

To be heard by Whatcom County Superior Court Judge:  
***The Honorable Raquel Montoya-Lewis***  
Noted for Hearing in Judge Montoya-Lewis's Courtroom:  
**Date: March 25, 2016**  
**Time: 1:30 p.m.**

SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

KEVAN COFFEY,  
Plaintiff,  
v.  
PUBLIC HOSPITAL DISTRICT NO. 1,  
SKAGIT COUNTY WASHINGTON, et al.,  
Defendants.

***Hon. Raquel Montoya-Lewis***

No. 15-2-00217-4

HOSPITAL DISTRICT'S MOTION FOR  
SUMMARY JUDGMENT ON THE  
CONSTRUCTION OF RCW 9.02.150

NOTED: March 25, 2016 at 1:30 p.m.

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1  
II. LEGAL RULING REQUESTED [*the hospital district's construction of RCW 9.02.150*] ..... 1  
III. LEGAL ISSUE [*is the hospital district's construction of RCW 9.02.150 correct?*] ..... 1  
IV. MATERIAL FACTS [*the text of RCW 9.02.150*] ..... 2  
V. LEGAL DISCUSSION [*statutory construction of RCW 9.02.150*] ..... 2  
    A. Construing The Wording Of RCW 9.02.150 Is A Question Of Law. .... 2  
    B. Unambiguous Wording Is Construed As Written ..... 2  
    C. The Wording Of RCW 9.02.150 Is Unambiguous:  
        "*No person*" means *no person*. ..... 3  
VI. CONCLUSION ..... 4

1 **I. INTRODUCTION**

2 The hospital district’s May 2015 Answer asserted a counterclaim for declaratory  
3 judgment on the legal construction of RCW 9.02.150.<sup>1</sup>

4 The construction of a statute is a question of law rather than a question of fact.<sup>2</sup>

5 And Rule 56 mandates that summary judgment “shall be rendered forthwith if ... there is  
6 no genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
7 matter of law.”<sup>3</sup>

8 The hospital district accordingly files this summary judgment motion to establish the  
9 correct legal construction of RCW 9.02.150 forthwith.

10 **II. LEGAL RULING REQUESTED**  
11 **[the hospital district’s construction of RCW 9.02.150]**

12 The defendant hospital district seeks the following ruling as a matter of Washington law:

13 The “no person” language in RCW 9.02.150 prohibits a hospital  
14 district from making a person’s willingness to participate in  
15 abortions an enforceable contract requirement or a consideration in  
16 employment or professional hospital privileges.

17 **III. LEGAL ISSUE**  
18 **[is the hospital district’s construction of RCW 9.02.150 correct?]**

19 This motion raises the following statutory construction issue:

20 Does the “no person” language in RCW 9.02.150 prohibit a  
21 hospital district from making a person’s willingness to participate  
22 in abortions an enforceable contract requirement or a consideration  
23 in employment or professional hospital privileges?  
24

25 <sup>1</sup> Defendants’ Answer To Amended Complaint, Defenses, And Counterclaim at ¶¶42-44.

26 <sup>2</sup> Part V.A of this motion.

<sup>3</sup> CR 56(c) (underline added).

1 **IV. MATERIAL FACTS**  
2 **[the text of RCW 9.02.150]**

3 RCW 9.02.150 states in full:

4 **RCW 9.02.150**

5 No person or private medical facility may be required by law or contract in any  
6 circumstances to participate in the performance of an abortion if such person or private  
7 medical facility objects to so doing. No person may be discriminated against in  
8 employment or professional privileges because of the person's participation or refusal to  
9 participate in the termination of a pregnancy.

10 **V. LEGAL DISCUSSION**  
11 **[statutory construction of RCW 9.02.150]**

12 **A. Construing The Wording Of RCW 9.02.150 Is A Question Of Law.**

13 Construing the wording of a statute is a question of law. E.g., *Amalgamated Transit*  
14 *Union v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000) (“Construction of a statute is a question  
15 of law”).

16 This motion accordingly presents a question of law rather than a question of fact.

17 **B. Unambiguous Wording Is Construed As Written.**

18 The Washington Supreme Court has established the statutory construction rule this court  
19 must follow:

20 ***If a statute is clear on its face, its meaning is to be derived from the language of***  
21 ***the statute alone. This court has repeatedly held that an unambiguous statute is***  
22 ***not subject to judicial construction and has declined to add language to an***  
23 ***unambiguous statute even if it believes the Legislature intended something else***  
24 ***but did not adequately express it.*** A statute is ambiguous if it can be reasonably  
25 interpreted in more than one way, but it is not ambiguous simply because different  
26 interpretations are conceivable. If a statute is ambiguous, this court resorts to  
principles of statutory construction, legislative history, and relevant case law to  
assist in interpreting it.

*Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (bold italics added).<sup>4</sup>

<sup>4</sup> Accord, e.g., *Jewels v. City of Bellingham*, 183 Wn.2d 388, 394, 353 P.3d 204 (2015) (“Statutory interpretation is a question of law, which we review de novo. Our starting point is always the statute’s plain

1 **C. The Wording Of RCW 9.02.150 Is Unambiguous: “No person” means no person.**

2 The full wording of RCW 9.02.150 consists of two straightforward sentences:

- 3 • “**No person** or private medical facility may be required by law or contract in any  
4 circumstances to participate in the performance of an abortion if such person or  
5 private medical facility objects to so doing.”
- 6 • “**No person** may be discriminated against in employment or professional privileges  
7 because of the person’s participation or refusal to participate in the termination of a  
8 pregnancy.”

9 RCW 9.02.150 (bold underline added).

10 The wording of RCW 9.02.150 is not ambiguous.

11 It unequivocally says “No person”.

12 And “no” means no.

13 The unequivocal “no person” wording of RCW 9.02.150 prohibits the hospital district  
14 from making any person’s willingness to participate in abortions an enforceable contract  
15 requirement or a consideration in employment or professional hospital privileges.

16

---

17 *language and ordinary meaning. If the language is unambiguous, our review is at an end.”* (citations omitted);  
18 *State v. Cooper*, 156 Wn.2d 475, 479-480, 128 P.3d 1234 (2006) (“When the plain language [of a statute] is  
19 unambiguous – that is, when the statutory language admits of only one meaning – the legislative intent is apparent,  
20 and we will not construe the statute otherwise. .... Where the Legislature omits language from a statute, intentionally  
21 or inadvertently, this court will not read into the statute the language that it believes was omitted.”) (citations &  
22 internal quotation marks omitted); *In re Custody of Smith*, 137 Wn.2d 1, 8-9, 969 P.2d 21 (1998) (“When the words  
23 in a statute are clear and unequivocal, this court is required to assume the Legislature meant exactly what it said  
24 and apply the statute as written. Although the court should not construe statutory language so as to result in absurd  
25 or strained consequences, neither should the court question the wisdom of a statute even though its results seem  
26 unduly harsh. This court has emphasized that it will not construe unambiguous language and that it assumes that  
the legislature means exactly what it says.”) (citations & internal quotation markings omitted) and 137 Wn.2d at 12  
 (“we will not read qualifications into the statute which are not there. A court cannot read into a statute that which  
it may believe the legislature has omitted, be it an intentional or inadvertent omission.”) (citations & internal  
quotation marks omitted); *Duke v. Boyd*, 133 Wn.2d 80, 87-88, 942 P.2d 351 (1997) (“When the words in a statute  
are clear and unequivocal, this court is required to assume the Legislature meant exactly what it said and apply the  
statute as written. Although the court should not construe statutory language so as to result in absurd or strained  
consequences, neither should the court question the wisdom of a statute even though its results seem unduly harsh.  
It may seem unduly harsh to [interpret the statute at issue as written]. Regardless, we cannot question the wisdom  
of this policy, and we must enforce the statute as written. .... If the Legislature dislikes the impact of the statute as it  
enacted it, the Legislature, and not this court, has the responsibility to change it.”) (citations omitted).

1 **VI. CONCLUSION**

2 The Legislature can change the wording of RCW 9.02.150.

3 But this court cannot. As a matter of Washington law, this court must construe  
4 RCW 9.02.150 to mean what it says:

5 (a) Since RCW 9.02.150 says “No person ... may be required ... in any circumstances  
6 to participate in the performance of an abortion if such person ... objects to so  
7 doing”, the hospital district cannot make any person’s willingness to participate in  
8 abortions an enforceable contract requirement.

9 (b) Since RCW 9.02.150 says “No person may be discriminated against in  
10 employment or professional privileges because of the person’s...refusal to  
11 participate in the termination of a pregnancy”, the hospital district cannot make  
12 any person’s willingness to participate in terminations a consideration in  
13 employment or professional hospital privileges.

14 (c) Since RCW 9.02.150 prohibits a person’s willingness to participate in the above  
15 from being an enforceable requirement or lawful consideration, inquiring about a  
16 person’s willingness has no legal relevance or justification.<sup>5</sup> A person’s  
17 willingness to participate in abortions is therefore not a lawful line of inquiry  
18 when a person is seeking employment or professional hospital privileges.

19 In short: RCW 9.02.150 says what it says. The defendant hospital district is entitled to  
20 judgment establishing the above statutory construction as a matter of Washington law. Pursuant  
21 to CR 56, the hospital district respectfully requests the above legal ruling forthwith.

22 DATED this 26<sup>th</sup> day of February, 2016.

23 FOSTER PEPPER PLLC

24 By: 

25 Thomas F. Ahearne, WSBA #14844  
Christopher G. Emch, WSBA #26457  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101-3299  
Telephone: (206) 447-4400  
Email: ahearne@foster.com  
emchc@foster.com  
*Attorneys for Defendants & Counterclaim Plaintiff*

26 <sup>5</sup> Cf. WAC 162-12-130 (prohibiting pre-employment inquiry of protected status for a discriminatory purpose).