AFFIRM; and Opinion Filed June 7, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-01321-CV

AVALON RESIDENTIAL CARE HOMES, INC., Appellant
V.
GLENN JONES, INDIVIDUALLY AND AS THE REPRESENTATIVE OF THE ESTATE OF RUTH JONES, DECEASED, Appellees

On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-12742

MEMORANDUM OPINION

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

In this interlocutory appeal, we consider whether expert reports filed by appellee Glenn Jones[1] to support a health care liability claim against appellant Avalon Residential Care Homes, Inc. ("Avalon") meet the requirements of section 74.351 of the civil practice and remedies code. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351 (West Supp. 2016). We conclude that they do, and we affirm the trial court's order denying Avalon's motion to dismiss.

[1] Jones is a party to this appeal in both his individual capacity and in his capacity as representative of his mother's estate. Our references to "Jones" in this opinion are to Jones in both capacities, and for clarity, we refer to Jones's mother as "Ruth."

BACKGROUND[2]

In 2014, Jones placed his mother Ruth in Avalon's assisted living facility, Avalon Memory Care. Jones had been Ruth's primary caretaker from 2009 to 2014, and Ruth resided with him until she fractured her ankle in early 2014. Ruth moved to Avalon in March, 2014, and remained there until her death on March 27, 2016.

In September 2016, Avalon sued Jones for $17,966.00 it claimed was due for Ruth's care in the six months before her death. Jones filed a counterclaim, pleading claims for nursing home malpractice and alleging that Avalon was negligent and grossly negligent in caring for his mother. Jones pleaded that Avalon contacted him in early March 2016 to report that Ruth had a sore on her heel. The following day, Jones hired Harris Hospice, Inc. ("Hospice") to assist in Ruth's care. Within a day, a Hospice representative reported to Jones that his mother had a severe bed sore on her foot that would have taken weeks to develop. Within two weeks, the Hospice representative informed Jones that Ruth's bed sores "had deteriorated to the point that she had a severe infection (gangrene)," as Jones alleged in his counter-petition. Ruth died a few days later.

On March 10, 2017, Jones served Avalon with an expert report from Kimberly Kelly, R.N. Avalon moved to dismiss Jones's claims, arguing that the report did not meet the requirements of section 74.351 of the civil practice and remedies code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351 (requirement of expert report for health care liability claim). The trial court sustained Avalon's objections, and granted Jones thirty days to cure the report's deficiencies. Jones responded by serving the report of David Mansfield, M.D. on May 18, 2017. Jones also filed a third-party petition, alleging that Hospice and Joseph Surdacki, M.D. were negligent and grossly

[2] Given the procedural posture of this case, we draw the background facts from the allegations against Avalon in Jones's operative counter-petition. *See generally* TEX. CIV. PRAC. & REM. CODE ANN. Chapter 74, Subchapter H, Procedural Provisions.

negligent in caring for Ruth. Dr. Mansfield's report addressed the Hospice's and Dr. Surdacki's conduct as well as Avalon's.

Avalon again moved to dismiss, contending that Dr. Mansfield's report did not satisfy section 74.351's standard of care, breach, and causation requirements. After a hearing, the trial court denied Avalon's motion in an order dated October 30, 2017, and Avalon filed this appeal. Although Hospice and Dr. Surdacki had also filed objections to Jones's experts' reports and had moved to dismiss, the trial court did not rule on their motions in its October 30 order. After Avalon filed its notice of appeal, the trial court signed an order administratively closing the case during the pendency of this appeal. Consequently, the expert reports' sufficiency as to Hospice and Dr. Surdacki is not before us.

In three issues, Avalon contends that the trial court abused its discretion by denying its motion to dismiss. Avalon argues that (1) Nurse Kelly's and Dr. Mansfield's reports did not identify sufficiently the standard of care and the breach of the standard of care; (2) the reports did not have sufficient statements on causation; and (3) the trial court should have awarded Avalon its attorney's fees.

