Supreme Court No. 1045018

Court of Appeals No. 870432 – Division I

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

ANGE WANG,

Plaintiff-Appellant,

v.

KAISER FOUNDATION HEALTH PLAN OF WASHINGTON and LANCE HO,

Defendants-Respondents.

DEFENDANT KAISER FOUNDATION HEALTH PLAN OF WASHINGTON AND LANCE HO, MD'S ANSWER TO PETITION FOR REVIEW

Levi S. Larson, WSBA No. 39225
Geraldine Anne T. Enrico, WSBA No. 54917
Larson Health Advocates, PLLC
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
levi@lhafirm.com
geraldine@lhafirm.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

---

[1] Unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate. GR14.1(a).

Civil Rules

Rules of Appellate Procedure

Statutes

I. INTRODUCTION

This case involves the dismissal of Ange Wang's frivolous and untimely medical malpractice claims against his former treating providers, Lance Ho, MD (Dr. Ho), and Kaiser Foundation Health Plan of Washington. On May 5, 2017, pursuant to Dr. Ho's discussions with Mr. Wang, Dr. Ho performed a left 1st metatarsophalangeal joint fusion on Mr. Wang at Kaiser Foundation Health Plan of Washington. Mr. Wang submitted a Request for Mediation to Kaiser Foundation Health Plan of Washington on April 9, 2020, which extended the statute of limitations by one year pursuant to RCW 7.70.110. Mr. Wang failed to file suit before May 5, 2021, and his medical malpractice claims are now time barred.

Mr. Wang filed the first lawsuit, Cause No. 23-2-18202-2 KNT, arising from his May 5, 2017, surgery on September 22, 2023, against Dr. Ho. The trial court dismissed the first lawsuit without prejudice for lack of personal jurisdiction over Dr. Ho

due to Mr. Wang's failure to serve Dr. Ho within 90 days of filing the Complaint as required by RCW 4.16.170.

Mr. Wang filed the second lawsuit, Cause No. 24-2-06306-4 KNT, arising from his May 5, 2017, surgery on March 21, 2024, against both Kaiser Foundation Health Plan of Washington and Dr. Ho. On August 2, 2024, the trial court granted Kaiser Foundation Health Plan of Washington and Dr. Ho's CR56 Motion for Summary Judgment, dismissing Mr. Wang's second lawsuit with prejudice.

Mr. Wang appealed the Summary Judgment, and on July 28, 2025, the Court of Appeals affirmed it. The Court of Appeals denied Mr. Wang's Motion for Reconsideration on August 21, 2025.

In requesting review of the summary judgment dismissal of his claims Mr. Wang confuses issues of law and fact that have been properly addressed by both the trial court and the Court of Appeals. None of the grounds raised by Mr. Wang in his Petition for Review meet the requirements of RAP 13.4(b). Moreover, Mr.

Wang's Petition for Review do not comply with the requirements of RAP 13.4(c) and RAP 18.17(a) and (b). The Petition for Review should be denied.

II. IDENTITY OF THE ANSWERING PARTY

Respondents Lance Ho, MD (Dr. Ho), and Kaiser Foundation Health Plan of Washington (collectively "Respondents") by and through their attorneys of record, respectfully ask the Court to deny the Petition for Review.

III. RESTATEMENT OF THE CASE

A. The Medical Treatment from which Mr. Wang's Allegations of Negligence Arise was Well Within Standard of Care.

On March 17, 2017, Mr. Wang presented to Dr. Ho with "complaints of left 1st metatarsal phalangeal joint pain and progressive deformity over the years. Pain affect[ed] [Mr. Wang's] ability to walk and exercise." Clerk's Papers (CP) at 2, 17-19, 174, 289-290. Upon physical examination, Dr. Ho found an obvious deformity with bony prominence over 1st metatarsal phalangeal joint. CP at 17-19, 289-290. Dr. Ho assessed Mr.

Wang with "left moderate bunion and moderate 1st metatarsal phalangeal arthritis." *Id.*

Dr. Ho proposed the following treatment options: modification of activities or surgical fusion of left 1st metatarsal phalangeal joint. *Id.* Dr. Ho discussed the risks of the surgical fusion with Mr. Wang, which included, but were not limited to, "recurrence of problem or failure to correct problem. Non healing of wound, bone, ligament, or tendon. Need for further surgery over time. May expect residual swelling… Future arthritis." *Id.* Dr. Ho also noted that recovery can take several months and even up to a year. *Id.* Dr. Ho advised that, for a fusion, Mr. Wang would have to be heel weightbearing with a postoperative controlled ankle motion (CAM) boot for a period of 6 weeks. *Id.*

Mr. Wang declined to have an interpreter at this appointment. *Id.* Dr. Ho answered all questions. *Id.* Mr. Wang understood the treatment options and wished to proceed with

surgery. *Id.* Mr. Wang was provided with pre-surgical instructions. *Id.*

On May 5, 2017, Dr. Ho performed a left 1st metatarsophalangeal joint fusion on Mr. Wang at Kaiser Permanente Orthopedics in Bellevue. *Id.* On May 8, 2017, 3 days post-operation, Mr. Wang's left foot was examined to have healing incisions with mild swelling and no redness. *Id.* There was no evidence of infection, and the sutures were intact. *Id.* New dressings were applied. *Id.* Dr. Ho instructed Mr. Wang to continue with the CAM boot and heel weight bearing for 6 weeks. *Id.*

On May 15, 2017, Mr. Wang presented to Alison M. Chromy, PA-C, for a follow-up visit. *Id.* Mr. Wang was only in his CAM boot "sometimes," and admitted that he would take it off at home but walk on his heels. *Id.* Mr. Wang's x-rays revealed stable 1st MTP fusion, hardware intact without signs of failure. *Id.* Mr. Wang was assessed to be stable 1-week post-operation.

