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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-451**

Susanna Grabinger,
as trustee for the heirs and next of kin of William A. Hrdlichka,
Appellant,

vs.

Allina Health System,
Respondent.

**Filed September 12, 2011
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CV-10-14081

Craig A. Goudy, Cox, Goudy, McNulty & Wallace, P.L.L.P., Minneapolis, Minnesota
(for appellant)

Kelly A. Putney, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant, trustee for the heirs of William Hrdlichka, challenges the district court's dismissal of her medical-malpractice claim for failure to comply with the medical-expert-disclosure requirements of Minn. Stat. § 145.682 (2010). We affirm.

DECISION

William Hrdlichka was admitted to Abbott Northwestern Hospital, which is operated by respondent Allina Health System, for hip-replacement surgery in October 2006. Hrdlichka was being treated for diabetes and hypertension at the time. After the surgery, Hrdlichka developed encephalopathy and other medical complications and died in December. Appellant Susanna Grabinger was appointed trustee for Hrdlichka's heirs and next of kin and commenced a medical-malpractice action against respondent.

“The Minnesota legislature enacted Minn. Stat. § 145.682 for the purpose of eliminating nuisance medical malpractice lawsuits by requiring plaintiffs to file [expert] affidavits verifying that their allegations of malpractice are well-founded.” *Stroud v. Hennepin Cnty. Med. Ctr.*, 556 N.W.2d 552, 555 (Minn. 1996). The failure of a plaintiff to satisfy these affidavit requirements results in the mandatory dismissal with prejudice of her malpractice claim. Minn. Stat. § 145.682, subd. 6(c); *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005). We review the district court's dismissal of a medical-malpractice action based on the insufficiency of an expert affidavit for abuse of discretion. *Anderson v. Rengachary*, 608 N.W.2d 843, 846 (Minn. 2000).

It is undisputed that appellant satisfied the requirement of filing an affidavit of expert review. *See* Minn. Stat. § 145.682, subd. 3 (stating standard for expert-review affidavit). The requirements for a plaintiff's second affidavit—an expert-identification affidavit—are more extensive. Minn. Stat. § 145.682, subd. 4. In this affidavit, the plaintiff's expert must

(1) disclose specific details concerning the expert's expected testimony, including the applicable standard of care, (2) identify the acts or omissions that the plaintiff alleges violated the standard of care, and (3) include an outline of the chain of causation between the violation of the standard of care and the plaintiff's damages.

Teffeteller v. Univ. of Minn., 645 N.W.2d 420, 428 (Minn. 2002).

Appellants submitted two affidavits from Dr. Richard Levy, a cardiologist and internist from California. Dr. Levy stated that intravenous glucose administration was the standard of care for someone who is insulin dependent and anesthetized; that oral administration of fluids is contra-indicated in patients under anesthetic influence because of poor absorption into the bloodstream; that Hrdlichka was "reportedly" only given orange juice orally; and that respondent "negligently failed to properly monitor, maintain and treat the decedent's blood sugar." Dr. Levy concluded that hypoglycemia and its potential complications, including encephalopathy, likely led to Hrdlichka's protracted hospitalization, and the protracted hospitalization "with picture encephalopathy" led to "multiple complications . . . leading to his ultimate demise." Encephalopathy is defined as "any dysfunction of the brain." *Taber's Cyclopedic Medical Dictionary* 586 (16th ed. 1989). In his second affidavit, Dr. Levy also stated he did not have the immediate preoperative, intraoperative, and postoperative medical records and that his opinions were based on the records summary appellant provided to him for the first week of the hospitalization period following the operation.

The district court concluded that appellant's expert affidavits did not sufficiently describe how respondent breached the standard of care or the chain of causation connecting the alleged breach to Hrdlichka's death. We agree.

The expert's statements on respondent's breach of the standard of care are insufficient. Respondent submitted a medical record showing that Hrdlichka was given glucose intravenously on the date of his surgery, directly contradicting Dr. Levy's understanding of how respondent cared for Hrdlichka. And Dr. Levy did not specify what actions respondent should have taken, e.g., when Hrdlichka's blood sugar should have been tested but was not, or when glucose or insulin should or should not have been administered. As such, appellant's expert did not set out the facts on which he was relying for his opinion that respondent breached the standard of care.

In addition, Dr. Levy failed to explain how the alleged breach caused Hrdlichka's death. His affidavits do not indicate what occurred in Hrdlichka's "protracted hospitalization," or describe the nature of Hrdlichka's "multiple complications," and how they were aggravated. Importantly, Dr. Levy fails to outline how respondent's alleged failure to monitor, maintain, or treat Hrdlichka's blood sugar caused his death. Finally, we note the district court's conclusion, based on Dr. Levy's admission that he did not have the relevant medical records, that "because Dr. Levy was not familiar with the relevant facts, his affidavit cannot identify 'specific details' of the alleged breach." *See Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 154-55 (Minn. 1982) ("The expert must base his opinion on facts sufficient to form an adequate foundation for an opinion and should not be allowed to speculate.").

Because appellant's expert did not describe the specific acts or omissions that constituted a breach of the standard of care and did not state how the breach caused Hrdlichka's death, the district court did not abuse its discretion in dismissing the claim. *See Stroud*, 556 N.W.2d at 554, 556 (concluding that chain of causation was insufficient in an affidavit that opined that a delay in diagnosing a subarachnoid hemorrhage led to a "complicated hospital course and the death of [p]laintiff"); *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 192-93 (Minn. 1990) (describing statements that defendants "failed to properly evaluate" and "failed to properly diagnose" as "empty conclusions," which did not "interpret the facts and connect the facts to conduct which constitutes malpractice and causation").

Affirmed.