STANDARD OF REVIEW

We review a trial court's ruling on a motion to dismiss a health care liability claim under section 74.351 for an abuse of discretion. *Baty v. Futrell*, 543 S.W.3d 689, 693 n.4 (Tex. 2018); *Children's Med. Ctr. of Dallas v. Durham*, 402 S.W.3d 391, 395 (Tex. App.—Dallas 2013, no pet.). Under this standard, we must determine whether the trial court acted arbitrarily and without reference to any guiding rules or principles. *Nexion Health at Duncanville, Inc. v. Ross*, 374 S.W.3d 619, 622 (Tex. App.—Dallas 2012, pet. denied). A trial court does not abuse its discretion merely because it decides a discretionary matter differently than an appellate court would under similar circumstances. *Nexion Health at Terrell Manor v. Taylor*, 294 S.W.3d 787, 791 (Tex.

App.—Dallas 2009, no pet.). But a trial court has no discretion in determining what the law is or in applying the law to the facts. *Ross*, 374 S.W.3d at 622.

DISCUSSION

An expert report under section 74.351 must represent a good-faith effort to provide a fair summary of the expert's opinions. *See Am. Transitional Care Ctrs. of Texas, Inc. v. Palacios*, 46 S.W.3d 873, 878–79 (Tex. 2001). The report need not marshal all the plaintiff's proof, but it must include the expert's opinion on each of the elements identified in the statute. *Id.* To constitute a good-faith effort, the report must (1) inform the defendant of the specific conduct the plaintiff has called into question, and (2) provide a basis for the trial court to conclude the claims have merit. *Id*. at 879.

A. Standard of care and breach

In its first issue, Avalon contends that Dr. Mansfield's report does not comply with section 74.351 because it does not specifically address the standard of care and breach of duty with respect to Avalon. Avalon argues that Dr. Mansfield must explain "how and why it is the responsibility of Avalon, and not Harris Hospice or Dr. Surdacki, to transfer Ms. Jones to a 24-hour skilled nursing facility." Avalon further argues that Jones's care and treatment were Dr. Surdacki's and Hospice's responsibility, not Avalon's.

But Jones alleges that each of the three counter-defendants breached the same duty to Ruth. Dr. Mansfield's report articulates, for each counter-defendant, the same standard of care: that "a patient in need of skilled nursing care be transferred to a facility that can provide the needed higher level of care." And Dr. Mansfield's report states how each counter-defendant breached that standard of care. For Avalon, Dr. Mansfield said that the failure to transfer Ruth to a facility with "a higher level of care where 24-hour skilled nursing services can be provided" was "a violation of the standard of care." He listed the specific services that should have been provided to Ruth,

including wound evaluation, wound care, every-two-hour turning and repositioning, intensive nutritional support, and pain evaluation and management. He detailed the injuries that were caused by Avalon's breach of the standard of care, including deteriorating wounds on Ruth's left heel and sacral area and an insufficiently-treated urinary tract infection. Dr. Mansfield concluded:

> In conclusion, it is my opinion, based on a reasonable degree of medical probability that neglect of Ruth Jones by Avalon Residential Care Homes caused her to remain in an assisted living facility where her wounds deteriorated which is the proximate cause of much pain and suffering. If the standard of care as outlined above and in the report of Kimberly Kelly, RN, had been followed by Avalon Residential Care Homes, Ruth Jones would not have remained in an assisted living facility where her wounds deteriorated and she experienced much increased pain and suffering.

In *Romero v. Lieberman*, 232 S.W.3d 385, 391–92 (Tex. App.—Dallas 2007, no pet.), three physicians participated in treating a patient for septic shock. The expert named each physician, detailed the patient's symptoms, and discussed the standard of care and how the conduct of each physician fell below that standard and caused the patient's injuries. *See id.* We rejected the physicians' arguments that the expert report was conclusory and did not articulate a standard of care for each of them. *Id.* Similarly here, Dr. Mansfield identified the standard of care for Avalon and discussed how Avalon's conduct fell below that standard. That Hospice and Dr. Surdacki may have owed and breached the same duty to Ruth does not render Dr. Mansfield's opinions about Avalon deficient. *See id.*

