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NO. 74890-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

PRISON LEGAL NEWS,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER PRISON LEGAL NEWS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

LAWS, STATUTES AND COURT RULES

I. INTRODUCTION

The decision of the Court of Appeals, if not corrected, conflicts with decisions of this Court and openly disregards the mandate of openness that underlies Washington's Public Disclosure Act ("PDA").

First, the Court of Appeals allowed the Department of Corrections ("DOC") to redact the names of public employees found guilty of medical misconduct. The records here were not routine performance evaluations that did not discuss "specific instances of misconduct"; instead they related specifically to employees found to have committed misconduct.

Second, the Court of Appeals applied an overbroad interpretation of what is "law enforcement" and what is "essential to effective law enforcement" for purposes of RCW 42.17.310(1)(d). This is contrary to the PDA's mandate to construe exemptions narrowly.

Third, the Court of Appeals allowed DOC to extensively redact details in the medical misconduct records, including all body parts, all medications, all ailments, all diagnoses, all exam results and all medical conditions even though the inmate names had already been redacted, thus making the additional redactions unnecessary to protect the patient's identity. This disregards the statutory language and the PDA's mandate in favor of disclosure.

Fourth, the Court of Appeals failed to order DOC to pay the statutory penalty for wrongfully withholding unredacted copies of draft letters and reports. This defies RCW 42.17.340(4)'s requirement of a penalty of "not less than five dollars" and this Court's holding that the statute "entitle[s] a requester to an award" if an agency erroneously withholds public records.

II. FACTUAL BACKGROUND

The independent newspaper Prison Legal News ("PLN") publishes news and analysis of judicial rulings that affect correctional institutions. CP 22. As part of this reporting, PLN sent two requests for public records to DOC in January 2000. The requests sought, among other things, records regarding all disciplinary actions against DOC medical providers by any licensing agency, DOC medical staff practicing with restricted or suspended licenses, DOC medical providers who were disciplined or fired, and names of disciplined staff members and the actions taken against them. CP 158, 181.

Nine months later, PLN received heavily redacted documents responsive to its requests. CP 208. DOC redacted names of disciplined staff members – health care employees who were found to have committed misconduct. After redacting all patient names from the misconduct investigation records, DOC also redacted all references to body parts, medications, ailments, diagnoses, exam results and conditions for all patients whose care was the subject of the misconduct investigations.

The records that PLN did obtain revealed serious medical misconduct in Washington penal institutions, resulting in at least two inmate deaths: CP 187. Other incidents included "fail[ure] to properly administer health care to inmate & unborn child," "fail[ure] to follow proper medical instructions, misdiagnosed medical condition and shredded a medical record" and use of "krazy glue on inmate's wounds." CP 187.

III. ARGUMENT

A. Allowing Agencies to Withhold Records of Misconduct by Public Employees Conflicts with the PDA's Mandate of Openness.

The PDA is a "strongly worded mandate for broad public disclosure." *Spokane Police Guild v. Washington State Liquor Control Bd.*, 112 Wn.2d 30, 33, 769 P.2d 283 (1989).

> The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.

Progressive Animal Welfare Soc'y v. University of Washington (*PAWS II*), 125 Wn.2d 243, 251, 884 P.2d 592 (1994). Agencies must disclose all public records unless a specific exemption allows withholding. RCW 42.17.310(4). Courts must construe the right of disclosure broadly and the exemptions narrowly. RCW 42.17.251; *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 128, 580 P.2d 246 (1978); *Cowles Publ'g Co. v. Pierce County Prosecutor's Office*, 111 Wn. App. 502, 505-06, 45 P.3d 620 (2002) ("The Act's disclosure provisions are liberally construed; its exemptions are 'precise, specific, and limited.' ") (quoting *PAWS II*, 125 Wn.2d at 258).

