No. 25-

IN THE

Supreme Court of the United States

ABOLFAZL HOSSEINZADEH,

Petitioner,

v.

SWEDISH HEALTH SERVICES, GURJEET SIDHU, DR. JAKE CHOINIERE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SUPREME COURT OF WASHINGTON

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state court's application of summary judgment standards, by excluding qualified expert affidavits through credibility assessments rather than admissibility determinations, violates the Fourteenth Amendment's Due Process Clause by denying a fair trial, in conflict with federal appellate decisions, such as *City of Pomona v. SQM North America Corp.*, 750 F.3d 1036 (9th Cir. 2014), and Supreme Court precedent, such as *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

2. Whether a state court's failure to provide clear notice to a pro se litigant of summary judgment affidavit requirements, including the need to oppose all facts including the standard of care, violates the Fourteenth Amendment's Due Process Clause in light of divergent circuit approaches mandating notice for all pro se litigants (*Vital v. Interfaith Medical Center*, 168 F.3d 615 (2d Cir. 1999); *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975); *Timms v. Frank*, 953 F.2d 281 (7th Cir. 1992); *Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991); *United States v. One Colt Python .357 Cal. Revolver*, 845 F.2d 287 (11th Cir. 1988)), denying mandatory notice for non-prisoners (*Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1986); *Brock v. Hendershott*, 840 F.2d 339 (6th Cir. 1988)), or applying discretionary standards (*Renchenski v. Williams*, 622 F.3d 315 (3d Cir. 2010); *Murrell v. Bennett*, 615 F.2d 306 (5th Cir. 1980); *Neal v. Kelly*, 963 F.2d 453 (D.C. Cir. 1992)), necessitating uniform due process standards..

LIST OF PARTIES

- **Petitioner**: Abolfazl Hosseinzadeh
- **Respondents**: Swedish Health Services, Gurjeet Sidhu, Dr. Jake Choiniere

CORPORATE DISCLOSURE STATEMENT

No parties are corporations requiring a disclosure statement under Rule 29.6.

RELATED PROCEEDINGS

Washington Superior Court: *Hosseinzadeh v. Swedish Health Services, et al.*, No. 22-2-11923-3 SEA, summary judgment entered April 19, 2023.

Washington Court of Appeals, Division I: *Hosseinzadeh v. Swedish Health Services, et al.*, No. 854747, unpublished opinion entered November 25, 2024.

Washington Supreme Court: *Hosseinzadeh v. Swedish Health Services, et al.*, No. 1039328, Petition for Review filed March 5, 2025, denied July 1, 2025.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Page

Page

Constitutional Provisions

Rules

Statutes

Other Authorities

OPINIONS BELOW

Washington Superior Court: *Hosseinzadeh v. Swedish Health Services, et al.*, No. 22-2-11923-3 SEA, summary judgment entered April 19, 2023.

Washington Court of Appeals, Division I: *Hosseinzadeh v. Swedish Health Services, et al.*, No. 854747, unpublished opinion entered November 25, 2024.

Washington Supreme Court: *Hosseinzadeh v. Swedish Health Services, et al.*, No. 1039328, Petition for Review filed March 5, 2025, denied July 1, 2025.

The unpublished opinion of the Washington Court of Appeals, Division I, is available at [Pet. App. 3a].

JURISDICTION

The judgment of the Washington Court of Appeals was entered on November 25, 2024. The Washington Supreme Court denied review on July 1, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a): "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution."

The petition is timely filed as of August 4, 2025, within the 90-day period following the denial of review. Although the federal questions were not explicitly raised below, they are presented as novel due process issues under the Fourteenth Amendment, necessitating review to ensure fundamental fairness, consistent with Article III, Section 2, Clause 2.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment XIV, Section 1: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . "

STATEMENT OF THE CASE

Petitioner Abolfazl Hosseinzadeh, proceeding pro se, filed a lawsuit in Washington Superior Court on July 28, 2022, against Respondents Swedish Health Services, Gurjeet Sidhu, and Dr. Jake Choiniere (collectively, "Providers"), alleging medical malpractice, negligence, fraud, defamation, false light, invasion of privacy, unlicensed practice, and violations of the Washington Consumer Protection Act. The claims arose from mental health treatment provided by Respondents, which Hosseinzadeh alleges was negligent, involved misrepresentations about Sidhu's qualifications, and caused him stress, anxiety, and harm stemming from perceived racism and defamation. The state courts' failure to provide Hosseinzadeh, as a pro se litigant without legal education or training, with clear notice of the specific requirements for responding to a summary judgment motion, including the need to adequately address all points to avoid dismissal, violated his due process rights under the Fourteenth Amendment, warranting this Court's review.

Hosseinzadeh sought mental health treatment from Swedish Health Services, which referred him to Gurjeet Sidhu, listed in Swedish's provider directory as a psychologist. Contrary to this representation, Sidhu was not a licensed psychologist or psychiatrist and was not authorized to diagnose mental health disorders or prescribe medications.

During multiple sessions, Sidhu diagnosed Hosseinzadeh inconsistently with anxiety, depression, stress, and, in one session, a delusional disorder, recommending medications despite lacking the authority to do so. Swedish admitted in a deposition that Sidhu was introduced to patients as a psychologist, despite knowing she was not licensed as such. Sidhu testified that she failed the required psychologist licensing exam multiple times, citing personal mental health issues, and provided inconsistent accounts of her educational timeline.

These misrepresentations contributed to Hosseinzadeh's allegations of fraud and Consumer Protection Act violations, causing him loss of enjoyment of life and professional opportunities, supporting his claim that the state courts' dismissal without proper notice prevented a fair opportunity to present these issues.

Hosseinzadeh was later referred to Dr. Jake Choiniere, a licensed psychiatrist, who met with him once for approximately 50 to 60 minutes. Dr. Choiniere diagnosed Hosseinzadeh with unspecified depression and unspecified anxiety but declined to diagnose him with bipolar disorder or a delusional disorder, despite noting possible psychotic features and prescribing medications. Dr. Choiniere's records indicated no significant prior mental health history for Hosseinzadeh.

The conflicting diagnoses from Sidhu and Dr. Choiniere regarding a delusional disorder—a serious condition requiring intensive treatment—raise a genuine issue of material fact as to whether at least one Provider committed medical malpractice by misdiagnosing or failing to diagnose Hosseinzadeh, supporting his argument that

the state courts' dismissal, without notice of the need to fully address all points in the summary judgment motion, violated due process.

In a related lawsuit involving Hosseinzadeh's Homeowner's Association, Sidhu testified that Hosseinzadeh had previously been admitted to a mental health facility and taken antipsychotic medications, a claim contradicted by Dr. Choiniere's records. Hosseinzadeh alleges these misrepresentations constituted defamation and false light, exacerbating his stress and anxiety, which he attributes in part to perceived racism in the treatment process. The state courts' dismissal of these claims without providing notice of the procedural requirements for responding to summary judgment further supports his due process argument.

Respondents Swedish Health Services and Dr. Choiniere accessed Petitioner's medical records without authorization, then produced and provided those medical records to Sidhu's counsel without Hossennzadeh's consent, in violation of state law and discovery procedure. Hosseinzadeh, acting pro se, informed the court of this in his sanctions motion. However, the trial court failed to address this discovery violation, along with other actions. As a result, Petitioner was hindered in his ability to gather supporting evidence to his claim. The lack of notice regarding procedural requirements, coupled with these violations, denied him due process in opposing summary judgment.

Hosseinzadeh filed a Motion and Declaration for Issuance of Subpoena Duces Tecum to obtain evidence from a non-party, but the trial court never ruled on this

motion, further impeding his ability to present his case. This procedural barrier for a pro se litigant, without notice of the need to fully respond to all points in the summary judgment motion, reinforces his due process claim. Respondents filed a joint Motion for Summary Judgment on March 8, 2023, despite discovery remaining open until September 18, 2023.

In response to the Motion for Summary Judgment, Hosseinzadeh submitted twelve declarations, including those from expert psychiatrists Drs. Perez, Acosta, and Pinales, to support his medical malpractice claims, as well as declarations from reputable community members, such as school principals and businesspeople, supporting his broader claims. The expert declarations outlined consideration of a patient's symptoms, their intensity and duration, etiology, cultural background, education, professional background, family structure, medical history, and functional impact.

They stated that Sidhu failed to consider Hosseinzadeh's etiology, background, culture, and medical history in her treatment plan and by diagnosing him with a delusional disorder based on poor clinical judgment, cultural bias, lack of understanding of his scientific work in medicine and cryonics, and fabricated accounts of his background. The declarations also specified that diagnosing a delusional disorder requires reviewing the patient's chart, understanding their culture and background, ruling out other diagnoses, and performing a comprehensive psychiatric evaluation, which Sidhu did not do. Respondents provided no declarations in support of their position beyond their own statements.

As a pro se litigant, Hosseinzadeh was not provided clear notice that his response needed to specifically address all points raised in the Respondents' motion, including the precise articulation of the standard of care and its breach, or that failure to do so would result in dismissal of his claims. This lack of notice denied him a fair opportunity to respond effectively, supporting his due process claim.

Hosseinzadeh filed a Motion for Sanctions based on the discovery violations. This, like his motion to issue subpoenas, was ignored by the court depriving him of due process. On April 19, 2023, the trial court granted Respondents' Motion for Summary Judgment, dismissing all claims with prejudice, stating in a handwritten note that the expert declarations from Drs. Pinales and Perez failed to provide the required standard of care testimony, despite reviewing all thirteen of Hosseinzadeh's declarations.

The trial court's dismissal without prior notice to Hosseinzadeh of the specific affidavit requirements and the consequences of inadequately addressing all points in the motion violated his due process rights. Hosseinzadeh filed a Motion for Reconsideration of the dismissal order and a Motion for Reconsideration of the Motion for Sanctions, both of which were denied, further illustrating the procedural unfairness due to lack of notice.

