No. 104418-6

SUPREME COURT
OF THE STATE OF WASHINGTON

MARCI PETERHANS, individually and MARCI PETERHANS AS GUARDIAN FOR COLIN PETERHANS,

Petitioner,

v.

UNIVERSITY OF WASHINGTON, et al.,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Applying the plain language and clear legislative intent of the Involuntary Treatment Act, ch. 71.05 RCW, the Court of Appeals properly held that respondent University of Washington health care providers are entitled to qualified immunity under RCW 71.05.120(1) regarding the decision to discharge petitioner Marci Peterhans's son, Colin Peterhans, from involuntary inpatient treatment.

Under that statute, health care providers are not liable unless the plaintiff can establish the discharge resulted from either bad faith or gross negligence, and Ms. Peterhans did not present admissible evidence of either. Ms. Peterhans does not identify any valid grounds for review under RAP 13.4(b), nor even cite the governing rule *at all*. But even if the Court considers the petition's substantive merits, Ms. Peterhans fails to raise any issue warranting this Court's review.

The ITA recognizes the difficult decisions facing mental health care providers, balancing the conflicting goals of public safety and patient autonomy. But Ms. Peterhans's medical expert does not define what a reasonable physician should have done to meet the standard of care, and he ignored both the ITA's statutory overlay and the applicable gross negligence standard that fulfills the ITA's policy goals.

Ms. Peterhans's assertion that a jury could infer bad faith simply because Mr. Peterhans shoved a Harborview staff member two days prior to his discharge is not "circumstantial evidence" of bad faith or gross negligence—it is pure speculation.

Finally, Ms. Peterhans was not entitled to voluntary dismissal under CR 41(a)(1)(B) after the parties completed presenting oral argument at the summary judgment hearing.

Rather than establishing a conflict with precedent, constitutional error, or issue of public importance, Ms. Peterhans's petition simply asserts that Division One got it wrong—citing scant authority and without meaningful analysis. Division One's well-reasoned decision does not contradict any authority from this Court or the Court of Appeals, nor does this case involve any constitutional issue or issue of substantial public interest. *See* RAP 13.4(b)(1)-(4).

The Court should deny the petition.

II. RESTATEMENT OF THE CASE

The Court of Appeals accurately stated the underlying factual basis for Ms. Peterhans's claim. Those undisputed facts are summarized here:

A. Harborview providers discharged Colin Peterhans following six weeks of involuntary inpatient treatment upon determining that he would benefit from monitored, outpatient treatment.

Colin Peterhans has an extensive psychiatric history, including bipolar disorder, schizoaffective disorder, substance abuse, and suicide attempts. (CP 72; Op. 2)[1] In January 2020, Mr. Peterhans was hospitalized under the Involuntary Treatment Act, ch. 71.05 RCW, following an overdose on antipsychotic lithium medication. (CP 686) In July, Mr. Peterhans was discharged by court order to "less restrictive alternative treatment" (the LRA order), so he could reside at home while fulfilling treatment conditions. (CP 266)

On August 12, 2020, Mr. Peterhans—then age 32—was admitted to Harborview Medical Center after another overdose attempt. (Op. 2; CP 915-18) The King County

[1] This Answer cites to Division One's published decision, appended to the Petition for Review, as "Op.___."

Department of Crisis Response petitioned to revoke the July LRA order and recommended Mr. Peterhans be involuntarily detained. (CP 915-18) Mr. Peterhans was held in Harborview pending a probable cause hearing on the revocation petition. (CP 923-25) The hearing was initially set for the next week, but it was continued for six weeks while Mr. Peterhans received inpatient treatment at Harborview. (*See* CP 927-29, 936-53)

By mid-September, providers noted that Mr. Peterhans "continue[d] to stabilize" and demonstrated a "calmer affect and more engagement in treatment," concluding it "may still be reasonable" to plan his discharge "pending coordination of intensive follow-up" with the outpatient treatment team. (CP 582)