This Court recently emphasized the fundamental importance of an open government to a "free and democratic society." *Dreiling v. Jain*, __ Wn.2d __, 93 P.3d 861 (2004). In *Dreiling*, this Court found that having an open government operates as a check on the misuse of political and judicial power because "[p]roceedings cloaked in secrecy foster mistrust and, potentially, misuse of power." *Id.* While *Dreiling* affirmed public access to court records, the importance of open government resonates in the context of access to public records as well. The PDA itself contains declarations of public policy that mandate broad disclosure of public records:

> [M]indful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.
>
> The provisions of this chapter shall be ***liberally construed*** to promote ... full access to public records so as to assure continuing public confidence of ... governmental processes, and so as to assure that the public interest will be fully protected.

RCW 42.17.010(11) (emphasis added).

The Court of Appeals' denial of public access to the names of DOC medical providers who have committed medical misconduct on inmates – and the details of that misconduct – prevents public monitoring of these subjects and limits governmental accountability. The importance of such public monitoring is at the core of the PDA. Permitting the DOC to withhold information about disciplined medical providers conflicts with the clearly stated policy of the PDA.

This Court has recognized the legitimate public interest in records that discuss "specific instances of misconduct or public job performance" by public employees. *Dawson v. Daly,* 120 Wn.2d 782, 797, 800-01, 845 P.2d 995 (1993). The medical misconduct in question here is not a mere technicality, like showing up late for work or improperly using state computers for personal use. Instead, it involves specific instances of misconduct and public job performance. The incidents for which PLN seeks additional information – for example, failing to provide care, giving the wrong injections, writing incorrect prescriptions or destroying medical records – resulted in at least two inmate deaths. CP 187. By allowing DOC to select what the public learns about these types of incidents, the decision below raises serious concerns about the transparency of DOC's processes and the safety of its facilities, concerns that are of substantial interest to the public.

B. Withholding Records of Investigations into Misconduct by Health Care Employees is Not Essential to Effective Law Enforcement.

The Court of Appeals accepted DOC's determination that RCW 42.17.310(1)(d), commonly described as the investigative records exemption, applied to records of misconduct by the agency's health care employees. This acceptance was an error.

Exemption (1)(d) applies only to:

> [s]pecific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

RCW 42.17.310(1)(d).[1]

To determine if agency records may be withheld under the "effective law enforcement" prong of the exemption, a two-step analysis is required. First, the record must be compiled by law enforcement, and second, the record must be essential to effective law enforcement. *Newman v. King County*, 133 Wn.2d 565, 572, 947 P.2d 712 (1997). Exemption (1)(d) does not apply to the records PLN requested because investigations into medical malpractice are not "law enforcement," and the records at issue are not "essential to effective law enforcement."

Just as it defines all PDA exemptions narrowly, this Court has a narrow definition of "law enforcement" as used in Exemption (1)(d). Not every activity by "investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession" is law enforcement. In *Brouillet v. Cowles Publishing Co.*, for example, the Court held the Superintendent of Public Instruction (SPI) administered a school system; it did not enforce law. 114 Wn.2d 788, 795, 791 P.2d 526 (1990). Thus, RCW 42.17.310(1)(d) did not apply to proceedings and investigations into whether to revoke teaching licenses based on teachers' sexual activity with students. The Court held:

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[1] DOC did not argue that personal privacy rights were implicated under Exemption (1)(d). This Court's decisions make clear that misconduct records may not be withheld on privacy grounds. *See, e.g., Dawson v. Daly*, 120 Wn.2d 782, 797, 800-01, 845 P.2d 995 (1993) (personnel records involving specific instances of misconduct would be disclosable); *Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 798, 791 P.2d 526 (1990) (no privacy rights violated in release of records detailing reasons for revocation of teaching certificates); *Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 728, 748 P.2d 597 (1988) (privacy grounds do not support withholding of names of officers against whom complaints were sustained).

> Law enforcement involves imposition of sanctions for illegal conduct. ... But [SPI investigates] conduct which could not be illegal under the constitution, such as 'immorality,' 'intemperance,' or 'unprofessional conduct.' ... Finally, law enforcement involves imposition of a fine or prison term. The record in this case does not link these investigations with any SPI attempt to seek either civil or criminal penalties.

Id. at 796.

