COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00129-CV

ANTONIO SISON, M.D. AND HEIDI CHRISTINE KNOWLES, M.D.	APPELLANTS
V.	
ANDREW M. AND CYNTHIA M., BOTH INDIVIDUALLY AND AS GUARDIANS TO C.M., A MINOR CHILD	APPELLEES

FROM THE 352ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 352-277588-15

MEMORANDUM OPINION[1]

I. INTRODUCTION

In this interlocutory appeal,[2] Appellants Antonio Sison, M.D., a radiologist, and Heidi Christine Knowles, M.D., an emergency-medicine physician, appeal

[1]*See* Tex. R. App. P. 47.4.

the trial court's order denying their motions to dismiss the healthcare-liability claims brought by Appellees Andrew M. and Cynthia M., both individually and as guardians to C.M., their minor son. Dr. Sison and Dr. Knowles each raise two issues claiming that the expert reports served upon them by Appellees are insufficient in certain respects to satisfy the requirements of chapter 74 of the civil practice and remedies code.[3] We will affirm.

II. BACKGROUND FACTS

In March 2015, Appellees sued Dr. Sison and Dr. Knowles.[4] They alleged that on March 28, 2013, when C.M. (Christopher)[5] was thirteen years old, he woke up experiencing severe pain in his left testicle and was taken to a Fort Worth hospital. Appellees pleaded that at the hospital, Christopher received a physical exam and an ultrasound of his testicles. Appellees alleged that Dr. Sison and Dr. Knowles failed to properly detect Christopher's torsed left testicle and sent Christopher home. On March 31, 2013, Christopher returned to the hospital. His left testicle was now swollen to the size of a baseball. After he underwent another ultrasound, he was transferred to another hospital on

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[2]*See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(9) (West Supp. 2016).

[3]*See* Tex. Civ. Prac. & Rem. Code Ann. §§ 74.001–.507 (West 2017).

[4]Appellees also sued three other defendants but eventually nonsuited those defendants.

[5]We use an alias to protect C.M.'s anonymity. *See generally* Tex. R. App. P. 9.9, 2d Tex. App. (Fort Worth) Loc. R. 7.

"suspicion of testicular torsion." At the second hospital, Christopher was diagnosed with left testicular torsion and immediate surgery was performed. Christopher's left testicle was torsed, or twisted, approximately 720 degrees, cutting off the blood supply to it. After Christopher's left testicle was detorsed during surgery, the surgeon observed it for approximately fifteen minutes to determine whether blood flow could be reestablished. No blood flow returned to Christopher's left testicle, and it was amputated.

Appellees asserted a negligence claim against Dr. Sison and Dr. Knowles, contending that during Christopher's initial visit to the hospital, they owed Christopher a duty to exercise reasonable care in diagnosing and treating him and that they had breached these duties; Appellees sought damages for Christopher's pain and suffering, medical bills, mental anguish, physical disfigurement, and physical impairment and for their (Andrew M.'s and Cynthia M.'s) pain and suffering, medical bills, mental anguish, and lost wages.

Appellees timely served Dr. Sison and Dr. Knowles with two expert reports. Dr. David Smoger, a Pennsylvania interventional radiologist, authored one report. Dr. Smoger's report addressed Dr. Sison's negligence in failing to correctly diagnose testicular torsion from the March 28, 2013 ultrasound of Christopher's left testicle, and the report included Dr. Smoger's opinion that Dr. Sison's negligence led to the amputation of Christopher's left testicle. Dr. Jonathan Guenter, a Utah emergency-medicine physician, wrote a report addressing Dr. Knowles's negligence. Dr. Sison and Dr. Knowles challenged the adequacy of

these reports, claiming both reports failed to constitute a good-faith effort to comply with the requirements of chapter 74 and claiming neither Dr. Smoger nor Dr. Guenter were qualified to write their respective reports.

The trial court held a hearing on Appellants' challenges to the reports; globally sustained them, noting the reports were "right there on the edge" of satisfying chapter 74's requirements; and gave Appellees thirty days to cure the deficiencies.[6] Within the thirty-day period, Appellees served amended expert reports from Dr. Smoger and Dr. Guenter.[7] Dr. Smoger's amended report, addressing Dr. Sison's alleged negligence in performing his duties as a radiologist, stated in part,

> I received my medical degree from Temple University School of Medicine in 2003. I completed one year as an Intern in Medicine at Lankenau Medical Center in Wynnewood, PA[,] in 2004 and completed my Radiology Residency at Temple University Hospital in 2008. At the Hospital of the University of Pennsylvania, I completed a fellowship in Interventional Radiology in 2009. I am Board Certified in Diagnostic Radiology with a Certificate of Added Qualification in Interventional Radiology. I am familiar with the Radiology standards of care as they apply to the interpretation of testicular ultrasound.

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[6]*See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(c) (stating that when a trial court finds elements of an expert report deficient, the court may "grant one 30-day extension . . . to cure the deficiency"). At the hearing leading to the trial court's first ruling on the reports, the court stated, "[I]n my mind[,] it's right there on the edge. So I'd like to grant the objections and give you 30 days to tie up some of these knots."

[7]Appellees stipulated that Dr. Smoger's report addressed only Dr. Sison's negligence while Dr. Guenter's report addressed only Dr. Knowles's negligence.

In providing my amended opinions in this case, I have reviewed records and imaging from John Peter Smith Hospital and Cook Children's Hospital.

At the time of this case, [Christopher] was a 13[-]year[-]old male who presented to JPS with complaints of significant left testicular pain, swelling, redness[,] and a subjectively high riding left testicle. He underwent an ultrasound at that time which by report revealed "normal echogenicity vascular flow, and size of the testes bilaterally. . . . Patient presents with recent onset of left testicular pain. He was tender during scanning of the left hemiscrotum. IMPRESSION: Mass protruding from or abutting the lower pole of left testis suspicious for hemorrhage arising from inferior margin of the testis or in the epididymal tail. Bilateral hydroceles.["] . . . Of note, at the end of the study, the sonographer explains that it was "more difficult to get color/[D]oppler on left testicle, difficult scan[."] This information was not reported in the Radiology report . . . .

. . . .

The standard of care . . . for conducting an ultrasound on a 13[-]year[-]old boy's testicle(s) to determine the cause and source of the testicular pain and swelling in an emergency room setting is to evaluate the testes in at least 2 planes: longitudinal and transverse. Transverse images should be obtained in the superior, mid, and inferior portions of the testes. Longitudinal views should be obtained centrally as well as medially and laterally. Each testis should be evaluated in its entirety. The size, echogenicity, and blood flow of each testis and epididymis should be compared to the contralateral side. Comparison of the testes is best accomplished with a side-by-side transverse image.