On September 21, Dr. Sharon Romm took over as the attending psychiatrist for Mr. Peterhans. (CP 111) On September 26, Mr. Peterhans assaulted a Harborview staff member without provocation and was placed in seclusion

with a security escort. (CP 114, 489) The next day, Mr. Peterhans denied any suicidal ideation and multiple providers determined that he presented a low risk for suicide. (CP 493-94, 497)

On September 28, Dr. Romm assessed Mr. Peterhans a final time prior to his discharge. (CP 115) Dr. Romm reviewed all of Mr. Peterhans's records and summarized the six weeks he received treatment at Harborview, detailing the treatment team's attempts to develop a sustainable approach for Mr. Peterhans's care that would prepare him for life in the community. (CP 484-85)

Dr. Romm determined discharge was appropriate based on several factors:

- Mr. Peterhans had improved since his admission to Harborview; he had stabilized to his "baseline" and did not present the "acute suicidality" or psychosis that originally justified involuntary hospitalization. (CP 117; *see also* CP 493-94, 497-99, 557, 559-60, 582)

- Harborview providers consistently assessed Mr. Peterhans as presenting a low suicide risk; he repeatedly denied suicidal ideation, and he

told Dr. Romm he did not want to harm himself. (CP 116; *see also* CP 485, 493-94, 582, 585-89, 635-36, 639-41, 650, 654-56, 662, 671)

- Consistent with a low suicide risk, Mr. Peterhans discussed his future aspirations with Harborview staff, such as getting a job and helping others. (CP 116, 520, 591, 633)

- Mr. Peterhans repeatedly expressed his desire to return home and his belief that continued hospitalization was not helping him. (CP 116-17; *see also* CP 520, 526, 529, 533, 535, 538, 557, 565, 572, 575, 577, 585, 591, 592, 595, 601, 604, 617, 621, 633, 636, 639, 642)

- Mr. Peterhans complied with his medication regimen and expressed his intent to continue taking his medication after discharge. (CP 111-13; *see also* CP 521, 523, 529, 533, 535, 557, 617, 624, 633, 651)

- Mr. Peterhans's occasional aggressive outbursts often coincided with anxiety from impending court dates and were manifestations of his baseline personality disorders rather than evidence of imminent suicide risk. (CP 114; *see also* CP 485, 562, 565, 572)

- Mr. Peterhans would be discharged under a robust outpatient care plan monitored by an outpatient care team, and the less restrictive alternative treatment order permitting discharge provided he could be re-admitted if

his care providers had concerns. (CP 117-18; *see also* CP 268-73, 485-87)

Dr. Romm also noted that Mr. Peterhans was no longer benefitting from inpatient treatment any more than he would benefit from outpatient treatment. (CP 116; *see also* CP 484-85)

Harborview notified Mr. Peterhans's parents regarding the discharge plan; while Mr. Peterhans's father accepted the plan, his mother—Marci Peterhans—"asked that he not be discharged" until she enrolled him in "a supportive residential program in New Jersey." (CP 453) Throughout his treatment, Mr. Peterhans instructed Harborview providers that he did not want them "talking with his mother about plans or treatment" (CP 627), and he "consistently denied interest in exploring" residential treatment programs like the one his mother suggested. (CP 607; *see also* CP 485, 595)

Due to Mr. Peterhans's overdose history, Dr. Romm provided him a limited, one-week supply of medication

prior to discharge. (CP 453-54) "A taxi transported [Mr. Peterhans] to his apartment, where he discovered that someone had stolen his belongings. Following that discovery, [he] jumped from his fifth-floor apartment window [and] suffered a permanent brain injury leaving him in a coma-like state." (Op. 3)

B. Division One affirmed summary judgment dismissal of Marci Peterhans's lawsuit, holding she could not establish Harborview providers acted in bad faith or were grossly negligent under RCW 71.05.120(1).