Indeed, even when dealing with law enforcement entities, not all investigations performed by those agencies are "law enforcement" nor is the secrecy of all investigative records compiled by such agencies "essential to effective law enforcement." This Court has required the release of investigations of employee misconduct, including investigations by law enforcement entities of their employees. *See, e.g., Amren v. City of Kalama,* 131 Wn.2d 25, 929 P.2d 389 (1997) (ordering release of state patrol report investigating the Kalama Police Chief; investigation was not "criminal"); *Dawson*, 120 Wn.2d at 797 (indicating that personnel records of prosecutor involving specific instances of misconduct would be disclosable).

Courts in other states also have required disclosure of internal investigations by law enforcement entities. *See e.g., Evening News Ass'n v. City of Troy,* 339 N.W.2d 421 (Mich. 1983) (rejecting a police department's conclusory statements that disclosure of an incident report would interfere with law enforcement proceeding); *Globe Newspaper Co. v. Bratton*, 1 Mass. L. Rep. 136 (Mass. Super. Ct. 1993) (finding disclosure of internal affairs investigation report concerning police misconduct would not prejudice effective law enforcement); *City of*

Hartford v. Freedom of Info. Comm'n, 518 A.2d 49 (Conn. 1986) (ordering the disclosure of police department internal investigation records relating to allegations of police misconduct). These courts have rejected the notion that disclosure of law enforcement agencies' internal investigations of misconduct inescapably interferes with the aims of law enforcement.

Just as the records in *Brouillet* were not law enforcement, the records of medical misconduct are not law enforcement. In *Brouillet*, this Court noted that the SPI records could relate to legal but immoral or unprofessional conduct and then held that the records were not related to law enforcement. 114 Wn.2d at 796-97. Similarly, the internal DOC investigations into medical misconduct by health care employees are not investigations into allegedly illegal acts. DOC admits its medical misconduct investigation procedure looks into "unlawful ***or*** inappropriate acts" (emphasis added). CP 1433. The investigations do not result in "civil or criminal penalties," and "the documents involve medical conduct rather than criminal activity." CP 1408, 1447. DOC itself does not contend the investigations in question are law enforcement. Ct. of Appeals Br. of Resp't DOC at 23.

Even if DOC's investigations into medical malpractice were "law enforcement" and satisfied the first part of the two-part test, the exemption does not apply because DOC's redactions were not "essential to effective law enforcement." The Court of Appeals incorrectly relied on *Cowles Publishing Co. v. State Patrol* to support its decision that withholding the medical misconduct records was essential to effective law enforcement. But the facts in this case diverge sharply from those in *State Patrol.*

State Patrol held that the police agencies did not have to disclose the names of officers who were the subject of internal affairs investigations because releasing those names would undermine public confidence in police and would interfere with future internal investigations by having a chilling effect on the willingness of other officers to testify against them. 109 Wn.2d 712, 729, 732-33, 748 P.2d 597 (1988). These concerns do not translate to this case for several reasons. First, in *State Patrol*, "the job the officers did was law enforcement." *Brouillet*, 114 Wn.2d at 797 (discussing *State Patrol*). Second, the agencies claiming the exemption conducted the investigations and generated the records themselves and therefore had genuine cause for concern that their future investigative efforts would be seriously hindered by full disclosure. *State Patrol*, 109 Wn.2d at 732-33. Third, the sanctions remained confidential within the agency. *Id.* at 729. And fourth, the trial court decision in *State Patrol* came only after extensive testimony from representatives of each of the three law enforcement agencies seeking to prevent disclosure. The court heard testimony from high-ranking officers and a police psychologist regarding a "code of silence" among officers and harm to the investigative process if the names of complainants, witnesses or officers under investigation were disclosed. *Id.* at 715-716.

