Supreme Court No. 1045328

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

STEPHANIE BELISLE, f/k/a STEPHANIE BELISLE WILLIAMSON

Petitioner,

vs.

PROLIANCE SURGEONS, INC., et al,

Respondent

AMENDED PETITION FOR REVIEW

From Court of Appeals No. 862421; Appeal from King County Superior Court Case No. 20-2-07498-5 SEA

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Stephanie Belisle is Petitioner in this Petition for Review. She was Plaintiff in originating action and Appellant in the Court of Appeals.

I. CITATION TO COURT OF APPEALS DECISION

This is an appeal from the Court of Appeals of Washington, Division I, seeking relief from the case *Belisle-Williamson v. Proliance Surgeons, Inc.*, 86242-1-I (Wash. App. Aug 04, 2025).

II. STATEMENT OF THE CASE

Belisle was an emergency room trauma nurse, a singer, and mother experienced recurring tonsil infections and tonsil stones. CP 4, VRP 575-76, 600. She was married for over twenty years and had two children who she homeschooled. VRP 575-77. She sang in plays and acapella groups—through singing she communicated and related to her autistic son. VRP 583-85; CP 145; VRP 575-76. But after 2016, Belisle could not sing, lost her job as an emergency room nurse, and divorced.

In 2016, Belisle went to Meadowbrook Urgent Care in North Bend for another tonsil infection. VRP 602. The staff encouraged her to find an otolaryngologist (an ear, nose and throat doctor ("ENT")). VRP 602-03. Belisle met with ENT Dr. Seely who scheduled surgery for April 27, 2016, to remove the tonsils. VRP 602-03; CP 829.

Before surgery, Dr. Seely presented her with some generic forms. CP 829-46. The forms warned Belisle of possible risks—including "nerve damage." CP 837. Dr. Seely did not discuss what this meant for her. VRP 624-27. Belisle signed the forms and immediately went under general anesthesia. VRP 624-27.

Recovery was rough. CP 97. On May 12, 2016, Belisle met with Lori Hill of Dr. Seely's office who told her Dr. Seely had to go "deeper" than normal to remove her tonsils. CP 97. Belisle returned on May 31, 2016, reporting a "catching" sensation in the right side of her throat and a newly-developed dysphagia. CP 97. On June 17, 2016, Belisle returned to Dr.

Seely, who suspected the tonsils were infected and prescribed antibiotics, scheduled a barium swallow exam, and noted should "she remain[] severely symptomatic, [she should] return to the operating room for direct inspection of the tonsillar fossa may be considered." CP 07-98.

Belisle continued struggling to eat as food and swallowing triggered a gag reflex. VRP 628-29. On July 1, 2016, Belisle saw Dr. Roger Zundel, who had taken over for Dr. Seely, reporting severe gagging. VRP 628-30, 2039. Dr. Zundel noted Belisle had already made dietary changes. CP 98.

On July 6, 2016, Belisle had a barium esophogram at Swedish Health Services in Issaquah. CP 98. This showed "a smooth 5 mm indentation upon posterior esophageal wall at C-C5 level" and a "[r]elatively high cricopharyngeal bar versus potential posterior esophogeal web at C4-C5 level;" however, Dr. Zundel did not believe that caused Belisle's symptoms. CP 98.

Belisle had a second surgery in August 2016. CP 933. Instead of Dr. Zundel, Dr. Seely performed the surgery. CP 933-45. In this second surgery, Dr. Seely performed a "partial tonsillectomy, right [side]." CP 934. On August 22, 20216, Dr. Seely performed a videostroboscopy, but he was unable to make a diagnosis. CP 966. He referred her to Dr. Allen Hillel, who she saw on October 10, 2016; however, he too was unable to make a diagnosis. CP 966. Belisle saw at least a dozen doctors attempting to discover the cause. CP 945.

Belisle remained unable to eat, to sing, and speak clearly. CP 966-67. Finally, in February 2017, Belisle visited the Mayo Clinic in Arizona and saw Dr. Francisco Ramierz. CP 993. During these "four days of hell" she went through a series of intense appointments, procedures, and testing. VRP 1184-85. He diagnosed her with "jackhammer esophagus," meaning Belisle's esophagus makes ingesting food normally impossible. CP 993.

After her diagnosis, Belisle was diagnosed with damaged glossopharyngeal and cranial nerves. CP 993. The damaged area was in the neck. CP 993-94. A gastroenterologist reviewed Belisle's pharyngogram and barium swallow study centered on the esophagus. CP 993-94. On November 21, 2017, an otolaryngologist and speech language pathologist performed a fiberoptic laryngoscopy, revealing dysfunctional vocal cords. CP 993-94.

Belisle was given Botox injections and a dilation. VRP 1185. Despite these painful injections, she was still unable to swallow. VRP 1185-86. Her teeth began to break down, and she began prescription-strength toothpaste and xylitol gum to help preserve them. VRP 1208.

Belisle now lives on an entirely liquid and semi-solid diet. CP 1558. Her only treatment option is a novel and risky POEM treatment. CP 1558-59. Additionally, she will need PEG tube feeding installation surgeries—which have a high annual mortality rate (as high as 28%). CP 1559. The PEG tube will

require replacement procedures every three months. VRP 1215-16. She is also supposed to take dilations with Botox every three months, costing around $10,000 to $15,000 for each procedure with two to three days of recovery. CP 148.

Belisle filed suit against Dr. Seely, alleging negligence under RCW 18.130.180(4) and failure to inform and get informed consent under RCW 7.70.050. CP 6-7.

On June 7, 2023, the trial court heard discussions regarding Motions in Limine, refiled later as a Motion for Summary Judgment. VRP 77. The Defense admitted their Motions in Limine could be construed as an MSJ and requested leave to refile as such. VRP 84, 89. Belisle's attorney made a Motion for Continuance of Trial from June 12, 2023, to September 11, 2023, because the motions could be dispositive, so he intended to respond. CP 623-24. On June 5, 2023, her attorney filed a Motion to Shorten Time on Plaintiff's Motion to Continue Trial, and Defendants responded. CP 630, 669.

Expert testimony showed it was more probable than not the electrocautery during the first surgery caused Belisle's nerve damage because Dr. Seely also cut too deep into the tissue. VRP 1657-58. Evidence of such included area's healing time, immediate trouble swallowing post-surgery, and post-healing continued swallowing and voice problems. VRP 1657-58. The damaged area was only "maybe a centimeter" away from the nerves causing the symptoms. VRP 1658.

During the first surgery, Dr. Seely used suction electrocautery to dissect the tonsil free from its bed, having learned the technique decades ago on children at Seattle's Children's Hospital. VRP 2535. Electrocautery works by transmitting electricity (heat) through the tissue, causing thermal damage. VRP 1658-59.

Expert testimony insisted a reasonable standard of care in Washington requires avoiding putting muscles or nerves at risk. VRP 1660. One expert noted, "if you're too deep with the cautery, too deep with your dissection and you . . . hit that

cautery . . . turn it on for . . . even a few seconds and you're in the wrong in close proximity to the nerve, that's certainly enough to damage those nerves. So wrong spot, wrong depth and wrong amount of time could easily cause nerve damages." VRP 1664-65. The glossopharyngeal nerve injury would also cause numbness. VRP 1678-79. To injure the glossopharyngeal nerve, Dr. Seely "would have [had] to go through the muscle, through this area, there's fat here and actually a space." VRP 1737. Damage to the glossopharyngeal nerve is a known complication of tonsillectomy. CP 102-03. ENTs should discuss the risk of nerve injuries. VRP 1680-81.

The Court of Appeals denied Belisle any relief, stating she "claim[ed] that the trial court erred in granting summary judgment because the consent form did not mention Dr. Seely and purported to provide Dr. Zundel consent to perform only a laryngoscopy (with possible biopsy) and esophagoscopy." Op.

13. However, it held doctors do not need to obtain informed consent for other doctors and should have referenced Dr. Zundel in the procedure itself. Op. 13-14.

