Reversed and Remanded and Memorandum Opinion filed December 9, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00938-CV

FATIMA IBRAHIM, M.D., Appellant

V.

LISA GILBRIDE AND PETE GILBRIDE, Appellees

On Appeal from the 152nd District Court
Harris County, Texas
Trial Court Cause No. 2009-25767

MEMORANDUM OPINION

This case is an interlocutory appeal from the trial court's order denying appellant, Fatima Ibrahim, M.D.'s, motion to dismiss the health-care-liability claims filed by appellees, Lisa Gilbride and Pete Gilbride. Dr. Ibrahim contends dismissal was mandatory for two reasons: (1) the Gilbrides did not timely serve their expert's curriculum vitae ("CV") with his report; and (2) the report is insufficient because the expert fails to (a) establish he is qualified to opine on the applicable standard of care and (b) adequately explain the applicable standard of care, the manner in which Dr. Ibrahim allegedly breached the standard, and the causal connection between the alleged breach and the

Gilbrides' damages. Because we agree the report is insufficient but conclude dismissal was not mandatory, we reverse and remand.

I. BACKGROUND

The Gilbrides sued Dr. Ibrahim, a neurologist, claiming she was negligent in her medical treatment of Lisa Gilbride. In their petition, the Gilbrides alleged the following: in April 2006, Mrs. Gilbride was hospitalized for recurrent seizures and thereafter began treatment with Dr. Ibrahim; despite diagnostic testing in July 2006 confirming ongoing seizure activity, Dr. Ibrahim failed to prescribe anti-seizure medications; therefore, in August 2006, Mrs. Gilbride suffered a grand mal seizure, struck her head during the seizure, and suffered brain hemorrhages and other injuries requiring emergency brain surgery.

Within 120 days after filing suit, the Gilbrides served on Dr. Ibrahim an expert report of Donald W. Smith, M.D. Although Dr. Smith referenced an "attached" CV, a separate CV was not served with the report. Four days after the statutory 120-day deadline for serving an expert report, the Gilbrides served a separate CV, which they assert was inadvertently omitted when serving the report.

Dr. Ibrahim filed a motion to dismiss the suit based on the Gilbrides' failure to timely serve a CV and on Dr. Ibrahim's objections to the sufficiency of the report. On October 9, 2009, after a hearing, the trial court signed an order overruling Dr. Ibrahim's objections and denying her motion to dismiss.

II. UNTIMELY SERVICE OF THE CURRICULUM VITAE

In her first issue, Dr. Ibrahim contends the trial court abused its discretion by refusing to dismiss the Gilbrides' claims because they did not timely serve a CV.

Chapter 74 of the Texas Civil Practice and Remedies Code governs the Gilbrides' health-care-liability claims. *See generally* Tex. Civ. Prac. & Rem. Code Ann. § 74.001–.507 (West 2005 & Supp. 2009). Under this chapter, "a claimant shall, not later than the 120th day after the date the original petition was filed," serve on a defendant

physician "one or more expert reports, with a curriculum vitae of each expert listed in the report . . . ." *Id.* § 74.351(a). If "an expert report has not been served within" the 120-day period, on the defendant's motion, the trial court "shall," subject to section 74.351(c), dismiss the claim with prejudice. *Id.* § 74.351(b). If a report is served, a defendant physician must file and serve any objections to the sufficiency of the report "not later than the 21st day after the date it was served. . . ." *Id.* § 74.351(a). If an expert report has not been served within the 120-day period "because elements of the report are found deficient," the trial court may grant one thirty-day extension for the plaintiff to cure the deficiency. *Id.* § 74.351(c).

In her motion to dismiss and at the hearing thereon, Dr. Ibrahim argued that dismissal is mandatory under section 74.351(b) if a plaintiff fails to serve both an expert report *and* a CV within the 120-day deadline. In response, the Gilbrides argued that late service of a CV is not a ground for dismissal under section 74.351(b); rather, omission of a CV is merely a deficiency in the served report that the plaintiff is allowed to correct. Thus, the Gilbrides suggested that, upon a defendant's filing a motion to dismiss based on lack of a timely CV, a trial court may, under section 74.351(c), grant a thirty-day extension for the plaintiff to cure such deficiency; *see id.* § 74.351(c); but, the Gilbrides noted that an extension would be moot in this case because they had already corrected the deficiency.