Avalon argues that Dr. Mansfield was "required to explain how and why it was the responsibility of Avalon, and not Harris Hospice or Dr. Surdacki, to transfer Ms. Jones to a 24-hour skilled nursing facility." We disagree that Dr. Mansfield was required to opine that Avalon, and only Avalon, had a duty to Ruth, to the exclusion of any duty on the part of Hospice or Dr. Surdacki. The cases Avalon cites are not to the contrary; they stand for the propositions that (1) an expert report must "articulate that the standards of care are the same" if an expert relies on a single standard of care for more than one health care provider, *see Polone v. Shearer*, 287 S.W.3d 229,

235 (Tex. App.—Fort Worth 2009, no pet.), *Clapp v. Perez*, 394 S.W.3d 254, 259 (Tex. App.—El Paso 2012, no pet.), and *HN Texas Properties, L.P. v. Cox*, No. 02-09-00111-CV, 2009 WL 3337190, at *6 (Tex. App.—Fort Worth Oct. 15, 2009, no pet.) (mem. op.); and (2) the expert report must provide an explanation for how each defendant breached the standard of care and how that breach caused or contributed to the plaintiff's injury, *see Clapp*, 394 S.W.3d at 259, and *Tenet Hospitals Ltd. v. De La Riva*, 351 S.W.3d 398, 404 (Tex. App.—El Paso 2011, no pet.). Dr. Mansfield's report meets each of these requirements.

Avalon also argues that Dr. Mansfield's report does not "identify the applicable time frame in which Avalon should have transferred Ms. Jones." Avalon contends that Nurse Kelly's[3] report did not "adequately state the standard of care applicable to Avalon regarding transferring Ms. Jones to a nursing facility," and argues that Nurse Kelly's opinions "are not sufficiently linked to Dr. Mansfield's alleged causation opinion that Ms. Jones' pain and suffering resulted from Avalon's failure to transfer Ms. Jones to [a] nursing facility." But "[t]he statute does not require that a single expert address all liability and causation issues with respect to a health care provider." *Baylor Univ. Med. Ctr. v. Rosa*, 240 S.W.3d 565, 570 (Tex. App.—Dallas 2007, pet. denied). Subsection (i) of section 74.351 provides:

> (i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.

TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(i).

[3] As a registered nurse and not a physician licensed to practice medicine, Nurse Kelly is not qualified to testify on medical causation. *Kettle v. Baylor Med. Ctr. at Garland*, 232 S.W.3d 832, 841 (Tex. App.—Dallas 2007, pet. denied). The trial court granted Avalon's motion to dismiss on this ground and granted Jones an extension of time to cure the deficiencies in the report. Jones then filed Dr. Mansfield's report, while continuing to rely on Nurse Kelly's report for issues other than medical causation. We may consider Nurse Kelly's report in conjunction with Dr. Mansfield's medical causation opinion. *See id.* at 841–42.

Consequently, we may consider Dr. Mansfield's and Nurse Kelly's reports together to determine whether section 74.351's specificity requirements for standard of care and breach are met. *See id.* Dr. Mansfield stated: "The standard of care for Avalon . . . with regards to Ruth Jones required that a patient in need of skilled nursing care be transferred to a facility that can provide the needed higher level of care." Nurse Kelly stated, "It is my opinion based upon the medical records reviewed that Ms. Jones did require skilled care 24 hour[s]/day to monitor her nutrition, hydration, skin condition, infection, and overall condition." Nurse Kelly explained that Avalon should not have accepted Ruth Jones as a resident in the first place, given her condition as "an end stage vascular dementia/cerebral atherosclerosis patient who had behavioral disturbances and was dependent on the staff for evacuation and for her needs to be met daily."[4] But having done so, Avalon should have determined that Ruth required 24-hour nursing care, and should have ensured that Ruth received that care. Nurse Kelly explained that "[o]n and before 3/4/16 when Ms. Jones['s] condition required more care than what Avalon . . . could provide," Avalon did not "offer[ ] to move Ms. Jones to a long-term care facility, and discuss with her son that she no longer met the criteria for residential/assisted living care due to her confusion, dependent status, heel ulcer, and general decline in condition," instead leaving Jones "responsible to try to identify what was best for his mother." Nurse Kelly's report "identif[ies] the applicable time frame in which Avalon should have transferred Ms. Jones," contrary to Avalon's argument.