The Court of Appeals noted Belisle provided no reason why the motion to shorten consideration of the MSJ should have been granted. Op. 15. "[W]e conclude that Belisle misrepresents the trial court's order and fail to establish resulting prejudice because the trial court specifically stated, outside the presence of the jury, that any delay resulted from the plaintiff's poor time management." Op. 16. Ultimately, the Court of Appeals decided the trial court did not err in limiting Belisle's medical testimony, permitting the Defense's late-disclosed expert testimony, and precluding Dr. Seely's Parkinson's diagnosis. Op. 17. As to Dr. Seely's Parkinson's Disease diagnosis, it decided Belisle failed to establish *relevancy*, and her attorney should have noticed something was amiss during their April 2023 deposition and asked why he left medical practice in May 2018. Op. 21-22.

III. ARGUMENT

A. Dr. Seely's medical condition was relevant, and the trial court's exclusion of such evidence or discovery implicates an issue of substantial public interest.

The medical negligence statutory elements are: "(1) [t]he 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 belongs, in the state of Washington, acting in the same or similar circumstances; [and] (2) Such failure was a proximate cause of the injury complained of." RCW 7.70.040.

RCW 7.70.010 states the substantive and procedural requirements of chapter 7.70 RCW apply to actions regarding injuries "occurring as a result of health care." RCW 7.70.030, which establishes grounds for a medical malpractice claim, also applies to injuries "occurring as the result of health care."

Cause in fact is established by showing "but for" a defendant's acts, a plaintiff would not have been injured. *Tyner v. DSHS*, 141 Wn.2d 68, 82, 1 P.3d 1148 (2000). Cause in fact

is a question for the jury, except where the causal connection is so speculative and indirect reasonable minds could not differ. *Doherty v. Municipality of Metropolitan Seattle*, 83 Wn. App. 464, 921 P.2d 1098 (1996). Medical testimony should demonstrate the alleged negligence "probably" or "more likely than not" caused a condition leading to the injury. *O'Donoghue v. Riggs*, 73 Wn.2d 814, 824, 440 P.2d 823 (1968).

i. The trial court improperly excluded the important and relevant evidence of Dr. Seely's Parkinson's Disease diagnosis as a sanction against trial counsel.

A trial court generally has discretion to impose discovery sanctions. *Burnet v. Spokane Ambulance*, 131 Wash.2d 484, 494, 933 P.2d 1036 (1997). However, courts may impose only the least severe sanction that adequately serves its purpose in issuing a sanction. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 355–56, 858 P.2d 1054 (1993).

Here, the Court of Appeals approved the trial court's exclusion of evidence or further discovery about Dr. Seely's Parkinson's Disease where the margin of error was mere centimeters. This missing evidence was highly important to Belisle's claims because it explained the injuries' cause—Dr. Seely's Parkinson's Disease. The Defense failed to disclose the diagnosis, and "[w]hen a party intentionally withholds or destroys evidence, the trial court may issue a spoliation instruction for the jury to draw an inference the missing evidence would be unfavorable to the party at fault." *Henderson v. Thompson*, 200 Wash.2d 417, 441, 518 P.3d 1011 (2022). Instead, here, the trial and the appellate courts rewarded the Defense for hiding evidence.

The importance of missing evidence "depends on the particular circumstances of the case." *Henderson*, 80 Wash. App. at 607, 910 P.2d 522. Missing evidence is often a mixed question of law and fact. See *In re Trust and Estate of Melter*, 167 Wash. App. 285, 300, 273 P.3d 991 (2012) (mixed

questions of fact and law require the application of law a set of factual circumstances). Therefore, appellate courts review de novo a trial court's ruling as to the importance or relevance of missing or excluded evidence. *In re Dependency of G.M.W.*, 24 Wash. App. 2d 96, 127, 519 P.3d 272 (2022) (mixed question of fact and law subject to de novo review). Here, the trial and appellate courts excluded the evidence of Dr. Seely's Parkinson's Disease more as a sanction for Belisle's counsel not "discovering" the diagnosis during the deposition instead of considering the importance of that evidence.

On November 2, 2023, during pretrial hearings, Respondent informed the court Dr. Seely suffered from Parkinson's Disease. VRP 284-85. Initially, all parties agreed they should at least disclose it to the jury in case Dr. Seely should tire and the jury speculate about his tremors. VRP 284-87. On November 7, 2023, Belisle's counsel asked to address Dr. Seely's Parkinson's Disease. VRP 463. Belisle's attorney knew that Dr. Seely retired in 2018 for medical reasons but did

not know about the diagnosis during the deposition. CP 1480, VRP 463-65. Belisle's counsel explained Parkinson's Disease manifests earlier than a diagnosis. VRP 465-67. However, because of the late disclosure, he had not developed the issue. VRP 466-67. Unwilling to delay trial further, the court excluded any evidence or arguments about the Parkinson's Disease. VRP 469. Belisle's attorney motioned for reconsideration. VRP 473. The Court of Appeals also believed Belisle's attorney should have noticed something during the April 2023 deposition. Op. 21-22. During Dr. Seely's Zoom deposition, Defense (unprompted) assured Belisle's counsel they were unconcerned about Dr. Seely's health—suggesting Dr. Seely was in good health. VRP 1472.

However, Dr. Seely tremors when he is tired and takes medication. This prevented tremors during the deposition. Additionally, in 2016, he would not be taking medication to control the tremors until 2018. Permitting Belisle to present this

evidence would have given the jury proof of causation. Further discovery would have permitted Belisle to discover *when* Dr. Seely felt something was amiss.

Exclusion amounted was sanctioning Plaintiff not discovering Dr. Seely's diagnosis. This prevented Belisle from explaining to the jury a highly probable causation theory. This Court cannot permit such highly relevant and important evidence to be excluded, amounting to a sanction, when it goes straight to the heart of an issue.

ii. The Court of Appeals erred because Dr. Seely's Parkinson's Diagnosis was relevant under ER 402.

"A trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion." *State v. Darden*, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *Teter v. Deck*, 174 Wn.2d 207, 215, 274 P.3d 336 (2012).

The trial court granted Defense's Motion in Limine to exclude any evidence or arguments about Dr. Seely's Parkinson's Disease because it did not believe Belisle had any evidence the diagnosis was relevant to the medical negligence claim and worried it would only invite the jury to speculate about causation. VRP 47, 469-70. The Court of Appeals agreed. Op. 21-22.

However, the diagnosis was relevant. Belisle's 2016 surgery closely predated Dr. Seely's official Parkison's Disease diagnosis in 2018. CP 1479-1502. Soon after his diagnosis, Dr. Seely retired in May 2018. CP 1480. The diagnosis was relevant to Belisle's claim because it offered a material element as to causation.

"Evidence must be probative, relevant, and meet the appropriate standard of probability." *Anderson v. Akzo Nobel Coatings Inc.*, 172 Wash.2d 593, 260 P.3d 857 (Wash. 2011), 606; ER 102; ER 401; ER 402. There are two components to relevance: logical and legal relevance. *State v. Vazquez*, 198

Wash.2d 239, 255-57, 494 P.3d 424 (2021). Evidence is logically relevant if it tends to make a material fact more or less likely than it would be without the evidence. *Id.*; ER 401.

Dr. Seely's diagnosis would have weighed heavily on causation. Proximate cause is defined as a cause "'in natural and continuous sequence, unbroken by an independent cause, produces the injury complained of and without which the ultimate injury would not have occurred.'" *Mehlert v. Baseball of Seattle, Inc.*, 1 Wash. App. 2d 115, 118, 404 P.3d 97 (2017) (quoting *Attwood v. Albertson's Food Ctrs., Inc* ., 92 Wash. App. 326, 330, 966 P.2d 351 (1998)). There are two elements of proximate cause: cause in fact and legal cause. *N.L. v. Bethel Sch. Dist.*, 186 Wash.2d 422, 437, 378 P.3d 162 (2016). Cause in fact refers to the physical connection. *Id*. Legal cause refers to a "policy determination[ ] as to how far the consequences of a defendant's acts should extend" and if those acts are "too remote or insubstantial to trigger liability." *Id*. Cause in fact

generally is a question for the trier of fact, unless "the causal connection is so speculative and indirect that reasonable minds could not differ." *Mehlert*, 1 Wash. App. 2d at 119, 404 P.3d 97.

Discovering when Dr. Seely noticed his health declining, and those symptoms leading him to the 2018 diagnosis, would show the jury the actual, factual, cause of Belisle's injuries. His developing symptoms made an error with the electrocautery tools highly probable. By depriving the jury of hearing this evidence, the trial court deprived it of its essential fact-finding mission as to causation.