This case is not comparable. First, the job the medical employees did was not law enforcement. It was – or was supposed to be – providing proper medical care to inmates. Second, DOC claims that its own investigations and law enforcement efforts will be impeded by disclosure not only of DOC records but also records created by a wholly different agency, the Personnel Appeals Board. The absurdity of this concern is underscored by the fact that the Personnel Appeals Board itself did not believe that disclosure of this information would have any negative effect on its work; it produced some of the documents that PLN originally requested from the DOC, without any redactions whatsoever. Third, the disciplinary sanctions imposed on DOC medical employees do not necessary remain confidential within the agency; in fact, a finding of serious misconduct results in reporting the act to "the appropriate licensing commission which then conduct an investigation." CP 1450. Fourth, while DOC provided two conclusory declarations by DOC employees stating that DOC's investigations will suffer if DOC is forced to release the names of DOC employees and inmates who report potential wrongdoing, CP 1432-34, CP 1446, such evidence does not meet the level provided in *State Patrol*. Neither declaration set forth any evidence for the assertion that DOC employees will not report wrongdoing if their names might be disclosed. Neither declaration sets forth any evidence, study or basis for the conclusion that ***inmates*** – the very population harmed by medical misconduct in prison – would not report wrongdoing and poor medical care.

The Court of Appeals' broad interpretation allows the DOC to expand Exemption (1)(d) to cover investigations relating to employees in all operations at DOC. As this Court has recognized, DOC performs a variety of services – including mental health care and electrical work on its facilities – outside of this alleged "law enforcement" mission. *See Melville v. State*, 115 Wn.2d 34, 38-39, 793 P.2d 952 (1990) (mental health treatment); *National Elec. Contractor's Ass'n v. Riveland*, 138 Wn.2d 9, 978 P.2d 481 (1999) (employment of inmates to perform electrical work on prison facilities); *cf. McLean v. State Dep't of Corrections*, 37 Wn. App. 255, 258, 680 P.2d 65 (1984) (acknowledging certain DOC employees may not be law enforcement personnel). The Court of Appeals described the scope of DOC's duties to inmates as "broad," covering food, clothing, shelter, medical care and safety. Opinion at 11. It echoed DOC's claim that identifying employees found to have committed misconduct would "compromise the staff members," exposing them to blackmail and intimidation. Opinion at 12. Under the Court of Appeals decision, DOC could extend Exemption (1)(d) to cover records of employee misconduct in all areas of the agency. Under the court's rationale, DOC could hide records of misconduct of any employee who could have contact with inmates and thus be "compromised" if details of their misconduct were publicized.

The lower court's decision effectively shields one of the state's largest agencies from any public oversight of its internal operations. By allowing DOC to broadly define non-law enforcement activities – such as health care, medical misconduct or investigations into medical misconduct – as essential to effective law enforcement, the Court of Appeals effectively grants the agency carte blanche to cloak all of its activities under the investigative records exemption. This broadly construed exemption and deference to the agency's determination are incompatible with the language of the PDA and the decisions of this Court. *See* RCW 42.17.340(3); *Hearst*, 90 Wn.2d at 130-31.

C. Once a Patient's Identity has been Redacted, the Remainder of the Record is Not Exempt under RCW 70.02.020.

The Court of Appeals erred in its interpretation of RCW 70.02.020, a provision of the Uniform Health Care Information Act. The statute defines "health care information" as "any information ... that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care." RCW 70.02.010(6). The PDA expressly incorporates Chapter 70.02 as controlling the public inspection and copying of health care information of patients. RCW 42.17.312.

While there have only been a few judicial opinions interpreting Washington's Uniform Health Care Information Act,[2] the plain language is clear: a health care provider may not, without either patient or statutory authorization, disclose information that identifies or can readily be associated with the identity of a patient ***and*** directly relates to the patient's health care. Accordingly, the term "'health care information' has two

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[2] *Doe v. Group Health Cooperative of Puget Sound, Inc.*, reversed summary judgment after finding a genuine issue of material fact as to whether, under the circumstances, disclosure of an employee/patient's name and consumer number constituted disclosure of health care information. 85 Wn. App. 213, 932 P.2d 178 (1997), *overruled on other grounds by Reid v. Pierce County*, 136 Wn.2d 195, 961 P.2d 333 (1998). Unlike the redacted DOC records, the records at issue in *Doe* clearly identified the plaintiff; the issue was whether the disclosed information directly related to the plaintiff's health care.

requisites – patient identity and information about the patient's health care." *Wright v. Jeckle*, 121 Wn. App. 624, 630, 90 P.3d 65 (2004). Withholding the patient's name and other identifiers takes the record out of the statutory definition of "health care information" and thus out of the ambit of the health care information exemption.