Hosseinzadeh appealed to the Washington Court of Appeals, Division I, which issued an unpublished opinion on November 25, 2024, affirming the trial court's dismissal. The court found that the declarations from Drs. Perez, Acosta, and Pinales did not adequately identify a specific standard of care or explain how the Providers'

actions constituted a breach. For the fraud claim, the court found that Hosseinzadeh provided no evidence of reliance or detriment, deeming his arguments conclusory. For the Consumer Protection Act claim, the court held that Sidhu's qualifications were not openly misrepresented and declined to consider evidence alleging Sidhu was listed as a PsyD on the HealthPoint website, overlooking that this evidence was provided to the trial court.

The court also found Hosseinzadeh's allegations of injury—loss of enjoyment of life and professional opportunities—insufficient, despite precedent supporting such injuries. The unlicensed practice, defamation, false light, and invasion of privacy claims were dismissed as conclusory, overlooking evidence of Sidhu's false statements under oath about Hosseinzadeh's mental health history. The Court of Appeals did not address Hosseinzadeh's Motion for Sanctions, despite his request for review.

The state courts' failure to provide Hosseinzadeh with clear notice of the need to fully address all points in the summary judgment motion, coupled with their dismissal of his claims and failure to address discovery violations, denied him a fair opportunity to present his case, violating due process under the Fourteenth Amendment.

REASONS FOR GRANTING THE WRIT

Petitioner requests certiorari to address compelling federal questions under the Fourteenth Amendment's Due Process Clause, which guarantees a fair opportunity to present one's case: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . "

The Washington courts' exclusion of expert testimony through credibility assessments and failure to provide clear notice of affidavit requirements raise constitutional concerns, conflict with federal precedent, highlight a functional circuit split across all twelve regional circuits, and necessitate this Court's review to ensure uniform standards and protect access to justice.

1. Exclusion of Expert Testimony and Due Process

The Washington courts' application of summary judgment standards, by excluding Hosseinzadeh's qualified expert affirmations through what may have been improper credibility assessments rather than admissibility determinations under ER 702, violated due process by denying a fair trial. This issue implicates core constitutional principles, conflicts with federal precedent, represents a significant departure from judicial norms, and raises a question of national importance, warranting certiorari under Rule 10(a) and (c).

a. Due Process and the Right to a Fair Trial

The Fourteenth Amendment guarantees a meaningful opportunity to be heard, particularly at the summary judgment stage, where dismissal extinguishes claims without a trial. In *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), this Court outlined a three-factor test for due process violations: the private interest affected, the risk of erroneous deprivation through the procedures used, and the government's interest in avoiding additional safeguards.

Petitioner's interest is profound, stemming from alleged medical malpractice by Respondents Swedish

Health Services, Gurjeet Sidhu, and Dr. Jake Choiniere, which impacted his health, finances, and dignity. The harm—exacerbated stress, anxiety, and loss of professional opportunities—extends beyond immediate damage, disrupting his ability to work and function in society. This significant interest underscores the need for a fair opportunity to present his case, especially in mental health malpractice claims with broad societal stakes.

The risk is substantial when courts exclude expert testimony by assessing credibility rather than admissibility, usurping the jury's role. In medical malpractice cases, expert testimony is essential to establish the standard of care and breach (*Grove v. PeaceHealth St. Joseph Hosp.*, 182 Wn.2d 136, 143-44 (2014)). The trial court's handwritten note dismissed declarations from Drs. Perez, Pinales, and Acosta as failing to provide "required standards of care testimony" (5CP 2291), and the Court of Appeals affirmed, likening them to conclusory affidavits in *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 25 (1993), without analyzing Dr. Acosta's declaration or the contradictory diagnoses by Sidhu (delusional disorder) and Choiniere (no such diagnosis)

Dr. Perez, a board-certified psychiatrist with 35 years of experience, detailed the standard of care, noting Sidhu's failure to conduct a comprehensive evaluation (3CP 1264-67). Dr. Pinales addressed Choiniere's inadequate single-visit diagnosis. These declarations, grounded in fact and connecting Respondents' actions to Petitioner's injuries, met ER 702's admissibility criteria: qualifications, reliable methodology, and helpfulness to the trier of fact (*State v. Allery*, 101 Wn.2d 591, 596 (1984); *Philippides v. Bernard*, 151 Wn.2d 376, 393 (2004)). By dismissing

them as "conclusory" (*Keck v. Collins*, 184 Wn.2d 358, 370 (2015)), the courts likely weighed their persuasiveness, a jury function (*State v. O'Connell*, 83 Wn.2d 797, 834 (1974); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)), increasing the risk of erroneous dismissal. The contradictory diagnoses alone raise a genuine issue of material fact (*Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26 (1989)), as at least one Respondent's diagnosis was incorrect, supporting a malpractice claim.

The state's interest in judicial efficiency is minimal. Applying ER 702's admissibility standards imposes little burden, as courts routinely assess expert qualifications and methodology (*Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Ensuring proper procedures safeguards fairness without significant administrative strain.

This Court's jurisprudence prohibits credibility determinations at summary judgment. *Anderson* holds: "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" (477 U.S. at 255). *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000), reinforces this, directing courts to credit the nonmovant's evidence. By excluding admissible expert testimony, the Washington courts denied Petitioner a fair opportunity to present his case to a jury, violating due process.

b. Conflict with Federal Precedent

The Washington courts' approach conflicts with federal precedent, raising a substantial question under Rule 10(c). *Anderson* prohibits credibility assessments

at summary judgment: "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor" (477 U.S. at 255). *Reeves* adds: "The court must disregard all evidence favorable to the moving party that the jury is not required to believe" (530 U.S. at 151). The Ninth Circuit's *City of Pomona v. SQM North America Corp.*, 750 F.3d 1036, 1044 (9th Cir. 2014), clarifies: "The district court's role . . . is not to weigh the correctness of an expert's opinion, but to determine whether it is admissible." Washington's ER 702, mirroring Federal Rule of Evidence 702, focuses on admissibility—qualifications, reliable methodology, and relevance—not persuasiveness (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993)). The Washington courts' requirement for granular detail in expert declarations (*Keck v. Collins*, 184 Wn.2d at 370) and dismissal of Petitioner's declarations as "conclusory" (Op. 9; *Guile*, 70 Wn. App. at 23) suggest a heightened threshold, akin to assessing merit, conflicting with *Daubert*'s focus on methodological reliability. The courts' failure to address the contradictory diagnoses further underscores a genuine issue of material fact (*Young*, 112 Wn.2d at 225-26), as Respondents provided no counter-expert testimony (*J.N. v. Bellingham Sch. Dist. No. 501*, 74 Wn. App. 49, 60-61 (1994)). This deviation from federal standards risks encroaching on the jury's role, warranting review to ensure state courts adhere to constitutional summary judgment principles.

c. Departure from Judicial Norms

The exclusion of expert testimony based on what may have been credibility or weight assessments, rather than admissibility determinations, marks a significant

departure from established judicial norms. Under both federal and state law, courts at summary judgment are tasked with assessing whether evidence is admissible under rules like ER 702 and whether it creates a genuine issue of material fact—not with evaluating its persuasiveness or ultimate correctness (*Daubert*, 509 U.S. at 589). By potentially overstepping this boundary, the Washington courts deviated from standard practice, introducing a risk of systemic unfairness in cases reliant on expert testimony, such as medical malpractice claims. This departure threatens the integrity of the summary judgment process, warranting this Court's attention to restore uniformity and fairness.

d. Public Importance and Systemic Implications

This issue carries national importance under Rule 10(c). Medical malpractice claims hinge on expert testimony to establish critical elements like the standard of care and causation. Improper exclusions at summary judgment can effectively deny plaintiffs access to justice, a concern magnified for pro se litigants who may lack the legal acumen to navigate complex evidentiary requirements. With pro se litigation comprising over 25% of federal civil cases (Administrative Office of the U.S. Courts, 2024), such technical hurdles disproportionately burden self-represented parties, undermining equal access to the judicial system. Supreme Court review would clarify the constitutional limits of summary judgment procedures, ensuring that state courts apply standards fairly and consistently, thereby safeguarding public confidence in the judiciary and promoting uniform protections across jurisdictions.

e. Broader Constitutional Stakes

The exclusion of Hosseinzadeh's expert testimony implicates the fundamental right of access to the courts. When courts exclude admissible evidence through improper credibility assessments, they erect procedural barriers that prevent litigants from fully presenting their cases, particularly impacting pro se plaintiffs who may not anticipate or counter such rulings. Premature dismissals based on these exclusions erode equal access to justice, violating due process by denying a fair trial. This Court's intervention is critical to protect this constitutional right, ensuring that state courts do not impose unnecessary obstacles that thwart litigants' ability to seek redress for legitimate grievances.

2. Pro Se Litigant Notice and Due Process

The Washington courts' failure to provide clear notice to Hosseinzadeh, a non-prisoner pro se litigant, of the specific affidavit requirements for responding to a summary judgment motion—particularly the need to articulate and challenge the standard of care in his expert declarations—violated due process under the Fourteenth Amendment. This failure denied him a meaningful opportunity to present his case, an issue compounded by the differential treatment of pro se prisoners versus non-prisoners. It highlights a functional circuit split across all twelve regional U.S. Courts of Appeals, conflicts with federal precedent, deviates from judicial norms, and raises a pressing question of national importance, warranting certiorari under Rule 10(a) and (c).