This Court must not approve of the Defense springing a highly relevant and important piece of information on the eve of trial. Because this piece of highly relevant evidence was excluded and hidden by the Defense, this Court should reverse and remand.

iii. Dr. Seely's diagnosis does not run afoul of ER 403.

When "the evidence is relevant, its probative value must be shown to outweigh its potential for prejudice." *State v. Vazquez*, 494 P.3d 424 (Wash. 2021). Evidence Rule 403 provides relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Defense argued to the jury Belisle's entire case was based on speculation. VRP 526. Yet, introduction of Dr. Seely's Parkinson's Disease would have made it more likely than not Dr. Seely made a surgical error. The neck is small, and the tools are sharp with less than a centimeter's space for the margin of error. Dr. Seely's Parkinson's diagnosis was potentially determinative—overcoming confusion and unfair prejudice. The jury had the right to weigh that evidence.

iv. Belisle was prejudiced by the court's erroneous exclusion because evidence or argument about Dr. Seely's Parkinson's was relevant and material to the dispositive issues.

When trial courts make erroneous evidentiary rulings, the appellate courts ask whether the error was prejudicial. *Driggs v. Howlett*, 193 Wn.App. 875, 903 (2016). An erroneous evidentiary ruling is one made based on a trial court's incorrect application of the wrong legal standards. *Aubin v. Barton*, 123 Wn.App. 592, 610, 98 P.3d 126 (2004). Errors are considered harmless unless they affect the case's outcome. *State v. Jackson*, 102 Wash.2d 689, 695, 689 P.2d 76 (1984).

Error is prejudicial if it presumptively affected the trial's outcome. *James S. Black & Co. v. P & R Co.*, 12 Wash.App. 533, 537, 530 P.2d 722 (1975). When the reviewing court is unable to know what value a jury placed on improperly admitted evidence, a new trial is necessary. *Thomas v. French*, 99 Wash.2d 95, 105, 659 P.2d 1097 (1983). "[T]he rule should be the same when the appeals court may not judge what value a

jury may place on improperly excluded evidence." *Driggs v. Howlett*, 193 Wash.App. 875, 371 P.3d 61, 75 (Wash. App. 2016).

Here, Belisle sought further discovery and evidence of Dr. Seely's Parkinson's Disease and was denied. The exclusion of Dr. Seely's diagnosis, its timing, and further discovery of it, left the question open: how did such an experienced surgeon make such a traumatic mistake? This exclusion affected the trial's outcome and rewarded the Defense's gamification of the Motions in Limine and Discovery process to hide a material piece of evidence.

v. The trial court should have considered the Burnet factors for excluding an entire theory of recovery.

A trial court has broad authority to control "the mode and order of interrogating witnesses and presenting evidence so as to . . . make the interrogation and presentation effective for the ascertainment of the truth." ER 611(a).

In punishing a discovery violation, courts "should impose the least severe sanction that will be adequate to serve the purpose of the particular sanction but not be so minimal that it undermines the purpose of discovery." *Burnet*, 131 Wash.2d at 495–96, 933 P.2d 1036. When imposing a severe sanction such as witness exclusion, the trial court's "record must show three things—the trial court's consideration of a lesser sanction, the willfulness of the violation, and substantial prejudice arising from it." *Mayer*, 156 Wash.2d at 688, 132 P.3d 115 (relying on *Burnet*, 131 Wash.2d at 494, 933 P.2d 1036). This Court in *Mayer* stated, "the reference in *Burnet* to the '"harsher remedies allowable under CR 37(b)" ' applies to such remedies as dismissal, default, and the exclusion of testimony—sanctions that affect a party's ability to present its case." *Id*. at 690, 132 P.3d 115 (quoting *Burnet*, 131 Wash.2d at 494, 933 P.2d 1036 (quoting *Snedigar v. Hodderson*, 53 Wash.App. 476, 487, 768 P.2d 1 (1989), rev'd in part, 114 Wash.2d 153, 786 P.2d 781 (1990))).

Belisle's attorney knowing Dr. Seely had Parkinson's Disease, a slowly progressing disease, would have changed the discovery process's entire course. It would have led to nuanced questions about how an experienced surgeon could have made a (less than a centimeter's worth) error. See *Blair v. Ta–seattle East No. 176*, 171 Wash.2d 342, 254 P.3d 797 (Wash. 2011), 802. As a matter of policy, this Court should extend consideration of *Burnet* factors to theories of causation with equal force as it does to the exclusion of witnesses.

vi. The proper remedy was a continuance permitting further discovery.

Trial courts should not permit surprise disclosures of important and highly relevant evidence. *Cofer v. Pierce County*, 8 Wash.App. 258, 505 P.2d 476 (1973); *Ungar v. Sarafite*, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964). An appellate court will overturn a discretionary ruling only for a manifest abuse of discretion. *In re Dependency of E.S.*, 92 Wash.App. at 769, 964 P.2d 404.

In *Cofer*, the Court of Appeals reversed a trial court's ruling when it denied a plaintiff's request for continuance because of its failure to give the nonmoving party a reasonable opportunity to show the existence of an issue of material fact 8 Wash.App. at 263, 505 P.2d 476. In that case, plaintiff asked for a continuance because a witness fell ill one week before the hearing on defendant's motion for summary judgment and was unavailable at the hearing. *Id*. at 259-60, 505 P.2d 476.

Like the litigant in *Cofer*, Belisle's attorney had little time to prepare after Defendants disclosed Dr. Seely's diagnosis. Like *Cofer*, the evidence and arguments Belisle sought to introduce had high evidentiary value. Where the difference between malpractice and a successful surgery is separated by less than one centimeter, this evidence was essential for the jury's consideration of whether Dr. Seely was impaired.

vii. Conclusion

This Court should reverse and remand for a new trial because when a trial court excludes an important and relevant

piece of newly discovered evidence, it must prioritize substantive justice. Under RAP 13.4, this Court should rule on issues of substantial public interest. The Defense hid an important piece of highly relevant evidence. Gamesmanship cannot be rewarded and, instead, should be discouraged. This encourages a lack of disclosure by litigants and eve-of-trial MSJ's masquerading as Motions in Limine.

B. The Court of Appeals erred when it permitted the trial court to rule that doctors need not disclose "very unlikely" injuries in an informed consent claim as a matter of law.

Belisle's case involves a significant question of law and an issue involving a substantial public interest under RAP 13.4. Whether recovery for medical malpractice permits a judge to decide what degree of risk is required for an informed consent decision. The statutory language encourages a subjective patient-centered approach to the question, and this Court must clarify where a claim may arise. A ruling on a motion for a directed verdict is reviewed de novo. *Rowe v. Vaagen Bros. Lumber, Inc.*, 100 Wn. App. 268, 274, 996 P.2d 1103 (2000)..

"The doctrine of informed consent refers to the requirement that a physician, before obtaining the consent of his or her patient to treatment, inform the patient of the treatment's attendant risks." *Driggs v. Howlett*, 193 Wash.App. 875, 371 P.3d 61 (Wash. App. 2016); *ZeBarth v. Swedish Hospital Medical Center*, 81 Wn.2d 12, 499 P.2d 1 (1972); *Miller v. Kennedy*, 11 Wn. App. 272, 522 P.2d 852 (1974), aff'd per curiam, 85 Wn.2d 151, 152, 530 P.2d 334 (1975). *Miller* explained the duty to warn and advise of alternatives if "'(1) the risk of injury inherent in the treatment is material; (2) there are feasible alternative courses available; and (3) the plaintiff can be advised of the risks and alternatives without detriment to his well-being.'" *Miller*, 11 Wn. App. at286-87 (quoting *Getchell v. Mansfield*, 260 Ore. 174, 182, 489 P.2d 953 (1971)). RCW 7.70.050 codifies the standard. It requires a healthcare provider inform patients of material facts. RCW 7.70.050.

"'Material facts' include: (a) The nature and character of the treatment proposed and administered; (b) The anticipated

results of the treatment proposed and administered; (c) The recognized possible alternative forms of treatment; or (d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including nontreatment." RCW 7.70.050(3). The two-step analysis includes: "First, the scientific nature of the risk must be ascertained, i.e., the nature of the harm that may result and the probability of its occurrence. . . . Second, the trier of fact must decide whether the probability of that type of harm is a risk which a reasonable patient would consider in deciding on treatment." *Driggs v. Howlett*, 193 Wash.App. 875, 371 P.3d 61 (Wash. App. 2016).

