive the defense, as sometimes discovery is necessary to identify the defense. *Id.* at 41.

Here, the facts are materially different. Neither party served discovery on the other, there was no attempt by Ms. Millet to confirm service was appropriate, and as is outlined above, OMC asserted the defense on 12/07/2023, before the limitations period expired on 12/21/2023, giving Ms. Millet notice and

opportunity to fix her error. None of the factors the *Lybbert* court cited are present here. No waiver took place.

A far more analogous case is *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d 1234 (1991). In that case, the plaintiff filed suit in January 1986, but never properly served the defense. In February 1986, defense counsel appeared. In August 1986, the defense filed its answer, asserting a defense of insufficient service of process among several other affirmative defenses. In June 1987, the plaintiff filed an amended complaint, and the defense filed an amended answer a month later, asserting the same defenses. There was no attempt by the plaintiff to correct the defect in service. *Id.* at 587.

It was not until after opening statements at trial that the defense moved for dismissal for insufficient service of process. *Id.* at 587–88. The defense renewed its motion at the close of trial. *Id.* The trial court denied both motions on the basis of waiver. *Id.* at 588. The Court of Appeals, Division I, later reversed, holding the claims should have been dismissed because

proper service had not been made on the defendants. *Id.* The Supreme Court affirmed, citing a factual record like that before this Court. *Id.* at 593–94.

Orders by the trial Court and the Court of Appeals conform to all precedent cited above and are not in conflict with any decision by this Court or the Court of Appeals. This Court should deny review.

B. The Court of Appeals Decision Does Not Involve an Issue of Substantial Public Interest.

Ms. Millett has not raised any substantive argument related to public interest, aside from noting there are 57 Public Hospital Districts in Washington. Pet. For Rev.

While Ms. Millett is correct that Washington has many Public Hospital Districts, the statute establishes clear requirements for service on a Public Hospital District, as shown above. As such, the Court of Appeals decision did not involve an issue of substantial public interest. This Court should deny review.

Moreover, Ms. Millet did not explicitly argue public interest. This issue should be considered abandoned on appeal and not considered for purposes of the Petition for Review. *Blue Spirits Distilling, LLC v. Wash. State Liquor & Cannabis Bd.*, 15 Wn. App. 2d 779, 794 (2020).

C. The Court of Appeals Decision is Not in Conflict with a Published Opinion of the Court of Appeals and Does Not Implicate Either the U.S. Constitution or the Washington State Constitution.

Ms. Millett has not raised any argument related to the constitution of the State of Washington or the United States. Pet. For Rev.. These issues should be considered abandoned on appeal and not considered for purposes of the Petition for Review. *Blue Spirits Distilling*, 15 Wn. App. 2d at 794 (2020).

V. CONCLUSION

Ms. Millett fails to present a sufficient basis under RAP 13.4(b) to justify acceptance of discretionary review by this Court. Therefore, the Court should deny this Petition for Review.

I certify that this brief produced using word processing software, contains 2,960 words in compliance with RAP 18.17, exclusive of the title sheet, table of contents, table of authorities, this certification of compliance, certificate of service, and signature blocks, as calculated by the word processing software used to prepare this motion.

Respectfully submitted this 5th day of May 2025.

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DECLARATION OF SERVICE

Pursuant to RCW 9A.72.085, I declare under penalty of perjury and the laws of the State of Washington that: on the below date, I caused to be served a true and correct copy of *ANSWER TO PETITION FOR REVIEW* via the method indicated below to the following party(ies) at their address(es) listed:

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DATED this 5th day of May 2025.

Erika Wilson
Litigation Legal Assistant

LARSON HEALTH ADVOCATES, PLLC

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