REVERSE and REMAND; and Opinion Filed May 22, 2018.

In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-16-01402-CV

VICKIE JONES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LEROY JONES, Appellant

V.

ASHFORD HALL, INC. D/B/A ASHFORD HALL, ASHFORD HALL, INC., AND LION HEALTH SERVICES, Appellee

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On Appeal from the 298th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-15042

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Fillmore

Vickie Jones, individually, and on behalf of the Estate of Leroy Jones (Jones) appeals the trial court's order dismissing her claims against Ashford Hall, Inc., d/b/a Ashford Hall, Ashford Hall, Inc. (collectively, Ashford Hall) and Lion Health Services (Ashford Hall and Lion Health Services, collectively, Ashford), and denying her motion for new trial by operation of law. In three issues, Jones argues the trial court: (1) erred in sustaining Ashford's First Objections to Plaintiff's original expert report; (2) abused its discretion in sustaining Ashford's Second Objections to Plaintiff's amended expert report and granting Ashford's motion to dismiss; and (3) abused its discretion by overruling Jones's motion for new trial by operation of law. For the reasons that follow, we conclude the amended expert report satisfied the statutory requirements of chapter 74

of the Texas Civil Practice and Remedies Code; and the trial court abused its discretion by sustaining Ashford's objections to the amended expert report, and granting Ashford's motion to dismiss. Accordingly, we reverse the trial court's award of attorneys' fees in favor of Ashford, reverse the trial court's order dismissing Jones's claims against Ashford, and remand this case to the trial court for further proceedings.

Background

Factual Allegations

Jones filed this lawsuit against Ashford following the death of Jones's father, Leroy Jones (Mr. Jones), while he was a resident at Ashford Hall, a skilled nursing facility "owned, operated, managed and/or staffed" by Ashford. With the exception of a February 2013 hospital stay at Baylor Medical Center of Irving precipitated by injuries and illnesses Mr. Jones sustained after his admission to and while under the care of Ashford, Mr. Jones resided at Ashford Hall from January 2013 until his death on March 4, 2013.

The petition asserted Ashford admitted Mr. Jones to Ashford Hall knowing he required assistance, skilled nursing care, proper medical oversight, and qualified, trained medical staff support for the activities of daily living, as well as his advancing Alzheimer's disease. Ashford represented its facilities and services were equipped, and it was "able, knowledgeable and sufficiently staffed," "to adequately care for Mr. Jones' conditions" and meet his needs. The petition alleged Ashford was negligent and grossly negligent in its care and treatment of Mr. Jones, failed to provide continuous care to Mr. Jones, and breached its duty of care in the following ways, among others:

- failing to observe, intervene, and provide the medical and nursing care reasonably required for Mr. Jones's known conditions;
- failing to provide appropriate supervision of and training to its staff and personnel to ensure Mr. Jones received the requisite care to meet his needs at all relevant times;

- failing to provide a written care plan specifying the care and services necessary to meet, and appropriate to address the severity of, Mr. Jones's specific needs; and

- failing to ensure Mr. Jones's care plan was properly updated upon a significant change in his condition.

As a result of Ashford's negligence and gross negligence, the petition alleged Mr. Jones: became wheelchair bound and lost the ability to perform every-day activities he had been able to perform with little to no assistance just ten days prior to his admission to Ashford Hall; lost forty pounds due to malnutrition; became weak and lethargic; developed pressure wounds and sores on his body and feet that Ashford failed to treat; as a result of Ashford's failure to properly treat the pressure wounds and sores, developed multiple injuries and illnesses; suffered a heart attack that Ashford failed to detect;[1] experienced a drop in blood pressure that required hospitalization; was transferred to Baylor Medical Center of Irving where "it was discovered that Mr. Jones had developed untreated [pressure wounds and sores] while he was a resident at Ashford Hall"; and died. The petition alleged that physicians at Baylor Medical Center of Irving were unable to perform the surgery required to treat and heal Mr. Jones's pressure wounds because his undetected heart attack "left him too physically weak to survive a surgical procedure."

The petition alleged the injuries and illnesses Mr. Jones sustained as a result of Ashford's acts and omissions severely diminished his quality of life; caused unnecessary and preventable harm, substantial injuries, pain, and suffering; and caused his untimely and preventable death. The petition further stated Mr. Jones "would have been entitled to bring a suit for damages he incurred as a resident of [Ashford's] Facility if he were still alive," and sought damages for past physical

[1] The petition alleged physicians at Baylor Medical Center of Irving could not pinpoint the exact date of the heart attack, but suggested it was recent enough to have occurred while Mr. Jones resided at Ashford Hall.

pain, past mental anguish, past disfigurement, past physical impairment, past medical expenses, and past and future loss of companionship and society.[2]