The trial court insisted it could not imagine the law requiring disclosure of "very unlikely" injuries, but the inquiry asks whether a patient "*under similar circumstances* would not have consented to the treatment if informed of such material fact or facts." RCW 7.70.050. The trial court failed to center a patient

with *Belisle's circumstances* (a nurse, singer, and mother who relates to her autistic son through singing) in its decision. Instead, the trial court analyzed it from the doctor's viewpoint; however, Washington requires a patient-centered analyze "rather than from the physician's standpoint." *Driggs v. Howlett*, 193 Wash.App. 875, 371 P.3d 61 (Wash. App. 2016).

Probability is not a reasonable patient's sole consideration. The inconvenience of tonsil stones and repeated tonsil infections versus injured nerves resulting in life-shortening nerve damage weighed differently for Belisle. The question is whether, given Belisle's circumstances, the disclosure was appropriate—not a mere probability of injury. *Gustav v. Seattle Urological Associates*, 90 Wn. App. 785, 790-91, 954 P.2d 319 (1998).

This Court thus has jurisdiction to consider this claim because it involves an issue of substantial public interest about when a doctor has a duty to disclose possible risks for an informed consent claim.

C. Dr. Zundel carries liability for providing the informed consent even when he never intended to do the surgery

Appellate courts have not addressed whether informed consent claims arise when a doctor does not perform the procedure from which the claim arises. Informed consent claims arise when a "physician failed to inform the patient of a material risk of the proposed course of treatment," the "patient consented to the proposed treatment without being aware of or fully informed of the material risks and alternatives," and "a reasonable, prudent patient would not have consented to the treatment when informed of the material risks, and 4) the treatment caused injury to the patient." *Coggle v. Snow*, 784 P.2d 554, 56 Wn.App. 499 (Wash. App. 1990), 562; RCW 7.70.050. RCW 7.70.050's statutory language does not preclude physician liability for recommended courses of action.

In *Judy v. Hanford Environmental Health Foundation*, Division Three of the Court of Appeals stated the medical malpractice statute "extends malpractice liability beyond

traditional physician-patient relationships." 106 Wash. App. 26, 37, 22 P.3d 810 (2001). *Judy* demonstrates there be a direct connection between a physician and an injured person for RCW 7.70.030(1) liability to attach. The nexus ceases to exist where there is "no intent to diagnose, treat or otherwise benefit the patient." *Id*. at 39, 22 P.3d 810.

Requiring liability attach only to those who perform the procedures leads to ridiculous results. For example, physicians could recommend dangerous courses of treatment and sever *their* liability by having a lab administer the shots or infusions. Dr. Zundel examined, advised, and by all appearances intended to perform the surgery himself.

Doctors must remain liable for recommendations when the recommendation directly causes a patient to undergo unnecessary and harmful surgeries. This Court must permit review under RAP 13.4 because this case involves a decision that conflicts with the decisions of this Court and presents an important question of statutory interpretation.

D. A lay witness should be able to testify from their knowledge.

ER 701 permits lay witness testimony "based on firsthand knowledge or observation." *Sentinelc3, Inc. v. Hunt*, 331 P.3d 40, 181 Wash.2d 127 (Wash. 2014), 142. Evidentiary rules remain applicable in medical negligence claims. *Young v. Key Pharmaceuticals, Inc.*, 112 Wash.2d 216, 227-28 (1989). The "line between what is permissible lay opinion" and expert testimony is "understandably difficult at times to draw." *Cavner v. Cont'l Motors, Inc.*, No. 76178-1-I (Wash. App. Mar 18, 2019), 23.

Lay witness testimony does not mean the witness must talk in laymen's terms. *Ruhl v. ProjectCorps*, LLC, No. 72604-8-I (Wash. App. Feb 16, 2016), 12. Lay witnesses can also testify with precision. See *State v. Kinard*, 39 Wn. App. 871, 874, 696 P.2d 603 (1985). The precision goes to the "weight of [witness] testimony, not its admissibility." *State v. Canedy*, No. 35915-8-III (Wash. App. May 09, 2019), 9. Thus, "a lay

witness's practical experience in a given area can provide a basis for his or her opinion testimony." *Cavner v. Cont'l Motors, Inc.*, No. 76178-1-I (Wash. App. Mar 18, 2019).

The trial court prevented Belisle from testifying from her perspective as nurse. VRP 229. The injury was inside of Belisle who could testify with more precision than most. However, when the trial court constrained how she could relay her injuries' specifics to a jury, it limited her testimony about what she experienced firsthand as she self-edited in the language of a hypothetical layman.

Trial courts must not constrain a witness so they are unable to speak to their own experiences. This Court should accept review because this case permits trial courts to impede fact witness testimony to the point where it affects their ability to testify.

E. This Court must not permit local court rules gamesmanship to prevent litigants from substantive justice.

"A trial court has discretion when ruling on a motion to shorten time." *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 236, 88 P.3d 375 (2004). This Court reviews discretionary decisions for abuse of discretion. *Id*.; See, *Graser v. Olsen*, 28 Wn.App. 2d 933, 940, 542 P.3d 1013 (2023).

"[M]odern rules of civil procedure are intended to allow the courts to reach the merits, as opposed to disposition on technical niceties." *Carle v. Earth Stove*, 670 P.2d 1086, 1089 (Wash. App. 1983) (quoting *Fox v. Sackman*, 591 P.2d 855 (Wash. App. 1979)).

CR 56(c) states that a "motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing" with opposing parties having "11 calendar days before the hearing to submit opposition papers." *Zurich Servs. Corp. v. Gene Mace Constr., LLC*, 526 P.3d 46 (Wash. App. 2023), 1.

i. The trial court insisted that previous missed deadlines that resulted in medical bills being discussed before the jury.

A superior court may "enact local rules 'not inconsistent' with the superior court civil rules." *King County v. Williamson*, 66 Wash. App. 10, 12, 830 P.2d 392 (1992) (quoting CR 83(a)). Local rules are inconsistent with the civil rules "when they are 'so antithetical that it is impossible as a matter of law that they can both be effective.'" *Id*. (quoting *Heaney v. Seattle Mun. Ct.*, 35 Wash. App. 150, 155, 665 P.2d 918 (1983)).

Belisle's counsel attempted to admit medical bills as a group before the trial. VRP 259-60. On October 3, 2023, her attorney filed a motion to shorten time, and Dr. Seely opposed the motion. CP 1388-89; 1397-98. On October 9, 2023, the trial court denied Belisle's motion to shorten time, noting the dispositive pretrial motions deadline was October 16, 2023. CP 1415-18. Medical bills were a major trial issue. VRP 3044. On

Denying the motion to shorten resulted in the medical bills resulted in cumulative and distracting testimony. These distractions complicated an already complex trial about nerves, centimeters-worth of errors, and medical terminology.

ii. Trial courts must not permit the consideration of a Motion for Summary Judgment disguised as a Motions in Limine resulting in prejudice.

"Washington has a long, clear tradition of condemning gamesmanship in civil discovery." *Matter of Firestorm 1991*, 916 P.2d 411, 129 Wn.2d 130 (Wash. 1996), 150. Washington courts should view "motions in the[ir] context." *Coggle v. Snow*, 784 P.2d 554, 56 Wn.App. 499 (Wash. App. 1990), 508. Court rule interpretation is reviewed de novo. *Bus. Servs. of Am. II, Inc. v. WaferTech, LLC*, 174 Wash.2d 304, 307, 274 P.3d 1025 (2012).

Defendants filed thirty Motions in Limine on May 30, 2023, for a June 12 trial date that included hundreds of pages of exhibits, transcripts, and declarations. CP 623. Belisle considered this a dispositive motion, as did the court. CP 624.

The trial court granted the Defendants leave to refile as a Motion for Summary Judgment—indicating this was, in fact and effect. Defendants resubmitted as a Motion for Summary Judgment on June 16, 2023. CP 696-98.