Nurse Kelly also addressed other breaches of the standard of care by Avalon. She reported that Avalon did not provide a low air loss mattress for Ruth's bed to help alleviate pressure, and

[4] Nurse Kelly explained,

> The provider and payor source of hospice services per Medicare qualifies or deems the patient to be considered terminally ill when the life expectancy is 6 months or less to live. It is confusing reviewing Ms. Jones' records as to why she was placed on hospice off and on for over a period of two years when her condition did not seem to be terminal throughout this time based upon the records reviewed. It does appear based upon the text records of her son provided for review that hospice services were used to supplement the care that was lacking at [Avalon] and that Ms. Jones was most likely inappropriately placed at [Avalon] as an end stage vascular dementia/cerebral atherosclerosis patient who had behavioral disturbances and was dependent on the staff for evacuation for her needs to be met daily.

did not order heel protectors until two days "after Ms. Jones further broke down on her left heel and a stage II on her sacrum." There was no documentation of Avalon's "turning and positioning, off-loading pressure, providing an exercise program, coordinating with the physician or hospice nurse, requesting nutritional screening and evaluation, or meeting the needs of Ms. Jones." Nurse Kelly also reported that although a hospice nurse instructed Avalon staff on elevating Ruth's heels and adjusting Ruth's position at least every two hours, Avalon did not provide this care. Nurse Kelly also said that Avalon did not "obtain physician orders timely, follow MD orders, and document within the standards of care," citing Avalon's failure to document the treatment for Ruth's urinary tract infection and failure to obtain the air mattress and heel protectors "as documented on the physician telephone order in a timely manner." Nurse Kelly concluded that these failures did not "meet the standards of care for a patient such as Ms. Ruth Jones."

Together, Dr. Mansfield's and Nurse Kelly's reports describe the accepted standards of health care that should have been provided by Avalon to Ruth. And they explain in detail how Avalon did not provide that care. Together, their reports provide a fair summary of the applicable standards of care and the manner in which Avalon failed to meet those standards, as section 74.351 requires. *See Moreno*, 401 S.W.3d at 45. We decide Avalon's first issue against it.[5]

[5] To support its argument that it owed no duty to Ruth, Avalon also relies on statutory and regulatory provisions precluding assisted living facilities from practicing medicine and requiring a family's consent before transferring a patient. But section 74.351 does not require an expert report on each liability theory alleged against a defendant, nor is the expert required to refute defensive theories. *See TTHR Ltd. P'ship v. Moreno*, 401 S.W.3d 41, 45 (Tex. 2013) (Chapter 74 does not require expert report on each liability theory alleged against each defendant); *see also Ennis Reg'l Med. Ctr. v. Crenshaw*, No. 05-12-01428-CV, 2013 WL 2446374, at *3–5 (Tex. App.—Dallas June 4, 2013, no pet.) (mem. op.) (expert report that satisfies statutory requirements for one theory of liability alleged against defendant is sufficient for entire suit to proceed against that defendant). As we have discussed, an expert report must provide a fair summary of the applicable standards of care, the manner in which the health care provider failed to meet those standards, and the causal relationship between that failure and the harm alleged. *Moreno*, 401 S.W.3d at 45. An expert report need not marshal all the plaintiff's proof, but it must include the expert's opinion on each of the elements identified in the statute. *Palacios*, 46 S.W.3d at 879. And an "adequate" expert report "'does not have to meet the same requirements as the evidence offered in a summary-judgment proceeding or at trial.'" *Miller v. JSC Lake Highlands Operations, LP*, 536 S.W.3d 510, 517 (Tex. 2017) (quoting *Scoresby v. Santillan*, 346 S.W.3d 546, 556 n.60 (Tex. 2011)). Dr. Mansfield's report is not deficient for failing to address the statutory and regulatory provisions that Avalon cites.

