***Anaya v. Sauerwein*: The WSMA Joins in an *Amicus Curiae* Brief Regarding Informed Consent and Medical Malpractice Claims**

**The appellant in this case, the husband of a deceased patient, challenges a decision of the Washington State Court of Appeals which held that when a physician allegedly misdiagnoses a patient’s condition, the patient is only permitted to bring an action for medical negligence, not for failure to obtain informed consent. The parties disagreed whether an earlier court decision which appeared to allow a separate claim for lack of informed consent represented an exception to that holding. The Court of Appeals ruled in favor of Dr. Sauerwein when it found that the earlier case relied upon by the appellants had either been abrogated, limited to its facts, or silently overturned by the Supreme Court. The Supreme Court has accepted review of this case.**

**This case is important because it could adversely affect the manner in which medical malpractice claims are brought against healthcare providers and facilities. Physicians could be required to discuss every abnormal laboratory test or result with every patient, and fully discuss the pros and cons of all relevant treatment options related to those abnormalities, or else risk a claim for failure to provide informed consent. The effects of this would be time-consuming, resource intensive, confusing for patients, costly, and would fail to improve patient care. It is crucial that the Supreme Court be persuaded to maintain its position that informed consent is not a legitimate basis for a claim separate from that of medical negligence.**

**The WSMA, along with the Washington State Hospital Association (WSHA) and Physicians Insurance (PI), has submitted an *amicus curiae* brief in support of the decision of the Court of Appeals. The brief argues against allowing a separate cause of action (claim) based on lack of informed consent in a medical negligence action. The Court has accepted the brief. Oral arguments are scheduled for October 29, 2013. This website will be updated as the case develops.**

***Neighborcare v. Teeter*: *Amicus Curiae* Brief Regarding Access to Federal Courts in Legal Challenges to the State Medicaid Program**

**This is a case before the Ninth Circuit Court of Appeals challenging a ruling that Washington’s Medicaid Core Provider Agreement (CPA) limits venue to state court in Thurston County, thus prohibiting the Federally Qualified Health Centers (FQHC) from challenging the CPA in federal court. In other words, the court ruled that all challenges to the Medicaid CPA can only be brought in state court – not federal court.**

**Physicians and hospitals have an interest in this case because the FQHC and all other providers sign the same CPA. The WSMA and other groups have brought a number of lawsuits against the State of Washington for violations of federal law in the past, and we will undoubtedly need to do so again in the future. Cases involving issues related to federal law are often best litigated in federal court, partly because federal courts are most experienced in interpreting federal law. As Medicaid becomes a greater share of providers’ revenue, the likelihood of litigation by physicians and hospitals against the state for violations of federal law will likely increase. Requiring all challenges to the CPA to be brought in state court not only places the cases in the hands of (state) courts less experienced in dealing with interpretation of federal law, it also potentially creates a bias in favor of the state agency.**

**In April 2013, the WSHA submitted an *amicus* brief in association with WSMA legal staff in support of the plaintiff-appellants (the FQHC). This case is still before the Ninth Circuit. A date for oral arguments has not been set, and a decision is not expected for several months following that.**

**WSMA Lawsuit Seeking Writ of Mandamus to Compel Coverage by Health Plans for Emergency Medical Services Provided by Non-Participating Physicians**

In December, 2010, the WSMA submitted a petition seeking a writ of mandamus to compel Insurance Commissioner Kreidler to require insurance plans to pay the billed charges for emergency medical services performed by non-participating providers. The WSMA believes the law requires this in order to protect patients from balance billing. The Supreme Court declined to hear the petition, but chose to transfer the case to Thurston County Superior Court. The court ruled against the WSMA on summary judgment. The WSMA then sought direct appeal of its petition for declaratory judgment and a writ of mandamus at the Supreme Court. Despite making compelling arguments for the Supreme Court to accept the case for direct review, on April 25, 2012 the Supreme Court declined to take up the case at this time, and transferred it to Division II of the Court of Appeals. The WSMA anticipates that oral arguments will be heard in fall, 2012.

We were disappointed that the Supreme Court declined to take the case. However, we believe that our legal arguments are sound. We hope to convince the court that the law does not allow the Insurance Commissioner to permit insurance companies to limit their payments for emergency services provided by non-participating physicians to their in-network rate.

**Palomar Medical Center v. Sebelius**

In this case, the Ninth Circuit Court of Appeals held that when a Medicare Recovery Audit Contractor makes a decision to reopen an old claim, the decision is final and unappealable, and thus, the issue of good cause for opening the old claim cannot be raised after the audit’s conclusion. The WSMA joined the American Medical Association (AMA) and the medical associations from all other states in the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, and Oregon) in an [amicus curiae brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_palomar-v-sebelius-second-brief.pdf) [PDF]in an unsuccessful effort in support of Palomar Medical Center.

**Braswell v. Shoreline Fire Department**

The WSMA joined the University of Washington, the City of Seattle, and WSHA in an [amicus curiae brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Braswell-amicus-brief.pdf) [PDF] in a case related to the rights associated with a paramedic certificate and the associated rights of the physician supervising the paramedic.