Id. Mr. Wang was instructed on the "importance of boot and that he should not be walking around without it…" *Id.*

On June 12, 2017, Mr. Wang presented to Dr. Ho for a follow-up visit. *Id.* Mr. Wang reported that he had been wearing his CAM boot very little. *Id.* Mr. Wang wore a regular dress shoe to the clinic for his appointment. *Id.* Mr. Wang was concerned about toe stiffness. *Id.* Dr. Ho's examination of the left foot revealed that the incision line was healing well, there were no signs of infection, and there was minimal swelling. *Id.* Dr. Ho assessed Mr. Wang to be stable 6 weeks post-operation. *Id.* Dr. Ho discussed with Mr. Wang the importance of the boot, and that failure to comply can lead to nonunion. *Id.* Dr. Ho instructed Mr. Wang to continue the CAM boot for another 4 weeks. *Id.* This 6-week follow-up appointment was the last appointment in which Mr. Wang presented to Dr. Ho. *Id.*

B. Mr. Wang Had Actual Knowledge of His Allegations of Medical Malpractice Prior to the Expiration of the Statute of Limitations on May 5, 2021, and Failed to Timely File Suit.

On March 30, 2020, records show that Mr. Wang sought the advice of an attorney, and that attorney had advised him that a review of his medical records by a qualified medical professional, in this case by an orthopedic surgeon, would be required for his case, and that the statute of limitations on his claims would pass on May 5, 2020. CP at 114, 132, 148, 273.

On April 9, 2020, Mr. Wang signed and executed a request for mediation to Kaiser Foundation Health Plan of Washington. CP at 53, 90, 115, 254. On April 29, 2020, Kaiser Foundation Health Plan of Washington acknowledged Mr. Wang's request for mediation and notified Mr. Wang that it would keep the claim open until May 5, 2021, at which time the statute of limitations would expire if a lawsuit was not filed. CP at 267-268.

On December 17, 2020, Kaiser Foundation Health Plan of Washington notified Mr. Wang that its review revealed no indication that the standard of care was breached, denied Mr. Wang's claim for compensation, and reminded Mr. Wang that he had until May 5, 2021, to initiate suit before his claims are

forever barred. CP at 156-157, 270-271. After Kaiser Foundation Health Plan of Washington advised him twice about the deadline for filing suit, Mr. Wang did not do so until more than two years after it passed.

On May 8, 2023, Mr. Wang filed a Complaint with the Washington Medical Commission, alleging he has had complaints since the 2017 surgery. CP at 56-57, 257-258. The same Complaint stated that Mr. Wang got a second opinion from Dr. Clifford. CP at 57. Mr. Wang's medical records reflect that he saw Dr. Clifford in 2019, and Dr. Clifford informed Mr. Wang that there was a nonunion to the affected area. CP at 46, 83, 247. None of Mr. Wang's medical records state that the nonunion was proximately caused by a violation of standard of care by any provider. *Id.* Mr. Wang's Complaint to the Washington Medical Commission was closed by the Case Management Team on May 21, 2023, and Dr. Ho was notified on June 1, 2023. CP at 134, 150, 275. Mr. Wang requested reconsideration of his Complaint to the Washington Medical Commission on June 23, 2023. *Id*.

The Washington Medical Commission Case Management Team determined that Mr. Wang did not submit any new information not previously provided in his original complaint. *Id*. On September 11, 2023, the Washington Medical Commission Reconsiderations Unit notified Plaintiff Mr. Wang that his Complaint will remain closed and that they could not take any further action. CP at 136, 152, 277.

C. Mr. Wang Filed the First Lawsuit, Cause No. 23-2-18202-2 KNT, on September 22, 2023, which was Dismissed Without Prejudice.

On September 22, 2023, Mr. Wang filed suit for the first time against Dr. Ho alleging the May 5, 2017, fusion surgery was negligent (Cause No. 23-3-18202-2 KNT). CP at 1-7, 222-229. On January 11, 2024, Dr. Ho filed a CR12 Motion to Dismiss and CR56 Motion for Summary Judgment seeking dismissal of Mr. Wang's first lawsuit for (1) insufficiency of service of process, (2) lack of evidence supporting his claim for medical negligence, and (3) because the statute of limitations had passed on Mr. Wang's claims. CP at 16-28. In Mr. Wang's Response to Dr. Ho's

dispositive Motion, Mr. Wang alleged that "he did not discover the medical malpractice until April 8, 2023." CP at 279-283.