This tradition of leniency toward pro se litigants stems from *Haines v. Kerner*, 404 U.S. 519, 520 (1972), where

this Court held that pro se pleadings must be judged by "less stringent standards than formal pleadings drafted by lawyers," a principle reaffirmed in *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Yet, in Hosseinzadeh's case, the Washington courts applied the same rigorous procedural standards as for represented parties, disregarding his pro se status and the complexity of RCW 7.70.040, which requires expert testimony to establish the standard of care in medical malpractice cases.

a. Due Process and Clarity of Notice

The Fourteenth Amendment guarantees a meaningful opportunity to be heard, a right critical for pro se litigants lacking legal training. In *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), this Court outlined a three-factor test for due process: the private interest affected, the risk of erroneous deprivation, and the government's interest in avoiding additional procedures.

Hosseinzadeh's interest is substantial, involving alleged medical negligence that impacted his health, finances, and dignity. The dismissal of his claims extinguished his right to seek redress.

The risk is significant when pro se litigants are not informed of technical requirements. Hosseinzadeh, unaware of the need to articulate a specific standard of care and challenge the movant's standard in his affidavits, believed his expert declarations sufficed. This mirrors the complexity in *Castro v. United States*, 540 U.S. 375, 381 (2003), where notice was required before recharacterizing pro se motions, and *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), which mandated notice of Rule 56

requirements. The Washington courts' silence increased the likelihood of an unjust dismissal.

The state's interest in judicial efficiency is minimal. Providing notice imposes a slight burden, as seen in *Hudson v. Hardy*, 412 F.2d 1091, 1094 (D.C. Cir. 1968), where courts routinely notify pro se prisoners without significant cost. The Ninth Circuit's *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998), reinforces that such notice ensures fairness with little administrative strain.

By failing to notify Hosseinzadeh of these requirements, the Washington courts denied him a fair chance to respond in a complex medical malpractice case, breaching due process.

b. Functional Circuit Split on Pro Se Notice

A significant functional circuit split exists across all twelve regional U.S. Courts of Appeals regarding notice requirements for pro se litigants, particularly non-prisoners, creating inconsistent due process protections that necessitate Supreme Court review under Rule 10(a).

Second Circuit: The Second Circuit mandates notice for all pro se litigants, emphasizing the need to evaluate their understanding of summary judgment procedures. In *Vital v. Interfaith Medical Center*, 168 F.3d 615, 621 (2d Cir. 1999), the court stated: "Although we have never reversed on these grounds a judgment entered against a pro se litigant who responded to an opposing motion for summary judgment, the concerns that we have expressed regarding pro se litigants' understanding of summary judgment are not extinguished by the mere fact that a

pro se litigant files a response of some sort. Where the proper notice has not been given, the mere fact that the pro se litigant has made some response to the motion for summary judgment is not dispositive where neither his response nor other parts of the record reveal that he understood the nature of the summary judgment process." The court further noted: "In the absence of explicit notice from the District Court or an opposing party, the nature of the papers submitted by the litigant and the assertions made therein as well as the litigant's participation in proceedings before the District Court may assist in determining whether the pro se litigant had such an understanding" (*id.*, *citing M.B. #11072-054 v. Reish*, 119 F.3d 230, 232 (2d Cir. 1997)). In *Sellers v. M.C. Floor Crafters, Inc.*, 842 F.2d 639 (2d Cir. 1988), the court reversed a summary judgment grant because the non-prisoner pro se plaintiff was not advised of the consequences of failing to respond, underscoring the need for explicit notice to ensure fairness; *see also Graham v. Lewinski*, 848 F.2d 342, 344 (2d Cir. 1988) (holding that "in all fairness" a pro se litigant, who is unaware of his obligation to respond, should not have summary judgment entered against him).

Third Circuit: The Third Circuit requires notice for pro se prisoners and encourages it for non-prisoners, though it has not mandated it for the latter. In *Renchenski v. Williams*, 622 F.3d 315, 340 (3d Cir. 2010), the court held: "We agree with the majority of our sister circuits that adequate notice in the pro se prisoner context includes providing a prisoner-plaintiff with a paper copy of the conversion Order, as well as a copy of Rule 56 and a short summary explaining its import that highlights the utility of a Rule 56(f) affidavit." The court cited cases like

Graham v. Lewinski, 848 F.2d 342, 344 (2d Cir. 1988), and *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), to support its view but noted that circuits like the Fifth (*Martin v. Harrison County Jail*, 975 F.2d 192 (5th Cir. 1992)) and Sixth (*Brock v. Hendershott*, 840 F.2d 339, 343 (6th Cir. 1988)) deny mandatory notice for non-prisoners, following *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1986). The Third Circuit's silence on mandatory notice for non-prisoners creates ambiguity, placing it in the discretionary category.

Fourth Circuit: The Fourth Circuit mandates notice for all pro se litigants. In *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), the court held: "We agree with the plaintiff, however, that there is another side to the coin which requires that the plaintiff be advised of his right to file counter-affidavits or other responsive material and alerted to the fact that his failure to so respond might result in the entry of summary judgment against him." This requirement applies broadly, ensuring pro se litigants, including non-prisoners, are informed of Rule 56 requirements to prevent procedural defaults.

Fifth Circuit: The Fifth Circuit encourages accommodations for pro se litigants, particularly regarding discovery and notice, but does not mandate notice for non-prisoners. In *Murrell v. Bennett*, 615 F.2d 306, 310 (5th Cir. 1980), the court reversed a summary judgment grant, stating: "Murrell had no opportunity to provide this information because his unschooled attempts at requesting discovery were nipped in the bud only thirty-two days after the complaint was filed. This court noted in *Alabama Farm* that summary judgment normally should not be granted before discovery is completed" (*id.*,

citing Alabama Farm Bureau Mutual Casualty Co. v. American Fidelity Life Insurance Company, 606 F.2d 602, 609 (5th Cir.1979), cert. denied, 449 U.S. 820, 101 S.Ct. 77, 66 L.Ed.2d 22 ('Summary Judgment should not, therefore, ordinarily be granted before discovery has been completed.'); *Littlejohn v. Shell Oil Co.*, 483 F.2d 1140, 1145 (5th Cir.1973) (en banc), cert. denied, 414 U.S. 1116, 94 S.Ct. 849, 38 L.Ed.2d 743 (noting the high fatality rate of summary dispositions at a time before the facts have been fully developed);

The court further noted: "Pro se claims for relief are held to 'less stringent standards than formal pleadings drafted by lawyers'" (*id.*, citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). Options included appointing counsel (28 U.S.C. § 1915(d)), treating requests as Rule 56(e) motions for continuance, issuing subpoenas, or denying the motion and holding an evidentiary hearing (*id.*, citing *Hudson v. Hardy*, 412 F.2d 1091, 1095 (D.C. Cir. 1968)). The court emphasized: "Summary judgment is a valuable judicial tool. Because its consequences are so severe, however, we must always guard against premature truncation of legitimate lawsuits merely because of unskilled presentations" (*id.*).

Sixth Circuit: The Sixth Circuit denies mandatory notice for non-prisoner pro se litigants but requires it for prisoners. In *Brock v. Hendershott*, 840 F.2d 339, 343 (6th Cir. 1988), the court held: "This circuit has never directly addressed the issue of what procedural help, if any, a non-prisoner pro se defendant is entitled to receive. We are persuaded that no special assistance is required in situations such as this, based on *Jacobsen v. Filler*, 790 F.2d 1362 (9th Cir. 1986)." However, in *United*

States v. Ninety-Three Firearms, 330 F.3d 414, 427 (6th Cir. 2003), the court acknowledged: "The majority of circuits have held that a pro se litigant is entitled to notice of the consequences of a summary judgment motion and the requirements of the summary judgment rule," citing cases like *Roseboro* and *Hudson*. The court noted its own precedent in *Brock* denies such notice for non-prisoners, stating: "A 'litigant who chooses himself as a legal representative should be treated no differently'" (*id.*, quoting *Jacobsen*, 790 F.2d at 1364-65).

Seventh Circuit: The Seventh Circuit mandates notice for all pro se litigants. In *Timms v. Frank*, 953 F.2d 281, 285 (7th Cir. 1992), the court held: "In spite of these arguments, we believe that all pro se litigants, not just prisoners, are entitled to notice of the consequences of failing to respond to a summary judgment motion. As outlined in *Lewis*, this notice should include both the text of Rule 56(e) and a short and plain statement in ordinary English that any factual assertion in the movant's affidavits will be taken as true by the district court unless the non-movant contradicts the movant with counter-affidavits or other documentary evidence" (*id.*, citing *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th Cir. 1982)). The court rejected distinctions between prisoners and non-prisoners: "We base this decision on the rationale of *Lewis* and a belief that the attempted distinction between prisoners and other pro se litigants with regard to this issue is unconvincing" (*id.* at 284).

Ninth Circuit: The Ninth Circuit denies mandatory notice for non-prisoner pro se litigants but requires it for prisoners. In *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986), the court held that no special assistance is

required for non-prisoners, stating that a pro se litigant "should be treated no differently" from represented parties. However, Judge Reinhardt dissented: "The need to provide pro se litigants with proper notice of summary judgment procedures is just as great when the opposing party moves for summary judgment as when the court sua sponte converts a motion to dismiss into a motion for summary judgment, since a party's motion for summary judgment does not in and of itself provide notice of the affidavit requirement and the risk that 'enforcing' a 'highly technical requirement[] . . . might result in a loss of the opportunity to prosecute or defend a lawsuit on the merits'" (*id.*). In *Klingele v. Eikenberry*, 849 F.2d 409, 411 (9th Cir. 1988), the court reaffirmed that the notice requirement applies only to pro se prisoners. This approach governed Hosseinzadeh's case in Washington, denying him notice and contributing to his procedural default.

Tenth Circuit: The Tenth Circuit strongly encourages notice for all pro se litigants to ensure fairness in summary judgment proceedings. In *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991), the court stated: "'[D]istrict courts must take care to ensure that pro se litigants are provided with proper notice regarding the complex procedural issues involved in summary judgment proceedings'" (*id.*, quoting *Jaxon v. Circle K Corp.*, 773 F.2d 1138, 1140 (10th Cir. 1985), and citing *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975)).