In April 2023, Marci Peterhans—individually and as guardian for her son—sued the University of Washington and the State of Washington, asserting that Dr. Romm caused Mr. Peterhans's injuries by negligently discharging him from involuntary inpatient treatment at Harborview. (Op. 3; CP 1-2) The University moved for summary judgment, arguing that Ms. Peterhans could not establish that Mr. Peterhans's injuries resulted from gross negligence or bad faith as a matter of law and thus she

failed to defeat the University's statutory immunity under the ITA. (CP 422-45); *see* RCW 71.05.120(1) (exempting providers from liability for "the decision of whether to . . . discharge . . . a person" so long as their "duties were performed in good faith and without gross negligence.").

In opposing summary judgment, Ms. Peterhans submitted declarations from Dr. William Newman (CP 47-50, 308-09; Op. 12-13), who asserted that "the decision to discharge [Mr. Peterhans] at all, let alone to his own care was 'gross negligence' as defined by the Washington pattern jury instructions." (CP 309) Dr. Newman attested that the "standard of care was to keep [Mr. Peterhans] involuntarily committed until he was stable for discharge, i.e., clearly not a danger to himself or others." (CP 48)

Thereafter the trial court heard argument on the University's summary judgment motion in a hearing conducted via Zoom. (RP 1-38) After hearing the parties' arguments, the trial court informed them that it would

issue its ruling later that day. (RP 36-37) The remote hearing concluded at 2:15 p.m. (CP 333)

At 2:46 pm, Ms. Peterhans's counsel emailed the trial court and the University, informing them that "Plaintiffs move the Court for a voluntary dismissal pursuant to CR 41." (CP 354) At 3:17 p.m.—31 minutes later—the trial court entered an order dismissing the case without prejudice under CR 41. (CP 357-59, 957) On June 3—the next court day—Ms. Peterhans re-filed a new complaint (CP 361-64), and the case was assigned to a different judge. (*See* CP 347, 373)

Three days later the University filed a motion for reconsideration of the trial court's order granting voluntary dismissal under CR 41. (CP 339-49) The trial court granted reconsideration and vacated the voluntary dismissal order (CP 403-06), and then entered a separate order that it "previously prepared" granting summary judgment in the University's favor. (CP 405, 407-10) Ms. Peterhans

appealed the trial court's orders granting reconsideration and summary judgment. (CP 411-21)

Division One affirmed, holding that (1) Mr. Peterhans "was not entitled to voluntary dismissal under CR 41(a)(1)(B)" after "the summary judgment hearing had begun and the parties had concluded their oral arguments" (Op. 5), and that (2) Ms. Peterhans failed to establish either that Dr. Romm acted in bad faith or that she was grossly negligent in discharging Mr. Peterhans, and thus the University is exempt from liability under RCW 71.05.120(1). (Op. 6-16)

Ms. Peterhans now seeks review in this Court.

III. WHY REVIEW SHOULD BE DENIED

A. Ms. Peterhans's petition fails to cite any basis for review under RAP 13.4.

"A petition for review will be granted only in certain circumscribed cases [under] RAP 13.4(b)." *Shumway v. Payne*, 136 Wn.2d 383, 392, 964 P.2d 349 (1998). An adequate petition for review must contain "[a] direct and

concise statement of the reason why review should be accepted *under one or more of the tests established in section (b)*, with argument." RAP 13.4(c)(7) (emphasis added).

This Court will not consider a petition that fails to adequately identify or argue sufficient reasons to accept review. *See State v. Korum*, 157 Wn.2d 614, 624-25, ¶16, 141 P.3d 13 (2006) (declining to consider issues petitioner failed to properly raise under RAP 13.4(c)); *see also Darkenwald v. State, Emp. Sec. Dep't.*, 183 Wn.2d 237, 248, ¶18, 350 P.3d 647 (2015) ("[I]ssues not supported by argument and citation to authority will not be considered on appeal.") (quoted source omitted).