Procedural History

Jones filed the petition on December 31, 2014. Because this lawsuit involved a health care liability claim, it was subject to the requirements of chapter 74 of the Texas Civil Practice and Remedies Code. TEX. CIV. PRAC. & REM. CODE ANN. § 74.001–.507 (West 2017). In accordance with chapter 74, on July 14, 2015, Jones timely served on Ashford an expert report and curriculum vitae of Dr. E. Rawson Griffin, III, M.D. (Dr. Griffin). On August 3, 2015, Ashford filed a motion to dismiss and objections pursuant to chapter 74 for failure to file an adequate expert report. The trial court granted Ashford's motion to dismiss, but gave Jones thirty days to "correct any deficiencies" in Dr. Griffin's expert report. The trial court did not identify specific deficiencies in the original expert report. On December 4, 2015, Jones served on Ashford the amended expert report of Dr. Griffin. On December 28, 2015, Ashford filed a motion to dismiss the amended report and objections pursuant to chapter 74 for failure to file an adequate expert report, which the trial court granted on August 31, 2016, dismissing Jones's claims with prejudice and ordering Jones to pay $6,500 in attorneys' fees to Ashford, "plus any additional fees and expenses associated with any oral hearing on this matter and any appeal of this order." Jones filed a "Motion for New Trial/Reconsideration" on September 30, 2016. The trial court did not rule on Jones's motion, which was subsequently overruled by operation of law, and Jones filed a notice of appeal.

Applicable Law

Chapter 74 of the civil practice and remedies code requires a claimant pursuing a health care liability claim to serve one or more expert reports on each physician or health care provider

[2] We need not address the petition's request for funeral and burial expense damages, because Jones's attorney stated at oral argument of this appeal that Jones had abandoned her wrongful death claim.

against whom a health care liability claim is asserted no later than 120 days after the date each defendant's original answer is filed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a). A report meets the requirements of chapter 74 if it represents "an objective good faith effort to comply with the definition of an expert report." *Id.* § 75.351(l). "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 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).

The trial court may grant a motion challenging the adequacy of an expert report under the provisions of chapter 74 only if the report does not represent an objective good faith effort to comply with section 74.351(r)(6) by informing the defendant of the specific conduct that is the subject of the plaintiff's claim, and providing a basis for the trial court to conclude the plaintiff's claim has merit. *Id.* at § 74.351(l); *Loaisiga v. Cerda*, 379 S.W.3d 248, 260 (Tex. 2012); *Hebner v. Reddy*, 498 S.W.3d 37, 41 (Tex. 2016). The expert report need not marshal all of the plaintiff's proof, *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001), but it must include a fair summary of the expert's opinion as of the date of the report on each of the three elements required by chapter 74: the applicable standard of care, the manner in which the physician or health care provider failed to meet the standard of care, and the causal relationship between that failure and the injury, harm, or damages claimed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *Bowie Mem. Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002) (per curiam).

The purpose of the expert report requirement is to "deter baseless claims, not to block earnest ones." *Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 631 (Tex. 2013); *see also Scoresby v. Santillan*, 346 S.W.3d 546, 554 (Tex. 2011); *Nexion Health at Garland, Inc. v. Townsend*, No. 05-15-00153-CV, 2015 WL 3646773, at *3 (Tex. App.—Dallas June 12, 2015, pet. denied) (mem.

op.). Thus, the expert report must link its conclusions to the facts, but no "magical words" are required. *Bowie Mem. Hosp.*, 79 S.W.3d at 53. Because the expert report requirement "is a threshold mechanism to dispose of claims lacking merit," *Potts*, 392 S.W.3d at 631, it may be informal. *See Godat v. Springs*, No. 05-08-00791-CV, 2009 WL 2385569, at *3 (Tex. App.—Dallas Aug. 5, 2009, no pet.) (mem. op.). In other words, the information presented need not meet the same requirements as evidence offered at trial or in summary judgment proceedings that dispose of claims lacking evidentiary support, *see id.*, "especially given that section 74.351(s) limits discovery before a medical expert's report is filed," *Nexion Health at Terrell Manor v. Taylor*, 294 S.W.3d 787, 797 (Tex. App.—Dallas 2009, no pet.); *see also Potts*, 392 S.W.3d at 631–32 (recognizing expert reports are provided prior to discovery and do not require the type of evidence offered at trial or in summary judgment proceedings, but only need inform defendant of conduct in question). "Further, the report is not required to address every alleged liability theory to make the defendant aware of the conduct at issue." *Nexion Health at Garland*, 2015 WL 3646773, at *3. "If a health care liability claim contains at least one viable liability theory, as evidenced by an expert report meeting the statutory requirements, the claim cannot be frivolous." *Id.* (quoting *Potts*, 392 S.W.3d at 631); *see also SCC Partners, Inc. v. Ince*, 496 S.W.3d 111, 113–15 (Tex. App.—Fort Worth 2016, pet. dism'd) (concluding entire case could proceed when expert report sufficiently addressed causation for pain and suffering in survival claim, even if it may not have explained how injuries led to decedent's death in wrongful death action).