Division Three of the Court of Appeals recently addressed the dual elements of the statutory definition of "health care information." In *Wright v. Jeckle*, the court held a class action notice procedure in a lawsuit against a physician did not violate RCW 70.02.020 because it did not disclose patients' "health care information" as defined by RCW 70.02.010(6). 121 Wn. App. at 630. The notice procedure ensured that people who had access to the patients' names did not have access to information about the patients' medical treatment. The procedure separated the mailing of the class action notice to the defendant doctor's patients into two phases. In the first phase, the employees of one mailing agent inserted the notices into the envelopes and then sealed the envelope. In the second phase, the employees of a second mailing agent addressed the envelopes using the list of names provided by the court. The first group would be aware only of the medical condition that was the subject of the lawsuit. The second group would be aware only of the addressees' names, not the health care information suggested by the class action notice.

Similarly, where public records disclose information about the medical treatment but do not disclose patients' names, the records do not disclose protected "health care information." PLN seeks disclosure of records relating to the health care of unnamed patients; it does not seek identifying patient information. Like the first mailing agents in *Wright*, PLN would have access only to the health care information of unidentified patients. This information is not "health care information" as defined by RCW 70.02.010(6).

Nevertheless, the Court of Appeals in this case allowed the exemption to cover medical reports and specific medical information where the identity of the patient had been redacted (CP 100, 102, 121, 122, 130). It also expanded the exemption to cover such information as the identities of non-patients, including staff and DOC and Personnel Appeals Board officials; generic medical information (CP 118); and names of drugs (CP 102, 121, 122, 126). Names, pronouns and the identification numbers of patients were already redacted. Allowing DOC to withhold the identity of its employees – people whose health care information does not appear in the requested records – the names of drugs and patients' medical information where the patients' names have been redacted impermissibly broadens the scope of the exemption.

Releasing the requested records with information identifying the patient redacted sufficiently protects the interests of the patient. In contrast, affirming the DOC's widespread redactions under RCW 70.02.020 goes beyond the statutory interest in patient privacy and merely serves the interests of the public employees who were disciplined and the interests of the state agency that employs them.

Permitting only limited redactions also allows the public, including PLN, to monitor the performance of the state in caring for Washingtonians who are uniquely vulnerable to medical misconduct. Individuals incarcerated in DOC facilities are not at liberty to choose new health care providers to avoid those who have been sanctioned for misconduct. The court erred in holding that RCW 70.02.020 could be used to withhold the very information that would allow the public to monitor the activities of health care providers within the DOC.

D. The PDA Requires Public Agencies that Wrongfully Withhold Public Records to Pay a Statutory Penalty for Each Day the Records are Withheld.

The PDA provides that "it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that [the requester] was denied the right to inspect or copy said public record." RCW 42.17.340(4). This Court has recognized that "'strict enforcement' [of this penalty] will discourage improper denial of access to public records." *PAWS II*, 125 Wn.2d at 272, 884 P.2d 592 (1994) (quoting *Progressive Animal Welfare Soc'y v. Univ. of Washington*, 114 Wn.2d 677, 686, 790 P.2d 604 (1990) ("*PAWS I*")). This Court has held that RCW 42.17.340(4) "***entitle[s]*** a requester to an award if an agency erroneously denies disclosure of a public record." *Limstrom v. Ladenburg*, 136 Wn.2d 595, 617, 963 P.2d 869 (1998) (emphasis added). By failing to require DOC to pay any penalties whatsoever even though the Court found DOC had wrongfully withheld certain records, the Court of Appeals rejected this Court's holding. Opinion at 18.