Ms. Peterhans fails to address the criteria in RAP 13.4(b). She does not argue that Division One's decision conflicts with any decision from this Court or the Court of Appeals under RAP 13.4(b)(1)-(2), or that this case involves either an issue of substantial public interest or any

constitutional issue under RAP 13.4(b)(3)-(4). Indeed, Ms. Peterhans's petition fails to cite RAP 13.4 *at all*. The Court should deny the petition because Ms. Peterhans fails to articulate any valid grounds for review.

Regardless, none of Mr. Peterhans's claims warrant review under RAP 13.4(b).

B. Ms. Peterhans failed to identify any direct or circumstantial evidence supporting an inference of bad faith.

Under RCW 71.05.120(1), a "mental health professional is immune from tort liability in the performance of his duties unless he acted in bad faith or gross negligence." *Estate of Davis v. State, Dep't. of Corr.*, 127 Wn. App. 833, 840, ¶14, 113 P.3d 487 (2005). To establish that a health care provider acted in bad faith, the plaintiff must present evidence that they acted with "tainted or fraudulent motives":

> [Bad faith] imports a dishonest purpose or some moral obliquity. It implies conscious doing of wrong. It means a breach of a known

> duty through some motive of interest or ill will. It partakes of the nature of fraud.

Spencer v. King Cnty., 39 Wn. App. 201, 208, 692 P.2d 874 (1984) (quoted source omitted), *rev. denied*, 103 Wn.2d 1035 (1985), *overruled on other grounds*, *Frost v. City of Walla Walla*, 106 Wn.2d 669, 724 P.2d 1017 (1986).

Division One correctly held that "[n]o evidence whatsoever has been provided to show action in bad faith." (Op. 6, quoting CP 408) Ms. Peterhans failed to identify *any* specific evidence supporting a reasonable inference that Dr. Romm acted with a dishonest purpose or ill will when she discharged Mr. Peterhans, nor does she cite to the record to support her argument. (*See* Pet. 25-26, citing App. Br. 36-37) This Court typically does not consider arguments unsupported by any citation to the record. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Regardless, Ms. Peterhans again argues that a reasonable jury could infer Dr. Romm harbored some ill

will towards her son simply because she discharged him two days after he shoved a Harborview staff member: "Dr. Romm wouldn't wait . . . and had him discharged . . . by agreed order, without informing the judge of the assault." (Pet. 26, quoting App. Br. 37) (emphasis in original)

This is no different than *Spencer*, where the plaintiff tried to establish bad faith by relying "upon evidence in the record suggesting that [the defendant] had made up his mind to arrest [the plaintiff]" under the ITA "before he had a chance to interview and evaluate him." *Spencer*, 39 Wn. App. at 207. Division One affirmed summary judgment on that issue because, "[e]ven if this were true, it would not be evidence of bad faith" as the plaintiff failed to show the defendant "harbored any ill-will toward" the plaintiff. 39 Wn. App. at 207-08.

There is no hint of any remotely analogous evidence here. Thus, Division One correctly held that that Ms. Peterhans's theory does not rely on "circumstantial

evidence," but is "pure argument" lacking any support in the record. (Op. 6-7) Ms. Peterhans "cannot satisfy . . . her burden" on summary judgment "merely by relying on conclusory allegations, speculative statements, or argumentative assertions," but instead must "set forth specific facts demonstrating a genuine issue of fact" as to the alleged bad faith. *See Boguch v. Landover Corp.*, 153 Wn. App. 595, 610, ¶25, 224 P.3d 795 (2009) (quoted source omitted).

Indeed, by insisting that "[**a**]**ll circumstantial evidence is 'argument**'" (Pet. 28, emphasis in original), Ms. Peterhans essentially concedes that her claim Dr. Romm acted in bad faith is nothing more than an improper "argumentative assertion"—not circumstantial evidence. *See Boguch*, 153 Wn. App. at 610, ¶25. The fact that Ms. Peterhans can concoct a speculative bad faith theory does not mean she presented adequate "circumstantial evidence" of bad faith. *Boguch*, 153 Wn. App. at 614, ¶32

("That an alternate outcome might have been possible or that [appellant's] theory may appear plausible in the abstract is insufficient to create a genuine issue" to survive summary judgment).