Testicular torsion occurs when a testicle rotates, twisting the spermatic cord that brings blood to the scrotum. In this case, the sonographer conducted transverse and longitudinal imaging, but is clear that on 3/28/2013, Dr. Antonio Sison fell below the standard of care by not properly interpreting the imaging as the study of the left testicle lacked color/[D]oppler flow which he failed to see and report to Dr. Heidi Knowles, the emergency[-]medicine physician for [Christopher]. When there is a lack of color/[D]oppler flow[,] that is an indication that there is no blood flowing through the testis. In this case, there was no color/[D]oppler flow in the left testicle[,] and that fact is referenced by the hospital's own records. As a result, Dr.

> Antonio Sison failed to make the proper diagnosis of testicular torsion[,] which was evident on the ultrasound study. His deviation in failing to adhere to the appropriate standards of care amounts to the fact that he acted with willful and/or wanton negligence in conducting, and interpreting[] [Christopher's] 3/28/2013 ultrasound of his testicles[,] which would have more likely than not revealed left testicular torsion. . . . [Testicular torsion] is a condition that requires emergency intervention. If testicular torsion is detected in a timely manner, the testicle can be saved. Had Dr. Sison not willfully and/or wantonly acted in a negligent manner in the operation and interpretation of the 3/28/2013 ultrasound, [Christopher's] left testicle more likely than not would have been saved, especially considering the relatively short time frame between the onset of [Christopher's] symptoms (as per the history) and the arrival time at the hospital. It is my opinion, based upon reasonable medical probability, that Dr. Sison's falling below the standard of care as a radiologist in an emergency[-]room setting was a proximate cause in [Christopher's] delay in obtaining the proper medical treatment to save his left testicle. Had Dr. Sison not fallen below the standard of care in the interpretation of the ultrasound, [Christopher] would more likely than not have lost his left testicle.

Dr. Guenter's amended report, addressing Dr. Knowles's alleged negligence in performing her duties as an emergency-medicine physician, stated in part,

> I am a board-certified, practicing, Emergency Medicine Physician. . . . I have extensive experience caring for and treating patients with testicular pain in the emergency department.
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> I have reviewed documents that include medical records and imaging from JPS and Cook Children's Hospitals. In summary, [Christopher] presented to the emergency room complaining of testicular pain that awakened him from sleep. His case was managed by Heidi Knowles, MD. After an ultrasound was performed, [Christopher] was sent home with a diagnosis of testicular pain and hydrocele. Three days later[,] he returned with continued pain and increasing swelling. A second ultrasound ultimately led to a transfer and surgical treatment of a testic[ul]ar torsion.

> Testicular torsion is a time-sensitive emergency. Outcomes are best when definitive management occurs within 4–6 hours. The standard of care in this case is for Dr. Knowles to have evaluated and examined [Christopher] for the common presentation symptoms[,] which include sudden onset of testicular pain, often at night, with nausea and vomiting and conducting examinations to determine lack of cremasteric reflex, abnormal orientation or asymmetric elevation of the testicle, and scrotal edema. Further, her diagnosis must only be considered after history and clinical examinations and specialty consultation should never be delayed for imaging studies. Furthermore, each of these examinations should be properly denoted with [Christopher's] medical records[,] and the failure to do so is also a breach from the appropriate standard of care.
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> Dr. Knowles[']s] physical examination did not include cremasteric reflex or orientation of the testicle. ln spite of the typical presentation for testicular torsion, an indicated urologic consultation was also not made. She also did not even include testicular torsion as the differential diagnosis. It is my opinion, to a reasonable degree of medical probability, that the evaluation and management of [Christopher] . . . did not meet the standard of care for a patient with severe testicular pain in the emergency department because a thorough examination of the cremasteric reflex or orientation of the testicle was not conducted, nor was a specialty consult provided to [Christopher]. The apparent disregard of the one true potential emergency in [Christopher's] presentation to the ER was reckless and equates to wanton negligence. ln essence, Dr. Knowles[']s] failure to adhere to the appropriate standards of care in the evaluation and examination of [Christopher] . . . to determine the source of his pain and left testicular swelling was a proximate cause in his inability to obtain proper medical attention, which was emergent at the time of his presentation on 3/28/2013. Had [Christopher] . . . received the proper medical attention in a timely manner, his left testicle would have more likely than not been saved.

Dr. Sison and Dr. Knowles each objected to the amended reports. They both filed motions to dismiss Appellees' suit. After holding another hearing, the trial court overruled Dr. Sison's and Dr. Knowles's objections to the amended

expert reports and denied their motions to dismiss Appellees' suit. Dr. Sison and Dr. Knowles each appealed.

III. THE ADEQUACY OF THE EXPERT REPORTS

In separate briefing, Dr. Sison and Dr. Knowles contend that the trial court abused its discretion by denying their motions to dismiss. Dr. Sison raises two issues consistent with his objections in the trial court complaining that Dr. Smoger is not qualified to opine on the applicable standards of care, breach, or causation and that Dr. Smoger's amended report does not contain a fair summary of the applicable standards of care, breach, or the causal connection between Dr. Sison's alleged negligence and the amputation of Christopher's left testicle. Dr. Knowles raises two issues consistent with her objections in the trial court complaining that "inconsistencies" between Dr. Guenter's amended report and Dr. Smoger's initial report "fail to meet the Chapter 74 requirements for expert reports" and that Dr. Guenter's report "fail[s] to render reliable expert testimony when [Dr. Guenter's] opinions on the standard of care and causation are not based upon reliable facts and do not set forth facts to support the opinions."

A. Standard of Review

In a healthcare-liability claim,[8] a plaintiff must serve each defendant with a report and a curriculum vitae (CV) of the report's author. Tex. Civ. Prac. & Rem.

[8]A healthcare-liability claim is, in pertinent part, "a cause of action against a . . . physician for treatment, lack of treatment, or other claimed departure from

Code Ann. § 74.351(a). The report must be written by an expert qualified to give an opinion on the matters in the report, must inform the defendant of the specific conduct called into question, and must provide a basis for the trial court to determine that the plaintiff's claim has merit. *See id.* §§ 74.351(r)(5)(A), (r)(6), 74.401(a); *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002); *see also Hebner v. Reddy*, 498 S.W.3d 37, 40 (Tex. 2016) (explaining that chapter 74 aims to eliminate frivolous claims expeditiously while preserving claims of potential merit). The purpose of the Texas Medical Liability Act's (the TMLA) expert report requirement is not to have claims dismissed regardless of their merits, but rather it is to identify and deter frivolous claims while not unduly restricting a claimant's rights. *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 502 (Tex. 2015); *Scoresby v. Santillan*, 346 S.W.3d 546, 554 (Tex. 2011). The expert-report requirement is a threshold mechanism to dispose of claims lacking merit. *Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 631 (Tex. 2013). When reviewing the adequacy of a report, the only information relevant to the inquiry is the information contained within the four corners of the document. *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001). And a report is deficient only if it does not represent an objective, good-faith effort to comply with the statutory requirements. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(a)–(b), (*l*). When reviewing an expert's qualifications under

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accepted standards of medical care . . . which proximately results in injury to . . . a claimant." Tex. Civ. Prac. & Rem. Code Ann. § 74.001(a)(13).

section 74.351, we look to the four corners of the report and also to the expert's CV. *See, e.g.*, *Baylor Coll. of Med. v. Pokluda*, 283 S.W.3d 110, 117 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *see also Palacios*, 46 S.W.3d at 878.

Consequently, an expert report "need not marshal all the plaintiff's proof"; it must only provide a fair summary of the expert's opinions as to the "applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed." *Id.* § 74.351(r)(6); *Palacios*, 46 S.W.3d at 879. We do not grade the report based on whether an expert stated these statutory elements exhaustively or elegantly or based on whether the expert recited the proper "magic words" necessary to ward off the specter of dismissal. *Mendez-Martinez v. Carmona*, 510 S.W.3d 600, 608–09 (Tex. App.—El Paso 2016, no pet.). Nor is the information in the expert report held to the same standard as evidence offered in a summary-judgment proceeding or at trial. *Palacios*, 46 S.W.3d at 879*; El Paso Specialty Hosp. Ltd. v. Gurrola*, 510 S.W.3d 655, 664 (Tex. App.—El Paso 2016, no pet.).

Instead, we review a trial court's denial of a motion to dismiss alleging the inadequacy of an expert report for an abuse of discretion. *Van Ness v. ETMC First Physicians*, 461 S.W.3d 140, 142 (Tex. 2015); *Rosemond v. Al-Lahiq*, 331 S.W.3d 764, 766 (Tex. 2011); *Moore v. Gatica*, 269 S.W.3d 134, 139 (Tex. App.—Fort Worth 2008, pet. denied) (op. on remand). Likewise, we review a trial court's decision on whether a physician is qualified to offer an expert opinion in a

healthcare-liability claim under an abuse-of-discretion standard. *Moore*, 269 S.W.3d at 139. A trial court abuses its discretion if the court acts without reference to any guiding rules or principles. *See Samlowski v. Wooten*, 332 S.W.3d 404, 410 (Tex. 2011); *Downer v. Aquamarine Operators, Inc*., 701 S.W.2d 238, 241–42 (Tex. 1985), *cert. denied*, 476 U.S. 1159 (1986). In making such a determination, a court of appeals may not simply substitute its own judgment for that of the trial court. *Wright*, 79 S.W.3d at 52. That is, an abuse of discretion does not occur simply because a trial court decides the matter differently than an appellate court would under similar circumstances. *See Baylor Univ. Med. Ctr. v. Rosa*, 240 S.W.3d 565, 569–70 (Tex. App.—Dallas 2007, pet. denied).

B. Dr. Sison's Challenges to Dr. Smoger's Amended Report

1. Challenge to Dr. Smoger's qualifications to opine on standard of care, breach, and causation

The trial court overruled Dr. Sison's objections to Dr. Smoger's qualifications as reflected in Dr. Smoger's amended report. On appeal, Dr. Sison's first issue re-urges his complaint that Dr. Smoger is not qualified to articulate opinions about the standard of care for interpreting a testicular sonogram, about a breach of that standard of care, or causation. Dr. Sison's complaint was framed in the trial court as follows:

> Dr. Smoger is not demonstrated in his first report to have the qualifications to address the interpretation of a testicular sonogram of a child and that he does not have the qualifications to render

> opinions regarding causation from the failure to diagnose a testicular sonogram of a child.
>
> He is a radiologist. He is a [sic] neuroradiologist. His first report and his second report are absolutely silent as to his education, training, and experience in diagnosing and treating children for testicular problems and the diagnostic tool [is] a sonogram.
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> The *In re Windisch*[9] case, it is the Spotted Dog case. . . .
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> . . . .
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> The same thing[—that the expert has not properly demonstrated his qualifications with respect to the particular procedure—]is true here.

Dr. Sison reiterates this same position—that the facts here are controlled by *In re Windisch*—in his first issue on appeal.

An expert is qualified to opine concerning a physician's breach of a standard of care, when the expert is 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
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> (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

Tex. Civ. Prac. & Rem. Code Ann. § 74.401(a); *see also id.* § 74.351(r)(5)(A). In determining whether the witness is qualified on the basis of training or experience,

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[9]138 S.W.3d 507 (Tex. App.—Amarillo 2004, orig. proceeding).

> the court shall consider . . . whether the witness:
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> (1) is certified by a licensing agency of one or more states . . . or a national certifying professional agency, or has other substantial training or experience, in the area of health care relevant to the claim; and
>
> (2) is actively practicing health care in rendering health care services relevant to the claim.

Id. § 74.402(c). In determining the third element of this qualification standard, courts consider whether the physician who completed the report (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). That is, the report must generally demonstrate that the expert has "knowledge, skill, experience, training, or education regarding the specific issue before the court which would qualify the expert to give an opinion on that particular subject." *Ehrlich v. Miles*, 144 S.W.3d 620, 625 (Tex. App.—Fort Worth 2004, pet. denied). It is not enough for an expert to simply be of the same specialty as the healthcare-provider defendant. *See, e.g.*, *Broders v. Heise*, 924 S.W.2d 148, 152–53 (Tex. 1996). A physician is qualified to submit an expert report on the causal relationship between a departure from a standard of care and an injury when he would otherwise be qualified to address causation under rule 702 of the Texas Rules of Evidence. Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(5)(C); *see*

Tex. R. Evid. 702;[10] *Thomas v. Alford*, 230 S.W.3d 853, 857 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

Dr. Smoger's report and attached CV establish that Dr. Smoger is a diagnostic radiologist and is board certified by the American Board of Radiology. In addition to completing a four-year residency in diagnostic radiology, Dr. Smoger also completed a one-year fellowship in interventional radiology and attained from the American Board of Radiology a "Certificate of Added Qualification in Interventional Radiology." Dr. Smoger is a member of five different radiology associations and also is a member of the Society of Interventional Radiologists. Dr. Smoger has served in a hospital setting as Chief of Interventional Radiology since 2009. After detailing his education, training, and experience, Dr. Smoger's report states, "I am familiar with the Radiology standards of care as they apply to the interpretation of testicular ultrasound."

Dr. Sison is a diagnostic radiologist. As pointed out by Appellees' counsel in the trial court:

> [T]he Court will recall, Dr. Sison is a diagnostic radiologist. Dr. Smoger is not only a diagnostic radiologist but he's also trained in interventional radiology. He is more qualified to render these opinions than Dr. Sison is.

[10]Rule 702 states that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Tex. R. Evid. 702.

> If he wants to take -- if the Defendants want to take the approach that because there's not a juvenile element, that's better served for an argument down the line in [*Daubert*] or something down the line if I can't prove through discovery that we have an expert that will opine that in a juvenile setting that a testicle would or would not have been saved under these particular sets of scenarios, that's a different story.
>
> All I have to do in this report is provide the Court with a fair summary of our claims. We do that not only with a radiologist that is equal in kind to [Sison], but he is more qualified than [Sison]. So the qualifications argument, in my opinion, fails.

The *In re Windisch* case Dr. Sison relies upon in support of his contention that Dr. Smoger is not qualified to opine on the standard of care for interpreting a testicular sonogram or on the breach of that standard of care does not involve facts that parallel those here. 138 S.W.3d at 512.[11] Contrary to Dr. Sison's contention, the present qualification facts are the exact inverse of those presented in *Windisch*. Dr. Windisch was an interventional neuroradiologist. *Id*. at 509. A patient suffering with a large brain tumor was referred to Dr. Windisch for performance of the interventional procedures of angiography—to locate the arteries supplying blood to the tumor—and embolization—the placement of small particles and wires into the blood vessels for the purpose of cutting off the blood supply to a tumor. *Id*. Dr. Windisch was sued for negligent performance of these procedures, and the plaintiff filed an expert report prepared by a radiologist, Dr. Shenk. *Id*. In holding that Dr. Shenk (a radiologist with a fellowship in

[11]Dr. Sison solely cites *Windisch* in support of his contention that Dr. Smoger lacks qualifications to testify as to standard of care and breach. 138 S.W.3d at 514 (holding neuroradiologist not qualified to opine on interventional procedures performed by interventional neuroradiologist).

neuroradiology) was not qualified to testify regarding the standard of care required in performing the interventional angiography and embolization procedures that were performed by Dr. Windisch (an interventional neuroradiologist), the Amarillo Court of Appeals explained that

> [b]oth Shenk and Windisch are radiologists. Nothing in . . . Shenk's report or curriculum vitae allows us to presume, though, that the issues involved in this case are so common to radiology that any credentialed radiologist can testify to the applicable standard of care. His fellowship in neuroradiology and his teaching appointments earlier in his career might indicate familiarity with the interventional procedure Windisch performed on Powell[] but cannot reasonably be said to demonstrate that he has knowledge of the accepted standard of care for the procedure.

Id. at 513–14. Thus, in *Windisch*, the plaintiff's expert was a radiologist while the defendant was an interventional neuroradiologist. *See id.* And in *Windisch*, the less medically trained radiologist expert offered opinions on the standard of care for interventional radiology procedures (angiography and embolization) not common to all radiologists. *See id.* Whereas here, Dr. Smoger is more specifically qualified in radiology (Board Certified in Radiology by the American Board of Radiology with a Certificate of Added Qualification in Interventional Radiology) than Dr. Sison (a diagnostic radiologist). And the more medically trained interventional radiologist Dr. Smoger offered expert opinions on the standard of care for an issue common to diagnostic radiology—interpreting a sonogram. *Cf. In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 463 (Tex. 2008) (orig. proceeding) (providing example of expert report and CV that failed to establish expert's qualifications to opine on hospital credentialing standard of

care and breach).[12] Thus, the Amarillo Court of Appeals's holding in *Windisch* is inapplicable here.

Appellees' claim against Dr. Sison involves the standard of care required of a diagnostic radiologist in interpreting a sonogram of testicles and a breach of that standard. Viewing the four corners of Dr. Smoger's report along with his CV, we cannot say that the trial court abused its discretion by determining that Dr. Smoger's report and CV sufficiently demonstrate the knowledge Dr. Smoger claimed to have of the accepted standards of care applicable to diagnostic radiologists interpreting a sonogram of testicles[13] and what constitutes a breach of that standard of care, rendering him qualified "on the basis of training or experience"—based on his relevant licensing certifications, his "other substantial

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[12]The supreme court pointed out that the expert's report

> lists where she went to high school and college[] but not medical school. It discloses a "general surgery internship[]" but not when it took place or how long it was. For employment, it shows two years practicing emergency medicine (1978–80), twenty years in solo family practice (1980–2000), five years "specializing in medical-legal issues" (1995–2000), and a "house call business in general medicine" since 2000. It lists no hospitals where she is on staff, or has been for twenty years, though in her reports Dr. Brown says she has worked as a "surgical assistant" and attended "heart catherizations" [sic] regarding some of her patients. There is nothing else in either the CV or the reports to suggest she has special knowledge or expertise regarding hospital credentialing.

Id. at 463.

[13]Dr. Smoger stated in his report, "I am familiar with the Radiology standards of care as they apply to the interpretation of testicular ultrasound."

training or experience," and his "actively practicing health care in rendering health care services relevant to the claim"—"to offer an expert opinion regarding [these] accepted standards." *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.402(c); *Pokluda*, 283 S.W.3d at 117 (holding expert's report and CV "satisfies the qualifications requirements" of the TMLA).[14] We overrule this portion of Dr. Sison's first issue.

In the second part of his first issue, Dr. Sison complains that Dr. Smoger was not qualified to offer a causation opinion.[15] An expert is qualified under chapter 74 to offer opinion testimony in a preliminary expert report about the

[14]Dr. Sison does not separately argue Dr. Smoger's qualifications to opine on the standard of care and to opine on breach. We agree that the standards are the same in this case, and we address them jointly as Dr. Sison did.

[15]In support of his contention that Dr. Smoger lacks qualifications to testify as to causation, Dr. Sison cites several cases: *Pediatrix Med. Servs. Inc. v. De La O*, 368 S.W.3d 34, 40 (Tex. App.—El Paso 2012, no pet.) (holding neonatologist/pediatrician not qualified to render causation opinion that prematurely born baby's blindness was caused by untimely diagnosis and treatment for Retinopathy of Prematurity when her report stated that she had "requested ophthalmic consultations from pediatric ophthalmologists to screen preterm infants for ROP"); *Collini v. Pustejovsky*, 280 S.W.3d 456, 461–67 (Tex. App.—Fort Worth 2009, no pet.) (holding family practice D.O. not qualified to render causation opinion that extended use of prescription drug Reglan caused tardive dyskinesia); *Costello v. Christus Santa Rosa Health Care Corp.*, 141 S.W.3d 245, 247 (Tex. App.—San Antonio 2004, no pet.) (holding registered nurse not qualified to opine on cause of death because such an opinion required a medical diagnosis); *Thomas*, 230 S.W.3d at 859–60 (holding radiologist was not qualified to render causation opinion regarding cancer treatment); and *Kapoor v. Estate of Klovenski*, No. 14-09-00963-CV, 2010 WL 3721866, at *3–4 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (mem. op.) (holding physician specializing in family medicine and emergency medicine was not qualified to render causation opinion regarding cancer treatment).

causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in a healthcare-liability claim when the expert is a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(5)(C); *see TTHR, L.P. v. Coffman*, 338 S.W.3d 103, 112 (Tex. App.—Fort Worth 2011, no pet.) ("The legislature has prescribed that it is necessary for a physician to opine as to causation of damages."). This statutory requirement incorporates the rules of evidence in the context of the expert's qualifications. *Tenet Hosps., Ltd. v. Garcia*, 462 S.W.3d 299, 307 (Tex. App.—El Paso 2015, no pet.).[16] The rules of evidence provide that a witness may testify on "scientific, technical, or other specialized knowledge" if the witness is qualified as an expert on the matter "by knowledge, skill, experience, training, or education." Tex. R. Evid. 702.

[16]The El Paso Court of Appeals in *Tenet* held that

> [c]ertainly TEX. R. EVID. 702's requirement that the witness must be qualified by "knowledge, skill, experience, training, or education" would apply. But we think it premature at this early stage of a case to impose all of the additional requirements in Rules 702 and 703 concerning relevance and reliability. We take the language in Section 74.351(r)(5)(C) at face value that the reference to the Texas Rules of Evidence pertains to qualifications, and not to the opinion itself. Otherwise, every report challenge would turn into a mini-*Daubert Robinson* hearing.

Id. (footnote omitted).

Dr. Sison's specific complaint in the second part of his first issue is that "Smoger is opining that earlier diagnosis of testicular torsion and treatment would have resulted in the salvage of the involved testicle. However, there is nothing in his reports or CV which offers any evidence of why he is qualified to address the treatment and outcomes of pediatric testicular torsion." Dr. Smoger's amended report, however, addresses the alleged negligence of Dr. Sison, a radiologist, not the alleged negligence of the surgeon performing surgery on Christopher and, ultimately, amputating Christopher's nonviable left testicle. In addressing Dr. Sison's alleged negligence, Dr. Smoger's report and CV establish that he is qualified to opine—as he did—that Dr. Sison's alleged negligent interpretation of the sonogram of Christopher's left testicle by failing to recognize a lack of blood flow to it as reflected in the March 28, 2013 sonogram was a proximate cause of the delay in obtaining proper medical treatment and that but for the delay (given the short time between the onset of Christopher's symptoms and his arrival at the emergency room), Christopher's left testicle could have been saved. Thus, contrary to Dr. Sison's position, Dr. Smoger's causation opinion—that immediate medical treatment is needed to reestablish blood flow to a testicle when a sonogram shows no blood flow to it, that time is of the essence, and that immediate treatment reestablishing blood flow will more likely than not save the testicle—is not based on his qualifications in the treatments and outcomes of pediatric testicular torsion surgery but rather on Dr. Smoger's training and experience as an interventional diagnostic radiologist. *See, e.g.*, *Mosely v.*

Mundine, 249 S.W.3d 775, 779–80 (Tex. App.—Dallas 2008, no pet.) (rejecting contention that emergency-room internist was not qualified—because he was not an oncologist—to offer causation opinion that if lung cancer had been detected earlier, the likelihood of plaintiff's survival would have been greater because "[t]he conduct causing the [plaintiffs'] injuries related to the ability of an emergency[-]room physician to interpret a routine chest x-ray and identify an abnormality, not the diagnosis and treatment for cancer").

Viewing the four corners of Dr. Smoger's report along with his CV, we cannot say that the trial court abused its discretion by determining that Dr. Smoger's report and CV sufficiently demonstrate that he possesses the knowledge, skill, training, education, credentials, and experience to provide an opinion linking the failure to recognize on a sonogram the deprivation of blood flow to a testis to cause a lack blood flow to exist for an increased length of time which increases the damage to that testis. We overrule the remainder of Dr. Sison's first issue complaining that Dr. Smoger was not qualified to opine that Dr. Sison's alleged negligence in failing to recognize a loss of blood flow to Christopher's left testicle caused a delay in Christopher's receiving proper medical intervention and that timely intervention would more likely than not have saved Christopher's testicle. To the extent this second portion of Dr. Sison's first issue also encompasses his contention that the actual causation opinion proffered by Dr. Smoger in his report is insufficient, we address that contention in our analysis of Dr. Sison's second issue.

2. Contention that Dr. Smoger's amended report fails to contain a fair summary of the applicable standards of care, breach, and causation

In his second issue, Dr. Sison argues that Dr. Smoger's amended report "fail[s] to contain the requisite opinions by an expert that Appellees' claims against Sison have merit."

While the plaintiff is not required to prove his claim with the expert report, the report must show that a qualified expert is of the opinion he can. *Columbia Med. Healthcare Sys., L.P. v. Zamarripa*, No. 15-0909, 2017 WL 2492003, at *4 (Tex. June 9, 2017). The expert report must discuss the standards of care, breach, and causation with sufficient specificity (1) to inform the defendant of the conduct the plaintiff has called into question and (2) to provide the trial court with a basis to conclude that the claims have merit. *Scoresby,* 346 S.W.3d at 555–56. An expert report, however, must do more than merely state the expert's conclusions about the standard of care, breach, and causation; it must explain the basis of the expert's statements and link his conclusions to the facts. *Wright*, 79 S.W.3d at 52; *Quinones v. Pin*, 298 S.W.3d 806, 810 (Tex. App.—Dallas 2009, no pet.).

As quoted above, in his amended report Dr. Smoger sets forth the standard of care "for conducting an ultrasound on a 13[-]year[-]old boy's testicle(s) to determine the cause and source of the testicular pain and swelling in an emergency room setting." Dr. Smoger identified the views and images required by the standard of care in performing an ultrasound for the purpose of

determining in an emergency-room setting the cause and source of testicular pain and swelling, stating that the "blood flow of each testis and epididymis should be compared to the contralateral side." Dr. Smoger explained in his amended report that testicular torsion occurs when a testicle rotates, twisting the spermatic cord that brings blood to the testicle. Dr. Smoger pointed out that the March 28, 2013 ultrasound of Christopher's left testicle showed that it "lacked color/[D]oppler flow" and that "in this case, there was no color/[D]oppler flow in the left testicle[,] . . . and that fact is referenced by the hospital's own records." Dr. Smoger explained that "lack of color/[D]oppler flow is an indication that there is no blood flowing through the testis." Dr. Smoger opined that Dr. Sison "fell below the standard of care by not properly interpreting" the ultrasound because "the left testicle lacked color/[D]oppler flow which he failed to see and report to Dr. Heidi Knowles, the emergency[-]medicine physician for [Christopher]." Dr. Smoger opined that a proper interpretation of the March 28, 2013 ultrasound of Christopher's testicles would have revealed left testicular torsion. Dr. Smoger explained that testicular torsion requires emergency intervention and opined that given "the short timeframe between the onset of [Christopher's] symptoms (as per the history) and [his] arrival time at the hospital," based upon reasonable medical probability, Dr. Sison's falling below the standard of care as a radiologist in an emergency-room setting was a proximate cause in Christopher's delay in obtaining the proper medical treatment to save his left testicle. "Had Dr. Sison

not fallen below the standard of care in the interpretation of the ultrasound," Christopher more likely than not would not have lost his left testicle.

Dr. Smoger's amended report discusses the standard of care and breaches with sufficient specificity to inform Dr. Sison of the conduct called into question and to provide the trial court with a basis to conclude that Appellees' claims have merit. Dr. Smoger's amended report states that the standard of care for a radiologist in reviewing a testicular ultrasound of a patient presenting in an emergency-room setting with testicular pain and swelling requires a determination of the blood flow to each testis and a comparison of that blood flow to the other testis. Dr. Smoger's amended report identifies Dr. Sison's alleged negligent interpretation of the March 23, 2013 ultrasound of Christopher's testicles as the conduct Appellees have called into question. Concerning breach of the standard of care, Dr. Smoger's amended report states that Dr. Sison breached the standard of care by failing to recognize or "see" that the March 23, 2013 ultrasound documented a lack of blood flow to Christopher's left testicle. Dr. Smoger's amended report then explains that Dr. Sison's negligence in falling below the standard of care as a radiologist in an emergency-room setting was a proximate cause of the delay in Christopher's obtaining the emergency intervention required to save his left testicle, which was not receiving blood per the ultrasound. Based on the four corners of Dr. Smoger's amended report, the trial court did not act arbitrarily, unreasonably, or without reference to guiding principles (i.e., did not abuse his discretion) by determining that the amended

report constitutes a good-faith effort to explain, factually, the bases of Dr. Smoger's standard of care, breach, and causation opinions. *See, e.g.*, *Van Ness*, 461 S.W.3d at 144 (holding trial court did not abuse its discretion by determining report constituted good-faith effort to comply with all expert-report elements of TMLA); *Minck v. Perales*, No. 13-16-00694-CR, 2017 WL 2289030, at *3–4 (Tex. App.—Corpus Christi May 25, 2017, no pet.) (mem. op.) (holding trial court did not abuse its discretion by determining expert report constituted good-faith effort to provide a fair summary of expert's opinions on breach and causation); *Thomas*, 230 S.W.3d at 859 (holding trial court did not abuse its discretion by determining Grossbard's expert report provided adequate opinions on standard of care, breach, and causal relationship).

We overrule Dr. Sison's second issue.

C. Dr. Knowles's Challenges to Dr. Guenter's Amended Report

1. Contention that "inconsistencies" between Dr. Guenter's amended report and Dr. Smoger's initial report "fail to meet the Chapter 74 requirements for expert reports"

In her first issue, Dr. Knowles complains that because Dr. Smoger's original report named Mr. Hutchins as the person who cared for Christopher in the emergency room on March 28, 2013, while Dr. Smoger's amended report identifies Dr. Knowles as the person who cared for Christopher in the emergency room on March 28, 2013, this conflict or inconsistency causes Dr. Guenter's amended report to fail to meet chapter 74's requirement. Because Dr. Smoger's amended report supersedes his initial report, the contention that Dr. Smoger's

initial report creates a fatal conflict with Dr. Guenter's amended report is without merit. *See Cornejo v. Hilgers*, 446 S.W.3d 113, 124 n.11 (Tex. App.—Houston [1st Dist.] 2014, pet. denied) (explaining amended expert report served after thirty-day extension granted by trial court supersedes any initial report filed by the claimant); *HealthSouth Corp. v. Searcy*, 228 S.W.3d 907, 909 (Tex. App.—Dallas 2007, no pet.) (explaining that amended filing supplants previously filed document so that second amended expert report was the report before the trial court and appellate court).

Additionally, Dr. Guenter's amended report states that on March 28, 2013, Christopher's care in the emergency room was managed by Dr. Knowles. Because Dr. Guenter's amended report was consistent with Dr. Smoger's amended report regarding the factual assertion that Dr. Knowles is the person who cared for Christopher in the emergency room, a factual variation on this point between the report and the amended report of Dr. Smoger—which are both directed at Dr. Sison's conduct—does not somehow render Dr. Guenter's amended report, which is directed at Dr. Knowles, fatally flawed under chapter 74. We have reviewed the cases cited by Dr. Knowles and have conducted our own research on this issue; we have located no authority supporting Dr. Knowles's position.[17] We overrule this portion of Dr. Knowles's first issue.

[17]The cases cited by Dr. Knowles hold that courts may consider a healthcare claimant's expert reports in the aggregate to determine whether the trial court abused its discretion by determining that the expert reports constituted a good-faith effort to comply with the definition of an expert report. *See, e.g.*,

In the second part of her first issue, Dr. Knowles asserts that inconsistencies between Dr. Smoger's and Dr. Guenter's reports regarding the importance of a testicular ultrasound in making a diagnosis of testicular torsion render Dr. Guenter's amended report fatally flawed under chapter 74. Dr. Knowles appears to argue that according to Dr. Smoger and Appellees' counsel, a diagnosis of testicular torsion can be made only by means of a testicular sonogram; thus, Dr. Knowles could not have diagnosed it.[18] Dr. Smoger's report focuses on the standard of care in making a diagnosis of testicular torsion based on the results of Christopher's testicular sonogram because that is the job of a radiologist like Dr. Sison. Dr. Guenter's amended report focuses on the standard

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Salais v. Tex. Dep't Aging & Disability Servs., 323 S.W.3d 527, 534 (Tex. App.—Waco 2010, pet. denied); *Packard v. Guerra*, 252 S.W.3d 511, 526 (Tex. App.—Houston [14th Dist.] 2008, pet. denied); *Walgreen Co. v. Hieger*, 243 S.W.3d 183, 186 n.2 (Tex. App.—Houston [14th Dist.] 2007, pet. denied). Dr. Knowles has cited, and we have located, no cases holding that differences between expert reports (especially those of the type relied upon by Dr. Knowles) as a matter of law render noncompliant a report that otherwise complies with chapter 74.

[18]Dr. Knowles relies upon the following argument by Appellees' counsel before the trial court:

> This is a very simple case. It's not a complex medical case. You go in -- he goes in -- my client goes in, they do an ultrasound. You look for Doppler flow to see if there's any blood flow, which identifies whether or not there's testicular torsion or perhaps -- a preliminary diagnosis of testicular torsion[] because it's not formally diagnosed until you perform the surgery -- exploratory surgery to determine what is happening. They sent him away because they misread the ultrasound. They did not identify the Doppler flow that's identified. They didn't compare the images [that are] identified in the report. That's more than a fair summary.

of care in making a differential diagnosis of testicular torsion based on an evaluation of the symptoms Christopher presented with in the emergency room and a physical examination noting the presence or absence of specific findings based on those symptoms because that is the job of an emergency-medicine physician like Dr. Knowles. The fact that Dr. Smoger's and Dr. Guenter's reports focus on differing diagnosis mechanisms for Dr. Sison (testicular sonogram) and for Dr. Knowles (evaluation, physical examination, and testing) does not automatically render either report inadequate as a matter of law or fact.[19] We overrule the remainder of Dr. Knowles's first issue.

2. Contention that Dr. Guenter's amended report "fails to set forth how Dr. Knowles's actions constitute violations of the standard of care or how any breach was a proximate cause of plaintiff's injuries"[20]

In her second issue, Dr. Knowles complains that Dr. Guenter's amended report is insufficient because it does not "explain the basis of his statements to

[19]The case cited by Dr. Knowles for the proposition that Dr. Guenter's amended report is fatally flawed because of inconsistencies between Dr. Smoger's and Dr. Guenter's "beliefs as to what exam is necessary in arriving at a diagnosis of testicular torsion" involves exclusion of an expert's trial testimony on reliability grounds because of internal inconsistences in that same expert's testimony. *See Wilson v. Shanti*, 333 S.W.3d 909, 913–14 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) (citing *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631 (Tex. 2009); *Gen. Motors Corp. v. Iracheta*, 161 S.W.3d 462, 470–72 (Tex. 2005); and *Merrell Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997), *cert. denied*, 523 U.S. 1119 (1998)). This holding regarding exclusion of an expert's trial testimony is inapplicable to the issue of whether pretrial, statutorily-required expert reports comply with the statute requiring them.

[20]Dr. Knowles's second issue listed in her "issues presented" and her second issue stated in the body of her brief are different. We address the version of her second issue that is briefed.

link his conclusions to the facts."[21] To represent a good-faith effort to provide a fair summary of his opinions, Dr. Guenter was not required to marshal all of Appellees' proof but only needed to include his explained opinion on each element—standard of care, breach, and causation. *See, e.g.*, *Peterson Reg'l Med. Ctr. v. O'Connell*, 387 S.W.3d 889, 893–94 (Tex. App.—San Antonio 2012, pet. denied).

As set forth and quoted above, Dr. Guenter's amended report indicates the documents he had reviewed and the facts of the case:

> [Christopher] presented to the emergency room complaining of testicular pain that awakened him from sleep. His case was managed by Heidi Knowles, MD. After an ultrasound was performed, [Christopher] was sent home with a diagnosis of testicular pain and hydrocele. Three days later he returned with continued pain and increasing swelling. A second ultrasound

[21]Dr. Knowles makes several other contentions under her second issue: Dr. Guenter "never provides any details regarding the examination that was allegedly performed by Dr. Knowles (as opposed to Mr. Hutchins) or any basis for concluding that a proper exam was not completed," but Mr. Hutchins is not mentioned in Dr. Guenter's amended report; Dr. Guenter "provides no factual basis to support the contentions that Dr. Knowles failed to evaluate the cremasteric reflex, orientation[,] or elevation of the testicles[] and determine the presence of scrotal edema," but Dr. Guenter's amended report indicates that he reviewed the medical records from the emergency room hospital and that Dr. Knowles's examination did not include these evaluations; "Dr. Guenter does not even state what specialist would have been required to consult on the case . . . [thus] [t]he Court can only speculate as to what specialist Dr. Guenter believes should have consulted on the care," but Dr. Guenter's amended report states that "[i]n spite of the typical presentation for testicular torsion, an indicated *urologic consultation* was also not made"; and others. We liberally construe Dr. Knowles's second issue as a challenge to the factual bases for the standard of care, breach, and causation opinions set forth by Dr. Guenter in his amended report, and we address that issue. *See* Tex. R. App. P. 38.1(f), 38.9.

> ultimately led to a transfer and surgical treatment of a testicular torsion.

Thus, Dr. Guenter's amended report specifically states the facts upon which his opinions are based.

Dr. Guenter's amended report specifically sets forth the standard of care:

> Testicular torsion is a time-sensitive emergency. Outcomes are best when definitive management occurs within 4–6 hours. *The standard of care in this case is for Dr. Knowles to have evaluated and examined [Christopher] for the common presentation symptoms[,] which include sudden onset of testicular pain, often at night, with nausea and vomiting and conducting examinations to determine lack of cremasteric reflex, abnormal orientation or asymmetric elevation of the testicle, and scrotal edema. Further, her diagnosis must only be considered after history and clinical examinations[,] and specialty consultation should never be delayed for imaging studies. Furthermore, each of these examinations should be properly denoted with [Christopher's] medical records[,] and the failure to do so is also a breach from the appropriate standard of care.* [Emphasis added.]

Dr. Guenter's recitation of the standard of care for an emergency-room physician when presented with a patient displaying the symptoms recited above—the sudden onset of testicular pain, often at night, with nausea and vomiting—is clearly set forth. The standard of care is to conduct examinations to determine lack of cremasteric reflex, abnormal orientation or asymmetric elevation of the testicle, and scrotal edema. Dr. Guenter stated that the standard of care requires that the results "[e]ach of these examinations should be properly denoted with [Christopher's] medical records." Thus, Dr. Guenter's amended report constitutes a good-faith effort to provide a fair summary of his standard-of-care opinions. *See, e.g.*, *Van Ness*, 461 S.W.3d at 142 (holding the following

standard-of-care opinion—which is similar to Dr. Guenter's—adequate: "[t]he applicable standard of care as to Kristin Ault, DO is upon evaluation of a one[-] month[-]old child who presents with symptoms such as a history of fever, cough[,] and nasal congestion, compounded by sick contacts at home, is to perform laboratory tests, administer antibiotics prophylactically while the tests are pending[,] and/or to admit the infant to a medical facility"); *Estate of Birdwell ex rel. Birdwell v. Texarkana Mem'l Hosp., Inc.*, 122 S.W.3d 473, 479 (Tex. App.—Texarkana 2003, pet. denied) (holding substance of expert report constituted good-faith attempt to give a fair summary of the standard of care).

Dr. Guenter's amended report specifically identifies how Dr. Knowles allegedly breached the standard of care. It states that "Dr. Knowles['s] physical examination [of Christopher] did not include cremasteric reflex or orientation of the testicle." It states, "It is my opinion, to a reasonable degree of medical probability, [] the evaluation and management of [Christopher] did not meet the standard of care for a patient with severe testicular pain in the emergency department because a thorough examination of the cremasteric reflex or orientation of the testicle was not conducted" and because the failure to properly document each of these examinations in Christopher's medical records "is also a breach from the appropriate standard of care." *See, e.g.*, *Otero v. Richardson*, 326 S.W.3d 363, 367 (Tex. App.—Fort Worth 2010, no pet.) (holding report's standard-of-care and breach opinions adequate).

Dr. Guenter's amended report specifically links Dr. Knowles's alleged breaches of the standards of care to the amputation of Christopher's left testicle: The failure to conduct a thorough examination of the cremasteric reflex or orientation of Christopher's testicle led to the injury because "[t]esticular torsion is a time-sensitive emergency" and because outcomes for testicular torsion "are best when definitive management occurs within 4–6 hours." Dr. Guenter opined,

> In essence, Dr. [Knowles's] failure to adhere to the appropriate standards of care in the evaluation and examination of [Christopher] to determine the source of his pain and left testicular swelling was a proximate cause in his inability to obtain proper medical attention, which was emergent at the time of his presentation on 3/28/2013. Had [Christopher] received the proper medical attention in a timely manner, his left testicle would have more likely than not been saved. However, because Dr. Knowles fell below the standard of care in failing to conduct the appropriate, routine examinations of [Christopher's] left testicle, this did not occur.

Dr. Guenter's amended report provides a fair summary of his causation opinion, adequately links his opinion to the facts, and explains that Christopher's painful, swollen, left testicle would more likely than not have been saved if Dr. Knowles had adhered to the appropriate standards of care in her examination of Christopher's left testicle because in spite of Christopher's typical presentation for testicular torsion, Dr. Knowles failed to properly evaluate and examine Christopher and that this negligence "was a proximate cause" of Christopher's inability to obtain proper medical attention for his testicular torsion, which was emergent at the time Dr. Knowles saw him on March 28, 2013. *See, e.g.*, *Tenet Hosps. Ltd. v. De La Rosa*, 496 S.W.3d 165, 173–74 (Tex. App.—El Paso 2016,

no pet.) (holding expert report's causation opinion linking delay in diagnosis of spinal cord compression to resultant paraplegia was adequate); *Peterson Reg'l Med. Ctr*., 387 S.W.3d at 894 (holding expert report's causation opinion linking failure to provide additional monitoring and patient's resulting fall was adequate); *Moore v. Sutherland*, 107 S.W.3d 786, 791 (Tex. App.—Texarkana 2003, pet. denied) (holding expert report's causation opinion linking failure to diagnose and treat the bile peritonitis with patient's death was adequate); *see also Mendez-Martinez*, 510 S.W.3d at 610 (explaining that expert report satisfied statutory causation element because "[f]acially, the contentions laid out in Dr. Roddy's report provide an articulable, complete, and plausible path toward a cause of action against Dr. Mendez–Martinez. Whether the links in the logical chain are strong enough to support a liability finding against him is not a question to be resolved at the pleading stage. Dr. Roddy's report provides a fair summary of the plaintiff's theory on causation").

In summary, after reviewing Dr. Guenter's amended report, the trial court could reasonably have determined that Dr. Guenter's amended report met the requirements of making a good-faith effort to provide a fair summary of the applicable standards of care, of how Dr. Knowles allegedly breached those standards, and of the causal link between Dr. Knowles's alleged breaches and Christopher's injury; that is, Dr. Guenter's amended report informed Dr. Knowles of her specific conduct called into question by Appellees and provided a basis for the trial court to conclude that their claims have merit. *See, e.g.*, *Van Ness*, 461

S.W.3d at 144 (holding court of appeals erred by reversing trial court's denial of motion to dismiss because "[u]nder the circumstances, the trial court had discretion—indeed it was incumbent on the trial court—to review the report, sort out its contents, resolve any inconsistencies in it, and decide whether the report demonstrated a good-faith effort to show that the Van Nesses' claims had merit," and trial court did not abuse its discretion by determining report constituted good-faith effort on all elements); *Fortner v. Hosp. of the Sw., LLP*, 399 S.W.3d 373, 383 (Tex. App.—Dallas 2013, no pet.) (holding expert reports represented a good-faith effort to provide a fair summary of the experts' opinions about the applicable standard of care, the manner in which the care failed to meet that standard, and the causal relationship between the failure and the claimed injury and reversing trial court judgment dismissing healthcare-liability claim). We therefore find no abuse of discretion.

We overrule Dr. Knowles's second issue.

IV. CONCLUSION

Having overruled both of Dr. Sison's issues and both of Dr. Knowles's issues, we affirm the trial court's judgment denying Dr. Sison's and Dr. Knowles's motions to dismiss Appellees' healthcare-liability claim.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER, J.; and CHARLES BLEIL (Senior Justice, Retired, Sitting by Assignment).

LIVINGSTON, C.J., filed a dissenting opinion.

DELIVERED: September 7, 2017