Importantly, the Defendants alleged Belisle did not have the necessary experts to show the degree of probability of how or whether Dr. Seely's care caused her injuries. CP 710. In opposition, Dr. Matt Hershcovitch declared Belisle had expert testimony (his and Dr. Kaplan's) to support her informed consent claim. CP 808-09, 812, 825. Defendants insisted the Proliance consent form included acknowledging general risks that authorized Dr. Seely to perform a tonsillectomy and adenoidectomy. CP 829, 837. As to the second surgery in August, the consent form approved Dr. Roger Zundel to perform a micro direct laryngoscopy with biopsy and esophagoscopy. CP 846. The timing and breadth of this dispositive argument intended to ensure Belisle's attorney lacked time and preparation to counter the Motions.

The Supreme Court has noted the aim of the liberal federal discovery rules is to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent" not permit gamesmanship. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958). The Defendants again, on October 17, 2023, refiled their Motions in Limine for a trial date expected to begin on October 30, 2023. CP 1682. Much like their earlier Motions in Limine, this presented all the hallmarks of a Motion for summary judgment.

A trial court may deviate from the "normal time limits" . . . as long as there is ample notice and time to prepare." *Zurich Servs. Corp. v. Gene Mace Constr., LLC*, 526 P.3d 46 (Wash. App. 2023), 59. Plaintiffs were confronted with thirty Motions in Limine meant by the Defendants to have the effects of dispositive motions.

This Court should not permit Defendants' gamesmanship of the scheduling order. This Court should offer relief under RAP 13.4 as this case offers an issue of substantial public interest that must be determined by this Court.

V. CONCLUSION

Because Belisle's case shows where a court's discretion and misinterpretation of law can lead to substantial justice being denied before a jury, this Court should review, reverse, and remand for further proceedings pursuant to RAP 13.4.

DATED: October 7, 2025

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

This document contains 5,971 words, excluding the parts of the document exempted by the word county by RAP 18.17.

CERTIFICATE OF SERVICE

I, the undersigned declare: I am over the age of eighteen years and not a party to the cause; I certify under penalty of perjury under the laws of the United States and of the State of Washington that on October 7, 2025, I caused the following document(s):

AMENDED PETITION OF REVIEW

To be served on the following via e-mail through the Washington State Appellate Courts' Portal, which automatically serves a copy of the uploaded file upon all active case participants with an email address and any additional interested individuals for which an email address is manually entered.

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

Ashley Sandler

Ashley Sandler, Paralegal
Appellate Counsel

APPELLATE COUNSEL

October 07, 2025 - 11:39 AM

Filing Petition for Review

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Appellate Court Case Title:	Stephanie Belisle, App. v. Proliance Surgeons, Inc., P.S., et al., Res. (862421)

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FILED
8/4/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEPHANIE BELISLE-WILLIAMSON,

Appellant,

JOHN ANDREW WILLIAMSON,

Plaintiff,

v.

PROLIANCE SURGEONS, INC, PS; and DANIEL SEELY, MD, and wife and their marital community;

Respondents,

CHARLES PETERSON II and wife and their marital community; DAVID FITZGERALD and wife and their marital community; JEFF STICKNEY and wife and their marital community; THOMAS KNIPE and wife and their marital community; CAROL CORNEJO and husband and their marital community; MICHAEL SAILER and wife and their marital community ; JULIAN ARROYO and wife and their marital community; FRED HUANG and wife, and their marital community; MICHAEL MCADAM and wife and their marital community; CHARLES BIRNBACH and wife and their marital community; SAMUEL LEE and wife and their marital community; LISA BURNS and her husband and their marital community; MARK CAMPBELL and wife and their marital community; ROGER ZUNDEL, MD and wife and their marital community; John and Jane

No. 86242-1-I

DIVISION ONE

UNPUBLISHED OPINION

Does 1- 50 and their marital communities ,

Defendants.

SMITH, J. — In April 2016, Stephanie Belisle underwent an adenotonsillectomy performed by Dr. Daniel Seely. A second procedure followed in August 2016. After some difficulty eating and speaking, a different doctor diagnosed Belisle with nerve damage. She sued Proliance Surgeons, Inc., Dr. Seely, and several others in April 2020. Several parties were dismissed on summary judgment and the case proceeded to trial in November 2023. The jury returned a defense verdict.

Belisle appeals, asserting that the trial court improperly dismissed claims against Dr. Roger Zundel on summary judgment; improperly denied Belisle's motion to shorten time; erred in limiting Belisle's testimony about her medical conditions, erred in allowing late-disclosed expert testimony, and erred in excluding Dr. Seely's Parkinson's disease diagnosis. Belisle also contends that the evidence is insufficient to support the jury verdict. Finding no error, we affirm.

FACTS

Background

In April 2016, Stephanie Belisle sought care from otolaryngologist Dr. Daniel Seely for a recurring tonsil infection. After taking a patient history and performing a physical exam, Dr. Seely determined that she was a candidate for a tonsillectomy with a possible adenoidectomy. Dr. Seely documented discussing the nature of this surgery with Belisle, including its risks, benefits, and

alternatives. Belisle chose to proceed with the surgery.

The day of the surgery, the medical team provided Belisle with a series of documents including an informed consent form. The informed consent form listed nerve injury as a possible risk. Belisle signed the informed consent form and Dr. Seely performed the procedure.

Postoperative Care

Belisle's first postoperative appointment took place with Lori Hill, a certified physician's assistant, about two weeks after the procedure. Belisle described a difficult recovery because she took very little pain medication and was having difficulty swallowing. She did note feeling significantly improved otherwise. Hill informed Belisle that she was slightly behind in recovery because Dr. Seely had to "go deeper" than normal to remove the tissue but that she should continue to improve.

Belisle saw Dr. Seely for her second postoperative visit, expressing greater difficulty swallowing and a feeling of "catching" on the right side of her throat. Dr. Seely performed a flexible fiberoptic laryngoscopy,[1] which was unremarkable. He recommended a barium swallow study and speech pathology evaluation.

Belisle returned to Dr. Seely in June with continuing symptoms. Dr. Seely prescribed antibiotics and scheduled the barium swallow study. He also noted

[1] A flexible fiberoptic laryngoscopy involves passing a small, flexible camera through the nose and into the throat to view the larynx.

that "if [Belisle] remain[ed] severely symptomatic, return to the operating room for direct inspection of the tonsillar fossa may be considered."

In early July, Belisle saw Dr. Seely's colleague, Dr. Roger Zundel, while Dr. Seely was out of town. She described severe difficulty swallowing and reported that she was completely unable to eat solid food. Dr. Zundel's physical exam was normal. Belisle saw Dr. Zundel a second time two weeks later, again reporting persistent gagging. Dr. Zundel expressed that he "d[id] not have a solid explanation" for Belisle's experience. He recommended an esophagoscopy with a biopsy but documented the need to discuss with Dr. Seely.

Second Surgery

Belisle underwent the esophagoscopy with biopsy when Dr. Seely returned in August 2016. Before the procedure, the medical team again provided Belisle with an informed consent form. The form described the planned procedure as a "micro direct laryngoscopy with biopsy, esophagoscopy" to evaluate Belisle's difficulty swallowing. By signing the form, Belisle acknowledged that "during the course of the operation . . . unforeseen conditions may necessitate additional or different procedures than those above set forth" and authorized the performance of such procedures. She also acknowledged that she had been informed of risks and complications, including nerve injury.

The consent form authorized Dr. Zundel, "and/or such associates or assistants, including, if applicable, other physicians who will have an active process in the surgery" to perform the procedure. Dr. Seely performed the procedure and Dr. Zundel was not otherwise involved.

While performing the micro-laryngoscopy and esophagoscopy, Dr. Seely saw a "tiny amount of residual lymphoid tissue" and performed a biopsy to remove it. Belisle's discomfort and difficulty swallowing continued after the second surgery.

Additional Opinions

Following the second surgery, Belisle sought a number of additional opinions to determine the cause of her pain and dysphagia. Over the course of several months and with input from a variety of physicians and speech pathologists, Belisle determined that she suffers from a hypercontractile esophagus. Also known as a "jackhammer" esophagus, the condition makes it extremely difficult to swallow. Belisle believed the condition to be the result of nerve damage from her adenotonsillectomy.

Initial Suit

In April 2020, Belisle sued 16 defendants, including Proliance Surgeons, Inc. (Proliance), Dr. Seely, and Dr. Zundel, for alleged medical malpractice while performing her tonsil surgeries. In addition to general negligence, Belisle asserted that Dr. Seely and Dr. Zundel failed to obtain informed consent for either procedure. Belisle also named nine other defendants, and their spouses and marital communities, who had never been involved in Belisle's care.