In their appellate brief, the Gilbrides contend late filing of the CV was immaterial because there is a CV contained within the report. The Gilbrides express a willingness to rely entirely on the background and experience Dr. Smith recites in his report to purportedly demonstrate he is qualified to render his opinions, asserting the report contains more information regarding his qualifications than the separate CV.

Although the trial court refused to dismiss the suit, the basis for its ruling is not exactly clear. At the outset of the hearing, the trial court remarked, "But really the only issue for me is the CV because I think the report is fine," and asked, "When was the CV provided, and is there any flexibility?" After hearing arguments, the trial court remarked, "Well, I don't think it is as clear as you [Dr. Ibrahim's attorney] think it is. I do think there

is a sanction, but I don't know what it is. And, so, I am going to deny your Motion to Dismiss." Based solely on the trial court's comments at the hearing, there is no indication it decided the Gilbrides complied with section 74.351(a) because a CV is contained within the report. Rather, the trial court indicated there remains some sort of deficiency due to the untimely separate CV, but the court was not convinced dismissal is required.

Nonetheless, the trial court's order is silent regarding the reason it denied the motion to dismiss, and findings of fact and conclusions of law were not requested or filed. Therefore, we need not decide whether failure to timely serve a separate CV mandates dismissal of a health-care-liability suit because the report contains a CV and we may uphold the trial court's order on any legal theory supported by the record. *See Thoyakulathu v. Brennan*, 192 S.W.3d 849, 854 n.6 (Tex. App.—Texarkana 2006, no pet.) (recognizing court of appeals could consider whether to uphold trial court's denial of doctor's motion to dismiss health-care-liability claim based on failure to timely serve expert report on any ground supported by record where findings of fact and conclusions of law were not requested or filed); *see also Rosemond v. Al-Lahiq*, No. 14-08-00550-CV, 2009 WL 2365650, at *3 (Tex. App.—Houston [14th Dist.] Aug. 4, 2009, pet. filed) (mem. op.) (reciting same principle when evaluating trial court's dismissal of suit for failure to timely serve expert report).

As we will later set forth in more detail, we generally review a trial court's decision on a motion to dismiss under section 74.351 for abuse of discretion. *Amer. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 875 (Tex. 2001); *Baylor Coll. of Med. v. Pokluda*, 283 S.W.3d 110, 116–17 (Tex. App.—Houston [14th Dist.] 2009, no pet.). However, whether inclusion of an expert's CV within the body of his report is sufficient to satisfy section 74.351(a) is purely a legal issue involving statutory construction, subject to *de novo* review—albeit an issue of statutory construction that has already been decided by our court. *See Mokkala v. Mead*, 178 S.W.3d 66, 70 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (recognizing that, to the extent resolution of issue pertinent to motion to dismiss requires interpretation of section 74.351, appellate court applies *de novo* standard).

Specifically, our court has held section 74.351(a) is satisfied if a CV is contained within the report, concluding there is no requirement in the statute that the report and the CV be separate documents. *See Univ. of Tex. Med. Branch at Galveston v. Simmons*, No. 14-09-00246-CV, 2009 WL 4810296, at *3 (Tex. App.—Houston [14th Dist.] Dec. 15, 2009, no pet.) (mem. op.) (citing *Johnson v. Willens*, 286 S.W.3d 560, 564 (Tex. App.—Beaumont 2009, pet. filed); *Harris County Hosp. Dist. v. Garret*, 232 S.W.3d 170, 177 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Carreras v. Marroquin*, No. 13-05-082-CV, 2005 WL 2461744, at *2 (Tex. App.—Corpus Christi Oct. 6, 2005, pet. denied) (mem. op.)). Apparently anticipating the Gilbrides' argument regarding inclusion of a CV within the report, in her own appellate brief, Dr. Ibrahim acknowledges *Simmons* but nevertheless suggests Dr. Smith's report does not contain a CV.