To establish a causal relationship between the injury and the defendant's negligent act or omission, the expert report must show the defendant's conduct was a substantial factor in bringing about the harm, and, absent this act or omission, the harm would not have occurred. *Mitchell v. Satyu, M.D.*, No. 05-14-00479-CV, 2015 WL 3765771, at *4 (Tex. App.—Dallas June 17, 2015, no pet.) (mem. op.) Causation is generally established through evidence of a "reasonable

probability" that the injury was caused by the negligence of one or more of the defendants, meaning that it is more likely than not that the ultimate harm or condition resulted from such negligence. *See Jelinek v. Casas*, 328 S.W.3d 526, 532–33 (Tex. 2010). "An expert may show causation by explaining a chain of events that begins with [the defendant's] negligence and ends in injury to the plaintiff." *Mitchell*, 2015 WL 3765771, at *4; s*ee also McKellar v. Cervantes*, 367 S.W.3d 478, 485 (Tex. App.—Texarkana 2012, no pet.). The report must explain "to a reasonable degree, how and why the breach [of the standard of care] caused the injury based on the facts presented." *Mitchell*, 2015 WL 3765771, at *4 (quoting *Jelinek*, 328 S.W.3d at 539–40); *Quinones v. Pin*, 298 S.W.3d 806, 814 (Tex. App.—Dallas 2009, no pet.) (to satisfy chapter 74's requirement of a showing of causation, expert report must include fair summary of expert's opinion regarding causal relationship between breach of standard of care and injury, harm, or damages claimed). "We determine whether a causation opinion is sufficient by considering it in the context of the entire report." *Mitchell*, 2015 WL 3765771, at *4 (citing *Ortiz v. Patterson*, 378 S.W.3d 667, 671 (Tex. App.—Dallas 2012, no pet.)); *Bakhtari v. Estate of Dumas*, 317 S.W.3d 486, 496 (Tex. App.—Dallas 2010, no pet.).

Standard of Review

We review the trial court's determination of the adequacy of an expert report for an abuse of discretion.[3] *Van Ness v. ETMC First Physicians*, 461 S.W.3d 140, 142 (Tex. 2015); *Cook v. Spears*, 275 S.W.3d 577, 579 (Tex. App.—Dallas 2008, no pet.). We defer to the trial court's factual determinations if they are supported by the evidence, but review its legal determinations de novo. *Van Ness*, 461 S.W.3d at 142. The trial court has no discretion in determining what the law is or applying the law to the facts. *Sanchez v. Martin*, 378 S.W.3d 581, 587 (Tex. App.—

[3] A trial court's decision to dismiss a health care liability claim based on an inadequate chapter 74 expert report is subject to the same abuse of discretion review and analysis. *See Palacios*, 46 S.W.3d at 875. We therefore do not separately address the trial court's dismissal of Jones's lawsuit.

Dallas 2012, no pet.). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to any guiding rules or principles. *Jelinek*, 328 S.W.3 at 539.

The Amended Expert Report

In her second issue, Jones contends the trial court abused its discretion in sustaining Ashford's objections to the amended expert report and granting Ashford's motion to dismiss. Jones argues the amended expert report satisfied chapter 74 requirements. Ashford, however, contends the amended expert report failed to establish all three elements of an adequate expert report. Applying the above-stated standard of review, we thus consider whether Dr. Griffin's amended expert report sufficiently described the standard of care Ashford owed to Mr. Jones, Ashford's alleged conduct in breach of that standard, and how Ashford's conduct caused Mr. Jones's death. *See Bowie Mem. Hosp.*, 79 S.W.3d at 51–52. We determine the sufficiency of Dr. Griffin's opinion by evaluating the amended report in its entirety. *Mitchell*, 2015 WL 3765771, at *4.

In the amended expert report, Dr. Griffin stated his qualifications and the records he reviewed in forming his conclusions, which consisted of Jones's petition, Ashford's answer, Mr. Jones's death certificate, and the records of Ashford Hall, Baylor Medical Center of Irving, and Lions Hospice.[4] Dr. Griffin also stated his opinions were based on his "education, training, and experience as a practicing board certified internist, geriatrician, rheumatologist, and [his] knowledge of the accepted medical and nursing standards of care for the diagnoses, care and treatment of the illnesses, injuries, and conditions involved in this claim." While Dr. Griffin's qualifications are not challenged, they are worth noting in this case. Dr. Griffin holds a "certificate of added qualification in geriatrics," has many years' experience as a certified director of long-

[4] The petition in this case alleged that Lion Health Services "owned, managed, operated, supervised and/or staffed" Ashford Hall. Dr. Griffin's amended expert report stated Mr. Jones was discharged on February 23, 2013, from Baylor Medical Center of Irving back to Ashford Hall under the hospice care of Lions Hospice.

term care and skilled nursing facilities, and served as director and consultant of numerous geriatric and rehabilitation health care facilities. Dr. Griffin has "provided primary medical care to thousands of patients in hospitals, nursing homes and assisted living facilities," and treated patients "who, like Mr. Jones, were suffering from multiple illnesses including, but not limited to, pressure ulcers, acute kidney failure, deep vein thrombosis, [and] Alzheimer's . . . ." The amended expert report indicated Dr. Griffin:

> . . . supervised the execution of [his written orders] by RNs[,] LVNs and CNA's who were assigned to provide the hands on care to [his] patients. These orders included orders for the prevention and treatment of pressure ulcers and infection. [He is] therefore intimately familiar with the standards of care for the facilities involved in this claim as well as the RNs, LVNs and CNAs who were providing care to Mr. Jones.