Belisle deposed Dr. Seely shortly after initiating the lawsuit. When asked when he retired, Dr. Seely informed Belisle that he "went out on medical leave" in May 2018. Belisle did not ask any further questions about that medical leave during the deposition or any time thereafter.

Dr. Seely also repeatedly defended his medical care, testifying that he performed each procedure correctly and did not cut deeply enough to cause nerve injury as claimed. Dr. Seely cited his own experience performing the surgery, as well as the pathology report confirming that he removed only tonsillar tissue with no additional muscle or nerve tissue, in support of his testimony. Belisle did not ask Dr. Seely about his informed consent procedures or pre-surgery discussions. Belisle did not depose Dr. Zundel.

Motions for Summary Judgment

Proliance first moved for summary judgment dismissal in December 2020. Bringing three claims, Proliance asserted that Belisle failed to produce the necessary expert testimony to sustain a medical malpractice claim, that Belisle's husband's derivative loss of marital consortium claim failed as a result, and that Belisle did not allege facts that could give rise to any action against the nine listed defendants who were not involved in her care.

Proliance voluntarily withdrew the expert testimony claim in January but continued forward with the other two claims. The trial court denied the motion as to the loss of marital consortium but granted summary judgment dismissing the individual claims against the nine other doctors at Proliance, their spouses, and marital communities.

After setting a trial date and working out the details of in-person versus Zoom attendance, Proliance moved for summary judgment a second time in June 2023. Proliance contended that Belisle lacked sufficient evidence to

establish a prima facie case for medical negligence, loss of consortium, or failure to secure informed consent.

Opposing summary judgment, Belisle produced declarations from Dr. Michael Kaplan and Dr. Matt Hershcovitch, both otolaryngologists, criticizing Dr. Seely and Dr. Zundel's informed consent process. At argument on the issue, the court acknowledged that it was difficult to piece together Belisle's evidence against Dr. Zundel but denied the entirety of the motion for summary judgment.

Dr. Zundel moved for reconsideration on the issue of informed consent because, as he did not perform the procedure at issue, he believed he had no legal duty to obtain informed consent. Belisle responded that because Dr. Zundel was "in the same practice" as Dr. Seely, handled the informed consent forms, and appeared on the consent forms, Dr. Zundel was liable for any injuries associated with the second procedure. The trial court disagreed and granted Dr. Zundel's motion for reconsideration, dismissing the informed consent claims against him.

In September 2023, Belisle moved for summary judgment. Belisle argued that no genuine issue of material fact existed as to the reasonableness and necessity of her medical bills. But she included no legal authority, analysis, or argument as to why she was entitled to a dispositive ruling on the issue. Five days later, Belisle moved to shorten time on her motion for summary judgment, acknowledging that the motion when filed fell outside the court's case schedule order deadline for dispositive motions. She argued that, as the medical bills were uncontested, shortening time was appropriate. Dr. Seely opposed Belisle's

motion to shorten time, clarifying that he did in fact contest medical causation and that causation is central to the reasonableness of medical care and necessity of any resulting medical bills.

The trial court denied Belisle's motion to shorten time, finding that she provided no legal authority, argument, or explanation as to why she could not have filed the summary judgment motion within the deadline. The trial court did not rule on her motion for summary judgment, leaving the question of whether the medical bills would be admitted to be determined at trial.

Other Pre-Trial Motions

In the days leading up to trial, the court heard argument on the remaining pre-trial motions that had not been addressed by either motion for summary judgment.

Informing the court that Dr. Seely had been diagnosed with Parkinson's disease in 2018, Proliance requested accommodations for medicine and rest breaks. Proliance also requested that the court instruct the jury about his condition so that they would not speculate about Dr. Seely's visible tremor. Belisle initially agreed with Proliance's request. After a recess, however, Belisle stated that "[plaintiff's counsel] just found out about [the diagnosis]" and claimed that Dr. Seely's disease must have existed at the time of Belisle's procedure. Instead of having the court simply inform the jury of Dr. Seely's diagnosis, Belisle indicated that she intended to argue it resulted in her injury. Belisle acknowledged that she did not have an expert to testify about the progression of Parkinson's disease or any evidence that Dr. Seely's eventual diagnosis

impacted either surgery. Given that lack of evidence, and the risk of leading the jury to speculate, the court excluded any testimony or argument that Dr. Seely's diagnosis was implicated in the alleged malpractice.

Proliance also moved in limine asking the trial court to preclude Belisle from testifying about her mental and emotional pain and suffering. The trial court denied the motion but reserved ruling on a similar motion in limine to exclude non-physician testimony on medical facts, standards of care, or causation. The court determined that Belisle, a former trauma nurse, may have been able to testify to some medical facts, and therefore, defense counsel needed to object at the time of questioning.

The trial court then addressed Belisle's request to admit the medical bills at issue as a group, requiring Belisle to submit each bill as an individual exhibit.

Trial

The case proceeded to trial in November 2023. Belisle testified over the course of multiple days about her medical history, diagnoses and treatment options, and remaining symptoms. The court only limited Belisle's medical testimony on hearsay or foundational objections.

Dr. Seely testified in defense of his medical care and informed consent process. He unequivocally denied cutting deep enough to injure Belisle's nerves and stated that he complied with the standard of care. Both parties presented testimony from multiple experts.

Belisle's otolaryngologist experts testified that they believed Dr. Seely cut too deep and injured Belisle's vagus nerve. Neither described how the nerve

injury could have occurred, nor did they assert Dr. Seely breached the standard of care during the second procedure.

Dr. Seely's otolaryngologist expert, Dr. Dinesh Chhetry, testified that Dr. Seely did not breach the standard of care for either procedure. He specifically explained that to injure the vagus nerve, Dr. Seely would have had to cut through muscle and fat beyond the tonsillar tissue, of which no evidence exists.

Over the course of the trial, plaintiff's counsel consistently arrived late and budgeted time poorly. The court repeatedly admonished counsel and articulated that time management, not the unwieldiness of the medical bill exhibits, caused the drawn-out proceedings.

Following extensive testimony from both parties, the jury determined in an 11 to 1 verdict that Dr. Seely had not been negligent in either procedure and did not fail to obtain informed consent. Belisle appeals.

ANALYSIS

Summary Judgment

Belisle asserts that the trial court erred in granting summary judgment dismissing her informed consent claim against Dr. Zundel. She also asserts that the trial court erred in denying her motion for summary judgment concerning the admission of medical bills as reasonable and necessary. To the former, Proliance contends that summary judgment is appropriate because Dr. Zundel had no legal duty to obtain informed consent for a procedure he did not perform. To the latter, Proliance maintains that the trial court appropriately denied Belisle's

motion to shorten time and did not rule on her motion for summary judgment. We conclude the trial court did not err.

We review a summary judgment order de novo, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party. *Watkins v. ESA Mgmt., LLC*, 30 Wn. App. 2d 916, 923, 547 P.3d 271 (2024). Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Watkins*, 30 Wn. App.2d at 923.

We review a ruling on a motion to shorten time for a manifest abuse of discretion. *Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 295, 381 P.3d 95 (2016). A trial court manifestly abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *State v. Bellerouche*, 33 Wn. App. 877, 889-90, 565 P.3d 604 (2025).

1. Informed Consent

Belisle states that the trial court erred in granting summary judgment dismissal of the informed consent claim against Dr. Zundel because a genuine issue of material fact exists as to whether she gave informed consent to a second tonsillectomy by Dr. Seely. Because Belisle conflates the dismissal of the informed consent claim against Dr. Zundel with the ultimate jury determination in favor of Dr. Seely, and Dr. Zundel had no legal responsibility for damages because of a lack of informed consent for a procedure he did not perform, we disagree.

Under the doctrine of informed consent, a health care provider has a duty to disclose relevant facts about the patient's condition and the proposed course of treatment to allow the patient to make an informed health care decision. *Davies v. MultiCare Health Sys.*, 199 Wn.2d 608, 616, 510 P.3d 346 (2022). The doctrine rests on the presumption that patients have a right to make decisions about their medical treatment. *Backlund v. Univ. of Wash.*, 137 Wn.2d 651, 663, 975 P.2d 950 (1999). A patient may recover for a physician's failure to provide informed consent even if the diagnosis or treatment were not negligent. *Backlund*, 137 Wn.2d at 663.