The portion of the report pertinent to this issue is the following:

> A true and correct copy of my [CV] is attached to this affidavit and it correctly summarizes my educational background, training and experience. I attended medical school at State University of New York from 1959 through 1963. Upon graduating from medical school, I entered the United States Army where I first completed a rotating internship at Martin Army Hospital in Fort Benning, Georgia. I then completed my residency at Brooke Army Hospital in San Antonio, Texas. After completing my residency, I was assigned first as a Brigade Surgeon and ultimately as a Battalion surgeon in Viet Nam where I was wounded and awarded the Purple Heart. After returning from Viet Nam and recovering from my injuries, I then served as the Chief of Hospital Clinics in Japan for three (3) years. After leaving the Army, I began private practice in 1973 and I have continued in private practice through the present.
>
> During the course of my more than forty (40) years as a medical doctor, I have diagnosed, treated and managed dozens of patients who suffered from seizure disorders, and have been actively involved in the care of and treatment of this type of condition throughout my medical career. I am experienced in and familiar with the standard of medical care involved in prescribing and managing various medications used to treat seizure disorders. I am experienced in and familiar with the use of various modalities of diagnostic testing used in the diagnosis and treatment of seizure disorders, including the proper use and clinical interpretation of electroencephalograms

and their corresponding reports, and the applicable medical standard of care for same.

The gist of Dr. Ibrahim's argument is that the above recitation does not satisfy the CV requirement because it fails to show Dr. Smith is qualified to render his opinions in the report. In support, Dr. Ibrahim cites a portion of *Simmons* in which our court recognized, the "'[t]he purpose of a curriculum vitae requirement is to permit the trial court to perform its 'gatekeeper' function by assessing the qualifications, experience, and expertise of the expert.'" *Id.* at *3 (quoting *Carreras*, 2005 WL 2461744, at *2). Then, when holding that inclusion of the expert's CV within the report at issue was sufficient to satisfy section 74.351(a), we noted the defendant hospital had objected to the plaintiff's failure to serve a separate CV, but did not contend the plaintiff's expert was unqualified or the lack of a separate CV impeded the defendant's ability to determine whether the expert was qualified. *Id.* Despite this notation, the court did not proceed to hold, as suggested by Dr. Ibrahim, that a CV within a report effectively constitutes no CV and dismissal is required if the expert fails to demonstrate he is qualified. *See id.* Therefore, we cannot construe the court's remarks as authority for such a proposition.

Under Dr. Ibrahim's reasoning, dismissal would always be required when an expert fails to demonstrate he is qualified even if a plaintiff timely serves a separate CV. However, this reasoning is contrary to authority from the Texas Supreme Court recognizing that an expert's failure to show he is qualified is a deficiency for which the trial court is authorized, within its discretion, to grant an extension to correct. *See In re Buster*, 275 S.W.3d 475, 477 (Tex. 2008) (orig. proceeding) (stating, "[a] report by an unqualified expert will sometimes (though not always) reflect a good-faith effort sufficient to justify a 30-day extension."); *see also Leland v. Brandal*, 257 S.W.3d 204, 207 (Tex. 2008).

Accordingly, whether Dr. Smith's report demonstrates he is qualified to render his opinions therein is another issue, which we address below. However, the first paragraph of Dr. Smith's above-quoted recitation, summarizing his education and background, although fairly scant, at least qualifies as a CV, despite his intent to supplement this

summary with the further information contained in his separate CV. *See Simmons*, 2009 WL 4810296, at *3 (concluding report included CV although, when summarizing his specialty and positions of employment, expert stated, "[m]y curriculum vitae is attached.").

In sum, the Gilbrides met the threshold requirement that they serve a CV with the expert report. Accordingly, the trial court did not err by refusing to dismiss their claims for failing to timely serve the separate CV. We overrule Dr. Ibrahim's first issue.

III. SUFFICIENCY OF THE REPORT

In her second issue, Dr. Ibrahim contends the trial court abused its discretion by refusing to dismiss the Gilbrides' suit because Dr. Smith fails to (1) establish he is qualified to opine on the applicable standard of care for treatment of Mrs. Gilbride's seizure disorder and (2) adequately explain the applicable standard of care, the manner in which Dr. Ibrahim breached the standard, and the causal connection between the alleged breach and the Gilbrides' damages.

We employ an abuse-of-discretion standard to review a trial court's determinations regarding an expert's qualifications to render an opinion in a health-care-liability suit and adequacy of the expert's report. *Palacios*, 46 S.W.3d at 875; *Broders v. Heise*, 924 S.W.2d 148, 151 (Tex. 1996); *San Jacinto Methodist Hosp. v. Bennett*, 256 S.W.3d 806, 811 (Tex. App.—Houston [14th Dist.] 2008, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules or principles. *Broders*, 924 S.W.2d at 151; *Bennett*, 256 S.W.3d at 811. As proponent of the expert, the plaintiff bears the burden to show the expert is qualified and the expert report satisfies the statutory requirements. *Memorial Hermann Healthcare Sys. v. Burrell*, 230 S.W.3d 755, 757 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

A. Dr. Smith's Qualifications

For an expert report to satisfy section 74.351, the expert must be qualified to render the opinions therein. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(5). Analysis of

expert qualifications under section 74.351 is limited to the four corners of the report and the expert's CV. *Pokluda*, 283 S.W.3d at 117; *see Palacios*, 46 S.W.3d at 878.

To be qualified to provide opinion testimony regarding whether a physician departed from the accepted standard of medical care, the expert must satisfy section 74.401. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(5)(A). Under section 74.401, the expert must be a physician who:

> (1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;
> (2) has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and
> (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

Id. § 74.401(a).

To challenge Dr. Smith's qualifications, Dr. Ibrahim focuses on the third requirement of section 74.401(a). In determining whether a witness is "qualified on the basis of training or experience to offer an expert opinion regarding" the applicable standards of medical care, "the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness: (1) is board certified or has other substantial training or experience in an area of medical practice relevant to the claim; and (2) is actively practicing medicine in rendering medical care services relevant to the claim." *Id.* § 74.401(c). Dr. Ibrahim suggests that, applying these criteria, the trial court could not have concluded Dr. Smith is qualified.

We must note that our evaluation of Dr. Smith's qualifications overlaps to some extent with the issue regarding the untimely separate CV. In particular, as discussed below, we conclude that the background and experience recited in Dr. Smith's report does not show he is qualified to opine on the accepted standard of care. The trial court's comments at the hearing indicate it did not rely on the separate CV to determine whether Dr. Smith is qualified because the court remarked "the report is fine" before even

considering the issues concerning the untimely separate CV. Nevertheless, because we may uphold the trial court's order on any ground that has support in the record, we would need to decide whether a trial court may consider an untimely CV if the contents of Dr. Smith's separate CV would alter our conclusion regarding his qualifications; i.e. whether failure to timely serve a CV mandates dismissal or instead is merely a deficiency the plaintiff is allowed to correct. Accordingly, we will first evaluate Dr. Smith's qualifications based solely on his experience outlined in the report, as urged by the Gilbrides, and then explain why the separate CV does not alter our conclusion.

1. Dr. Smith's report

Based on Dr. Smith's report, the first above-cited criterion of section 74.401(c) is not satisfied because he does not state he is board certified in any area of medical practice, much less neurology, or list any "training or experience in an area of medical practice relevant to the claim." *See id.* § 74.401(c)(1). We have already quoted the two paragraphs of Dr. Smith's report pertinent to his purported qualifications. In the first such paragraph, summarizing his education and background, Dr. Smith states he completed an internship and a residency more than forty years ago but does not mention any specialty that was the subject of this post-medical-school training. Further, Dr. Smith asserts he has been engaged in private practice from 1973 to the present but does not describe any specialty; in short, we lack any information regarding the area of medicine he has practiced for the last thirty-seven years.

The only mention of any particular areas of medical practice during his career is Dr. Smith's statement that, following his residency and before private practice, he served in the army as a surgeon and Chief of Hospital Clinics in Japan. We recognize that, in order to qualify as an expert in a particular case, a physician need not be a practitioner in the same specialty as the defendant physician. *Broders*, 924 S.W.2d at 153–54; *Pokluda*, 283 S.W.3d at 118. However, given the increasingly specialized and technical nature of medicine, not every licensed medical doctor is automatically qualified to testify as an expert on every medical question. *Broders*, 924 S.W.2d at 152. The test is whether the

report and CV establish the witness's knowledge, skill, experience, training, or education regarding the specific issue before the court that would qualify the expert to give an opinion on the subject at issue. *Id.* at 153; *Pokluda*, 283 S.W.3d at 118–19 (citing *Roberts v. Williamson*, 111 S.W.3d 113, 121 (Tex. 2003)). Dr. Smith fails to describe how he acquired sufficient knowledge, skill, experience, training, or education while serving as a military surgeon and Chief of Hospital Clinics to opine on the accepted standard of care for treatment of seizure disorders, and these positions do not evince that he is so qualified.

Accordingly, the Gilbrides focus on the second paragraph of the pertinent portion of Dr. Smith's report, suggesting Dr. Smith does explain he has substantial experience in treating seizure disorders. We would construe any such explanation as more a description of a type of medical service rendered, as opposed to an area of medical practice, such as a specialty. Nevertheless, because an expert need not practice in the same field as the defendant physician, in some cases, determining whether the expert has substantial experience in an area of medical practice relevant to the claim might involve focusing on the type of medical-care services he has provided instead of merely the name of his particular practice. *See, e.g.*, *Burrell*, 230 S.W.3d at 759–62 (upholding trial court's ruling that expert was qualified to opine that hospital's substandard care caused patient's decubitus ulcers where expert linked his specialties to the subject at issue by explaining, over the course of his career in internal medicine, occupational medicine, and infectious disease, he has treated patients with decubitus ulcers and trained nurses and other personnel in proper techniques to prevent this condition). In this regard, our inquiry concerning the first above-cited criterion of section 74.401(c) overlaps with our analysis concerning the second criterion: whether Dr. Smith "is actively practicing medicine in rendering medical care services relevant to the claim." *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.401(c)(2).

In the second paragraph at issue, Dr. Smith first asserts, "[d]uring the course of my more than forty (40) years as a medical doctor, I have diagnosed, treated and managed dozens of patients who suffered from seizure disorders, and have been actively involved in the care of and treatment of this type of condition throughout my medical career."

Notwithstanding any issues regarding the vague term "dozens" (whether it means twenty-four or more than 1,000 patients), Dr. Smith's statement that he has "diagnosed, treated and managed dozens of patients who suffered from seizure disorders" does not establish Dr. Smith has treated these patients *for* seizure disorders. This statement could just as well mean Dr. Smith managed the general healthcare of these patients or treated them for other conditions and they also suffered from seizure disorders.

Moreover, Dr. Smith's statement in the remainder of the sentence—that he has "been actively involved in the care of and treatment of this type of condition throughout" his medical career—is vague and conclusory, especially when considered in the context of the entire sentence. In essence, Dr. Smith merely tracks the language of the statutory criterion that he "actively practices in rendering medical care services relevant to the claim," without providing any facts to explain his experience. "Actively involved" could mean Dr. Smith has treated patients for seizure disorders. However, on the opposite end of the spectrum, "actively involved" could mean that, if a patient whose general healthcare was managed by Dr. Smith had a seizure disorder, Dr. Smith referred the patient to a specialist and merely stayed abreast of the patient's progress and the medications prescribed, which would not necessarily render him qualified to opine on the standard of care for such condition. As another alternative, "actively involved" could mean Dr. Smith has referred patients with seizure disorders to other specialists and participated in deciding the appropriate treatment.

We do not conclude Dr. Smith must necessarily have personally treated seizure disorders to prove he is qualified to render opinions on the accepted standard of care in the present case; but without any explanation regarding the level of his "active[] involve[ment]," in the "care of and treatment of" seizure disorders, we cannot agree the

above-recited statement demonstrates he possesses "substantial training or experience in an area of medical practice relevant to" the present claim and "is actively practicing in rendering medical care services relevant to the claim." *See Reardon v. Nelson*, No. 14-07-00263-CV, 2008 WL 4390689, at *3–4 (Tex. App.—Houston [14th Dist.] Sept. 30, 2008, no pet.) (mem. op.) (holding board-certified anesthesiologist did not demonstrate he was qualified to opine on accepted standards of care applicable to cardiovascular surgeon who bypassed wrong artery on plaintiff, despite anesthesiologist's statement he has assisted in performing "numerous" cardiac bypass procedures through providing anesthesia and monitoring patients; his statement, "[a]nesthesiologists are routinely involved in the planning of the cardiac procedure conducted in preoperative care" was too conclusory and general to support a conclusion he was qualified to opine on standard of care for recognition and identification of vessels to be bypassed in surgery); *In re Windisch*, 138 S.W.3d 507, 513–14 (Tex. App.—Amarillo 2004, orig. proceeding) (holding conclusory statements referencing expert's qualifications which tracked language of statute were insufficient to show he was qualified on subject at hand where he did not provide explanation to bridge gap between positions he has held and expertise in standard of care for procedure at issue).

In the remainder of the paragraph at issue, Dr. Smith states, "I am experienced in and familiar with the standard of medical care involved in prescribing and managing various medications used to treat seizure disorders. I am experienced in and familiar with the use of various modalities of diagnostic testing used in the diagnosis and treatment of seizure disorders, including the proper use and clinical interpretation of electroencephalograms and their corresponding reports, and the applicable medical standard of care for the same."

These statements are also too general and conclusory to support a conclusion that Dr. Smith is qualified to opine in this matter. Again, the statements essentially track the language of section 74.401(a)(2), requiring that an expert have "knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or

condition involved in the claim." *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.401(a)(2). However, as we have discussed, Dr. Smith does not explain how he acquired, or the extent of, his experience and familiarity with the accepted standards of care for treating seizure disorders. Without any more detailed explanation regarding his experience, he has not demonstrated he "is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care," as required to satisfy section 74.401(a)(3). *See id.* § 74.401(a)(3).

We acknowledge that, under the abuse-of-discretion standard, we may not substitute our judgment for the trial court's judgment. *See Pokluda*, 283 S.W.3d at 117 (citing *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002)). However, in this case, considering the vague, general, and conclusory terms used by Dr. Smith to describe his experience, in conjunction with the lack of any information regarding the areas of medicine he has practiced for the majority of his career, including the present, we conclude the trial court acted beyond its discretion if it decided Dr. Smith's report shows he is qualified to opine on the accepted standards of care for a neurologist's treatment of a seizure disorder.

2. Dr. Smith's separate CV

In his separate CV, Dr. Smith does provide more information regarding his post-medical school training, the military service mentioned in his report, and his subsequent private practice. His internship and residency in the army involved rotations through "medicine," pediatrics, obstetrics, general surgery, pathology, plastic surgery, and rectal and colon surgery. Through the remainder of his military service, Dr. Smith performed the following medical-related responsibilities: served as a surgeon during the Vietnam War; "organized medical support" for units deploying to Vietnam; studied administration of the Army Medical Service; served as Chief of Hospital Clinics at an army hospital in Japan, where he supervised all outpatient care and was senior flight surgeon during transportation of patients from Vietnam to military hospitals; and served at the United States Aviation Safety Center, where he was medical consultant to the army's chief

aviation safety officer and taught "medical aspects" of airplane-accident investigation to students in flight-surgeon training.

Following his military service, Dr. Smith held various positions including the following: private practice, assisting in general surgical and gynecological operations; medical consultant to a corporation; medical director of the Harris County Sheriff's Department, during which he supervised medical care of inmates, developed a medical program to conform the jails to national health standards, and designed medical facilities for a new jail; and supervisor of the medical program for a large refinery. From 1981 to the present, he has served as medical director of the Kuykendahl Emergency Clinic and is "active in treating minor medical emergencies." During this same time period, he has also served as senior medical examiner for the Federal Aviation Administration, trained in mobilization medicine at the Pentagon, and served as medical director for an ambulance company, and is on the approved-doctors list for the Texas workers' compensation system.

None of the training, responsibilities, or positions outlined in Dr. Smith's CV, including his current practice of treating minor emergencies, evince he has had substantial training or experience in treating seizure disorders, although the outlined areas do not all foreclose the possibility he has such experience. Therefore, even if Dr. Smith's CV were considered, he still would have needed, in his report, to more specifically explain his "active[] involve[ment]" in the treatment of seizure disorders to attempt to establish "substantial training or experience in an area of medical practice relevant to" the present claim. In addition, he would have needed to provide more information on the extent of such "active[] involve[ment]" during his current position "treating minor medical emergencies" to attempt to demonstrate he is "actively practicing in rendering medical care services relevant to the claim." Accordingly, even if the trial court considered the separate CV and was authorized to do so, we could not uphold the court's ruling that Dr. Smith is qualified.