Ms. Peterhans cites no authority contradicting Division One's holding that the purported "circumstantial evidence" here is "pure argument" unsupported by any actual evidence in the record. (Op. 6-7) She cites a single employment discrimination case in which a college president's remarks expressing a "need for younger talent" was circumstantial evidence that "age actually played a role in the college's decision" to fire the plaintiff. *Scrivener v. Clark College*, 181 Wn.2d 439, 448-50, ¶¶26-30, 334 P.3d 541 (2014). (*See* Pet. 27-28) Ms. Peterhans never presented any similar circumstantial evidence here, nor can *Scrivener* provide insight in the ITA context given the unique "burden-shifting analysis" Washington courts apply on summary judgment in employment

discrimination cases under the Washington Law Against Discrimination. *See Scrivener*, 181 Wn.2d at 445, ¶16, citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

Ms. Peterhans similarly cites no authority supporting her argument that "'bad faith' can be inferred from a lack of candor with the ITA judge." (Pet. 23-25) At the revocation hearing on September 28, 2020, the court had the authority "to reinstate or modify" Mr. Peterhans's less restrictive alternative treatment order, and Mr. Peterhans had the right to "waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties" under RCW 71.05.590(5)(d)—which he did through counsel. (CP 268)

Ms. Peterhans certainly cannot argue the alleged failure to notify the court of Mr. Peterhans's assault supports an inference that Dr. Romm acted in bad faith when she cannot identify any provision in the ITA or other

authority that would require such notice when entering an *agreed* order imposing less restrictive alternative treatment. Nor can Mr. Peterhans—represented here via his legal guardian—object to an order he agreed to.

Ms. Peterhans's claim that Dr. Romm acted in bad faith is entirely speculative and Division One correctly rejected it. She cannot show any valid grounds for review under RAP 13.4(b).

C. Division One correctly applied Washington law when it held Dr. Newman's declarations failed to create a genuine issue of fact as to gross negligence.

Under RCW 71.05.120(1), absent a showing of bad faith, a health care professional may be liable for discharging a patient only if their conduct rises to gross negligence. *See Estate of Davis*, 127 Wn. App. at 840, ¶14. To avoid summary judgment "in a gross negligence case, a plaintiff must provide substantial evidence of serious negligence." *Harper v. State*, 192 Wn.2d 328, 345-46, ¶47, 429 P.3d 1071 (2018). If "reasonable minds" could not

disagree that "the defendant exercised slight care," summary judgment is required. *Harper*, 192 Wn.2d at 346, ¶47. Even a healthcare provider's "incomplete" or "unreasonable assessment under chapter 71.05 RCW does not necessarily rise to the level of gross negligence." *Dalen v. St. John Med. Ctr.*, 8 Wn. App. 2d 49, 62, ¶33, 436 P.3d 877 (2019); *Davis*, 127 Wn. App. at 841, ¶18.

Division One properly applied that precedent here, because "Dr. Newman's bald assertion that a reasonable doctor would not have discharged [Mr. Peterhans] when and as Defendants did is insufficient to create a genuine issue of material fact on summary judgment." (Op. 15) Its fact-specific decision that Dr. Newman's declaration was insufficient to create a genuine issue of fact as to gross negligence does not contradict any Washington decision or establish any other grounds for review under RAP 13.4(b). (*See* Pet. 29-33)

1. Dr. Newman's declaration fails to define what a reasonable physician should have done to meet the standard of care other than delay discharge.