Eleventh Circuit: The Eleventh Circuit requires notice for pro se prisoners and allows discretionary notice for non-prisoners, emphasizing the need for fairness in

summary judgment proceedings. In *United States v. One Colt Python .357 Cal. Revolver*, 845 F.2d 287, 289 (11th Cir. 1988), involving a pro se litigant committed to a mental hospital, the court held: "We have repeatedly emphasized that care must be exercised to ensure proper notice to a litigant not represented by counsel. Litigants without counsel lack formal legal training and 'occupy a position significantly different from that occupied by litigants represented by counsel.' A motion for summary judgment should only be granted against a litigant without counsel if the court gives clear notice of the need to file affidavits or other responsive materials and of the consequences of default" (*id.*, citing *Herron v. Beck*, 693 F.2d 125 (11th Cir. 1982)).

D.C. Circuit: The D.C. Circuit mandates notice for pro se prisoners and encourages special attention for all pro se litigants, with discretionary notice for non-prisoners. In *Hudson v. Hardy*, 412 F.2d 1091, 1094 (D.C. Cir. 1968), the court established: "Before entering summary judgment against appellant, the District Court, as a bare minimum, should have provided him with fair notice of the requirements of the summary judgment rule. We stress the need for a form of notice sufficiently understandable to one in appellant's circumstances fairly to apprise him of what is required." The court further noted that any procedure must "assure that the prisoner's claims receive fair, adequate, and meaningful consideration" (*id.* at 1095). In *Ham v. Smith*, 653 F.2d 628, 630 (D.C. Cir. 1981), the court remanded a case involving a recently released pro se litigant, stating: "This court has recognized that district judges should accord special attention to pro se litigants faced with summary judgment motions" (*id.* at 629-30). The court reasoned that a pro se plaintiff released

during a case "faced many of the same handicaps as a prisoner" (*id.* at 630). In *Neal v. Kelly*, 963 F.2d 453, 456 (D.C. Cir. 1992), the court clarified: "We further agree with our sibling circuit that the 'reasonable opportunity presupposes notice,' and that '[m]ere time is not enough, if knowledge of the consequences of not making use of it is wanting'" (*id.*, citing *Lewis v. Faulkner*, 689 F.2d 100, 102 (7th Cir. 1982)).

This split creates three approaches: (1) circuits mandating notice for all pro se litigants (First Second, Fourth, Seventh Eleventh, D.C.).); (2) circuits denying mandatory notice for non-prisoners (Fifth, Sixth, Ninth); and (3) circuits with discretionary or unclear standards for non-prisoners (, Third, Eighth, Tenth, The lack of clear notice about affidavit requirements—e.g., articulating and challenging the standard of care—led to Hosseinzadeh's procedural default, as he believed his declarations were sufficient. This concern was highlighted by the Second Circuit in *Vital*, emphasizing that courts must evaluate a pro se litigant's understanding of summary judgment procedures. Review is necessary to ensure uniform due process protections.

c. Differential Treatment of Prisoners and Non-Prisoners

The inconsistent treatment of pro se prisoners versus non-prisoners across federal circuits exacerbates the due process violation in Hosseinzadeh's case. Several circuits, such as the D.C. Circuit in *Hudson v. Hardy*, 412 F.2d 1091, 1094 (D.C. Cir. 1968), mandate notice for pro se prisoners, citing their unique disadvantages: "The prisoner's lack of legal sophistication and restricted access to legal

materials necessitate special consideration" (*id.*). This requirement acknowledges that incarceration inherently limits a litigant's ability to understand and comply with complex procedural rules, justifying additional safeguards to ensure a fair process.

Yet, non-prisoner pro se litigants like Hosseinzadeh encounter comparable barriers that similarly hinder their ability to represent themselves effectively. These include a lack of legal training, limited financial resources, and unfamiliarity with technical litigation requirements—such as the need to specify a standard of care in medical malpractice cases under RCW 7.70.040. Despite these shared challenges, the Ninth Circuit's ruling in *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986), denies non-prisoner pro se litigants any special notice, treating them as if they possess the procedural expertise of represented parties. This creates an arbitrary distinction, as both groups are equally prone to procedural missteps due to their lack of legal knowledge.

The Ninth Circuit's own precedent further highlights this inequity. In *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998), the court requires notice for pro se prisoners, recognizing their vulnerability. However, by denying the same protection to non-prisoners in *Jacobsen*, the Ninth Circuit implies that incarceration alone justifies procedural accommodations, ignoring the broader difficulties faced by all pro se litigants. Non-prisoners, especially those who are indigent or lack access to legal resources, face parallel obstacles, yet receive no equivalent consideration.

In contrast, the D.C. Circuit's approach in *Ham v. Smith*, 653 F.2d 628, 630 (D.C. Cir. 1981), offers a more

equitable framework. There, the court extended notice protections to a recently released pro se litigant, reasoning that he "faced many of the same handicaps as a prisoner" (*id.*). This suggests that notice should hinge on a litigant's actual circumstances—such as limited legal knowledge or resources—rather than their custodial status. The Ninth Circuit's rigid distinction fails to account for these common vulnerabilities, resulting in an unfair system where similarly situated litigants are treated differently based solely on whether they are incarcerated.

Indeed, the Eleventh Circuit approach in applying to the notice requirement to non-prisoners, recognized the rights of mentally ill individuals in confinement to due process and adequate care. Here, the result of the Washington Court's decisions has implicitly ratified the very mental health decisions that Hosseinzadah was challenging.

This arbitrary disparity not only raises equal protection concerns but also undermines due process by denying non-prisoner pro se litigants like Hosseinzadeh a meaningful opportunity to litigate their claims. The Ninth Circuit's approach effectively penalizes non-prisoners for not being incarcerated, withholding procedural safeguards that their prisoner counterparts receive, despite facing analogous barriers to self-representation.

d. Conflict with Federal Precedent

The Ninth Circuit's decision in *Jacobsen* clashes with Supreme Court precedent that emphasizes leniency and procedural accommodations to ensure pro se litigants' access to justice. In *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Court held that pro se pleadings should

be evaluated by "less stringent standards than formal pleadings drafted by lawyers," a principle reaffirmed in *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). These rulings establish a clear directive: courts must interpret procedural rules flexibly to preserve pro se litigants' ability to pursue their claims, given their inherent disadvantages.

Beyond pleadings, the Supreme Court has consistently required courts to provide pro se litigants with procedural guidance. In *Castro v. United States*, 540 U.S. 375, 381 (2003), the Court mandated notice before recharacterizing pro se motions, ensuring litigants understand the consequences of judicial actions. Similarly, in *Turner v. Rogers*, 564 U.S. 431, 447 (2011), the Court emphasized the need to explain complex legal standards to pro se litigants in civil contempt proceedings, asking "whether the State has provided sufficient procedural safeguards" (*id.*). Together, these cases underscore a broader due process obligation: courts must equip pro se litigants with the knowledge needed to navigate critical procedural requirements.

The Ninth Circuit's *Jacobsen* ruling, however, imposes no such duty on courts, holding non-prisoner pro se litigants to the same standard as attorneys. This approach directly contradicts *Haines* and *Erickson* by failing to accommodate the limitations of self-represented parties. It also disregards *Turner*'s mandate for procedural safeguards, as seen in Hosseinzadeh's case, where the Washington courts offered no guidance on the complex rules that led to the dismissal of his claim. This conflict with Supreme Court precedent warrants review to align the Ninth Circuit's practice with established federal standards.

e. Departure from Judicial Norms

The failure to provide notice to pro se litigants, as occurred in Hosseinzadeh's case, deviates from widely accepted judicial norms designed to ensure fairness. Courts have long acknowledged that pro se litigants "occupy a position significantly different from that occupied by litigants represented by counsel" (*United States v. One Colt Python .357 Cal. Revolver*, 845 F.2d 287, 289 (11th Cir. 1988)). This recognition has prompted many circuits, including the Eleventh, to adopt practices that assist pro se litigants in navigating procedural complexities, particularly in pivotal moments like summary judgment.

In *One Colt Python*, the Eleventh Circuit stressed that "care must be exercised to ensure proper notice to a litigant not represented by counsel" (*id.*), reflecting a norm of active judicial involvement to prevent unfair outcomes. Similarly, the Second Circuit in *Vital v. Interfaith Medical Center*, 168 F.3d 615, 621 (2d Cir. 1999), requires courts to verify that pro se litigants comprehend summary judgment procedures, reinforcing the judiciary's role in maintaining an even playing field. By contrast, the Washington courts' silence in Hosseinzadeh's case—offering no guidance on critical procedural requirements—strays from these norms, allowing technicalities to trump substantive justice and undermining the integrity of the judicial process.

f. Public Importance and Systemic Implications

The inconsistent application of notice requirements for pro se litigants is an issue of national significance under Supreme Court Rule 10(c). Pro se litigation accounts for over 25% of federal civil cases (Administrative Office of the

U.S. Courts, 2024), making the lack of uniform standards a systemic problem that affects a substantial portion of the judiciary's caseload. In circuits like the Ninth, pro se litigants face heightened risks of procedural default, while those in the Second or Seventh Circuits benefit from safeguards that mitigate such risks, creating stark disparities in access to justice.

These inequities disproportionately burden vulnerable populations—low-income individuals, non-English speakers, and those with limited education—further eroding public confidence in the legal system. Resolving this circuit split is essential to ensure that all pro se litigants, regardless of location or status, have a fair shot at presenting their cases. Supreme Court intervention would standardize protections, uphold the principle of equal access to the courts, and reinforce the judiciary's commitment to fairness for self-represented litigants nationwide.

g. Supervisory Authority and Constitutional Stakes

The Supreme Court's supervisory authority is critical to guaranteeing consistent due process protections across the circuits. The right of access to the courts, enshrined in the Due Process Clauses (*Lewis v. Casey*, 518 U.S. 343, 355 (1996)), demands that litigants receive the tools necessary to navigate procedural complexities. Inconsistent notice requirements undermine this right, leaving many pro se litigants, like Hosseinzadeh, ill-equipped to avoid procedural traps that derail their claims.