Dr. Griffin's amended expert report opined on all three required elements of an adequate expert report under chapter 74: the standard of care Ashford owed to Mr. Jones, the manner in which Ashford breached that standard, and how the breach caused Mr. Jones's death. Specifically, the amended expert report described Mr. Jones's condition and health upon his admission to Ashford Hall; identified Mr. Jones's specific care and support needs; chronicled the existing medical records; detailed the deficiencies in the care and treatment rendered by Ashford and the resultant decline in Mr. Jones's health; specified the care Ashford should have provided to Mr. Jones; and explained how and why Ashford's acts and omissions caused Mr. Jones's injuries and death. Dr. Griffin "compared [Ashford's] conduct in their care and treatment of Mr. Jones' illnesses, injuries, and conditions as revealed in the records to the accepted standards of care . . . employed by every physician who is asked to evaluate the quality of another professional caregiver's care and treatment of a patient," and opined that "this method is the generally accepted method for evaluating whether or not a long-term care facility, a hospital, or a physician's care and treatment of a patient met or fell below the accepted standards of care."

The amended expert report stated the records showed Mr. Jones "had a history of acute kidney failure, deep vein thrombosis, Alzheimer's, depression, hyperlipidemia and hypotension." The amended expert report then observed:

> At the time he was admitted to Ashford Hall, Mr. Jones was **noted to need assistance** performing/completing his activities due to his dementia. . . . He was also assessed to **need extensive assistance with bed mobility, transfers, ambulation**, dressing, eating, **toileting and personal care**.

(Emphasis added.) The amended expert report stated:

> There is no documentation evidencing that Mr. Jones had any pressure ulcers or skin breakdowns at the time he was admitted to Ashford Hall [in January 2013]. Specifically, **an assessment performed states that Mr. Jones had "no skin problems."** It is also noted that wound care was not needed.

(Emphasis added.) Dr. Griffin then provided a timeline of events that transpired during Mr. Jones's residence at Ashford Hall, which lasted no longer than two months.

Records showed that on January 18, 2013, Ashford discontinued skilled care, despite Mr. Jones's need for "extensive assistance" with acts of every-day living, such as "bed mobility," walking, "toileting and personal care." "Wound care" was not ordered until February 13, 2013. The amended expert report stated, "[t]he lack of documentation from the time skilled care was discontinued" on January 18 until February 13 "indicates that Mr. Jones' care was essentially abandoned and he was not treated appropriately or not treated at all." Although nurse's notes document Mr. Jones was incontinent of bowel from January 20, 2013, to January 25, 2013, the amended expert report indicated:

> [T]here is no documentation as to caring for or addressing his incontinence. . . . There is only one note, dated January 22nd at 04:30 a.m. that documents "incontinence care." **The lack of continuous incontinence care, as evidenced by lack of facility documentation, implies that Mr. Jones was left to continue to be incontinent for many days**, violating the standard of care.

(Emphasis added.) After January 25, there were no nurse's notes on Mr. Jones until February 23, when he returned to Ashford Hall from the hospitalization that began on February 17. Ashford

first documented the development of unstageable skin ulcers on both of Mr. Jones's heels and his buttock in a February 14, 2013 wound report. However, there is no documentation that wound care was started at that time. Instead, the amended expert report observed:

> [O]rders were written for Vitamin C, Zinc at 220 mg and for Mr. Jones to receive [an] air mattress. These orders do not meet the standard of care, as it is well known that Vitamin C and Zinc **do nothing to enhance wound care**. In addition, Zinc, as a rule, should not be given above 25 mg per day, as high doses are known to be toxic. Also, for an unstageable wound, as Mr. Jones had, **an air mattress** fails to meet the standard of care because it **doesn't significantly reduce the pressure on the skin in order to allow the pressure ulcer to heal**.

(Emphasis added.) Dr. Griffin opined that, due to the severity of his wounds, Ashford should have provided Mr. Jones with "a low air loss bed" to treat his pressure ulcers, promote healing, and prevent infection.

On February 17, 2013, Mr. Jones was transported to Baylor Medical Center of Irving "after experiencing altered mental status." The amended expert report stated:

> Upon admission and after assessment, Mr. Jones was found to be suffering from acute respiratory failure, pulmonary collapse, septicemia, severe sepsis, septic shock, a left ischial decubitus ulcer (stage III), pressure ulcers on both heels, acute kidney failure, cardiogenic shock, encephalopathy, anemia, disorder of phosphorous metabolism, sub endocardial infarction and unspecified local infection of skin and subcutaneous tissue. His left ischial decubitus ulcer was found to be leaking stool with fistulae suspected. Due to his advanced dementia and multiple comorbidities, Mr. Jones was not a viable candidate for surgery and hospice care was recommended . . . .

Ashford started wound care after Mr. Jones was discharged from the hospital on February 23, 2013, but as Dr. Griffin observed in the amended expert report:

> Conflicting nurse's notes dated February 25, 2013 state that Mr. Jones had "no skin issues," despite him having multiple wounds, demonstrating a complete lack of care and attention to detail completing the record.

Mr. Jones died on March 4, 2013. The death certificate listed his cause of death as "advanced age years."