The case involved the question whether a paramedic certification was a property or liberty interest, and whether removal from a paramedic position tortuously interfered with the plaintiff’s employment relationship. The federal District Court ruled for the defendants.

The brief urged the Court of Appeals to affirm the lower court’s opinion, and argued that the public’s interest in a strong emergency medical services system would be undercut if a Medical Director is unable to make a determination regarding the qualifications, competence, and suitability of paramedics under his or her supervision.

The Court of Appeals upheld most of the [District Court decision](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Braswell-Ninth-Circuit-Opinion.pdf) [PDF], but remanded the case back to District Court to determine if the plaintiff had suffered a deprivation of his liberty interest.

**Unruh v. Cacchiotti**

The WSMA filed an [amicus brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_UnruhvCacchiotti.pdf) [PDF] in this case, in which considered Washington’s 2006 statute of limitations and statute of repose. The Washington Supreme Court, reversing the trial court’s decision, held that neither statute would bar claims similar to the plaintiff’s. The measures WSMA’s brief sought to protect remain intact, but there is some concern that the court may erode these measures if given the chance in a case that more directly challenges these measures.

**Waples v. Yi**

In a [6-3 decision](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Waples_v_Yi.pdf) [PDF], the Washington State Supreme Court dealt yet another blow to medical malpractice tort reform by striking down the notice requirement of RCW 7.70.100(1). This requirement, which was included in the bipartisan medical malpractice reforms enacted in 2006, and which was strongly supported by the WSMA, required a plaintiff to provide at least ninety days’ notice of the intention to commence a medical malpractice suit. Read the [amicus curiae brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Waples_v_Yi_amicus.pdf) [PDF] in the Waples v. Yi case.

**Columbia Physical Therapy, Inc. P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.**

In a [unanimous decision](https://www.wsma.org/Media/Legal-pdfs/LegalAct_BFOA_v_Columbia.pdf) [PDF] released on March 18, 2010, the Washington State Supreme Court ruled in favor of Benton Franklin Orthopedic Associates (BFOA) in the case challenging whether physical therapists could be employed by medical practices in Washington.

**Ambach v. French**

The Washington Supreme Court reversed the Court of Appeals in [Ambach v. French](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Ambach_v_French.pdf) [PDF], and held that Washington’s Consumer Protection Act does not provide a remedy for plaintiffs in medical negligence cases.

**Putnam v. Wenatchee Valley Medical Center**

Washington Supreme Court declares medical malpractice certificate of merit statute unconstitutional in [Putnam v. Wenatchee Valley Medical Center](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Putnam_v_WVMC.pdf) [PDF]. Read the [amicus curiae brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Putnam_v_WVMC_amicus.pdf) [PDF] in the Putnam v. Wenatchee Valley Medical Center case.

**WSMA v. Regence**

A [WSMA initiated lawsuit](https://www.wsma.org/Media/Legal-pdfs/LegalAct_WSMA_v_Regence.pdf) [PDF] in response to a program implemented by Regence that scored physicians' performance based on quality and efficiency criteria. WSMA Regence Settlement cited in [Robert Wood Johnson Foundation funded analysis](https://www.wsma.org/Media/Legal-pdfs/LegalAct_WSMA_v_Regence_RWJF_Report.pdf) [PDF] of legal issues raised by health plan "High Performance" quality and efficiency rating programs.

**Blue Cross Blue Shield Settlement**

A [national class action lawsuit](https://www.wsma.org/Media/Legal-pdfs/LegalAct_BlueCross.pdf) [PDF] in which the WSMA was a signatory that alleged Blue Cross Blue Shield plans (Regence and Premera) had defrauded physicians out of payment for services provided.

**Wright v. Jeckle**

This is a Washington State Supreme Court ruling that held physicians can make a profit on the sale of goods to patients. The WSMA filed an [amicus brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Wright_v_Jeckle.pdf) [PDF] in this case.

**Tacoma Orthopedic v. Regence**

A Washington State Supreme Court ruling the held health plan contracts must not require arbitration to the exclusion of judicial remedies. The WSMA filed an [amicus brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_TacomaOrth_v_Regence.pdf) [PDF] in this case.

**Gonzales v. Oregon**

A United States Supreme Court ruling the upheld Oregon's physician assisted suicide law. The WSMA was a signatory to an [amicus brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Gonzales_v_Oregon.pdf) [PDF] filed in this case.

**Swedish v. Riccardo**

This was a case over disclosure of confidential peer review information. The WSMA filed an [amicus brief](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Swedish_v_Riccardo.pdf) [PDF] in this case.

**Peacehealth v. Turner**

Local hospital [sues physician board member](https://www.wsma.org/Media/Legal-pdfs/LegalAct_Peacehealth_v_Turner.pdf) [PDF] for breach of fiduciary duty when he decides to open a competing ASC. The WSMA provided financial support in this case.