By granting certiorari, the Court can clarify the constitutional duties of lower courts, ensuring that both

state and federal judges provide pro se litigants with the procedural guidance needed to uphold fundamental fairness. Such a decision would resolve the circuit split, strengthen the judiciary's role as a protector of equal justice, and affirm the rights of those who must represent themselves due to necessity.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE SUPREME COURT OF WASHINGTON, FILED JULY 1, 2025

THE SUPREME COURT OF WASHINGTON

No. 103932-8
Court of Appeals No. 85474-7-I

ABOLFAZL HOSSEINZADEH,

Petitioner,

v.

SWEDISH HEALTH SERVICES, ET AL.,

Respondents.

Filed July 1, 2025

ORDER

Department I of the Court, composed of Chief Justice Stephens and Justices Johnson, González, Yu, and Whitener, considered at its June 30, 2025, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

Appendix A

DATED at Olympia, Washington, this 1st day of July, 2025.

For the Court,

/s/_____
CHIEF JUSTICE

APPENDIX B — UNPUBLISHED OPINION OF THE UNITED STATES COURT OF APPEALS OF THE STATE OF WASHINGTON, FILED NOVEMBER 25, 2024

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

No. 85474-7-I

ABOLFAZL HOSSEINZADEH,

Appellant/Cross-Respondent,

v.

SWEDISH HEALTH SERVICES, A WASHINGTON NON-PROFIT ORGANIZATION; GURJEET SIDHU, AKA GURJEET K SIDHU, AKA GURJEET KAUR SIDHU, AKA GURJEET SIDHU, AKA DR. SIDHU, INDIVIDUALLY; JAKE HARLEY CHOINIERE, AKA JAKE H. CHOINIERE, AKA JAKE CHOINIERE, AKA DR. JAKE, INDIVIDUALLY; AND UNKNOWN JOHN AND JANE DOES,

Respondents/Cross-Appellants

September 12, 2024, Oral Argument;
November 25, 2024, Filed

UNPUBLISHED OPINION

Appendix B

CHUNG, J. — Abolfazl Hosseinzadeh received care from behavioral health providers associated with Swedish Health Services ("Swedish"), including Gurjeet Sidhu and Dr. Jake Choiniere, over the course of several months in 2019. Subsequently, defendants in a separate lawsuit filed by Hosseinzadeh subpoenaed Sidhu and Choiniere for depositions to discuss Hosseinzadeh's treatment. After Hosseinzadeh gave his consent, Sidhu and Choiniere were both deposed. Hosseinzadeh then filed this suit against Swedish, Sidhu, and Choiniere (collectively, "Providers") asserting claims of medical malpractice, defamation, and false light as well as claims of violation of privacy, unlicensed practice, fraud, and violations of the Washington Consumer Protection Act (CPA), chapter 19.86 RCW. Providers jointly filed a motion for summary judgment dismissing Hosseinzadeh's claims, which the court granted. Hosseinzadeh appeals. Providers cross-appeal the trial court's denial of attorney fees and costs. We affirm both the trial court's dismissal of Hosseinzadeh's claims and its denial of Providers' motion for attorney fees and costs. We deny the Providers fees on appeal but award costs.

FACTS

Abolfazl Hosseinzadeh was referred to counseling by his primary care physician in June 2019 to treat symptoms of depression and anxiety that he suffered as a result of alleged discriminatory and defamatory conduct by individuals in his condominium association and ensuing litigation that he initiated (HOA lawsuit). On June 17, 2019, Hosseinzadeh began the first of five counseling sessions

with Gurjeet Sidhu. Sidhu is a licensed marriage and family therapist (LMFT) who was employed by Swedish at the time. Sidhu's progress notes for Hosseinzadeh's initial visit state that she explained the role of a behavioral health provider (BHP) to him. Sidhu's notes throughout the course of Hosseinzadeh's five visits describe his symptoms, his discussion of the HOA lawsuit, changes in his behavior, and recommendations for treatment. At their final session on July 29, 2019, Sidhu recommended that Hosseinzadeh see a psychiatrist, and he agreed.

Subsequently, on August 28, 2019, Hosseinzadeh attended one session with Dr. Jake Choiniere, a licensed psychiatrist. Choiniere's clinical notes included Hosseinzadeh's medical history, surgical history, psychiatric history, family history, social history, and substance use history, as well as the results of a physical exam and a mental status exam. Under the heading "Diagnoses," Choiniere listed "unspecified depression" and "unspecified anxiety" and stated, "Psychiatric differential diagnosis includes: Major depression with psychotic features, mixed episode of bipolar disorder, generalized anxiety disorder, PTSD." Choiniere recommended that Hosseinzadeh consider "antidepressant treatment augmented with an atypical antipsychotic" medication which "may be helpful for sleep and borderline psychotic perceptions," along with "intensive psychotherapy, specifically cognitive behavioral therapy or acceptance commitment therapy." Choiniere's notes indicate that Hosseinzadeh was "quite reluctant to consider medication treatment, although [he was] open to the notion of psychological counseling."

Appendix B

Nearly a year after these treatment sessions, in May 2020, defendants in his HOA lawsuit sought to depose Sidhu and Choiniere. At the time of their respective depositions, neither Sidhu nor Choiniere had received written authorization or consent from Hosseinzadeh to discuss his personal health information. As a result, Sidhu and Choiniere refused to testify. In September 2020, the HOA lawsuit defendants again subpoenaed Sidhu and Choiniere for depositions. This time Hosseinzadeh provided Sidhu and Choiniere with signed authorization forms and stipulated to a protective order regarding their discussion of his medical records. Accordingly, at their respective depositions, Sidhu and Choiniere answered questions about their treatment of Hosseinzadeh.

On July 28, 2022, Hosseinzadeh filed a complaint in King County Superior Court against Providers, alleging claims of medical malpractice, false light,[1] and defamation. Hosseinzadeh also filed claims against Sidhu and Swedish for violation of privacy, unlicensed practice, fraud, and violation of the CPA.

On March 8, 2023, Providers filed a joint motion for summary judgment seeking dismissal of all claims against them and attorney fees and expenses pursuant to RCW 4.84.185. In support of his opposition to the motion, Hosseinzadeh submitted his own declaration and declarations by friends and family members, including his wife, Dr. Romelia Perez.

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1. For this claim only, Hosseinzadeh asserts that Swedish was vicariously liable for Choiniere's and Sidhu's action.

Appendix B

On April 19, 2023, the trial court granted Providers' motion for summary judgment. In its order, the trial court stated that along with other evidence, it considered all declarations submitted by Hosseinzadeh, with "particular focus . . . given to the declarations of Drs. Pinales and Perez, who concluded there was negligence without providing any facts to support their conclusions." The trial court elaborated that "neither Drs. Pinales or Perez offered the required standard of care testimony which would be applicable to a Washington Hospital[,] LMFT or Psychiatrist." The order did not specifically address or provide any additional reasoning regarding any other claim.

Hosseinzadeh filed a motion for sanctions against Providers, alleging that they intentionally lied to the court, made false statements of material fact, and violated his rights and court rules. The trial court denied the motion for sanctions as well as Hosseinzadeh's motion for reconsideration of the denial.

On May 1, 2023, Hosseinzadeh filed a motion for reconsideration of the order granting Providers' summary judgment motion, asserting that (1) Providers improperly served him by e-mail and untimely served him by mail and (2) genuine issues of material fact existed based on his "unopposed" declarations, Providers' admission that Sidhu was not a licensed psychologist, and Providers' failure to depose his witnesses. The trial court denied the motion for reconsideration on May 22, 2023.

Appendix B

DISCUSSION

Hosseinzadeh appeals the trial court's decision granting summary judgment and dismissing all of his claims.[2] Providers filed a cross-appeal of the trial court's decision to deny attorney fees and expenses for opposing a frivolous lawsuit.[3] Providers also seek attorney fees on appeal.

I. Dismissal of Hosseinzadeh's Claims on Summary Judgment

Hosseinzadeh challenges the trial court's grant of summary judgment on four grounds. First, he claims his experts' declarations created a genuine issue of material fact regarding the standard of care for an LMFT, psychiatrist, and hospital in Washington state as well as regarding whether Providers breached that standard, as required for his medical negligence claim. Second, Hosseinzadeh asserts that his fraud claim is not foreclosed by RCW 7.70, because it was not related to health care.

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2. In his notice of appeal, Hosseinzadeh also sought review of the court's denial of his motion for reconsideration of the order granting summary judgment, but he failed to assign error to that order. Hosseinzadeh's brief on appeal also challenges the denial of the motion for sanctions. However, he failed to attach the relevant order to the notice of appeal and also failed to assign error to the decision or provide argument in his opening brief. Accordingly, we decline to review the trial court's denial of his motion for sanctions.

3. Respondent Sidhu filed a brief and cross-appeal, and Respondents Swedish and Choiniere filed a "Joinder to Reply Brief of Respondent and Cross-Appellant Gurjeet Sidhu."

Third, he claims that the record evidence establishes questions of fact on his CPA claim, including as to whether Providers' conduct was based on entrepreneurial activities, was of public interest, and resulted in injury to business or property. And fourth, Hosseinzadeh claims his unlicensed practice, defamation, false light, and violation of privacy claims are not barred by RCW 7.70.

On appeal, we review orders granting summary judgment de novo and consider "the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party." *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We may affirm a summary judgment order on any basis that is supported by the record. *Davidson Serles & Assocs. v. City of Kirkland*, 159 Wn. App. 616, 624, 246 P.3d 822 (2011). Summary judgment is appropriate when "there is no genuine issue as to any material fact" and the moving party is entitled to judgment as a matter of law. CR 56(c). A "material fact" exists when such facts impact the outcome of the litigation. *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005).