B. Dr. Smith's Opinions

An "expert report" is defined as "a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding the applicable standards of care, the manner in which the care rendered by the physician . . . failed to meet the standards, and the causal relationship between the failure and the injury, harm, or damages claimed." Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6). The expert cannot merely state his conclusions about these elements but instead must explain the basis for his statements and link his conclusions to the facts. *Palacios*, 46 S.W.3d at 879; *Pokluda*, 283 S.W.3d at 117. The trial court should grant a motion challenging the adequacy of an expert report only if it appears to the court, after a hearing, that the report does not represent an objective good faith effort to comply with the statutory definition of an expert report. Tex. Civ. Prac. & Rem. Code Ann. § 74.351(l). When determining if a good faith effort has been made, the trial court is limited to the four corners of the report and cannot consider extrinsic evidence. *See Palacios*, 46 S.W.3d at 878; *Pokluda*, 283 S.W.3d at 117.

Dr. Smith provides the following opinion regarding the required elements:

> . . . I have reviewed the medical records from [Dr. Ibrahim], Northwest Medical Center, other relevant medical records, and historical clinical information provided by the patient and her family to provide opinions related to the treatment and care received by Lisa Gilbride from Dr. Ibrahim.
>
> Lisa Gilbride presented to Northwest Medical Center in June of 2006 and was diagnosed with a seizure disorder.[1] Dr. Ibrahim's treatment and care of Mrs. Gilbride began in the hospital and continued after she was released. In July of 2006, Dr. Ibrahim ordered a sleep deprived electroencephalogram. The test was performed on or about July 19, 2006. The results were abnormal, documented the presence of focal cerebral dysfunction, and revealed that Mrs. Gilbride was suffering from ongoing seizure activity. On or about July 27, 2006, during an appointment with Mrs. Gilbride, Dr. Ibrahim reviewed the findings of the test with her, but failed to prescribe any

[1] The Gilbrides allege Mrs. Gilbride was hospitalized in April 2006, but Dr. Smith indicates the hospitalization occurred in June 2006. Nevertheless, this variance is immaterial to our analysis.

> anti-seizure medications. In August of 2006, Mrs. Gilbride suffered a grand mal seizure, struck her head on the ground, and suffered a brain aneurysm, a subdural hematoma, and bleeding in the brain that required emergency brain surgery.
>
> In my opinion, the treatment and care received by Mrs. Gilbride from Dr. Ibrahim fell well below the required standard of medical care. The medical records from Mrs. Gilbride's hospitalization in June of 2006, the clinical records from Dr. Ibrahim, and the results of the electroencephalogram demonstrate a patient who was suffering from a seizure disorder with ongoing seizure activity. Based on this information, in my medical opinion the applicable standard of care required Dr. Ibrahim to prescribe appropriate anti-seizure medications. Dr. Ibrahim's failure to prescribe appropriate anti-seizure medication was a clear deviation from the applicable standard of care. In my medical opinion, Dr. Ibrahim's deviation from the applicable standard of care was a breach of the duties she owed Mrs. Gilbride to provide appropriate medical treatment, resulting in medical negligence by Dr. Ibrahim in the treatment and care of Mrs. Gilbride.
>
> As a direct and proximate result of the foregoing deviations from and breaches of the applicable standard of medical care, Mrs. Gilbride suffered a grand mal seizure and the resulting brain injuries described above. In reasonable medical probability, had she received proper care and treatment, as described above, she would not have suffered a grand mal seizure in August of 2006 or the resulting brain injuries described above.

The extent of Dr. Smith's opinion regarding Dr. Ibrahim's alleged negligence and causation is that, after testing revealed "a seizure disorder with ongoing seizure activity," Dr. Ibrahim failed to prescribe "appropriate anti-seizure medications," and Mrs. Gilbride suffered a grand mal seizure as a result of the untreated disorder.

We conclude that the terms "seizure disorder with ongoing seizure activity" and "appropriate anti-seizure medications" are too vague and general for the report to provide sufficient information regarding the accepted standard of care and alleged breach. We recognize an expert report need not marshal all the plaintiff's proof; but it must provide enough information to fulfill two purposes: (1) inform the defendant of the specific conduct the claimant has called into question; and (2) provide a basis for the trial court to conclude the claims have merit. *Palacios*, 46 S.W.3d at 878–79; *Pokluda*, 283 S.W.3d at

117. Without more specifically identifying the "seizure disorder" suffered by Mrs. Gilbride and the pathological basis for the disorder, Dr. Smith could not have adequately informed a neurologist such as Dr. Ibrahim why medication was the only option for treatment, or even a viable option, much less what "appropriate" medication should have been prescribed. In essence, the report repeats, without more, the allegations in the Gilbrides' petition regarding the standard of care and alleged breach, as well as causation.