B. Causation

In its second issue, Avalon contends that Nurse Kelly is not qualified to opine regarding causation, and Dr. Mansfield's report does not adequately address causation. Avalon argues that Dr. Mansfield did not

- distinguish between the conduct of Avalon, Hospice, and Dr. Surdacki, and did not "explain how Avalon's alleged failure to transfer Ms. Jones, separate and apart from" Hospice's and Dr. Surdacki's failures, caused Ms. Jones's injuries;
- explain how Avalon's conduct caused Ms. Jones's injuries after March 4, 2016, when Hospice and Dr. Surdacki were responsible for Ms. Jones's care;
- distinguish between the defendants' responsibilities in caring for Ms. Jones after March 4, 2016, including how the breach of those responsibilities caused Ms. Jones's pain and suffering;
- adequately explain the causal relationship between Avalon's individual acts and Ms. Jones's injury;
- explain how any particular different action would have prevented the injuries in question; or
- explain how transferring Ms. Jones to a 24-hour nursing facility would have prevented pain and suffering or development of additional wounds.

As we have discussed, Dr. Mansfield's opinions that Hospice's and Dr. Surdacki's negligence caused Ruth's injuries do not preclude him from opining that Avalon's conduct also caused Ruth's injuries. *See Romero*, 232 S.W.3d at 391–92. Dr. Mansfield explained that each counter-defendant owed a specific duty to Ruth, breached that duty by its specific conduct, and caused Ruth's specific injuries. This is sufficient to inform Avalon of the specific conduct Jones has called into question, and to provide a basis for the trial court to conclude the claims have merit, even if Jones's allegations against Hospice and Dr. Surdacki arise from the same duties to Ruth. *See Palacios*, 46 S.W.3d at 879.

And the experts' reports provide sufficient detail regarding the actions that would have prevented or alleviated Ruth's injuries, and Avalon's inactions and failures that caused the injuries.

Dr. Mansfield explained that patients who have dementia "are at risk for deterioration in their condition causing increased pain and suffering." Those patients should be "properly evaluated and placed to eliminate any preventable harm and injury." Dr. Mansfield stated that "[t]he standard of care for [Avalon] with regards to Ruth Jones required that a patient in need of skilled nursing care be transferred to a facility that can provide the needed higher level of care." Dr. Mansfield then detailed the manner in which Avalon breached the standard of care:

> In my opinion, [Avalon] violated the standard of care with regards to Ruth Jones. Ruth Jones was a long term resident at Avalon Residential Care Homes Memory Care Assisted Living Facility. While a resident at Avalon Residential Care Homes, Ruth Jones developed increased confusion and new wounds recorded by the hospice nurse on March 4, 2016. It is well known that patients who suffer from dementia are often unable to take care of their own activities of daily living (ADL) and may require skilled nursing services to prevent or treat skin injuries, support nutrition and control pain especially if they have confusion making it difficult for them to express their needs. When a patient who needs skilled nursing services is a resident in an assisted living facility, that resident needs to be transferred to a higher level of care where 24-hour skilled nursing services can be provided. **Skilled nursing services such as wound evaluation and wound care, every-two-hour turning and repositioning, intensive nutritional support and pain evaluation and management especially in a confused patient cannot be adequately provided in an assisted living facility even with home health or hospice nursing care.** However, Avalon Residential Care Homes failed to have Ruth Jones transferred to a facility where needed 24-hour skilled nursing services such as wound care, nutritional support and pain management could be provided, a violation of the standard of care.

(Emphasis added). Dr. Mansfield went on to explain Ruth's resulting injuries:

> As a result of this failure to move Ruth Jones to an appropriate facility, she developed a wound on her left heel which resulted in additional left heel physical injury as well as additional pain and suffering, a violation of the standard of care. As a result of this failure to move Ruth Jones to an appropriate facility, she was not provided with an order for needed heel protectors until March 16, 2016, and a much needed air mattress was not ordered until March 21, 2016, causing further deterioration of Ruth Jones' wounds which caused additional pain and suffering, a violation of the standard of care. As a result of this failure to move Ruth Jones to an appropriate facility, Ruth Jones developed a wound in her sacral area from not being turned and repositioned every two hours which caused additional pain and suffering, a violation of the standard of care. As a result of this failure to move Ruth Jones to an appropriate facility the 4 out of 20 prescribed doses of the antibiotic Bactrim prescribed for her [urinary tract infection] were not administered over a ten day period which contributed to Ruth Jones' decline and increased her pain and

> suffering, a violation of the standard of care. Instead, Ruth Jones was allowed to remain at Avalon Residential Care Homes Memory Care Assisted Living Facility where her condition and wounds deteriorated and she had increased pain and suffering.