The statutory penalty provision of the PDA was amended in 1992, when the Legislature replaced the earlier statutory penalty with the current language. Before the amendment, the provision read: "In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars for each day that he was denied the right to inspect or copy said public record." *See* Laws of 1992, ch. 139, § 8; *King County v. Sheehan*, 114 Wn. App. 325, 354-55, 57 P.3d 307 (2002) (discussing the Legislative amendment to the language in RCW 42.17.340(4)). Before 1992, the provision provided no minimum penalty and capped the penalty at $25 a day. In 1992, the Legislature raised the cap from $25 a day to $100 a day and created a minimum penalty of "not less than five dollars" a day.

This Court has, on numerous occasions, stated its principles regarding statutory interpretation. In particular, "[w]hen the plain language [of a statute] is unambiguous – that is, when the statutory language admits of only one meaning – the legislative intent is apparent, and we will not construe the statute otherwise." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citing *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)). This Court's interpretation of a statute is guided by a number of canons, three of which are particularly relevant in this situation. First, "[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *J.P.*, 149 Wn.2d at 450, 69 P.3d 318 (quoting *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)). Second, "[a] court must give effect to legislative intent determined 'within the context of the entire statute.'" *Davis*, 137 Wn.2d at 963. Third, "in construing a statute, 'a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.'" *J.P.*, 149 Wn.2d at 450, 69 P.3d 318.

Applying these canons of statutory interpretation, the only correct interpretation of RCW 42.17.340(4) is that the statutory penalty is mandatory and the trial court's discretion is limited to determining where within the "five dollars per day to one hundred dollars per day" range to set the penalty. Interpreting the statute as giving trial courts the discretion to determine whether to assess a penalty at all violates all three of the canons of statutory interpretation. It would violate the first canon because it would render the phrase "not less than five dollars," RCW 42.17.340(4), entirely superfluous. It would violate the second canon because it would ignore this Court's recognition that the PDA "is a strongly worded mandate for broad disclosure of public records," *PAWS II*, 125 Wn.2d at 251 (quoting *Hearst*, 90 Wn.2d at 127), and that "'strict enforcement' of fees and fines will discourage improper denial of access to public records." *PAWS II*, 125 Wn.2d at 272, 884 P.2d 592 (quoting *PAWS I*, 114 Wn.2d at 686, 790 P.2d 604). Finally, it would violate the third canon because it would lead to the absurd result that a trial court does not have the discretion to set the penalty at less than five dollars per day but at the same time has the discretion to set the penalty at zero dollars per day. *Cf. Sheehan*, 114 Wn. App. at 352 (noting that "if the trial court has discretion to set penalties within the range of *not less than* $5 to not more than $100 per day, it would not seem to have discretion to set the penalties at less than $5 per day, which in turn would necessarily mean that it does not have discretion to deny penalties altogether") (emphasis in original).

Because the decision below failed to grant statutory penalties to PLN, the prevailing party, in contravention of decisions of this Court and interpreted RCW 42.17.340(4) in a way that violated multiple canons of statutory interpretation, this Court should reverse the decision of the Court of Appeals.

E. This Court Should Award PLN Attorneys' Fees and Costs under RCW 42.17.340(4).

Pursuant to RAP 18.1, PLN hereby reiterates the request it made to the Court of Appeals for reasonable attorneys' fees and expenses. RAP 18.1(a), (b). The PDA provides:

> Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

RCW 42.17.340(4). This provision mandates fees and costs to the prevailing party at the trial court and on appeal. *PAWS I*, 114 Wn.2d at 690; *Limstrom v. Ladenburg*, 85 Wn. App. 524, 534, 933 P.2d 1055 (1997).

IV. CONCLUSION

For these reasons, PLN requests that the Court reverse the decision of the Court of Appeals that DOC properly redacted the names of employees who were found guilty of committing medical misconduct and that DOC properly redacted information under RCW 42.17.310(1)(d) and 70.02.020. PLN also requests that this Court reverse the Court of Appeals for its failure to award a statutory penalty for each day that DOC withheld records in violation of the PDA. PLN also requests that this Court direct DOC to release the requested records in accordance with this Court's decision. Finally, PLN requests that this Court award PLN its reasonable attorneys' fees and costs pursuant to RAP 18.1 plus the statutory penalty for each day and for each record withheld in violation of the PDA.

RESPECTFULLY SUBMITTED this 6th day of August 2004.

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