On March 15, 2024, the Honorable Kristin Ballinger granted Dr. Ho's Motion to Dismiss without prejudice for failure to serve Dr. Ho with process within 90 days of filing. CP at 168-170. Judge Ballinger explained that, because Mr. Wang had not served Dr. Ho with the Summons and Complaint within 90 days of filing, she did not have power to decide the merits of the case. *Id.* Judge Ballinger noted that Plaintiff would be allowed to re-file his case, after which the Defendant could bring a dismissal motion based on the statute of limitations and lack of expert testimony supporting the claim. *Id.*

D. Mr. Wang Filed the Second Lawsuit, Cause No. 24-2-06306-4 KNT, on March 21, 2024, which was Dismissed With Prejudice.

On March 21, 2024, Plaintiff Mr. Wang filed a second complaint, naming both Kaiser Foundation Health Plan of Washington and Dr. Ho as Defendants and arising from the same fusion surgery on May 5, 2017. CP at 171-176. Both Kaiser

Foundation Health Plan of Washington and Dr. Ho asserted in their Answers, among other affirmative defenses, that Plaintiff's claims were barred by the State of Limitations. CP at 194; 202.

On June 28, 2024, Kaiser Foundation Health Plan of Washington and Dr. Ho filed their Motion for Summary Judgment under CR56 for (1) the expiration of the statute of limitations on all of Mr. Wang's claims, and (2) lack of competent expert witness to support any claim of violation of standard of care and proximate causation. CP at 288-302. Mr. Wang did not file any Response briefing to the dispositive motion by July 22, 2024, as required by CR56(c), or any time thereafter. CP at 384-387. On July 25, 2024, Kaiser Foundation Health Plan of Washington and Dr. Ho filed their Reply brief. *Id.* After considering all materials submitted and the oral argument of the parties, the trial court granted Kaiser Foundation Health Plan of Washington and Dr. Ho's CR56 Motion for Summary Judgment and dismissed Mr. Wang's second lawsuit with prejudice. CP at 182-183.

E. The Court of Appeals affirmed Summary Judgment and Denied Mr. Wang's Motion for Reconsideration.

On direct appeal, Division I of the Court of Appeals affirmed Summary Judgment, reasoning that Mr. Wang's complaint is barred by the statute of limitations because Mr. Wang discovered, or should have reasonably discovered, the condition underlying his claim in 2019 at the latest, and potentially as early as 2017. The unpublished Court of Appeals decision is attached hereto as **Appendix A**.

Following the Court of Appeals decision, Mr. Wang filed a Motion for Reconsideration requesting the Court of Appeals reconsider its decision that affirmed the trial court order. The Court of Appeals denied reconsideration. The denial is attached hereto as **Appendix B.** His Petition for Review followed.

IV. ANSWER TO PETITION FOR REVIEW

A petition for review will be accepted by the Supreme Court only if (1) the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of

Appeals is in conflict with a published decision of the Court of Appeals; (3) 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 Judgment Was Correct and Not in Conflict with Any Decision by This Court or the Court of Appeals.

Mr. Wang failed to allege any error in fact or law that would warrant reversal or remand. Pet. For Rev. He continues to confuse issues of law and has failed to identify any issue that would have changed the outcome of the summary judgment decision. *Id.* The Court of Appeals correctly affirmed the trial court's decision on summary judgment because he failed to establish material facts to support his claim that there is a question of fact as to when he discovered the basis for his medical malpractice claim.

i. The Court of Appeals Did Not Depart from Precedent When It Correctly Determined Mr.

Wang's Claims were Barred by the Statute of Limitations.

The statute of limitations on medical negligence claims is governed by RCW 4.16.350, which provides, in pertinent part:

> Any civil action for damages for injury as a result of health care…against:
> (3) A person licensed by this state to provide health care…
> … based upon alleged professional negligence shall be commenced *within three years of the act or omission* alleged to have caused the injury or condition, or one year of the time the patient… discovered or reasonably should have discovered that the injury or condition as caused by said act or omission…

(emphasis added). The three-year statute of limitations under RCW 4.16.350(3) can be extended by one year pursuant to RCW 7.70.110, which provides:

> 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 under Chapter 7.70 RCW tolls the statute of limitations provided in RCW 4.16.350 for one year.

In a medical malpractice case, "the three-year limitations period in RCW 4.16.350(3) begins to run from the date of the act

or omission alleged to have caused injury." *Gunnier v. Yakima Heart Ctr., Inc.,* 134 Wn.2d 854, 858, 953 P.2d 1162 (1998).

Under Washington's discovery rule, a cause of action accrues when a party knows or reasonably should have known the essential elements of the possible cause of action *Clare v. Saberhagen Holdings, Inc.*, 129 Wn. App. 599, 602, 123 P.3d 465 (2005) (internal citations omitted). **The plaintiff bears the burden of proving that the facts constituting the claim were not and could not have been discovered by due diligence within the applicable limitations period.** *Id.* at 603 (citing *G.W. Constr. Corp. v. Professional Serv. Indus. Inc.,* 70 Wn. App. 360, 367, 853 P.2d 484 (1993)). Although whether a party exercised due diligence is normally a factual issue, when reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law. *Id.* (internal citations omitted).