Dr. Newman's declarations (CP 47-50, 308-09)—quoted at length in Division One's decision (Op. 12-14)—merely recount Mr. Peterhans's treatment history and then summarily assert that discharge violated the standard of care. (CP 48: "The standard of care was to keep him involuntarily committed until he was stable for discharge, i.e., clearly not a danger to himself or others"; CP 49: "discharge was below the standard of care"; CP 309: "the decision to discharge [Mr. Peterhans] at all, let alone to his own care was 'gross negligence'")

Division One correctly recognized these declarations are legally insufficient under this Court's decision in *Reyes v. Yakima Health Dist.*, 191 Wn.2d 79, 419 P.3d 819 (2018). In *Reyes*, this Court explained that "[a]llegations . . . that the standard of care was to correctly diagnose or treat the patient are insufficient" and that "the affiant must state

specific facts showing what the applicable standard of care was and how the defendant violated it." *Reyes*, 191 Wn.2d at 89, ¶15; *see also Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 26, 851 P.2d 689 (affirming summary judgment dismissal of medical negligence claim where expert declaration was "merely a summarization of [plaintiff's] postsurgical complications, coupled with the unsupported conclusion that the complications were caused by [the surgeon's] 'faulty technique.'"), *rev. denied*, 122 Wn.2d 1010 (1993).

Dr. Newman does not deny that Dr. Romm assessed Mr. Peterhans herself or that she reviewed and relied on all the records from other Harborview providers throughout treatment; nor did Dr. Newman identify any specific diagnostic, treatment, or method that a reasonable physician should have applied under the circumstances—he simply disagreed with Dr. Romm's ultimate discharge decision.

Such expert opinion "does little more than reiterate the claims made in [the] complaint." *Guile*, 70 Wn. App. at 26. Thus, Division One correctly held that Dr. Newman's declaration is no different than the expert testimony in *Reyes* and *Guile*, "where an allegation that a reasonable doctor would not have acted negligently was found insufficient to create a genuine issue of material fact." (Op. 14), quoting *Reyes*, 191 Wn.2d at 89, ¶14.

Ms. Peterhans does not explain why Division One should have diverged from *Reyes* and *Guile* here. Instead, she argues that the "reasonable inference" from Dr. Newman's declaration is "that what 'should have been done' was continued inpatient treatment until [Mr. Peterhans] was stable for discharge[.]" (Pet. 30) But this semantic hair-splitting in no way detracts from Division One's conclusion that "there is no indication what a reasonable physician should have done other than delay [Mr. Peterhans's] discharge." (Op. 14)

2. Dr. Newman ignored both the ITA and the gross negligence standard, failing to address the actions providers *did* take before discharge.

Division One found Dr. Newman's deficient declarations "especially troubling" because the ITA permits involuntary inpatient treatment "only when certain statutory criteria are satisfied," with the express intent to "prevent inappropriate, indefinite" detention, to "safeguard individual rights," and to "encourage, whenever possible, that services be provided within the community." (Op. 14), quoting RCW 71.05.010(1)(b), (d), (g). Despite Ms. Peterhans's insistence that Dr. Newman's declaration "doesn't conflict with any" of the ITA's goals (Pet. 31), it is undisputed that Dr. Newman "does not address this statutory overlay" at all. (Op. 14)

Division One further held that Dr. Newman failed to address the proper standard for gross negligence, which requires courts to consider "both the relevant failure and, if applicable, any relevant actions that the defendant did

take." *Harper*, 192 Wn.2d at 343, ¶40. Dr. Newman "does not address" the various actions Dr. Romm and other Harborview providers took before discharging Mr. Peterhans. (Op. 15)

Ms. Peterhans claims these actions "were described in the Defense experts' declaration," and that Dr. Newman "disagreed with them." (Pet. 32) But Dr. Newman's general statement that he "reviewed the [Defense expert] declarations" and that "[n]either Declaration changes my opinion" in no way addresses the *specific* actions Harborview providers undertook in preparing to discharge Mr. Peterhans. (CP 309) Dr. Newman was required to "state specific facts showing what the applicable standard of care was and how the defendant violated it." *Reyes*, 191 Wn.2d at 89, ¶15. Division One correctly held he failed to do so. (Op. 14-15)

Ms. Peterhans argues *Harper* is distinguishable because it did not involve expert testimony and only

addressed whether certain facts "established 'slight care' as a matter of law." (Pet. 33) But, irrespective of the Court's holding in *Harper*, the same gross negligence standard applies in the ITA context. *See, e.g., Dalen*, 8 Wn. App. 2d at 61, ¶33 ("a plaintiff must present 'substantial evidence that the defendant failed to exercise slight care . . . considering both the relevant failure and . . . any relevant actions the defendant did take.'"), quoting *Harper*, 192 Wn.2d at 343, ¶40.