A party that moves for summary judgment has the initial burden of showing the absence of an issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). A defendant moving for summary judgment can submit affidavits to demonstrate that no issue of material fact exists or can demonstrate to the trial court that the "plaintiff lacks competent evidence to support an essential element of [their] case." *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 23, 851 P.2d 689

(1993). When the moving party is the defendant and the defendant-movant satisfies the initial burden, the burden then shifts to the plaintiff. *Young*, 112 Wn.2d at 225. The plaintiff must sufficiently demonstrate "the existence of an element essential to [their] case, and on which [they] will bear the burden of proof at trial." *Id.* The failure to make such a showing will result in the trial court granting summary judgment. *Id.*

A. Medical Malpractice Claim

In his complaint, Hosseinzadeh alleged that Providers breached the relevant standard of care for healthcare providers by (1) misdiagnosing him; (2) failing to account for relevant criteria such as his background; (3) failing to advise him as to alternative diagnoses and treatment plans; (4) failing to conduct the proper tests; (5) presenting Sidhu as a licensed psychologist;[4] and (6) failing to correct errors pertaining to his diagnosis, medical records, and treatment plans, such that his health and safety were threatened. Providers sought summary judgment on the basis that Dr. Perez and Dr. Pinales[5] are not qualified

4. Specifically, in his complaint, Hosseinzadeh alleges that "Swedish refused to schedule an appointment for Plaintiff to see a psychiatrist despite a recommendation," and "Swedish . . . owed a duty to Plaintiff, yet failed to provide services and activities and failed to operate, own, manage, control and/or administer the facilities in a manner that enable[d] Plaintiff [to] maintain the highest practicable health, mental, and psychosocial well-being."

5. Although Providers focus on Dr. Perez and Dr. Pinales, the record also includes a declaration from Dr. Cesar Acosta. As Dr. Acosta's declaration is substantively the same as Dr. Perez's

to establish the standards of care for an LMFT or Washington hospital, and their declarations failed either to establish the relevant standards of care or to state how Providers breached such standards.

To prevail in a medical malpractice claim, a complainant must prove that (a) the health care provider's treatment or conduct failed to comport with the applicable standard of care and (b) the failure to do so was the proximate cause of the complainant's injury. RCW 7.70.040(1). The standard of care applicable to a health care provider in Washington is that of a "reasonably prudent health care provider at that time in the profession or class to which [they] belong[], in the state of Washington, acting in the same or similar circumstances." RCW 7.70.040(1)(a). Both the standard of care and proximate cause elements for medical malpractice claims must be established through expert medical testimony. *Keck*, 184 Wn.2d at 370.

Providers assert that even assuming Dr. Perez or Dr. Pinales were appropriately qualified,[6] they failed

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and Dr. Pinales' declarations, the analysis of their declarations also applies to his.

6. Washington law requires that an expert testifying in a medical malpractice case "must demonstrate that [they have] sufficient expertise in the relevant specialty." *Young*, 112 Wn.2d at 229 (explaining that a pharmacist is not competent to testify as to a prescribing physician's standard of care regarding medication used for treatment); *see also Frausto v. Yakima HMA, LLC*, 188 Wn.2d 227, 229 n.1, 393 P.3d 776 (2017) (emphasizing that "only physicians may testify as to another physician's standard of care"). In his reply brief, Hosseinzadeh appears to acknowledge

to articulate the standard of care applicable to each respective Respondent. In response, Hosseinzadeh argues that Dr. Perez's and Dr. Pinales's declarations established the standard of care applicable for developing treatment plans and for diagnosing a patient with delusional disorder, pointing to these statements:[7]

> In my professional opinion, it is negligent to diagnose a patient with delusional disorder without reviewing patient's chart, without understanding patient's culture and background, without ruling out other diagnoses, and without performing a comprehensive psychiatric diagnostic evaluation. . . .
>
> In my professional opinion, a treatment plan in mental health must be based on consideration of a patient's symptoms, the intensity and duration

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that Dr. Pinales is not qualified to establish the standard of care for an LMFT, psychiatrist, or hospital, though he maintains that Dr. Perez, a psychiatrist, was qualified to discuss the standard of care for a LMFT in Washington because both professions "treat[] patients with mental health issues." Because we conclude Hosseinzadeh's experts' testimony is deficient on other grounds, we need not address Providers' argument that Dr. Pinales and Dr. Perez are not qualified to establish the relevant standards of care.

7. Dr. Perez's and Dr. Pinales's opinions set out in their declarations are largely similar and duplicative of each other and include nearly all of the same arguments or observations. As the same language appears in both declarations but in differently numbered paragraphs, the paragraph numbers are omitted here for simplicity.

> of the symptoms, the etiology of the symptoms, the Patient's cultural background, the Patient's educational and professional background, the Patient's family structure, the Patient's medical history, and the impact of the symptoms on the patient's functional ability.

However, despite stating that these are their "professional opinions," the doctors' declarations do not identify a specific standard of care.

Nor do the expert declarations address how any Providers' actions or omissions breached an applicable standard of care. Hosseinzadeh contends that these portions of Dr. Perez's and Dr. Pinales's declarations establish Sidhu's breach of the relevant standard of care:

> In my professional opinion, Ms. Gurjeet Sidhu diagnosed Dr. Hosseinzadeh with delusional disorder based on her poor clinical judgment, her own cultural bias, her lack of knowledge and understanding of the ongoing scientific research and projects in medicine and cryonics, her inability to comprehend the possibility that some individuals discriminated and defamed Dr. Hosseinzadeh, and her own fabricated version of Dr. Hosseinzadeh's background and symptoms. . . .
>
> In my professional opinion, Ms. Gurjeet Sidhu failed to consider Dr. Hosseinzadeh's etiology

> of his symptoms, background, culture, and medical history in her treatment plan for Dr. Hosseinzadeh.

The declarations also opine as to other allegedly negligent acts:

> In my professional opinion, Ms. Gurjeet Sidhu misdiagnosed Dr. Hosseinzadeh with delusional disorder.
>
> In my professional opinion, Ms. Gurjeet Sidhu and Mr. Jake Choiniere cannot both be correct when one diagnosed Dr. Hosseinzadeh with delusional disorder and the other does not within a short period of time. . . .
>
> In my professional opinion, it is improper, poor clinical judgment, and negligent to enter [the] word "bipolar" in Dr. Hosseinzadeh's medical records when he has never had the history or symptoms, diagnosis of bipolar disorder.
>
> In my professional opinion, it is improper, poor clinical judgment, and negligent to enter word "impairment reality testing", "borderline psychotic symptoms", or "psychotic" in Dr. Hosseinzadeh's medical records because his consideration for cryonics and because he has never had the history or symptoms of psychosis. . . .

Appendix B

> In my professional and personal opinion, the health providers have fabricated symptoms and diagnosis which their negligence resulted in misdiagnose and defamation of Dr. Hosseinzadeh.
>
> . . .
>
> In my professional opinion, it is improper, poor clinical judgment, and negligent to diagnose Dr. Hosseinzadeh with delusional disorder based on his interest [in] cryogenics scientific research and projects.
>
> In my professional opinion, it is improper, poor clinical judgment, and negligent to diagnose Dr. Hosseinzadeh with delusional disorder because he complained about being discriminated and defamed by some individuals in a condominium committee.
>
> In my professional opinion, it is improper, poor clinical judgment, and negligent for a mental health provider to diagnose a patient with delusional disorder based on the provider's personal beliefs and culture, based on the provider's lack of scientific knowledge, or based on lack of understanding of the patient's culture, background, or medical history.

As for Choiniere, Dr. Perez's declaration fails to identify any specific act constituting a breach. As for Sidhu, the

declarations lack information as to how any specific acts breached the standard of care for an LMFT. More is required to defeat summary judgment.

For example, in *Keck*, the expert identified the standard of care by averring that a reasonable doctor would have addressed the plaintiff's problems after surgery for sleep apnea by referring her to another qualified doctor for treatment. 184 Wn.2d at 371-72. Further, the expert's affidavit identified a breach of that standard of care by opining that the defendant surgeons sent the plaintiff to a general dentist, who would not have had the training or knowledge to deal with her specific postsurgery problems. *Id.* at 372. Thus, the expert's affidavit was sufficient to defeat summary judgment. *Id.* By contrast, in *Guile*, an expert affidavit was held to be insufficient to defeat summary judgment where it described the plaintiff's injuries and opined, "All of this was caused by faulty technique on the part of the first surgeon. . . . In my opinion he failed to exercise that degree of care, skill, and learning expected of a reasonably prudent surgeon at that time in the State of Washington . . . ." 70 Wn. App. at 26. The court in *Guile* concluded this affidavit lacked adequate factual support because it "was "merely a summarization of [the plaintiff's] postsurgical complications, coupled with the unsupported conclusion that the complications were caused by [the defendant physician's] 'faulty technique.'" *Id.* at 26, 27.

Here, the experts' affidavits are like those in *Guile*. They lack specificity about the applicable standard of care for an LMFT, psychiatrist, and hospital in Washington.

They also fail to connect acts or omissions of the Providers to the applicable standards of care. Consequently, there is no genuine issue of material fact as to Hosseinzadeh's medical malpractice claims.

B. Fraud Claim

Hosseinzadeh alleges that Swedish and Sidhu committed fraud against him by presenting Sidhu as a licensed psychologist despite knowing she did not possess that license. Further, he alleges that Sidhu defrauded him and the court at her deposition by providing false licensing and credential information and "hiding" information pertaining to her credentials and the cause of his depressive symptoms. And he claims that Swedish and Sidhu concealed material facts to "induce [him] to take or refrain from taking some action . . . to hide the ongoing danger and threat to [his] health and safety."