To prove a breach of the duty to secure informed consent, a plaintiff must establish that: (1) the health care provider failed to inform the patient of a material fact relating to the treatment; (2) the patient consented to treatment without being aware of or fully informed of such material fact; (3) a reasonably prudent person under similar circumstances would not have consented to the treatment if provided with that material fact; and (4) the treatment in question proximately caused injury. RCW 7.70.050.

But health care providers do not carry equal informed consent obligations. *See Alexander v. Gonser*, 42 Wn. App. 234, 238, 711 P.2d 347 (1985) (not every entity and individual that falls within the definition of "health care provider" has equal informed consent obligations). "To provide for equal informed consent obligations as to every person and entity falling within the definition [of 'health care provider'] would not be justified." *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 55, 785 P.2d 815 (1990). And RCW 7.70.050 limits

informed consent claims to treatment situations. *Gomez v. Sauerwein*, 180 Wn.2d 610, 617, 331 P.3d 19 (2014).

Belisle claims that the trial court erred in granting summary judgment because the consent form did not mention Dr. Seely and purported to provide Dr. Zundel consent to perform only a laryngoscopy (with possible biopsy) and esophagoscopy. This conflates a number of different issues.

To begin, the trial court granted summary judgment dismissing only the informed consent claim against Dr. Zundel following a motion for reconsideration. On appeal, Belisle does not argue that Dr. Zundel failed to obtain informed consent to perform the procedure. Rather, she seems to assert that Dr. Zundel failed to obtain informed consent for Dr. Seely to perform the procedure actually performed. But no Washington case law or statutory authority provides that a physician who did not perform or otherwise control a procedure is liable for a lack of informed consent for a procedure performed by another physician. And the trial court specifically denied summary judgment on the informed consent claim against Dr. Seely.

Additionally, in addressing the RCW 7.70.050 factors required to prove a lack of informed consent, Belisle fails to reference Dr. Zundel at all. Belisle states that she consented to the procedure without being fully aware of or informed of the difference between having a scope through one's larynx and esophagus and having a piece of tissue removed, especially by a physician she already suspected of "botching" the initial procedure. She then maintains that any reasonable person would not have consented given the full information and

that Dr. Seely further injured her throat in the process. She makes no assertions as to Dr. Zundel's role in the process.

Because Belisle conflates the dismissed informed consent claim against Dr. Zundel with the maintained claim against Dr. Seely, Dr. Zundel is not liable for damages for failure to obtain informed consent on a procedure performed by Dr. Seely, and Belisle fails to establish that Dr. Zundel failed to obtain informed consent, summary judgment was proper.

2. Medical Bills

Belisle next claims that the trial court's denial of summary judgment concerning her medical bills was prejudicial error. Because the trial court properly denied Belisle's motion to shorten time and did not rule on her motion for summary judgment, Belisle is incorrect.

"A trial court has discretion when ruling on a motion to shorten time." *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 236, 88 P.3d 375 (2004). A trial court also has discretion to "achieve the orderly and expeditious disposition of cases." *Peluso v. Barton Auto Dealerships, Inc.*, 138 Wn. App. 65, 71, 155 P.3d 978 (2007). Under Civil Rule (CR) 56(c), a motion for summary judgment "shall be filed and served not later than 28 calendar days before the hearing."

Here, the court initially set trial for October 30, 2023. The scheduling order required all dispositive motions decided by October 16, 2023, two weeks before trial. Belisle filed her motion for summary judgment on September 28, 2023. Because a motion for summary judgment shall be filed no later than 28

days before the hearing, the hearing on Belisle's motion for summary judgment would have taken place on October 27, 2023. Recognizing that this placed her outside the deadline for dispositive motions, Belisle moved to shorten time. She failed to provide any legal authority and her only argument was that "there really is no genuine issue as to whether these medical records and bills show reasonable and necessary treatments and billings." She did not offer any explanation as to why she filed the motion for summary judgment late.

On appeal, Belisle asserts that the trial court erred in denying the motion to shorten time based on rigid application of technical legal rules rather than the merits of the motion. She then contends that the denial of the motion for summary judgment prejudiced Belisle because it forced plaintiff's counsel to wade through each medical bill individually at trial.

To the former, Belisle did not provide any explanation as to why her motion was filed so late nor any authority as to why she was entitled to a dispositive ruling on the issue. Her only argument was that "[n]o one here in anyway [sic] disputes that the medical treatment and billing is reasonable." But as Proliance and Dr. Seely articulated, they did clearly contest medical causation and that causation is central to the reasonableness of medical care and necessity of any resulting medical bills. Given the clear deadlines, the lack of legal authority, and the lack of explanation as to why the motion was filed beyond the deadline in the case scheduling order, we conclude that the trial court did not manifestly abuse its discretion in denying Belisle's motion to shorten time.

To the latter, we conclude that Belisle misrepresents the trial court's order and fails to establish resulting prejudice because the trial court specifically stated, outside the presence of the jury, that any delay resulted from the plaintiff's poor time management.

Again, Belisle asserts that the trial court erred in denying her motion for summary judgment. But the trial court did not rule on her motion for summary judgment. And Belisle fails to establish that any of the supposed prejudice actually resulted from the denial of the motion to shorten time.

The record confirms that plaintiff's counsel repeatedly arrived to court late, asked repetitive questions that unnecessarily extended testimony, and failed to adequately allocate time for more relevant evidence. In fact, when plaintiff's counsel approached double the amount of time he had estimated for more than one witness, the court stated:

> I have seen — so far all the extra time — you keep pointing to the medical bills as reason you need more time. But everything I've observed are delays coming from other reasons. . . .
>
> I'm just warning you, you need to be efficient with presenting your case. And, frankly, what I'm observing is not efficient.

Belisle suggests that the trial court's refusal to grant her summary judgment motion forced her to march through the bills one by one, causing the inefficiency. This inefficiency then frustrated the court, leading to admonishment Belisle contends constituted an expression of bias in front of the jury. But as noted, the record shows that while the delays may have centered on the medical bills, they resulted from plaintiff's counsel's actions. Plaintiff's counsel could have moved through the individual exhibits in a smoother and more efficient manner.

Additionally, any admonishment from the court often took place outside of the presence of the jury. As a result, the jury would not have been impacted by any alleged expression of bias.

Because the court did not manifestly abuse its discretion in denying Belisle's motion to shorten time and the denial did not prejudice her case, the trial court did not err.

Evidentiary Rulings

Belisle contends that the trial court erred in limiting Belisle's medical testimony, allowing Proliance's late-disclosed expert to testify, and precluding argument about Dr. Seely's Parkinson's disease diagnosis. Proliance disagrees, noting that the record does not display any such limitation, Proliance's expert did not testify at trial, and Belisle failed to establish the diagnosis's relevance. We agree with Proliance.

We review evidentiary rulings for an abuse of discretion. *Bengtsson v. Sunnyworld Int'l, Inc.*, 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020). A trial court abuses its discretion if its ruling is manifestly unreasonable or based on untenable grounds or reasons. *Bengtsson*, 14 Wn. App. 2d at 99. But an evidentiary error is only grounds for reversal if it results in prejudice. *Bengtsson*, 14 Wn. App. 2d at 99. " 'An error is prejudicial if 'within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.' " *Bengtsson*, 14 Wn. App. 2d at 99 (internal quotation marks omitted) (quoting *City of Seattle v. Pearson*, 192 Wn. App. 802, 817, 369 P.3d 194 (2016)).

1. Medical Testimony

Belisle states that the trial court erred by granting a motion in limine that "effectively muzzled" her; limiting her ability to testify to her own medical conditions and diagnoses in the language she would normally use as a trained and experienced nurse. Because the record does not display any such limitation and Belisle fails to provide legal authority to support her argument, the court did not err.

Generally, an appellate brief must include "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6).

Belisle claims that the trial court granted Proliance's motion in limine, improperly precluding Belisle from testifying about medical issues in the language she would normally use as a trained emergency nurse. But the portion of the record that Belisle cites in support of her claim addresses a Proliance motion attempting to preclude expert witnesses from testifying specifically to causation. Belisle is not an expert witness and the trial court denied Proliance's motion.