The Court of Appeals has ruled consistently on statute of limitations issues involving the discovery rule in medical

malpractice cases. In *Bozung v. MultiCare Health Sys.*, the Court of Appeals affirmed a trial court's Summary Judgment where Plaintiff's complaint was not filed within the three-year statute of limitations provided in RCW 4.16.350, and no tolling provision applied. 2024 Wash.App.LEXIS 1033 (Div. 1, unpublished) (May 20, 2024).[2] In *Bozung,* the Appellant asserted that "genuine issues of material fact exist as to when he discovered the claims against MultiCare," and the Court of Appeals disagreed. *Id.* at 19. The Court of Appeals reasoned:

> The one-year "post-discovery period" begins to run "when the plaintiff 'discovered or reasonably should have discovered all of the essential elements of [his or] her possible cause of action, *i.e.*, duty, breach, causation, damages.'" *Zaleck v. Everett Clinic*, 60 Wn. App. 107, 110-11, 802 P.2d 826 (1991) (quoting *Ohler v. Tacoma Gen. Hosp.*, 92 Wn.2d 507, 511, 598 P.2d 1358 (1979)). A cause of action will accrue when a plaintiff should have discovered the basis for the cause of action "even if actual discovery did not occur until later." *Allen v. State*, 118 Wn.2d 753, 759, 826 P.2d 200 (1992)

[2] Unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate. GR 14.1(a).

> (emphasis added). **"To discover a 'breach' in a medical malpractice action, the plaintiff need not have known with certainty that the health care provider was negligent. Instead, the plaintiff need only have had, or should have had, information that the provider was possibly negligent."** *Zaleck*, 60 Wn. App. at 112. "The key consideration under the discovery rule is the factual, as opposed to the legal, basis of the cause of action." *Adcox v. Child's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 35, 864 P.2d 921 (1993). Nevertheless, "a question of fact may be determined as a matter of law where reasonable minds can reach only one conclusion." *Cho v. City of Seattle*, 185 Wn. App. 10, 15, 341 P.3d 309 (2014).

Id. at *19 (emphasis added).

Consistent with precedent in this Court, as well as in the Court of Appeals, the Court of Appeals properly affirmed summary judgment in this case. The facts constituting Mr. Wang's claim had been known to him since the day of his surgery on May 5, 2017. Mr. Wang alleged in his Petition for Review that "**from the beginning** of [his] left foot Bunion surgery… [Dr. Ho's] unqualified thumb surgery was a complete failure…which caused [him] great pain…" Pet. For Rev. at 2 (emphasis added). Additionally, per Mr. Wang's Complaint to the Washington

Medical Commission, since the day that Dr. Ho performed the bunion surgery on May 5, 2017, it has caused Mr. Wang's "left foot always with pain…" and that "since the surgery in 2017, [Mr. Wang has been] unhappy, upset, angry, disappointed…" CP at 56-57, 257-258. Mr. Wang's own submissions to the courts, as well as to the Washington Medical Commission, establish he had actual knowledge of the elements of his negligence claim as early as 2017.

Even if the Court disagrees, Mr. Wang certainly had the requisite knowledge to file suit as early as 2019. Mr. Wang's submissions to the Washington Medical Commission reflects that "when [Mr. Wang] had seen Dr. Clifford for this **back in 2019** he was informed that there was indeed a nonunion to the affected area. They had started discussion of possible first MPJ fusion revision versus first MPJ implant, [but Mr. Wang] did not end up undergoing surgery…" CP at 46, 83, 247 (emphasis added). None of Mr. Wang's medical records state that the

nonunion was proximately caused by a violation of standard of care by any provider. *Id.*

By Mr. Wang's own submissions and admissions, Mr. Wang has had information on potential provider negligence since the date of surgery on May 5, 2017, and at the latest, on December 19, 2019. In light of all of the evidence, Mr. Wang failed to meet his burden of proving that the facts constituting the claim were not and could not have been discovered by due diligence within the applicable limitations period. Accordingly, the Court of Appeals correctly determined, consistent with precedent, that Mr. Wang's medical malpractice claims are barred by the statute of limitations and appropriately affirmed summary judgment.

ii. The Court of Appeals Did Not Depart from Precedent When It Correctly Did Not Address Mr. Wang's Medical Negligence Claims After It had Determined Mr. Wang' Claims were Barred by the Statute of Limitations.

It is well established that in medical malpractice cases, expert testimony is required to establish a prima facie claim for

medical negligence because such analysis is beyond the expertise of a layperson. *Harris v. Groth*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983). A health care provider's conduct is to be measured against the standard of care of a reasonably prudent practitioner possessing the degree of skill, care and learning possessed by other members of the same area of specialty in the State of Washington. *Id.* at 451.

Mr. Wang needed to show that (1) Respondents breached the acceptable standard of care, and (2) this breach was the proximate cause of his injuries. RCW 7.70.040(1). Expert testimony is usually required to establish both the standard of care and causation elements of medical malpractice claims. *Harris*, 99 Wn.2d at 451.

Even if the statute of limitations had not yet expired on Mr. Wang's claims, Mr. Wang failed to meet his burden of proving a *prima facie* case for medical malpractice. Mr. Wang inappropriately asserted that the subsequent surgery performed by his treating provider, Dr. Hutchinson, is "super premium

qualified," and that the Dr. Ho's surgery is "inferior." Pet. For Rev. 4. Yet Mr. Wang failed to produce competent expert testimony to show that (1) Respondents breached the acceptable standard of care, and (2) this breach was the proximate cause of his injuries. RCW 7.70.040(1).

None of medical records from Mr. Wang's treating providers, Dr. Craig Clifford and Dr. Hutchinson, contain any affidavits from competent medical experts necessary to defeat a Motion for Summary Judgment. CP at 46, 83, 247. None of these medical records testify that, on a more probable than not basis, "to a reasonable degree of medical certainty," that Dr. Ho and Kaiser Foundation Health Plan of Washington (1) violated standard of care; and (2) proximately caused Mr. Wang's alleged damages. See, e.g., *Harris v. Groth*, 99 Wn.2d 438, 451, 663 P.2d 113 (1983); *Pelton v. Tri-State Mem. Hosp., Inc*., 66 Wn. App. 350, 355, 831 P.2d 1147 (1992); *Shoberg v. Kelly*, 1 Wn. App. 673, 677, 463 P.2d 280 (1969).

Even if the statute of limitations had not yet expired on his medical negligence claims, Mr. Wang needed a medical expert to establish a *prima facia* claim for medical negligence. He failed to provide the requisite evidence or facts sufficient to establish a legitimate claim that would survive summary judgment. Accordingly, this Court should deny his Petition for Review.

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

Mr. Wang has not raised any issue that implicates an issue of substantial public interest that would warrant review by this Court. Pet. For Rev. Mr. Wang is raising issues that were properly addressed by the trial court and Court of Appeals, namely that his claims are barred by the statute of limitations, and that he does not have the requisite competent medical expert testimony to establish a *prima facie* claim for medical negligence. The Court of Appeals appropriately affirmed the dismissal of his medical malpractice claims.

C. The Court of Appeals Decision Does not Implicate Either the U.S. Constitution or the Washington State Constitution.

Mr. Wang's Petition only argues that the Court of Appeals erred in affirming summary judgment of his claims. Pet. For Rev. Mr. Wang does not assert or provide any argument that the Court of Appeals decision implicates the U.S. Constitution or the Washington Statement Constitution. *Id.* These issues should be considered abandoned on appeal and not considered for purposes of Petition for Review. *Blue Spirits Distilling, LLC v. Washington State Liquor & Cannabis Bd.*, 15 Wn. App.2d 779, 794, 478 P.3d 153 (2020) (quoting *Holder v. City of Vancouver*, 136 Wn. App. 104, 107 147 P.3d 641 (2006).

D. Mr. Wang's Petition for Review Does Not Comply with Rules of Appellate Procedure 13.4(c), as well as 18.17(a) and 18.17(b).

RAP 13.4(c) requires that the petition for review contain under appropriate headings, and in the order here indicated:

> (1) *Cover*….
>
> (2) *Tables*. A table of contents… and a

table of cases...

(3) *Identity of Petitioner*...

(4) *Citation to Court of Appeals Decision*. A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration.

(5) *Issues Presented for Review*. A concise statement of the issues presented for review.

(6) *Statement of the Case*...

(7) *Argument*. 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.

(8) *Conclusion*...

(9) *Appendix*. An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

Moreover, RAP 18.17(a) provides certain formatting requirements regarding marginations, spacing, and font sizing, and RAP 18.17(b) requires that all documents filed "contain a short statement above the signature line certifying the number of words contained in the document…"

Mr. Wang's Petition for Review does not comply with any of these rules. First, Mr. Wang's Petition for Review does not contain the items required under RAP 13.4(c)(2)-(6) and RAP 13.4(8)(9); Mr. Wang did not properly cite to and did not include in an Appendix the Court of Appeals' Unpublished Opinion for which he is petitioning for review, or the Court of Appeals' denial of his Motion for Reconsideration. Pet. For Rev. Both are attached hereto as **Appendix A** and **Appendix B**, respectively. Second, Mr. Wang's Petition for Review does not comply with the marginations, spacing, or font size requirements listed under RAP 18.17(a). Third, Mr. Wang's Petition for Review does not contain the requisite Certificate of Compliance as under RAP 18.17(b). This Court should deny Mr. Wang's Petition for Review.

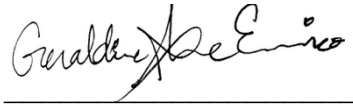
V. CONCLUSION

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

I certify that this brief produced through word processing software contains 4,379 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 22ND day of September 2025.

LARSON HEALTH ADVOCATES, PLLC



Levi S. Larson, WSBA # 39214
Geraldine Anne Enrico, WSBA # 54917
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
Telephone: 206-688-4690
levi@lhafirm.com
geraldine@lhafirm.com
Attorneys for Respondents

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 mailed a true and correct copy of the *RESPONDENTS' ANSWER TO APPELLANT'S PETITION FOR REVIEW* via the method indicated below to the following party at their address listed:

Pro Se Appellant Ange Wang 509 SW 331st St Federal Way, WA 98023 Marywang1388@gmail.com	☒ VIA E-SERVICE ☐ VIA FACSIMILE: ☐ VIA MESSENGER ☒ VIA U.S. PRIORITY MAIL, RETURN RECEIPT REQUESTED.

DATED this 22nd day of September 2025, at Gold Bar, Washington.

Erika Wilson

Erika Wilson, Litigation Legal Assistant to
Levi S. Larson, Esquire &
Geraldine Anne T. Enrico, Esquire

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ANGE WANG, Appellant, v. KAISER FOUNDATION HEALTH PLAN OF WASHINGTON, and LANCE HO, Respondents.	No. 87043-2-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Ange Wang received orthopedic surgery for joint fusion in May 2017. In September 2023, Wang sued Dr. Lance Ho, asserting medical malpractice. The suit was dismissed without prejudice. Wang again sued Dr. Ho and added Kaiser Foundation Health Plan of Washington as a defendant in March, 2024. Kaiser moved for summary judgment, contending the claim was time barred. The trial court granted Kaiser's motion. Wang appeals, arguing sufficient evidence in the record exists to create a question of fact as to when he discovered the basis for his medical malpractice claim.

We conclude the court did not err when it granted Kaiser's CR 56 motion for summary judgment and dismissed the case with prejudice. We affirm.

FACTS

In March 2017, Ange Wang met with Dr. Lance Ho at Kaiser Permanente Orthopedics concerning pain in his left foot. Dr. Ho diagnosed Wang with "left

moderate bunion and moderate 1st metatarsal phalangeal arthritis" and performed a left 1st metatarsophalangeal joint fusion on May 5, 2017. Wang had several follow-up appointments, where he complained of continued pain and stiffness. Dr. Ho stressed the importance of Wang wearing his CAM[1] boot for six weeks post-operative (post-op). In several of his follow-up visits, Wang admitted to only wearing his boot "sometimes" or "very little" and taking it off when he was at home. At Wang's six-week post-op visit, Dr. Ho instructed him to wear his boot another four weeks. At this visit, Dr. Ho determined Wang's foot was healing well with no sign of infection.

In December 2019, Wang was still experiencing pain in his foot and he met with Dr. Craig Clifford at Virginia Mason. Dr. Clifford informed Wang that a nonunion to the affected area had occurred, and the two discussed the option of fusion revision surgery. Wang did not move forward with surgery at that time.

In March 2020, Wang received a letter from an attorney, presumably in response to an inquiry from Wang, concerning his foot surgery. The letter stated, in pertinent part:

> I have reviewed the records you provided to us (38 pages).
>
> Based on the records provided there is no clear indication of a breach of standard of care. In order to determine that, I would at a minimum need records from other physicians who have treated you for your foot condition after the surgery of [redacted].
>
> We are going to be hard pressed against the statute of limitations (May 5, 2020) on this case to send records out and obtain an opinion on whether the treatment provided by Dr. Lance Ho met the standard of care.

[1] CAM is the abbreviation for "controlled ankle movement."

In April 2020, Wang requested mediation with Dr. Ho and Kaiser under RCW 7.70.110. In the mediation request, Wang alleged Dr. Ho's surgery "fail[ed] to follow the standard of care of reasonable and prudent health care providers under the circumstances." Wang stated he was unhappy with the results and had been in pain "[s]ince the surgery in 2017." In late April 2020, Kaiser responded to Wang acknowledging his mediation request. Kaiser informed Wang his request for mediation extended the statute of limitations on his medical negligence claim. Kaiser included the elements that must be established for a claim of medical negligence and told Wang his claim would be kept open until May 5, 2021, at which time the statute of limitations would expire.

In December 2020, Kaiser sent Wang a letter informing him that his claim had been reviewed and the record did not indicate that Dr. Ho breached the standard of care when performing Wang's surgery. The letter reiterated the required elements of a medical malpractice claim and noted there must be expert medical testimony to show negligence. Kaiser stated the "painful non-union at the fusion site . . . was not due to negligence by any health care provider, but rather [was] a potential outcome of this surgery without negligence." The letter concluded by reminding Wang the statute of limitations for his claim expired May 5, 2021.

In early April 2023, Wang went to urgent care after experiencing severe foot pain. According to Wang, the doctor told him that the metal rod Dr. Ho inserted in 2017 was at risk of breaking through the skin. Not wanting to go to

Kaiser for another surgery, Wang requested a referral. In August 2023, Wang underwent surgery at Virginia Mason to fix the nonunion.

In May 2023, Wang lodged a complaint with the Washington State Department of Health against Dr. Ho and Kaiser. In his complaint, Wang noted he had been in extreme pain since the surgery in May 2017. Wang claimed he had tried to contact Dr. Ho and Kaiser numerous times after the surgery, but never received a response.

The Washington Medical Commission closed Wang's complaint without investigation and notified Wang. Wang requested reconsideration and included progress notes, claim documents, and photos of his foot as new information. The Commission notified Wang that his claim was reviewed by another panel, but the panel did not authorize further action, and the complaint would remain closed.

In September 2023, Wang initiated a suit against Dr. Ho claiming medical malpractice arising from his foot surgery. The case was dismissed without prejudice for failure to properly serve Dr. Ho. Wang initiated a new suit in March 2024, naming both Dr. Ho and Kaiser as defendants. Dr. Ho and Kaiser moved for summary judgment, claiming the expiration of the statute of limitations barred Wang's claims and Wang did not present any expert testimony to support his claim of violation of the standard of care and proximate cause. The court granted the motion for summary judgment.

Wang appeals.

ANALYSIS

Standard of Review

We review summary judgment orders de novo. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We consider all evidence and reasonable inferences in the light most favorable to the non-moving party. *Davies v. MultiCare Health Systems*, 199 Wn.2d 608, 616, 510 P.3d 346 (2022). "Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Davies*, 199 Wn.2d at 616. A genuine issue of material fact exists when "the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party." *Reyes v. Yakima Health District*, 191 Wn.2d 79, 86, 419 P.3d 819 (2018).

Statute of Limitation

Wang contends the trial court erred in granting summary judgment because sufficient evidence existed in the record to create a question of fact as to when he discovered the basis for his medical malpractice claim. Kaiser asserts Wang's claim is time barred because Wang knew of his injury immediately after the surgery or, in the alternative, early enough that the statute of limitations had expired when Wang brought his claim. Because, looking at the evidence in the light most favorable to Wang, the evidence shows that he should have reasonably discovered his injury by 2019 at the latest, we agree with Kaiser that his claim is barred by the statute of limitations.

The statute of limitations to bring a medical malpractice claim is "within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or [their] representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later." RCW 4.16.350. However, if a party, in good faith, requests a mediation to address the dispute related to the injury, the statute shall be tolled for one year. RCW 7.70.110.

To determine whether a party should have reasonably discovered the injury, we ask whether, after a plaintiff " 'is placed on notice by some appreciable harm occasioned by another's wrongful conduct,' " did the plaintiff " 'make further diligent inquiry to ascertain the scope of the actual harm' "? *Clare v. Saberhagen Holdings, Inc.*, 129 Wn. App. 599, 603, 123 P.3d 465 (2005) (quoting *Green v. American Pharmaceutical Co*., 136 Wn.2d 87, 97, 960 P.2d 912 (1998)). The plaintiff has the burden to prove the facts constituting the harm were not discoverable within the statute of limitations. *Clare*, 129 Wn. App at 603. Generally, whether a party exercised due diligence is a factual issue for the jury, precluding summary judgment, *Clare*, 129 Wn. App at 603, but, "when reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law." *Clare*, 129 Wn. App at 603.

Here, Wang claims he did not discover Dr. Ho's malpractice until he went to urgent care on April 8, 2023. But Wang clearly indicated he was

in pain and upset with the outcome of the surgery since 2017. In his complaint to the Department, Wang stated he had been in pain since the surgery, and he went back to Dr. Ho several times after the surgery complaining of "severe pain."

Even if Wang could show he did not discover the condition at the time of surgery or shortly thereafter, his meeting with Dr. Clifford in 2019 indicates he was aware, or reasonably should have been aware, of a problem with Dr. Ho's surgery. Furthermore, after meeting with Dr. Clifford, Wang communicated with an attorney concerning a "breach of the standard of care" related to his foot surgery. Less than a month after his visit with Dr. Clifford, Wang submitted a request for mediation with Kaiser. In the mediation request, Wang stated the action giving rise to the mediation "arises from treatment provided to Ange Wang in the Bellevue Kaiser Permanente Medical Center around 05/05/17."

If the meeting with Dr. Clifford is considered the date of discovery, then Wang's request for mediation in April 2020 was timely, and the statute of limitations was tolled to May 5, 2021. This was communicated to Wang in letters from Kaiser on April 29, 2020 and December 17, 2020. But, even with this information, Wang did not initiate his complaint until September 22, 2023—more than two years after the statute of limitations ran out.

Because Wang discovered, or should have reasonably discovered, the condition underlying his claim in 2019 at the latest—and potentially as

early as 2017—his complaint is barred by the statute of limitations.

Accordingly, the court did not err when it granted summary judgment.[2]

We affirm.

WE CONCUR:

[2] Wang also claims the trial court erred in granting summary judgment based on his lack of expert witness testimony. Because summary judgment was appropriate under RCW 4.16.350 and RCW 7.70.110, we do not reach this issue. But, even if we were to address the issue, expert testimony is generally necessary to establish a standard of care in a medical malpractice action. *Harris v. Robert C. Groth, M.D., Inc., P.S.*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983).

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ANGE WANG, Appellant, v. KAISER FOUNDATION HEALTH PLAN OF WASHINGTON, and LANCE HO, Respondents.	No. 87043-2-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Ange Wang moved for reconsideration of the un/published opinion filed on July 28, 2025. The panel considered the motion pursuant to RAP 12.4 and determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Judge

APPENDIX C

RCW 4.16.170

Tolling of statute—Actions, when deemed commenced or not commenced.

For the purpose of tolling any statute of limitations an 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 the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. 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.

[**1971 ex.s. c 131 s 1**; **1955 c 43 s 3**. Prior: **1903 c 24 s 1**; Code 1881 s 35; **1873 p 10 s 35**; **1869 p 10 s 35**; RRS s 167, part.]

APPENDIX D

RCW 4.16.350

Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976, against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his or her employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW **4.16.190**, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW **4.16.340**(5).

[**2011 c 336 s 88**; **2006 c 8 s 302**. Prior: **1998 c 147 s 1**; **1988 c 144 s 2**; **1987 c 212 s 1401**; **1986 c 305 s 502**; 1975-'76 2nd ex.s. c 56 s 1; **1971 c 80 s 1**.]

NOTES:

Purpose—Findings—Intent—2006 c 8 ss 301 and 302: "The purpose of this section and section 302, chapter 8, Laws of 2006 is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW **4.16.350**.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW **4.16.350** with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302, chapter 8, Laws of 2006 be applied to actions commenced on or after June 7, 2006." [**2006 c 8 s 301**.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW **5.64.010**.

Application—1998 c 147: "This act applies to any cause of action filed on or after June 11, 1998." [**1998 c 147 s 2**.]

Application—1988 c 144: See note following RCW **4.16.340**.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW **4.16.160**.

Severability—1975-'76 2nd ex.s. c 56: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 56 s 15.]

*Actions for injuries resulting from health care: Chapter **7.70** RCW.*

*Complaint in personal injury actions not to include statement of damages: RCW **4.28.360**.*

*Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter **5.64** RCW.*

*Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW **4.24.240**.*

*Proof and evidence required in actions against hospitals, personnel and members of healing arts: RCW **4.24.290**.*

*Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW **4.56.260**.*

APPENDIX E

RCW 7.70.110

Mandatory mediation of health care claims—Tolling statute of limitations.

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 under this chapter shall toll the statute of limitations provided in RCW **4.16.350** for one year.

[**1996 c 270 s 1**; **1993 c 492 s 420**.]

NOTES:

Findings—Intent—1993 c 492: See notes following RCW **43.20.050**.

Short title—Savings—Reservation of legislative power—Effective dates—1993 c 492: See RCW **43.72.910** through **43.72.915**.

APPENDIX F

RCW 7.70.040

Necessary elements of proof that injury resulted from failure to follow accepted standard of care—COVID-19 pandemic.

(1) The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(a) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances;

(b) Such failure was a proximate cause of the injury complained of.

(2)(a) The following shall be necessary elements of proof that injury resulted from the failure of a health care provider to follow the accepted standard of care in acting or failing to act following the proclamation of a state of emergency in all counties in the state of Washington by the governor in response to the COVID-19 pandemic on February 29, 2020, and until the state of emergency is terminated:

(i) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances, taking into account whether the act or omission:

(A) Was in good faith based upon guidance, direction, or recommendations, including in interim or preliminary form, published by the federal government, the state of Washington or departments, divisions, agencies, or agents thereof, or local governments in the state of Washington or departments, divisions, agencies, or agents thereof, in response to the COVID-19 pandemic and applicable to such health care provider; or

(B) Was due to a lack of resources including, but not limited to, available facility capacity, staff, and supplies, directly attributable to the COVID-19 pandemic;

(ii) Such failure was a proximate cause of the injury complained of.

(b) The provisions in (a) of this subsection apply only if relevant to the determination of whether the health care provider followed the standard of care, as determined by the court.

(c) If any health care provider presents evidence described in (a) of this subsection, the injured patient or the patient's representative is permitted to present rebuttal evidence, so long as such evidence is otherwise admissible.

[**2021 c 241 s 2**; **2011 c 336 s 251**; **1983 c 149 s 2**; 1975-'76 2nd ex.s. c 56 s 9.]

NOTES:

Findings—Intent—2021 c 241: "(1) The legislature finds that the COVID-19 pandemic, a public health crisis, has placed an oversized burden on Washington's health care providers and health care facilities, as they care for communities and families.

(2) The legislature further finds that during the pandemic, the law should accurately reflect the realities of the challenging practice conditions. It is fair and appropriate to give special consideration to the challenges arising during the pandemic, such as evolving and sometimes conflicting direction from health officials regarding treatment for COVID-19 infected patients, supply chain shortages of personal protective equipment and testing supplies, and a proclamation on nonurgent procedures resulting in delayed or missed health screenings and diagnoses.

(3) The legislature intends, during the period of the declared state of emergency due to the COVID-19 pandemic, to amend the current standard of care law governing health care providers to give special consideration to additional relevant factors." [**2021 c 241 s 1**.]

Effective date—2021 c 241: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2021]." [**2021 c 241 s 3**.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW **4.16.350**.

LARSON HEALTH ADVOCATES

September 22, 2025 - 2:15 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,501-8
Appellate Court Case Title:	Ange Wang v. Kaiser Plan of Washington, et ano.

The following documents have been uploaded:

- 1045018_Answer_Reply_20250922141431SC729508_3169.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petiton for Review - Wang v. Ho.pdf

A copy of the uploaded files will be sent to:

- erika@lhafirm.com
- levi@lhafirm.com
- ma2926@msn.com
- marywang1388@gmail.com

Comments:

Sender Name: Geraldine Anne Enrico - Email: geraldine@LHAfirm.com
Address:
1700 7TH AVE STE 2100
SEATTLE, WA, 98101-1360
Phone: 206-658-4690

Note: The Filing Id is 20250922141431SC729508