Additionally, Dr. Smith references an appointment during which Dr. Ibrahim reviewed the test results with Mrs. Gilbride. However, Dr. Smith does not reveal any substance of their conversation, particularly whether Dr. Ibrahim and Mrs. Gilbride discussed medication as a treatment option and the benefits versus risks of such medication; and if the subject of medication was discussed, whether it was Mrs. Gilbride's, Dr. Ibrahim's, or a joint, decision that medication would not be used to treat Mrs. Gilbride's disorder and the factors forming the basis for such a decision. Therefore, Dr. Smith's mere reference to the visit leaves unanswered the question of whether Dr. Ibrahim failed to recognize medication was necessary to treat the disorder or whether an informed decision was made by Mrs. Gilbride, Dr. Ibrahim, or both that medication should not be prescribed. Consequently, Dr. Smith does not sufficiently provide the trial court with a basis for concluding Dr. Ibrahim breached the accepted standard of care by suggesting she simply neglected to treat an obvious seizure disorder while omitting any details of the consultation between doctor and patient that may have affected Dr. Ibrahim's decision regarding treatment.

Our conclusion regarding Dr. Smith's opinion on causation relative to the grand mal seizure is interrelated with our analysis regarding his opinion on the accepted standard of care and alleged breach. Dr. Smith fails to identify the seizure disorder suffered by Mrs. Gilbride and its pathology and thus show that medication was a necessary and potentially effective treatment, or specify the medication that allegedly should have been prescribed. Therefore, although "anti-seizure medications" are indubitably intended to prevent seizures, Dr. Smith does not sufficiently inform Dr. Ibrahim and the trial court why such

medication would necessarily have prevented Mrs. Gilbride's seizure. Accordingly, we cannot hold the trial court acted within its discretion by finding the report adequately demonstrates a causal connection between Dr. Ibrahim's alleged breach and Mrs. Gilbride's grand mal seizure.[2]

In sum, because the trial court abused its discretion by determining Dr. Smith is qualified and that his report complies with the requirements for an expert report, we sustain Dr. Ibrahim's second issue.

IV. CONCLUSION

If an expert report has not been timely served because elements of the report are found deficient, the court may grant one thirty-day extension to the plaintiff to cure the deficiency. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(c). If a court of appeals determines a report deemed adequate by the trial court is in fact deficient, the court of appeals may remand the case for the trial court to decide whether to grant such an extension. *Leland*, 257 S.W.3d at 207; *Gannon v. Wyche*, 321 S.W.3d 881, 898–99 (Tex. App.—Houston [14th Dist.] 2010, pet. filed). The trial court should consider on remand whether Dr. Smith's attempt to satisfy the statutory requirements for expert qualification and explanation of the accepted standard of care, the alleged breach, and causation constituted a good-faith effort warranting a thirty-day extension.

[2] The Gilbrides and Dr. Smith claim Dr. Ibrahim's alleged negligence caused both the grand mal seizure and Mrs. Gilbride's other brain injuries, including aneurysm, subdural hematoma, and bleeding, which required emergency surgery. However, with respect to these other brain injuries, it is not exactly clear from the petition and report whether they claim (1) the untreated seizure disorder directly caused both the seizure and some or all of the other brain injuries, (2) the untreated seizure disorder caused the seizure which, in turn, caused some or all of the other brain injuries, or (3) some or all of the other brain injuries resulted from Mrs. Gilbride's striking her head during the seizure. The Gilbrides seek damages not only because Mrs. Gilbride suffered a seizure but also because she required surgery to repair the other brain injuries. Nonetheless, regardless of which scenario is claimed, the gist of Dr. Ibrahim's motion was that Dr. Smith failed to adequately explain a causal relationship between Dr. Ibrahim's alleged negligence and the grand mal seizure. Although Dr. Ibrahim complains for the first time in her appellate reply brief that a brain aneurysm is not caused by a seizure and Dr. Smith failed to explain any causal connection, Dr. Ibrahim did not specifically argue in her motion that Dr. Smith failed to adequately explain a causal relationship between any negligence and the other brain injuries.

Accordingly, we reverse the trial court's order and remand for further proceedings consistent with this opinion.

/s/ Charles W. Seymore
Justice

Panel consists of Justices Anderson, Frost, and Seymore.