Nurse Kelly's report describes in more detail the deterioration in Ruth's condition in March 2016. On March 4, 2016, Ruth had an "unstageable" right heel deep tissue injury, "meaning it had an eschar on it and one cannot tell how deep it is until the eschar is removed." Ruth had lost weight, "was not ambulatory, she was chair bound, incontinent, suffered from gait disturbance, required an altered diet, needed assistance for her activities of daily living (ADLs), had a history of falls, and had a Karnofsky score of 40," indicating that Ruth was "unable to care for self; requires institutional or hospital care; disease may be rapidly progressing 40-disabled; requires special care." Nurse Kelly noted that Ruth developed a sacral ulcer on March 14 when she "[got] stuck between the rail and mattress creating pressure on her sacral area causing the skin to break down." The length of the sacral pressure injury, not measured until the day before Ruth died, was "approximately 4.72 inches long." On March 24, "Ms. Jones' heels changed color . . . to a blackened color almost where it was previously bruising in appearance to it is almost black." And for both the sacral injury and the heel injuries, no treatment was documented for two to four days after the injuries were first noted in the records.

Dr. Mansfield opined that Avalon's failure to move Ruth to a facility where she could receive specified care that Avalon did not provide caused Ruth additional injuries, pain, and suffering, including the worsening of existing wounds and the development of new wounds. Nurse Kelly described Ruth's injuries, including her pressure sores and urinary tract infection, in more detail, as well as Avalon's failure to document timely treatment. We conclude that Dr. Mansfield's report is sufficient on the issue of causation of Ruth's alleged injuries resulting from the failure to transfer Ruth to a skilled nursing facility where she could receive "the needed higher level of care." *See Jones v. Ashford Hall, Inc.*, No. 05-16-01402-CV, 2018 WL 2315960, at *12 (Tex. App.—

Dallas May 22, 2018, no pet. h.) (mem. op.) (where expert report linked chain of events beginning with defendant's negligence and ending in plaintiff's injury, report was sufficient on issue of causation); *SCC Partners, Inc. v. Ince*, 496 S.W.3d 111, 118 (Tex. App.—Fort Worth 2016, pet. dism'd) (expert report sufficient where expert explained that nursing home's records did not show it followed pressure ulcer prevention program, and stated that failure to monitor resident and identify lesions more likely than not resulted in greater pain and suffering). We decide Avalon's second issue against it.

C. Attorney's fees

In its third issue, Avalon contends the trial court erred by failing to award its attorney's fees as required by section 74.351(b)(1). But because Jones's expert reports were not deficient, Avalon may not recover its attorney's fees under section 74.351(b)(1). *Cf. Hightower v. Baylor Univ. Med. Ctr.*, 348 S.W.3d 512, 521–22 (Tex. App.—Dallas 2011, pet. denied) (automatic attorney's fees sanction in §74.351(b)(1) "comes into play when a timely *but deficient* expert report has been filed" [emphasis added]). We decide Avalon's third issue against it.

CONCLUSION

We affirm the trial court's order denying Avalon's motion to dismiss.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

AVALON RESIDENTIAL CARE HOMES, INC., Appellant

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GLEN JONES, INDIVIDUALLY AND AS THE REPRESENTATIVE OF THE ESTATE OF RUTH JONES, DECEASED, Appellees

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Opinion delivered by Justice Lang-Miers; Justices Fillmore and Stoddart, participating.

In accordance with this Court's opinion of this date, the trial court's October 30, 2017 "Order on Plaintiff/Counter-Defendant Avalon Residential Care Homes, Inc.'s Objections to Defendant/Counterclaimant's Amended Chapter 74 Expert Report and Motion to Dismiss" is **AFFIRMED**.

It is **ORDERED** that appellee Glen Jones, Individually and as the Representative of the Estate of Ruth Jones, Deceased recover his costs of this appeal from appellant Avalon Residential Care Homes, Inc.

Judgment entered this 7th day of June, 2018.