A claim of fraud requires the following:

> (1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by the plaintiff.

Adams v. King County, 164 Wn.2d 640, 662, 192 P.3d 891 (2008) (citing *Stiley v. Block*, 130 Wn.2d 486, 505, 925 P.2d 194 (1996)).

Appendix B

Hosseinzadeh's declaration states that "Sidhu did not say that she was not a psychologist, instead, she presented herself as [a] psychologist. My medical records show [the] title of psychologist in front of Sidhu's name. . . .The Washington Department of Health does not show that Sidhu has a psychologist or physician license." Hosseinzadeh's after visit summary (AVS) report for June 17, 2019 lists Sidhu as a "Mental Health Specialist," and the AVS reports for Hosseinzadeh's other four visits identify Sidhu as a "Gurjeet K. Sidhu, PsyD." In the progress notes section of the AVS report, the field "Author" states "Gurjeet K. Sidhu, PsyD"; the field "Author Type" states "Psychologist"; and the field "Editor" states "Gurjeet K. Sidhu, PsyD (Psychologist)." A Swedish CR 30(b)(6) corporate representative explained that in Swedish's electronic medical records system, "Epic," a provider's profile includes a title, which is based on their education, so a Psy.D degree will populate as "Psychologist." The Swedish representative also explained that Sidhu was hired as a psychotherapist, which broadly authorized her to conduct assessments on behavior and recommend pharmaceutical intervention not limited to family or marital issues. The record evidence shows that Sidhu was hired as a psychotherapist and her scope of practice as an LMFT included evaluating patients in the behavioral health clinic and providing diagnoses. There is no evidence that either Swedish or Sidhu falsely represented to Hosseinzadeh that Sidhu was a psychologist, or that they did so with knowledge of its falsity or with intent that Hosseinzadeh act on this information.

Moreover, Hosseinzadeh does not provide any evidence that he had a right to rely on the truth of any such representation or that he relied on a false representation to his detriment. To the contrary, he stated in his deposition that he "had no idea Sidhu has done to me until she went through the deposition." Thus, the record evidence does not create a genuine issue of material fact as to his reliance on Sidhu's being a licensed psychologist.

Similarly, as to Sidhu's allegedly false statements at her deposition, Hosseinzadeh does not identify evidence creating a question of fact as to how he relied on the truth of any false representation or how such reliance caused him damage. Hosseinzadeh's declaration states only that "Sidhu made false statements about me and my medical background," "made false statements on my behalf about past and ongoing concepts and research on cryonics, reanimation . . . and other scientific works in medical fields that I thought she understood," and "made false statements about my health and background that damaged my standing in the Hosseinzadeh v. Bellevue Park, et al. [case]." These conclusory statements are insufficient to satisfy his burden at summary judgment. Moreover, these claims are based on Sidhu's statements at her deposition and are barred by the litigation privilege doctrine.[8]

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8. The litigation privilege doctrine "protects participants [in litigation] - including attorneys, parties, and witnesses." *Young v. Rayan*, 27 Wn. App. 2d 500, 508, 531 P.3d 804, *review denied*, 2 Wn.3d 1008, 539 P.3d 4 (2023). The privilege provides witnesses with "absolute[] immun[ity] from suit based on their testimony." *Bruce v. Byrne-Stevens & Assocs. Engineers, Inc.*, 113 Wn.2d 123, 125, 776 P.2d 666 (1989).

Hosseinzadeh fails to identify specific evidence or provide argument as to how the record evidence establishes each element of fraud.[9] Therefore, the trial court properly dismissed Hosseinzadeh's fraud claim.

C. CPA Claim

Hosseinzadeh alleges that Swedish and Sidhu misled him to believe that Sidhu was a licensed psychologist and that this misrepresentation caused injury to his health in violation of the CPA. A party seeking to recover in a private CPA action "must establish five distinct elements: (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; [and] (5) causation." *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). A plaintiff alleging injury under the CPA must establish all five elements. *Id.* Providers argue that Hosseinzadeh's CPA claim fails because he did not establish the third or fourth elements.

As to the third element, public interest impact, Hosseinzadeh argues that the alleged misrepresentations about Swedish's staff are likely to harm others. However, as noted above, Sidhu is associated with the title "Psychologist" only within the Swedish medical records

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9. Further, as Providers point out, Hosseinzadeh failed to include a reference to the record for each factual statement. RAP 10.3(a)(5); *M.G. by Priscilla G. v. Yakima Sch. Dist. No. 7*, 2 Wn.3d 786, 803, 544 P.3d 460 (2024) (clarifying that RAP 10.3(a)(5) applies to merits briefs of the appellant and respondent).

system, Epic. No evidence in the summary judgment record indicates that Sidhu's, or any other provider's, qualifications or license are misrepresented to the public. In his reply brief, Hosseinzadeh argues that Sidhu "is listed on the HealthPoint website [which lists Swedish's providers] as being a PsyD," and that "listing of a provider with a specific designation leads the public to believe the provider holds that specific license." But for an appellate court to consider evidence on an appeal from a summary judgment order, the evidence must have been "called to the attention of the trial court." RAP 9.12. Hosseinzadeh's citation to a website in his reply brief is insufficient for our consideration under RAP 9.12. *See Gartner, Inc., v. Dep't of Revenue*, 11 Wn. App. 2d 765, 776-77, 455 P.3d 1179 (2020) (striking reference to website in appellate brief where party had not provided documentation of evidence contained on website). The summary judgment evidence does not establish a question of fact regarding public interest impact, as required for a CPA claim.

Hosseinzadeh also does not provide evidence of the fourth element, which requires the party to make a specific showing of injury caused by the defendant's acts. *Hangman Ridge*, 105 Wn.2d at 792. Hosseinzadeh claims that under the CPA, he was not required to "detail his property or business" that was injured and that his damages do not need to be quantifiable. It is true that *injury* (not damages) need not be quantifiable; the distinction between injury and damages "makes it clear that no monetary damages need be proven, and that nonquantifiable injuries, such as loss of goodwill would suffice." *Sign-O-Lite Signs, Inc., v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 563, 825

P.2d 714 (1992) (quoting *Nordstrom, Inc., v. Tampourlos*, 107 Wn.2d 735, 740, 733 P.2d 208 (1987)). Hosseinzadeh relies on *Michael v. Mosquera-Lacy* for the proposition that "[w]hen a misrepresentation causes inconvenience that deprives the claimant of the use and enjoyment of his property, the injury element is satisfied." 140 Wn. App. 139, 148-49, 165 P.3d 43 (2007), *rev'd*, 165 Wn.2d 595, 200 P.3d 695 (2009). But *Michael* does not change the requirement that "[t]here must be some evidence, however slight, to show injury to the claimants' business or property." *Sign-O-Lite*, 64 Wn. App. at 563. For example, in *Sign-O-Lite*, the court concluded that the plaintiff provided evidence that she suffered injury to her florist business when she could not manage her store the way she typically would because she had to address issues with her contract with the defendant. *Id.* at 564. By contrast, here, Hosseinzadeh does not identify evidence that establishes that he suffered injury to his business or property. Though he need not quantify injury, he makes only conclusory statements in his complaint that he suffered injury,[10] and does not identify any evidence supporting these statements in his responsive summary judgment briefing.

The record evidence does not establish a genuine issue of material fact regarding the required elements of a public interest impact or an injury to Hosseinzadeh's

10. For example, Hosseinzadeh states that "Swedish's . . . actions injured Plaintiff including, but not limi[ted] to injury to his health. Plaintiff's injury is directly and proximately caused by Defendant Swedish's misleading and [deceiving] actions."

business or property.[11] We affirm the trial court's decision to dismiss his CPA claim.

D. Unlicensed Practice, Defamation, False Light, and Violation of Privacy Claims

Hosseinzadeh also challenges the dismissal of his claims of unlicensed practice, defamation, false light, and violation of privacy. On appeal, Hosseinzadeh assigned error to the trial court's summary judgment dismissal but failed to brief the dismissal of these claims in his opening brief, which focused on the medical malpractice and fraud claims. To the extent he provided briefing on these issues, it was only in his reply briefing and was conclusory. "Points not argued and discussed in the opening brief are deemed abandoned and are not open to consideration on their merits." *In re Disciplinary Proceeding of Kennedy*, 80 Wn.2d 222, 236, 492 P.2d 1364 (1972). We do not consider claims argued for the first time on reply. RAP 10.3(c); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Therefore, because Hosseinzadeh failed to adequately brief these additional tort claims in his opening brief, we do not consider these claims on the merits.

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11. Providers also argue that the second element, whether the deceptive act or practice occurred in trade or commerce, is not satisfied. And Hosseinzadeh asserts that the evidence he submitted to the trial court was sufficient to demonstrate the fifth element, causation, but does not identify specific evidence in support. We need not address either of these elements as we conclude his CPA claim fails on other grounds.

II. Providers' Cross-Appeal of Denial of Attorney Fees and Expenses Below and Request for Fees and Costs on Appeal

Sidhu filed a cross-appeal, in which Choiniere and Swedish joined, claiming the trial court abused its discretion by denying Providers' request for attorney fees and expenses against Hosseinzadeh for filing a frivolous action. They also seek an award of attorney fees and costs on appeal. We affirm the trial court's denial of fees. We deny the Providers fees on appeal but award them their costs.

A prevailing party in an action that has terminated can submit a motion to the trial court seeking a determination that the non-prevailing party's claim(s) were "frivolous and advanced without reasonable cause." RCW 4.84.185. The trial court shall then consider all evidence presented on the motion to determine whether the action was "frivolous and advanced without reasonable cause." RCW 4.84.185. If the trial court determines that the action was frivolous, then the court may, "upon written findings by the judge that the action . . . was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action . . . ." RCW 4.84.185. An action is frivolous when it "'cannot be supported by any rational argument on the law or facts.'" *Alexander v. Sanford*, 181 Wn. App. 135, 184, 325 P.3d 341 (2014) (quoting *Rhinehart v. Seattle Times*, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990)). Notably, when determining if an action is frivolous, a court must consider it as a whole.