To succeed on summary judgment, the University only had to show that Ms. Peterhans "lack[ed] competent expert testimony to create a genuine issue of material fact with regard to" the "applicable standard of care[.]" *Reyes*, 191 Wn.2d at 86, ¶10. In other words, whether Harborview providers exercised "slight care" under *Harper* is irrelevant—indeed, Division One declined to rule on the issue. (Op. 8-9) Dr. Newman's declarations were still insufficient as a matter of law because he never

"address[ed] the actions Defendants *did* take leading to discharge" and thus failed to "engage in the required analysis under *Harper*." (Op. 15)

Division One correctly held that Dr. Newman's opinion was insufficient to establish a breach of the ITA's gross negligence standard. Dr. Newman not only failed to provide specific evidence defining the relevant standard of care—as *Reyes* requires—he also failed to consider both the ITA and the gross negligence standard under *Harper*. Ms. Peterhans provides no analysis or authority requiring a different result.

D. Ms. Peterhans provides no argument or analysis regarding the voluntary dismissal issue under CR 41.

Division One held that Ms. Peterhans "was not entitled to voluntary dismissal under CR 41(a)(1)(B)" once "the parties had concluded their oral arguments" even though "the trial court had not yet announced its decision." (Op. 5) Ms. Peterhans includes this issue among the "issues

presented for review" (Pet. 9-10), but the remainder of her petition contains no further argument or analysis whatsoever.

Because Ms. Peterhans failed to provide any "argument [or] citation to authority," the Court should deny review of the issue. *See Darkenwald*, 183 Wn.2d at 248-49, ¶18 (declining to review issue that petitioner raised "[a]t the beginning of her petition for review" but "never again mention[ed]").

In any event, Division One correctly held that Ms. Peterhans was not entitled to voluntary dismissal. A plaintiff loses the right to voluntary nonsuit once the case "has been submitted to the court for decision" on summary judgment. *Paulson v. Wahl*, 10 Wn. App. 53, 57, 516 P.2d 514 (1973); *Beritich v. Starlet Corp.*, 69 Wn.2d 454, 458-59, 418 P.2d 762 (1966) (plaintiff was not entitled to voluntary nonsuit where trial court "had already verbally indicated his ruling" but not yet entered summary

judgment order); *cf. Greenlaw v. Renn*, 64 Wn. App. 499, 503, 824 P.2d 1263 (1992) ("[W]here a motion for voluntary nonsuit is filed and called to the attention of the trial court *before the hearing on a summary judgment motion has started*, the motion must be granted as a matter of right.") (emphasis added).

Division One correctly applied these authorities in holding Ms. Peterhans was not entitled to voluntary dismissal under CR 41(a)(1)(B) here. (Op. 4-5) Ms. Peterhans has not established any basis for this Court's review. RAP 13.4(b).

IV. CONCLUSION

Division One correctly affirmed summary judgment dismissal of Ms. Peterhans's claims because she failed to present evidence creating a genuine issue of material fact as to either bad faith or gross negligence, as RCW 71.05.120(1) requires. Her petition lacks meaningful analysis or citation to authority, and she does not articulate

any valid grounds for review under RAP 13.4(b). The Court should deny the petition.

I certify that this answer is in 14-point Georgia font and contains 4,496 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 27th day of August, 2025.

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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 August 27, 2025, I arranged for service of the foregoing Answer to Petition for Review, to the Court and to the parties to this action as follows:

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DATED at Brookly, New York this 27th day of August, 2025.

/s/ Andrienne E. Pilapil
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August 27, 2025 - 1:24 PM

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