The amended expert report then provided a detailed description of how Ashford's conduct caused Mr. Jones to develop pressure ulcers; and how Ashford's failure to properly treat the pressure ulcers caused the development of an infection that spread throughout Mr. Jones's body, causing the multiple illnesses and injuries diagnosed by Baylor Medical Center of Irving on February 17, 2013, and Mr. Jones's preventable and premature death. Dr. Griffin explained:

> . . . Mr. Jones had prolonged, unrelieved pressure on his buttocks and heels. This pressure shut off the blood flow. When the blood flow was shut off, the tissue/skin died and decayed. Bacteria then invaded the dead tissue and multiplied, causing bacteria to form. These bacteria then spread to the surrounding normal tissue causing more dead and decayed tissue to form with more infection, resulting in an infected pressure ulcer. In turn, this caused an increased risk that the infection would get in the blood stream and then spread systematically throughout the body. To a reasonable degree of medical probability, I believe this is what occurred. This self-perpetuating event caused the progressive deterioration of Mr. Jones' condition.
>
> When prolonged pressure, i.e. longer than two hours is present on only one body part and this pressure exceeds approximately 32 mmHg, the capillaries are compressed and the blood flow to the affected part is shut off. Capillaries are the smallest vessels that connect the arteries and the veins. Capillaries have very thin walls and it is through the walls of these tiny blood vessels that oxygen and nutrients pass into the surrounding tissue to be utilized. All living tissue in the body requires oxygen and nutrients to stay alive and to function. When the tissues are deprived of blood flow, oxygen and nutrients, then the death of tissue occurs, the medical term for this is necrosis, and in layman's terms, the tissue simply dies and decays. Unrelieved pressure on a capillary is just like placing one's foot on a garden hose, compressing it, and shutting off the flow.
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> This is what happed in Mr. Jones' case: his capillaries were compressed, the blood flow was shut off from the tissues, the tissues died and became necrotic or decayed. There was no blood supply to the necrotic tissue and therefore oxygen, nutrients, and white blood cells could not be delivered to affected area to fight the infection on Mr. Jones' buttocks and heels. The infection by germs caused inflammation via toxins released by the bacteria. These toxins caused the production of chemical mediators, two examples of which are tumor necrosis factor alpha and interleukin-6. These chemical mediators themselves caused tissue destruction which, when unregulated, generates more chemical mediators (called cytokines).

Dr. Griffin concluded his explanation of exactly how Ashford's conduct caused Mr. Jones's death by stating:

> As a result of [Ashford's] conduct and numerous breaches in the standard of care, including failure to provide an appropriate pressure ulcer program as described above, this process became self-perpetuating, unregulated, and malignant. This is how Mr. Jones' pressure ulcers became larger and infected. Had reasonable steps been taken to adequately care for Mr. Jones' pressure ulcers and had Mr. Jones been provided the appropriate level of monitoring, supervision, care, and treatment, to a reasonable degree of medical probability, Mr. Jones' life could have been prolonged and his condition would not have significantly diminished as it did. Because of [Ashford's] conduct, Mr. Jones would more likely than not have been alive for a longer period of time.

Standard of Care
and
Breach of Standard of Care

Jones argues the amended expert report adequately identified the applicable standard of care, and the manner in which Ashford breached the standard. Ashford contends the amended expert report was conclusory and inadequate, because it "allege[d] a litany of breaches" "couched in vague terms which [made] it impossible" to determine what care would have satisfied the standard of care.

The standard of care required Ashford to provide the level of care and treatment that a reasonable, prudent skilled nursing facility would provide under the same or similar circumstances.[5] *See Palacios*, 46 S.W.3d at 880. To adequately identify the standard of care, a chapter 74 expert report must address what care was expected but not given. *Id.* Contrary to Ashford's contention the amended expert report was conclusory and failed to describe the applicable standard of care, Dr. Griffin stated with specificity: (1) what Ashford failed to do that an ordinarily prudent skilled nursing facility would have done with respect to the care and treatment of Mr. Jones; (2) what Ashford could have done differently to meet the standard of care;

[5] A nursing home facility owner or management services company may owe a duty of care to the nursing home residents. *See Tex. Health Enters., Inc. v. Geisler*, 9 S.W.3d 163, 167–68 (Tex. App.—Fort Worth 1999, pet. dism'd) (affirming damages awards against nursing home facility owner and management company for negligence and gross negligence in care of nursing home resident). The petition in this case alleged that Lion Health Services "owned, managed, operated, supervised and/or staffed" Ashford Hall. Dr. Griffin's amended expert report stated that Lion Health Services owed the same standard of care to Mr. Jones as Ashford Hall.

(3) actions Ashford should have taken to prevent Mr. Jones's formation of pressure ulcers; and (4) actions Ashford should have taken to properly treat Mr. Jones's pressure ulcers.

The amended expert report stated the standard of care required Ashford, among other things, to:

- "neither accept nor retain" Mr. Jones if it could not meet his "needs";

- "provide a safe environment . . . [which] encompasses a range of duties . . . such as securing qualified personnel to administer the services provided, adequately supervising treatment and rehabilitation, providing proper equipment and facilities for all treatments necessary to meet [Mr. Jones's] needs, monitoring and caring for [Mr. Jones] and his condition(s), and following-up with [Mr. Jones] to verify the success of all procedures and treatments";

- "[implement] proper procedures to ensure [Mr. Jones was] property evaluated, diagnosed and treated from the time of admission through the time of discharge";

- "use ordinary care to [hire,] monitor and supervise its employees charged with [Mr. Jones's] care and supervision";

- "properly investigate, monitor, treat, supervise, care for, and document [Mr. Jones's] care and treatment over the course of time";

- maintain a "complete, accurately documented, readily accessible, and systematically organized" clinical record of Mr. Jones's health and treatment; the amended expert report identified specific categories of information the clinical record should include, such as, "the resident's progress at any given time including response to treatment, change in condition, and changes in treatment";

- "provid[e] an appropriate pressure ulcer prevention program. . . . [which] would consist of but not be limited to a regular turning and repositioning program every two hours with documentation each time he was turned and repositioned. . . . [and] regular scheduled and documented head to toe skin assessments at least once a week"; and

- "notify [Mr. Jones's] treating physician and the family that [Ashford was] unable to meet his needs and that he should be transferred to another facility or receive care from another health agency that could indeed meet his needs i.e. proper management for the prevention and treatment of pressure ulcers."

Dr. Griffin's description of the standard of care Ashford owed to Mr. Jones is consistent with the Texas Supreme Court's synopsis of the standard of care owed by a nursing home to its residents:

> A nursing home provides services to its patients . . . which include **supervising** daily activities; providing **routine examinations** and visits with physicians; . . . **monitoring the physical and mental conditions of its residents**; . . . and **meeting the fundamental care needs** of the residents. These fundamental needs include, where necessary, feeding, dressing, assisting the resident with walking, and providing sanitary living conditions. These services are provided by professional staff . . . who care for the residents.
>
> The level and types of health care services provided vary with the needs and capabilities, both physical and mental, of the patients. **Nursing homes are required to assess each resident's needs and capabilities, including life functions and significant impairments**. The law requires these facilities to **prepare a comprehensive care plan** to address the resident's medical, nursing, mental, psychosocial, and other needs. **This plan must meet "professional standards of quality."** . . . **The nature and intensity of care and treatment, including professional supervision, monitoring, assessment**, . . . and **other medical treatment** are **judgments made by professionals trained and experienced in treating and caring for patients and the patient populations in their health care facilities**.

Diversicare Gen. Partner, Inc. v. Rubio, 185 S.W.3d 842, 849–50 (Tex. 2005) (internal citations omitted) (emphasis added). The supreme court stated, "Residents are in a nursing home for care and treatment, not merely for shelter." *Id.* at 851. "Health care staff make judgments about the care, treatment, and protection of individual patients . . . in their facilities based on the mental and physical care the patients require." *Id.* at 850. These judgments are "part of the care and treatment of the patients admitted to their facilities," and "alleged breaches of these standards are health care liability claims." *Id.* at 853.

The amended expert report maintained Ashford knew or should have known Mr. Jones was at high risk for developing pressure ulcers and infections due to his limited mobility, age, and multiple medical conditions, including advancing Alzheimer's disease. The amended expert report states Ashford breached the applicable standard of care by:

- accepting and retaining Mr. Jones as a patient, whose needs Ashford could not meet;

- failing to have or enforce policies and procedures:

    - concerning the use of ordinary care in hiring, monitoring, evaluating, and supervising employees and staff charged with the care and supervision of patients requiring skilled nursing care, including Mr. Jones;

    - ensuring the safety of Mr. Jones; and

    - ensuring Mr. Jones was properly evaluated, diagnosed, and treated from the time of admission through the time of discharge;

- failing to adequately supervise the skilled nursing services, treatment, and rehabilitation provided to Mr. Jones;

- failing to provide the appropriate level of monitoring, supervision, care, and treatment of Mr. Jones;

- discontinuing skilled care relating to activities Ashford knew Mr. Jones was not capable of performing or fully performing on his own;

- failing to address or care for Mr. Jones's incontinence of bowel, leaving him to be incontinent for many days, further increasing the risk Mr. Jones would develop pressure sores and ulcers;

- failing to provide Mr. Jones an appropriate pressure ulcer prevention program, including turning and repositioning every two hours and documentation of each time he was turned and repositioned;

- failing to prevent Mr. Jones from developing pressure ulcers;

- failing to administer medically reasonable treatment;

- failing to perform head to toe skin checks at least once a week;

- failing to properly treat Mr. Jones's pressure ulcers to promote healing, prevent infection, and prevent new pressure ulcers from developing;

- ordering vitamin C and zinc to treat Mr. Jones's pressure ulcers, which do not enhance wound care;

- ordering an air mattress to treat Mr. Jones's pressure ulcers because an air mattress does not significantly reduce pressure on the skin and enable a pressure ulcer to heal;

- failing to provide a "low air loss bed" to Mr. Jones, which was appropriate treatment for Mr. Jones's pressure ulcers;

- failing to maintain appropriate clinical records with sufficient information to show Mr. Jones's condition; and

- failing to notify Mr. Jones's treating physician and family that Ashford was unable to meet Mr. Jones's needs and that he should be transferred to another facility that could meet his needs with regard to proper management for the prevention and treatment of pressure ulcers.

The amended expert report stated:

> [Ashford] failed to provide a safe environment for Mr. Jones because they allowed him to develop pressure ulcers and failed to maintain clinical records. The standard of care is not met when a nursing home fails to properly investigate, monitor, treat, supervise, care for, and document a patient's care and treatment over the course of time, which is what happened in Mr. Jones' case.

Dr. Griffin's amended expert report described specific conduct by Ashford in breach of the standard of care regarding the maintenance of Mr. Jones's clinical records, preventing the development of pressure sores and ulcers, and treatment of the pressure sores and ulcers Mr. Jones developed while under Ashford's care, supervision, monitoring, and treatment. The amended expert report thus specifically addressed what care was expected but not given. *See Palacios*, 46 S.W.3d at 880. We conclude the amended expert report includes a fair summary of the expert's opinion as of the date of the report concerning the applicable standard of care Ashford owed to Mr. Jones and the manner in which Ashford failed to meet the standard. *See id.* (expert report should include "specific information about what the defendant should have done differently"); *Puempel v. Lopez*, No. 05-07-00371, 2007 WL 3173405, at *3–4 (Tex. App.—Dallas Oct. 31, 2007, no pet.) (mem. op.) (concluding expert reports complied with chapter 74 requirements by opining that prescribing excessive dosages of prescription drug Phentermine over excessive period of time was breach of standard of care and patient's sudden death from arrhythmia was, in reasonable medical probability, the result of effects of Phentermine); *Romero v. Lieberman*, 232 S.W.3d 385, 392–93 (Tex. App.—Dallas 2007, no pet.) (trial court did not abuse its discretion when it concluded export reports represented good faith effort to comply with chapter 74

requirements because reports identified conduct at issue and stated what standard of care applied, which was the same for all three physicians).

Causation

Jones argues the amended expert report sufficiently established a causal relationship between Ashford's acts and omissions in breach of the standard of care and Mr. Jones's injuries and death. Ashford contends the amended expert report was conclusory and failed to sufficiently establish causation. Ashford further argues the amended expert report failed to rule out old age as the cause of Mr. Jones's death. However, "[n]othing in section 74.351 suggests the preliminary report is required to rule out every possible cause of the injury, harm, or damages claimed, especially given that section 74.351(s) limits discovery before a medical expert's report is filed." *See Nexion Health at Terrell Manor*, 294 S.W.3d at 797 (quoting *Baylor Med. Ctr. v. Wallace*, 278 S.W.3d 552, 562 (Tex. App.—Dallas 2009, no pet.)); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(s) (limiting discovery until after expert report is served); *Arboretum Nursing & Rehab. Ctr. of Winnie, Inc. v. Isaacks*, No. 14-07-00895-CV, 2008 WL 2130446, at *1, 4–6 (Tex. App.—Houston [14th Dist.] May 22, 2008, no pet.) (mem. op.) (expert report not rendered inadequate by failing to eliminate pre-existing conditions as cause of death for elderly resident of long-term nursing and rehabilitation center where resident's skin ulcers were not properly diagnosed or treated and became infected and surgery further debilitated and weakened patient, who died of aspiration pneumonia). We conclude section 74.351 does not require at this early stage of litigation that the amended expert report rule out "advanced age years" as a possible cause of the injury, harm, or damages claimed. *See Nexion Health at Terrell*, 294 S.W.3d at 797.

To establish causation, "the issue is not whether the report identified the specific disease or condition that resulted in [the nursing home resident's] death; the issue is whether the report articulated a causal relationship between appellants' alleged failure to meet the applicable

standards of care and [the nursing home resident's] death." *Id.* at 796. Dr. Griffin's amended expert report established causation by explaining that Ashford's failure to care for, monitor, and treat Mr. Jones caused his pressure ulcers to develop; and then, Ashford's continuing failure to care for Mr. Jones and properly treat his pressure ulcers caused the pressure ulcers to worsen and become infected, which in turn caused multiple illnesses and injuries that culminated in Mr. Jones's death. Dr. Griffin's amended expert report:

- indicated Mr. Jones arrived at Ashford Hall with no adverse skin conditions or pressure ulcers, and there was "nothing in Mr. Jones' clinical condition to indicate that his pressure ulcers were unavoidable";

- noted Ashford knew Mr. Jones needed extensive skilled nursing assistance in his daily activities, including bed mobility, transfers, ambulation, dressing, eating, toileting, and personal care;

- explained how pressure ulcers form;

- noted Ashford's records did not show Ashford followed a pressure ulcer prevention program for Mr. Jones;

- maintained that, knowing Mr. Jones to be at high risk for developing pressure ulcers, Ashford should have implemented a care plan that included "a regular turning and repositioning program every two hours with documentation each time he was turned and repositioned," and "regular scheduled and documented head to toe skin assessments at least once a week," which would have prevented Mr. Jones from developing pressure ulcers;

- noted Ashford was aware Mr. Jones became incontinent of bowel soon after his admission to Ashford Hall, and continued to be incontinent for at least five days, but failed to properly address or care for Mr. Jones's incontinence;

- explained how Ashford's failure to care for Mr. Jones's incontinence "significantly increase[ed] the risk of [Mr. Jones] developing pressure ulcers because it adds moisture to the skin which increases the risk of bacteria growth, which in turn increases the risk of an ulcer," and opined, "[a]s a result of the lack of continuous incontinence care and care in general, it is in my professional medical opinion that Mr. Jones' pressure ulcers were, to a reasonable medical probability, caused by such violation";

- noted several ulcers on Mr. Jones's body were documented for the first time in a wound report on February 14, 2013, but that appropriate ulcer care was not administered;

- explained that Ashford's order for Mr. Jones to receive vitamin C, zinc at 220 mg, and an air mattress did not enhance wound care and were inappropriate treatments for his pressure ulcers;

- specified a low air loss bed should have been ordered to treat Mr. Jones's pressure ulcers;

- opined Ashford's failure to properly treat the pressure ulcers when they developed "caused the progressive deterioration of Mr. Jones' condition";

- observed Ashford's failure to take these steps of fundamental care "caused Mr. Jones['s] exposure to moisture and pressure for an extended period of time, increasing his risk of attributing to the development of pressure ulcers";

- maintained Ashford should have transferred Mr. Jones to a facility which could provide the necessary pressure ulcer treatment so Mr. Jones's pressure ulcers could heal;

- related that Mr. Jones was transported to Baylor Medical Center at Irving on February 17, 2013, three days after Ashford first noticed Mr. Jones's pressure ulcers, where he was "found to be suffering from acute respiratory failure, pulmonary collapse, septicemia, severe sepsis, septic shock, a left ischial decubitus ulcer (stage III), pressure ulcers on both heels, acute kidney failure, cardiogenic shock, encephalopathy, anemia, disorder of phosphorous metabolism, sub endocardial infarction and unspecified local infection of skin and subcutaneous tissue," and a "left ischial decubitus ulcer" which was "found to be leaking stool with fistulae suspected";

- explained Mr. Jones's pressure ulcers could not be treated with surgery due to his dementia and the "multiple comorbidities" the hospital identified upon Mr. Jones's arrival and assessment – comorbidities not noted in any of Ashford's records;

- reflected hospice care was recommended because the necessary surgery to treat Mr. Jones's pressure ulcers could not be performed, and consequently Mr. Jones died nine days later;

- concluded, "Mr. Jones' life could have been prolonged and his condition would not have significantly diminished as it did" if Ashford had not breached the standard of care, including providing an appropriate pressure ulcer program as described in the amended expert report, and providing the "appropriate level of monitoring, supervision, care, and treatment";

- stated that, if Ashford had taken the fundamental step of maintaining and reviewing accurate clinical records, it would have been "abundantly clear to all of his caregivers . . . that [Mr. Jones's] needs were not being met" and made it possible for Ashford to "properly investigate, monitor, treat, supervise, care for, and document" Mr. Jones's "care and treatment over the course of time," which Ashford failed to do; and

- opined, "[b]ecause of [Ashford's] conduct, Mr. Jones would more likely than not" have lived for a longer period of time.

The amended expert report of Dr. Griffin explains to a reasonable degree how and why the breach of the standard of care caused injury based on the facts presented. The mechanism of injury was described by Dr. Griffin in detail:

> . . . Mr. Jones had prolonged, unrelieved pressure on his buttocks and heels. This pressure shut off the blood flow. When the blood flow was shut off, the tissue/skin died and decayed. Bacteria then invaded the dead tissue and multiplied, causing bacteria to form. These bacteria then spread to the surrounding normal tissue causing more dead and decayed tissue to form with more infection, resulting in an infected pressure ulcer. In turn, this caused an increased risk that the infection would get in the blood stream and then spread systematically throughout the body. To a reasonable degree of medical probability, I believe this is what occurred. This self-perpetuating event caused the progressive deterioration of Mr. Jones' condition.

We conclude Dr. Griffin's amended expert report sufficiently linked a "chain of events that beg[an] with [Ashford's] negligence and end[ed] in" Mr. Jones's injuries and death. *See Mitchell*, 2015 WL 3765771, at *4; *Ince*, 496 S.W.3d at 118 (concluding expert report explaining how pressure ulcers form, noting nursing home's records did not show it followed pressure ulcer prevention program, and stating failure to monitor nursing home resident and identify lesions more likely than not resulted in greater pain and suffering satisfied chapter 74 expert report requirements). Accordingly, Dr. Griffin's amended expert report includes a fair summary of the expert's opinion as of the date of the report concerning the causal relationship between the failure to meet the standard of care and the injury, harm, or damages claimed. *Nexion Health at Garland*, 2015 WL 3646773, at *3.

Conclusion

We conclude Dr. Griffin's amended expert report met the requirements of chapter 74 of the civil practice and remedies code with respect to all the appellees, and the trial court abused its discretion in granting appellees' motion to dismiss for failure to serve an adequate expert report as

required by section 74.351. We need not address Jones's first and third issues, since the trial court's order dismissing Jones's lawsuit is reversed on the grounds stated herein. *See* TEX. R. APP. P. 47.1. Accordingly, we resolve Jones's second issue in her favor, reverse the trial court's award of attorneys' fees in favor of Ashford, reverse the trial court's order dismissing Jones's claims against appellees, and remand this case to the trial court for further proceedings consistent with this opinion.

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

VICKIE JONES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LEROY JONES, Appellant

No. 05-16-01402-CV V.

ASHFORD HALL, INC. D/B/A ASHFORD HALL, ASHFORD HALL, INC., AND LION HEALTH SERVICES, Appellee

On Appeal from the 298th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-14-15042.
Opinion delivered by Justice Fillmore, Justices Lang-Miers and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

Judgment entered this 22nd day of May, 2018.