Biggs v. Vail, 119 Wn.2d 129, 136, 830 P.2d 350 (1992). Further, the trial court has discretion to determine whether to award attorney fees for a frivolous lawsuit. *Rhinehart*, 59 Wn. App. 339-40. However, the frivolous lawsuit statute should not be used in place of other pretrial motions or sanctions. *Biggs*, 119 Wn.2d at 137.

We review trial court determinations regarding attorney fees and expenses under RCW 4.84.185 for an abuse of discretion. *Alexander*, 181 Wn. App. at 184. A trial court abuses its discretion when a determination is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (quoting *Associated Mortgage Investors v. G.P. Kent Constr. Co.*, 15 Wn. App. 223, 229, 548 P.2d 558 (1976)).

In *Biggs*, the trial court found three out of four of the plaintiff's claims to be frivolous and awarded attorney fees pursuant to RCW 4.84.185. 119 Wn.2d at 137. However, the Washington Supreme Court held that "the action *as a whole* cannot be deemed frivolous and attorneys' fees were therefore improperly granted," because the trial court did not find all of the plaintiff's claims to be frivolous. *Id.*

Here, Sidhu argues that the trial court abused its discretion by denying her motion for attorney fees and expenses under RCW 4.84.185 because all claims against her were dismissed on the merits based on their apparent frivolity and because such claims are "clearly prohibited by the plain language of the applicable statutes." Further, she posits that Hosseinzadeh brought this suit to "harass his

former healthcare providers after their candid deposition testimony." But nothing in the record, including the trial court's order granting summary judgment, indicates that the claims were dismissed because they were frivolous and advanced without reasonable cause. The court did not make written findings to that effect, as required for an award of expenses under RCW 4.84.185. Rather, the trial court's order indicates only that Hosseinzadeh's expert testimony was conclusory and failed to establish a standard of care as required for the medical malpractice claim and stated nothing specifically about the reason for dismissing the other claims. Because Providers fail to establish that the trial court abused its discretion in denying their request for attorney fees and expenses under RCW 4.84.185, we affirm the denial.

On appeal, a party can recover reasonable attorney fees or expenses when the party requests such fees in its opening brief. RAP 18.1(a). The party requesting fees must also "provide argument and citation to authority 'to advise the court of the appropriate grounds for an award of attorney fees as costs.'" *Robinson v. Am. Legion Dep't of Wash., Inc.*, 11 Wn. App. 2d 274, 298, 452 P.3d 1254 (2019) (quoting *Stiles v. Kearney*, 168 Wn. App. 250, 267, 277 P.3d 9 (2012)).

Here, the only argument Providers offer for appellate attorney fees is "[i]t is equitable for Hosseinzadeh to bear the expenses of this needless and frivolous litigation that occurred during the trial court proceedings, and which are now being continued on appeal." Providers fail to provide argument and citation to any relevant authority

to support their request for appellate attorney fees. Providers' request for appellate attorney fees is denied.

Providers also seek appellate costs pursuant to RAP 14.2. In general, the party that "substantially prevails on review" is awarded appellate costs unless the reviewing court instructs otherwise. RAP 14.2; *John Doe v. Benton County*, 200 Wn. App. 781, 793, 403 P.3d 861 (2017). On review, Providers are the substantially prevailing parties, so we award them appellate costs pursuant to RAP 14.2, subject to compliance with the applicable procedural requirements.

/s/ CHUNG, J.

WE CONCUR

/s/ SMITH, C.J. /s/ BIRK, J.

APPENDIX C — ORDER OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, FILED APRIL 19, 2023

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

NO. 22-2-11923-3 SEA

ABOLFAZL HOSSEINZADEH,

Plaintiff,

vs.

SWEDISH HEALTH SERVICES, A WASHINGTON NON-PROFIT ORGANIZATION; GURJEET SIDHU AKA GURJEET K SIDHU, AKA GURJEET KAUR SIDHU, AKA GURJEET SIDHU, AKA DR SIDHU, INDIVIDUALLY; JAKE HARLEY CHOINIERE, AKA JAKE H CHOINIERE, AKA JAKE CHOINIERE, AKA DR JAKE, INDIVIDUALLY; AND UNKNOWN JOHN AND JANE DOES,

Defendants.

ORDER GRANTING DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court on motion by defendants Sidhu, Choiniere and Swedish for an

order summarily dismissing all claims, and awarding attorney fees and expenses under RCW 4.84.185. The Court considered:

1. Defendants' Joint Motion for Summary Judgment;

2. Declaration of Gurjeet K. Sidhu;

3. Declaration of Jake Harley Choiniere, D.O.;

4. Plaintiffs Opposition to Defendants' Joint Motion for Summary Judgment;

5. Declaration of Aida Joudi;

6. Declaration of Akram Hosseinzadeh;

7. Declaration of Alireza Arjomandi;

8. Declaration of Elham Ghorbani;

9. Declaration of Javad Joudi;

10. Declaration of Mahboubeh Hosseinzadeh;

11. Declaration of Massumeh Baygan;

12. Declaration of Molook Hosseinzadeh;

13. Declaration of Neda Janamian;

14. Declaration of Reza Hosseinzadeh;

15. Declaration of Jeysel Pinales, MD;

16. Declaration of Cesar Acosta, MD;

17. Declaration of Romelia Perez, MD;

18. Declaration of Abolfazl Hosseinzadeh;

19. Defendants' Joint Reply in Support of Motion for Summary Judgment;

20. Declaration of Matthew J. McCauley;

21. The Court's complete files and records in this cause; and

22. The oral arguments of the parties.

Being fully advised, the Court now ORDERS that all claims are summarily dismissed with prejudice.[1]

DONE this 19th day of April, 2023.

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1. The court carefully reviewed the 13 Declarations submitted by Plaintiff. Particular focus was given to the Declarations of Drs. Pinales and Perez, who concluded there was negligence without providing any facts to support their conclusions.

The Court finds that neither Drs. Pinales or Perez offered the required standard of care testimony which would be applicable to a Washington Hospital; LMFT or Psychiatrist.

Appendix C

/s/_____
THE HONORABLE SUZANNE R. PARISIEN

Presented by:
HELSELL FETTERMAN LLP

By:_____
David J. Corey, WSBA #26683
Katherine D. Hekstra, WSBA #60231
Attorneys for Gurjeet Sidhu

APPENDIX D — ORDER OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING, FILED MAY 9, 2023

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

NO. 22-2-11923-3 SEA

ABOLFAZL HOSSEINZADEH,

Plaintiff,

vs.

SWEDISH HEALTH SERVICES, A WASHINGTON NON-PROFIT ORGANIZATION; GURJEET SIDHU AKA GURJEET K SIDHU, AKA GURJEET KAUR SIDHU, AKA GURJEET SIDHU, AKA DR SIDHU, INDIVIDUALLY; JAKE HARLEY CHOINIERE, AKA JAKE H CHOINIERE, AKA JAKE CHOINIERE, AKA DR JAKE, INDIVIDUALLY; AND UNKNOWN JOHN AND JANE DOES,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR SANCTION

[~~PROPOSED~~]

THIS MATTER came before the Court on motion for sanction by Plaintiff Abolfazl Hosseinzadeh. The Court considered:

Appendix D

1. Plaintiff's motion for sanction;

2. Declaration of Abolfazl Hosseinzadeh in support of Plaintiff's motion for sanction and the exhibits attached thereto;

3. Declaration of Dr. Perez in support of Plaintiff's motion for sanction;

4. Defendants' Joint Opposition to Plaintiff's motion for sanctions;

5. Declaration of Alexis K. Allen;

6. Declaration of David J. Corey;

7. Declaration of Katherine D. Hekstra with exhibits A-D attached hereto;

8. Plaintiff's reply, ~~if any;~~

9. _____;

10. _____;

11. The Court's complete files and records in the case.

Being in all matters fully advised, the Court now ORDERS that Plaintiff's motion for sanction be DENIED.

Appendix D

DONE IN OPEN COURT this 9th day of May, 2023.

/s/_____
Hon. Suzanne R. Parisien

Presented by:

HELSELL FETTERMAN LLP

By:_____
David J. Corey, WSBA #26683
Katherine D. Hekstra, WSBA #60231
Of Attorneys for Defendant Gurjeet Sidhu

APPENDIX E — ORDER ON CIVIL MOTION OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY, FILED MAY 23, 2023

SUPERIOR COURT OF THE
STATE OF WASHINGTON
KING COUNTY

NO. 22-2-11923-3 SEA

HOSSEINZADEH,

Plaintiff/Petitioner,

vs.

SWEDISH HEALTH SERVICES *et al.*,

Defendant/Respondent.

ORDER ON CIVIL MOTION

The above-entitled Court, having heard a Motion for Reconsideration by Plaintiff and having considered the pleadings on file, WHEREFORE:

IT IS HEREBY ORDERED that the motion is Denied.

Dated: 5/22/23

/s/
Honorable Judge Suzanne Parisien

APPENDIX F — ORDER ON CIVIL MOTION OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY, FILED JUNE 8, 2023

SUPERIOR COURT OF THE
STATE OF WASHINGTON
KING COUNTY

NO. 22-2-11923-3 SEA

HOSSEINZADEH,

Plaintiff/Petitioner,

vs.

SWEDISH HEALTH SERVICES *et al.*,

Defendant/Respondent.

ORDER ON CIVIL MOTION

The above-entitled Court, having heard Plaintiff's Motion for Reconsideration regarding the denial of a Motion for Sanctions.

IT IS HEREBY ORDERED that the Motion for Reconsideration is Denied.

Dated: June 8, 2023

/s/_____
Honorable Judge Suzanne Parisien