Legal Activities

The WSMA regularly files amicus curiae or "friend of the court" briefs in cases brought by others that raise issues of importance to the medical community and have the potential of having either a positive or negative impact on the practice of medicine in the state of Washington. In addition, the WSMA will defend the rights of its members by filing lawsuits or initiating other legal actions on behalf of its members.

**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**

The WSMA has 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/%7E/Media/Legal-pdfs/LegalAct_palomar-v-sebelius-second-brief.pdf) [PDF] in the case of Palomar Medical Center v. Sebelius. A Medicare Recovery Audit Contractor (RAC) reopened a paid claim submitted by Palomar after more than one year. Palomar challenged the reopening for failure to show good cause. A Medicare Appeals Counsel (MAC) held that even though federal regulations require a showing of good cause to reopen a claim, the regulations do not permit a challenge of the failure to make that showing. A Federal District Court judge granted summary judgment to the Department of Health & Human Services (DHHS). After oral arguments at the Ninth Circuit Court of Appeals on March 7, 2012, the court invited amicus briefs to address (i) whether federal regulations bar administrative challenge of a decision by a RAC to reopen a claim, despite a failure to show good cause, and (ii) if administrative challenge is barred, whether federal courts have jurisdiction to enforce compliance with the requirement to show good cause to reopen a claim.

The AMA Litigation Center initially had joined with the California Medical Association in filing an amicus curiae brief at the Court of Appeals. After the court’s invitation for addition briefing by amici, and following discussion with Tim Layton, WSMA senior director of legislative, regulatory, and legal affairs, the AMA Litigation Center reached out to all of the state medical societies in the Ninth Circuit to join in an amicus curiae brief. The brief is funded entirely by the AMA Litigation Center. This is a powerful demonstration of the strong advocacy of the AMA and state medical societies on behalf of their members and all physicians.

**Braswell v. Shoreline Fire Department**

The Washington State Medical Association joined the University of Washington, the City of Seattle, and the Washington State Hospital Association in an [amicus curiae brief](https://www.wsma.org/%7E/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 amicus curiae brief was drafted by Kristin Miles of the Washington State Attorney General’s Office

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 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 entire emergency medical system is designed by law to be under the control of physicians, including who is chosen to work as the eyes, ears, and hands of the supervising physician. The amici argued that reversing the District Court decision could have wide-ranging adverse effects on the health care system in general, since it could lead to a physician being unable to discharge any “at will” health care professional dependant on the physician for employment (potentially including physician assistants, nurses, or any other licensed or certified health care professional) absent a “pre-deprivation” due process hearing.

The Court of Appeals upheld the [District Court decision](https://www.wsma.org/%7E/Media/Legal-pdfs/LegalAct_Braswell-Ninth-Circuit-Opinion.pdf) [PDF], except the court found that there was a triable issue of fact whether the plaintiff had suffered a deprivation of his liberty interest (i.e. the action of removing the plaintiff from his position as a paramedic would preclude him from finding future work in his chosen profession). The case was remanded to District Court.

**Unruh v. Cacchiotti**

The WSMA filed an [amicus brief](https://www.wsma.org/%7E/Media/Legal-pdfs/LegalAct_UnruhvCacchiotti.pdf) [PDF] in this case, in which two of the remaining pieces of the 2006 tort reform legislation were being challenged. First, the 2006 legislation stated that the three-year statute of limitation would apply to minors, rather than being "tolled" (i.e. set aside) until the age of majority. The plaintiffs made an argument that the elimination of tolling of the statute of limitation for medical malpractice cases while a plaintiff is a minor violated her constitutional right of access to the court, as well as the privileges and immunities clause of the constitution. The court did not specifically address the constitutional issue because it was able to decide the case based on other laws. However, the court issued what amounts to a warning that it would consider the elimination of tolling for minors to give rise to "compelling constitutional challenges."

The second issue involved the 8-year statute of repose which was also part of the tort reform legislation of 2006. This sets a maximum 8-year period for filing a medical malpractice suit. The court had declared an earlier version of the statute of repose unconstitutional, and the legislature hoped that the 2006 law would correct this. While it recognized the earlier challenge to the statute of repose, the court did not have to use the new statute to decide this case, and made no comments about the constitutionality of the statute of repose.

So the measures which the WSMA sought to protect in this case emerged intact. The thinking of the court regarding the statute of repose is hard to discern because it made no comments about the current law's constitutionality. However, the court's comments about the elimination of tolling of medical malpractice cases for minors raises concerns about its ability to survive a direct challenge in the future.

**Waples v. Yi**

In a [6-3 decision](https://www.wsma.org/%7E/Media/Legal-pdfs/LegalAct_Waples_v_Yi.pdf) [PDF] released on July 1, 2010 in Waples v. Yi, 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/%7E/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/%7E/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**

Washington Supreme Court Reverses Court of Appeals in [Ambach v. French](https://www.wsma.org/%7E/Media/Legal-pdfs/LegalAct_Ambach_v_French.pdf) [PDF].

**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/%7E/Media/Legal-pdfs/LegalAct_Putnam_v_WVMC.pdf) [PDF]. Read the [amicus curiae brief](https://www.wsma.org/%7E/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/%7E/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/%7E/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/%7E/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 recent 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/%7E/Media/Legal-pdfs/LegalAct_Wright_v_Jeckle.pdf) [PDF] in this case.

**Tacoma Orthopedic v. Regence**

A recent 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/%7E/Media/Legal-pdfs/LegalAct_TacomaOrth_v_Regence.pdf) [PDF] in this case.

**Gonzales v. Oregon**

A recent 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/%7E/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/%7E/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/%7E/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.