Proliance did move to preclude Belisle from testifying about her mental and emotional pain and suffering later in the record but the trial court again denied that motion. And the trial court reserved ruling on a motion to exclude non-physician testimony on medical facts, standards of care, and causation, specifically noting, "presumably some people can testify to what we might call medical facts, for example, . . . [Belisle is] not a physician — well, she is a nurse."

The record does not support Belisle's assertion that the trial court granted any particular motion in limine.

In addition to misrepresenting the record, Belisle presents no legal authority to support her argument that the trial court acted improperly. Instead, Belisle makes the broad statement that "it simply cannot be an accurate statement of the law that a plaintiff with twenty years' experience as an ER nurse cannot bring that experience to bear on her own understanding of the diagnoses and treatments she received." She provides no case law or statutory authority to explain why that simply cannot be the case. She then continues on to request that this court draw "a clearer line than currently exists in Washington law."

Because Belisle provides no citations to legal authority nor references to relevant parts of the record, we conclude the trial court did not improperly limit Belisle's testimony.

2. Expert Testimony

Belisle next asserts that the trial court erred in allowing Dr. Michael Rubenstein, a late-disclosed Proliance expert witness to testify. Because the trial court acted appropriately in refusing to exclude Dr. Rubenstein under *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997), and Dr. Rubenstein did not actually testify at trial, we conclude that the trial court did not abuse its discretion and no prejudice occurred.

Before determining that exclusion of a witness is an appropriate sanction for late-disclosure, a trial court must explicitly consider whether the late-disclosure was willful or deliberate, whether it substantially prejudiced the

opposing party's attempts to prepare for trial, and whether lesser sanctions would suffice. *Burnet*, 131 Wn.2d at 1040-41.

We review a trial court's application of the *Burnet* factors for an abuse of discretion. *Scott v. Grader*, 105 Wn. App. 136, 152, 18 P.3d 1150 (2001). But an error, including an abuse of discretion, is harmless if it is " 'trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.' " *Veit v. Burlington N. Santa Fe Corp*, 171 Wn.2d 88, 99, 249 P.3d 607 (2011) (internal quotation marks omitted) (quoting *Mackay v. Acorn Custom Cabinetry, Inc.*, 127 Wn.2d 302, 311, 898 P.2d 284 (1995)).

Here, Proliance disclosed Dr. Rubenstein as a new expert after the April 2023 discovery cutoff but six weeks before trial. Proliance asserted that good cause existed to allow Dr. Rubenstein to testify because he would rebut new declarations Belisle submitted in response to an August 2023 summary judgment motion. Proliance further contended that the late disclosure was neither willful nor prejudicial given Belisle's new declarations.

In response to Proliance's motion, Belisle did not discuss any of the *Burnet* factors. Rather, Belisle stated only, "[m]y neurosurgeon says that if this is allowed that I must also get a neurologist to support him and not be 2 of the defendants' experts versus just him."

The trial court then marched through the *Burnet* factors, noting that Belisle did not dispute Proliance's assertion that the proposed witness served to respond to new opinions set forth in her own expert declarations, that Belisle failed to

articulate why she would need a new expert if Dr. Rubenstein was not excluded, and that any prejudice could be easily mitigated. Although the trial court did not explicitly address whether lesser sanctions would suffice, Belisle presented no argument as to why only exclusion was appropriate and the court clearly articulated that each *Burnet* factor failed to justify excluding Dr. Rubenstein as a witness.

Additionally, Proliance did not call Dr. Rubenstein to testify at trial. As a result, the trial court's refusal to exclude Dr. Rubenstein as a potential witness in no way affected the final outcome of the case. Therefore, any error would be harmless.

We conclude that the trial court did not abuse its discretion in refusing to exclude Dr. Rubenstein from the witness list and no resulting prejudice occurred.

3. Parkinson's Diagnosis

Belisle then contends that the trial court erred in excluding argument about Dr. Seely's Parkinson's disease diagnosis because the diagnosis could have been the causal link to establish Dr. Seely's negligence. Because Belisle failed to present any evidence to support this claim, the trial court did not abuse its discretion in excluding argument linking the diagnosis to negligence on Dr. Seely's part.

Evidence must be relevant to be admissible. ER 402. Evidence is relevant if it has any tendency to make the existence of any fact of consequence more or less probable. ER 401.

Belisle asserts that Dr. Seely's Parkinson's disease likely impacted his ability to perform surgery at the time of her operation and that his later diagnosis is clearly relevant evidence. She fails, however, to provide any evidence at all that Dr. Seely was impacted by the disease at the time of her surgery. Before the trial court, Belisle stated only, "Wikipedia, everybody is saying [Parkinson's displays early signs]." She did not provide any expert testimony, nor did she explain who "everybody" is. And when asked specifically by the court for any admissible evidence that Dr. Seely may have suffered Parkinson's symptoms at the time of surgery, Belisle conceded, "no, I don't have any evidence, Your Honor."

Belisle next suggests that this lack of evidence is immaterial because Proliance sprung the diagnosis on opposing counsel at trial and Belisle did not have time to find an expert witness. But, in April 2023, Belisle deposed Dr. Seely for three hours and had ample opportunity to discover Dr. Seely's diagnosis. In fact, Dr. Seely disclosed in that deposition that he left the practice on medical leave in May 2018. Belisle did not ask any further questions about that medical leave. Neither Dr. Seely nor defense counsel hid the diagnosis from Belisle at any point.[2]

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[2] At oral argument, Belisle's attorney contended that the exclusion of Dr. Seely's Parkinson's disease diagnosis implicated a discovery issue because Proliance denied Belisle's attempts to uncover Dr. Seely's diagnosis. The record does not reflect any such denial. No indication exists that Dr. Seely failed to respond to any discovery requests concerning his health. To the contrary, Belisle's trial attorney noted that they were unaware of any diagnosis until Proliance raised the issue as a motion *in limine*. And even had Belisle been able to prove discovery interference, she admitted to a complete lack of evidence connecting Dr. Seely's diagnosis with the alleged injury. Furthermore, Belisle did

Here, Belisle failed to provide any admissible evidence indicating that Dr. Seely's Parkinson's disease impacted her surgery. As a result, the trial court did not abuse its discretion in precluding argument based on the diagnosis.

Sufficiency of Evidence

Belisle claims that the evidence at trial was insufficient to support the jury's determination that Dr. Seely was not negligent. Proliance first contends that Belisle failed to preserve the issue for appeal. Proliance then asserts that substantial evidence supported the verdict and Belisle improperly asks this court to reweigh evidence.

Generally, a party may not raise an issue for the first time on appeal. RAP 2.5(a). A party may only raise an issue for the first time if it addresses lack of jurisdiction, failure to establish facts upon which relief can be granted, or manifest constitutional error. RAP 2.5(a). When a party does not present a claim of insufficiency of the evidence to the trial court, it is not subject to review on appeal. *Fowlkes v. International Broth. of Elec. Workers, Local No. 76*, 58 Wn. App. 759, 772-73, 759 P.2d 137 (1990).

Belisle did not raise the issue of insufficient evidence before the jury verdict nor did she move for a new trial or reconsideration after the verdict. We conclude that Belisle failed to raise the issue below and none of the RAP 2.5(a) exclusions apply.

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not move for a continuance to conduct additional discovery or obtain more evidence.

University of Washington Involvement

Lastly, Belisle assigns error on the basis that newly discovered evidence would have been material to the outcome of the trial. Because Belisle did not raise this issue below, we decline to reach it.

Again, a party generally may not raise an issue for the first time on appeal. RAP 2.5(a). If newly discovered evidence arises after the close of trial, CR 59(a)(4) allows a party to move for a new trial provided that evidence would not have been discovered and produced at trial. CR 60(b)(3) then allows relief from judgment if newly discovered evidence could not have been discovered in time to move for a new trial.

On appeal, a party must include legal authority and references to the record in support of the issues presented for review. RAP 10.3(a)(6).

Here, Belisle asserts that newly discovered evidence that the University of Washington manipulates patient care to protect physicians from malpractice suits would have impacted the jury's verdict. She failed to raise this issue during trial, or to move for a new trial or relief from judgment as a result of that newly discovered evidence. We conclude that Belisle failed to raise the issue below and decline to reach the issue.

We affirm.

WE CONCUR: