Opinion issued October 21, 2010

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00270-CV

DOCTORS HOSPITAL, DOCTORS HOSPITAL, 1997, L.P., INDIVIDUALLY AND D/B/A DOCTORS HOSPITAL AND TIDWELL PARKWAY VENTURES, LLC, INDIVIDUALLY AND D/B/A DOCTORS HOSPITAL, and DENITRIA PRICE, Appellants

V.

SANTOS HERNANDEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF CYNTHIA HERNANDEZ, DECEASED, AND AS NEXT FRIEND OF JOSSELYN NAOMI HERNANDEZ, A MINOR, Appellee

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On Appeal from the 164th District Court
Harris County, Texas
Trial Court Case No. 2009-50669

MEMORANDUM OPINION

In this interlocutory appeal, appellants, Doctors Hospital, Doctors Hospital, 1997, L.P., individually and d/b/a Doctors Hospital, Tidwell Parkway Ventures, LLC, individually and d/b/a Doctors Hospital (collectively, "Doctors Hospital"), and Denitria Price, challenge the trial court's order denying their motion to dismiss the heath care liability claim of appellee, Santos Hernandez, individually and as representative of the estate of Cynthia Hernandez, deceased, and as next friend of Josselyn Naomi Hernandez, a minor. Doctors Hospital and Price contend the expert report submitted by the Hernandezes is inadequate and the trial court erred by failing to dismiss the Hernandezes' suit. We hold the trial court did not abuse its discretion by not dismissing the Hernandezes' suit. We affirm.

Background

Cynthia Hernandez was admitted to Doctors Hospital on August 26, 2007 for a planned, elective, non-emergency inducement of labor. She was 41 weeks and 4 days pregnant and was overdue for delivery, which should have occurred around August 18, 2007. She was a Jehovah's Witness and had an advance directive against blood transfusion, but her 2006 medical power of attorney said that she would consider the use of blood fractions upon later discussion. Mrs. Hernandez was given a labor-inducing drug at 2:00 p.m. on August 27. Price, a labor and delivery nurse, established a relationship with Mrs. Hernandez at 7:45

p.m., when she was assigned to care for her during the inducement process. The labor progressed slowly, with complications, and, at 9:45 p.m., Dr. Piegari made the decision to perform a caesarean section.

The surgical team, including Dr. Piegari, Price, and Certified Registered Nurse Anesthetist D. Arrington, assembled within thirty minutes, and Mrs. Hernandez was taken to the operating room. The surgery, which was performed under local anesthesia, began at 10:44 p.m. A baby girl weighing 10 pounds, 1 ounce, Josselyn Naomi Hernandez, was delivered. At 11:18 p.m., the surgery complete, Mrs. Hernandez was transferred to the Post Anesthesia Care Unit ("PACU").

Price resumed caring for Mrs. Hernandez in the PACU. Arrington, who administered the local anesthetic during surgery, signed papers discharging Mrs. Hernandez from PACU at 11:29 p.m. While Ms. Hernandez was in the PACU, Price documented 200 milliliters of blood tinged urine in Mrs. Hernandez's Foley catheter bag. Additionally, Mrs. Hernandez's pre-surgery blood pressure was 118/74 with a pulse of 84, while her PACU blood pressure and pulse were 98/52 and 100. These were indications of internal bleeding. Price did not notify Dr. Piegari of these indications. Price made several entries in the medical records noting "dark red blood via Foley" and "scant vaginal blood loss," but then said there was "no active bleeding noted."

Mrs. Hernandez was transferred from the PACU to a regular floor room and was assigned to the care of another registered nurse, In Clemado. On the floor, her blood pressure at 1:20 a.m. was 98/52 with a pulse of 102. Clemado, like Price, did not notify Dr. Piegari about this hemodynamic instability. By 2:10 a.m., Mrs. Hernandez's vital signs were continuing to deteriorate, with a blood pressure of 75/50 and a pulse of 111. At 2:20 a.m., when blood pressure was 68/48, Clemado finally called Dr. Piegari.

Mrs. Hernandez was transferred back to the Labor and Delivery Department at 2:40 a.m., where she was again placed under the care of Price. Dr. Piegari arrived back at the hospital and summoned the operating team, consisting of an additional assistant surgeon and another nurse anesthetist, at 3:00 a.m. Mrs. Hernandez was taken to the operating room for emergency exploratory laparotomy surgery at 4:05 a.m. Surgery began at 4:20 a.m. and was completed at 5:20 a.m. Dr. Piegari's operative report details that four liters of blood were found in the abdominal cavity. There was bleeding from the left lower uterine segment, which was ligated and sutured. The operative notes report that the bleeding was stopped during surgery. Dr. Piegari claimed in his report that Mrs. Hernandez was stable when she left the operating room and was transferred to the Intensive Care Unit ("ICU"). But within 30 minutes of arriving in the ICU, Mrs. Hernandez was in full cardiac arrest. Mrs. Hernandez died at 6:52 a.m. on August 28, 2007.

Mrs. Hernandez's husband, Santos Hernandez, filed this medical malpractice suit against Dr. Piegari and his practice group; Doctors Hospital and its owners, Doctors Hospital 1997, L.P. and Tidwell Parkway Ventures, L.L.C.; and Price. Dr. Piegari and his practice group were later nonsuited. Hernandez alleged that Doctors Hospital was vicariously liable for the nurses' negligence and directly liable for its own acts and omissions.

Hernandez served Chapter 74 expert reports from obstetrician-gynecologist Harold J. Miller, M.D., and from registered nurse Tracy McManaman-Bridges. Doctors Hospital and Price objected to the reports and moved for dismissal pursuant to Chapter 74. The trial court denied the motion to dismiss.

Medical Expert Reports

In their second issue, Doctors Hospital and Price assert the trial court erred by failing to dismiss the Hernandezes' claim for failure to file an expert report pursuant to section 74.351 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(a) (Vernon Supp. 2010).

A. Standard of Review

We review a trial court's ruling dismissing a healthcare liability lawsuit pursuant to Chapter 74 of the Texas Civil Practice and Remedies Code under an abuse of discretion standard. *Am. Transitional Care Centers of Texas v. Palacios*, 46 S.W.3d 873, 877 (Tex. 2001). A trial court abuses its discretion if it acts in an

arbitrary or unreasonable manner without reference to guiding rules or principles. *See Garcia v. Martinez*, 988 S.W.2d 219, 222 (Tex. 1999). When reviewing matters committed to the trial court's discretion, we may not substitute our own judgment for that of the trial court. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). A trial court does not abuse its discretion merely because it decides a discretionary matter differently than an appellate court would in a similar circumstance. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242 (Tex. 1985). Although we may defer to the trial court's factual determinations, we review questions of law de novo. *Rittmer v. Garza*, 65 S.W.3d 718, 722 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

In reviewing whether an expert report complies with Chapter 74, we evaluate whether the report "represents a good-faith effort" to comply with the statute. *Strom v. Mem'l Hermann Hosp. Sys*., 110 S.W.3d 216, 221 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). In making this evaluation, we must look only at the information contained within the four corners of the report. *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 53 (Tex. 2002).

B. Chapter 74 Expert Report Requirements

Pursuant to section 74.351, medical-malpractice plaintiffs must provide each defendant physician and health care provider with an expert report or voluntarily nonsuit the action. TEX. CIV. PRAC. & REM. CODE § 74.351(a). If a claimant

timely furnishes an expert report, a defendant may file a motion challenging the report's adequacy. *Id.* The trial court shall grant the motion only if it appears, after hearing, that the report does not represent a good faith effort to comply with the statutory definition of an expert report. *See id.* § 74.351(*l*). The statute defines an expert report as a written report by an expert that provides, as to each defendant, a fair summary of the expert's opinions as of the date of the report regarding: (1) applicable standards of care; (2) the manner in which the care provided failed to meet the standards; and (3) the causal relationship between that failure and the injury, harm, or damages claimed. *See id.* § 74.351(r)(6); *Palacios*, 46 S.W.3d at 877.

Although the report need not marshal all the plaintiff's proof, it must include the expert's opinions on the three statutory elements—standard of care, breach, and causation. *See Palacios*, 46 S.W.3d at 878; *Gray v. CHCA Bayshore, L.P.*, 189 S.W.3d 855, 859 (Tex. App.—Houston [1st Dist.] 2006, no pet.). In detailing these elements, the report must provide enough information to fulfill two purposes if it is to constitute a good faith effort. First, the report must inform the defendant of the specific conduct the plaintiff has called into question. *Palacios*, 46 S.W.3d at 879. Second, the report must provide a basis for the trial court to conclude that the claims have merit. *Id.* A report that merely states the expert's conclusions as to the standard of care, breach, and causation does not fulfill these two purposes.

Id. "The expert must explain the basis of his statements and link his conclusions to the facts." *Bowie*, 79 S.W.3d at 52 (citing *Earle v. Ratliff*, 998 S.W.2d 882, 890 (Tex. 1999)). Furthermore, in assessing the report's sufficiency, the trial court may not draw any inferences, and instead must rely exclusively on the information contained within the report's four corners. *See Palacios*, 46 S.W.3d at 878.

C. Analysis of Adequacy of Reports

Doctors Hospital and Price contend that the expert report submitted by Hernandez is insufficient. Specifically, they assert that (1) Dr. Miller is not qualified to state the applicable standard of care, (2) the report does not adequately state the applicable standard of care or the breaches of the standard of care purportedly committed by Doctors Hospital and Price and (3) the report does not adequately set forth how the purported breaches caused Mrs. Hernandez's death.

1. Qualifications

Within this portion of their second issue, Doctors Hospital and Price assert that Dr. Miller is not qualified to offer an opinion concerning the standard of care applicable to Doctors Hospital or the nurses involved in Mrs. Hernandez's treatment, Price in particular.

a. Law Concerning Expert Qualifications

Section 74.351(r)(5)(B) states that an expert for the purpose of establishing the standard of care applicable to a non-physician health care provider must meet

the qualifications of section 74.402. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(5)(B) (Vernon Supp. 2010). Section 74.402(b) provides the following qualifications for an expert:

> (b) In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person:
>
> (1) is practicing health care in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual, at the time the testimony is given or was practicing that type of health care at the time the claim arose;
>
> (2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and
>
> (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.

TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(b)(Vernon 2005). Section 74.402 continues:

> (c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:
>
> (1) is certified by a licensing agency of one or more states of the United States or a national professional certifying 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.

TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(c).

b. Dr. Miller's Qualifications as to Doctor's Hospital

Doctors Hospital asserts that Dr. Miller is not qualified to opine on its hospital policies and procedures. Specifically, Doctors Hospital contends that because Dr. Miller's career has primarily been with Baylor College of Medicine, a teaching hospital, and Ben Taub Hospital, one of the nation's leading trauma centers, he has no experience working at a "smaller, tertiary, non-teaching hospital."

Doctors Hospital cites no authority that an expert must have worked at the same type of hospital to opine on a standard of care for a hospital—that is, only a doctor familiar with and having experience in a "smaller, tertiary, non-teaching hospital" would be qualified to opine on Doctors Hospital's standard of care. The one authority Doctors Hospital cites in its brief is *Reed v. Granbury Hosp. Corp.*, 117 S.W.3d 404 (Tex. App.—Fort Worth 2003, no pet.). We first note that *Reed* is procedurally distinguishable. *Reed* involved a summary judgment case in which the trial court found two doctors unqualified to testify as experts concerning the standard of care, specifically "what protocols, policies, or procedures a hospital of

ordinary prudence . . . would have had in place." *Reed*, 117 S.W.3d at 408–11. *Reed* is also distinguishable substantively. In *Reed*, the court applied the standards for qualifying an expert under Texas Rule of Evidence 702 and case law interpreting the rule. *See id.* at 409–10 (citing TEX. R. EVID. 702 and cases including *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 628 (Tex. 2002) and *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 718 (Tex. 1988)).

In contrast, in this case Dr. Miller's qualifications are governed by section 74.402. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(5)(B) (stating that expert for establishing standard of care applicable to non-physician health care provider must meet qualifications of section 74.402). Doctors Hospital and Price do not contend that Dr. Miller does not meet the qualifications set out in section 74.402 or address section 74.402 in any way.

The first requirement set forth in section 74.402 is that Dr. Miller "is practicing health care in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual." TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(b)(1). Doctors Hospital is not an individual. Therefore, this factor does not apply. However, we note that this claim relates to the field of Obstetrics and Gynecology. Dr. Miller states in his report that he is a licensed physician in Texas

in continuous practice since 1966 and has been a Board Certified Obstetrician-Gynecologist since 1967. Doctors Hospital and Price do not dispute this.

The second statutory requirement is that Dr. Miller "has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim." Dr. Miller states in his report that he is familiar with

> the appropriate standards of care pertaining to the medical and nursing care and treatment of patients who are hospitalized related to pregnancy, labor, delivery, and post partum (after delivery) care, and related to the patient being evaluated and treated for pregnancy and delivery, including complications, problems and disorders related thereto . . . such as intra abdominal bleeding . . . .

The final requirement of section 74.402 is that the expert must be "qualified on the basis of training or experience." TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(b)(3). To evaluate the expert's training or experience, we are required to examine whether the expert is "certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim . . . [and] is actively practicing health care in rendering health care services relevant to the claim." *See id.* § 74.402(c) (stating court "shall consider" these two factors). As noted above, Dr. Miller is a Board Certified Obstetrician-Gynecologist. In his report, Dr. Miller stated:

> For the past 43 years, I have been actively engaged in the practice of obstetrics and gynecology both in the clinical/office and hospital setting. . . . In each of these settings I have evaluated, treated, and coordinated the care for several patients who presented with a refusal to accept blood transfusions, similar to Ms. Hernandez and have evaluated, treated, and coordinated the care for many patients who presented with signs and symptoms of intra abdominal bleeding following a c-section, also similar to Ms. Hernandez.
>
> . . . .
>
> I reasonably estimate that, over this 43 year period, I have acted as the attending physician and/or been consulted with in literally hundreds of times for purposes of coordinating care of a patient with risk factors for post partum hemorrhage as well as providing direct patient care to evaluate and treat a patient like Ms. Hernandez, as the attending physician for, and in consultation with nurses, health care providers, and other physicians, for purposes of evaluating and treating a patient, like Ms. Hernandez, who presents with risk factors for post partum hemorrhage, as well as providing direct patient care on several hundred occasions to evaluate and treat patients who present with post partum hemorrhage determining what type of care and treatment is necessary and other reasonably related issues that are necessary to care for a patient with documented risk factors and/or signs and symptoms of post partum hemorrhage.

Dr. Miller's report and curriculum vitae also disclose that he has extensive experience teaching in the field of obstetrics and gynecology and served as the interim chief of the Department of Obstetrics and Gynecology at Ben Taub from 2006 to 2009.

We conclude that Dr. Miller's report and curriculum vitae provide a basis to conclude that he meets section 74.402's requirements for qualifications of an expert. *See Tenet Hospitals Ltd. v. Barnes*, No. 08-09-00093-CV, 2010 WL

2929520, at *7–8 (Tex. App.—El Paso July 28, 2010, no pet.) (holding expert qualified to state standard of care for hospital where report stated expert had experience with type of claim at issue, including being "involved in care of about 250 patients" similar to patient at issue and curriculum vitae showed he was "Chief of Surgery"); *see also Rusk State Hosp. v. Black*, No. 12-09-00206-CV, 2010 WL 2543470, at *7 (Tex. App.—Tyler June 23, 2010, no pet. h.) (holding psychologist qualified to opine concerning mental hospital's standard of care based in part on psychologist's "extensive training and experience in the diagnosis and treatment of mental disorders" and service "as supervising or consulting psychologist at numerous mental health facilities"). Accordingly, we hold that the trial court did not abuse its discretion in finding Dr. Miller qualified to give an expert report concerning Doctors Hospital's standard of care.

We overrule this portion of Doctors Hospital and Price's second issue.

c. Dr. Miller's Qualifications as to Nurses

Doctors Hospital and Price also contend that Dr. Miller is not qualified to opine on the standard of care owed by nurses. Specifically, Doctors Hospital and Price assert, "At most, Dr. Miller is qualified to speak to the standard of care for nursing *as it relates to the nurses[']* *interactive role with doctors*." (Emphasis in original). As with their argument concerning the standard of care applicable to

Doctors Hospital, Doctors Hospital and Price do not cite, discuss, or analyze the requirements of section 74.402.

In addition to the education, training, and experience detailed above, Dr. Miller specifically stated:

> I am familiar with the appropriate standards of care pertaining to the nursing care and medical care and treatment of patients at risk for and who are experiencing post partum hemorrhage.
>
> Given my hospital practice, I am familiar with the appropriate standard of care for nurses as it relates to the proper and timely communication of critical vital signs information by the hospital nurses, nurse anesthesiologists, and/or nonphysician health care providers to the treating physician.
>
> I am also familiar with, have undertaken on numerous occasions, and have taught physicians, nurses and students in the methods for preventing and alleviating through surgery and otherwise, postpartum hemorrhage, including, but not limited to intra abdominal bleeding following a caesarean section.

We hold that the trial court did not abuse its discretion in finding Dr. Miller qualified to give an expert report concerning Doctors Hospital's standard of care. *Baylor Med. Ctr., Waxahachie v. Wallace*, 278 S.W.3d 552, 558 (Tex. App.—Dallas 2009, no pet.) ("if the physician states he is familiar with the standard of care for both nurses and physicians, and for the prevention and treatment of the illness, injury, or condition involved in the claim, the physician is qualified on the issue of whether the health care provider departed from the accepted standards of care"); *San Jacinto Methodist Hosp. v. Bennett*, 256 S.W.3d 806, 814 (Tex. App.—

Houston [14th Dist.] 2008, no pet.) (holding doctor qualified under section 74.402 to testify against nurse for improper treatment of decubitus ulcer because he stated that he was familiar with standard of nursing care for ulcers).

We overrule this portion of Doctors Hospital and Price's second issue.

2. Standard of Care and Breach

Within this portion of their second issue, Doctors Hospital and Price contend that Dr. Miller's report is insufficient concerning the statutory elements of standard of care and breach of the standard of care because it contradicts "the objective facts within the medical records [that] Dr. Miller reviewed."

We review the sufficiency of Dr. Miller's report by looking within the four corners of the report. *See Wright*, 79 S.W.3d at 53; *Palacios*, 46 S.W.3d at 878. Doctor's Hospital and Price cite two unpublished opinions to support their contention that our review may include a comparison of Dr. Miller's report to the facts of the medical record. *See Kloeris v. Stockdale*, No. 01-09-00711-CV, 2010 WL 1241305, at *6 (Tex. App.—Houston [1 Dist.], Apr. 1, 2010, pet. denied); *Reddy v. Seale*, No. 09-07-00372-CV, 2007 WL 5011608, at *6 (Tex. App.—Beaumont Mar. 20, 2008, no pet.) (mem. op.). We disagree that our review can extend to the underlying medical records.

First, the Supreme Court of Texas has stated that review of expert reports is focused on the report itself. *See Wright*, 79 S.W.3d at 53 ("We have held that the

only information relevant to whether a report represents a good-faith effort to comply with the statutory requirements is the report itself."); *Palacios*, 46 S.W.3d at 878 ("[T]the only information relevant to the inquiry is within the four corners of the document."); *see also Strom*, 110 S.W.3d at 221 ("The trial court may not look beyond the report, therefore, in determining compliance with the statute."). Second, in *Kloeris*, although this Court did address the defendant doctor's argument that the medical records did not support the expert's report under *Reddy*, this Court stated twice in the opinion that the appropriate scope of review was confined to the four corners of the report. *See Kloeris*, at *4 ("In determining whether the expert report represents an 'objective good-faith effort' to comply with the statute, we look only to the four corners of the report."); *id.* at *6 ("In determining whether an expert report constitutes a 'good-faith effort' to comply with the requirements of section 74.351(r)(6), we look only to the four corners of the report."). Finally, this Court recently confirmed that our review is confined to the four corners of the report. *Mettauer v. Noble*, No. 01-10-00167-CV, 2010 WL 3833954, at *5 (Tex. App.—Houston [1st Dist.] Sept. 20, 2010, no pet. h.).

Because our review is confined to the four corners of Dr. Miller's report, we overrule the portion of appellants' second issue asserting that the report contradicts the medical records.

3. Causation

Within this portion of their second issue, Doctor's Hospital and Price contend that Dr. Miller's report is insufficient concerning the statutory element of causation. In part, this challenge is based upon the assertion that Dr. Miller's conclusions are "precluded by the facts found in the medical records he reviewed." As discussed above, our review is of Dr. Miller's report itself, not a comparison of the report to the records. *See Wright*, 79 S.W.3d at 53; *Palacios*, 46 S.W.3d at 878.

Doctors Hospital and Price also assert that Dr. Miller's report concerning causation is insufficient because it is conclusory and speculative concerning how the delay in treatment stated by Dr. Miller is causally related to Ms. Hernandez's death. An expert report must include a fair summary of the causal relationship between the defendant's failure to meet the appropriate standard of care and the injury, harm, or damages claimed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6). An expert cannot merely state his conclusions or "provide insight" about the plaintiffs' claims, but must instead "explain the basis of his statements to link his conclusions to the facts." *Wright*, 79 S.W.3d at 52.

After detailing facts of the case, Dr. Miller states,

> In summary, the nurses should be able to recognize any critical change in vital signs consistent with post partum hemorrhage. They failed to recognize critical changes in Ms. Hernandez[']s blood pressure and heart rate consistent with post partum hemorrhage that

> led to an unreasonable delay in treatment causing prolonged bleeding that led to hemorrhage and eventual death by exsanguination.

Dr. Miller's report concludes,

> In all medical probability (greater than 50%), if Ms. Hernandez had been operated on sooner she would have lived. . . . There was evidence that this patient [was] in hemorrhagic shock when she developed hypotension and tachycardia at 0120 and confirmed at 0150 hours with continued drop in blood pressure[.] Additional information followed at 0205 with a BP of 75/50 and P – 109[.] Later on an Hct of 24.2 clearly indicated intra-abdominal bleeding. If this patient had been taken back to surgery at this time instead of 0410 hours in all medical probability (greater than 50%) she would have survived.

Dr. Miller also opined, after detailing purported breaches of various standards of care, that "the violations of the standards of care that caused unreasonable delay also caused delay in conducting the surgery. It was too late to save Ms. Hernandez and she bled to death."

Additionally, throughout Dr. Miller's sixty-two page report, he identifies specific standards of care, breaches of those standards, and then states that the breach of the standard of care "lead[] to post partum hemorrhage leading to death caused by exsanguination," or similar language concerning the delay causing Ms. Hernandez's death due to blood loss. For example, the language just quoted concludes a paragraph stating, "The hospital is responsible for the nursing staff[']s understanding of the standard of care that requires the nurse to monitor the vital signs of a postoperative patient every 15 min while the patient is in the PACU."

Dr. Miller further states that the records reflect that this standard of care was breached because the records show 55 minutes elapsed between the recording of vital signs.[1]

We conclude Dr. Miller sufficiently linked his conclusions to the facts of the case. *See Hayes v. Carroll*, 314 S.W.3d 494, 507 (Tex. App.—Austin 2010, no pet.) (stating report adequately stated causation where report stated "failure to notice the presence of the bandage and monitor the effect it had on Carroll's leg caused the bandage and its effects to go undetected, which caused the damage requiring amputation of her leg"); *Fagadau v. Wenkstern*, 311 S.W.3d 132, 139 (Tex. App.—Dallas 2010, no pet.) (stating report adequately stated causation where report stated "if Wenkstern had been sufficiently examined in his initial visit and re-examined either by Dr. Fagadau or another physician within two weeks, the tears in Wenkstern's right eye would have been found in time to be treated successfully with a laser before the retina detached").

We overrule this portion of Doctors Hospital and Price's second issue.

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[1] Other standards of care and breaches identified by Dr. Miller include: failing to discuss alternatives to blood transfusion, failure of nurses to identify the physician of change in clinical status, failing to ensure effective communication with Ms. Hernandez who did not speak English, failure to assess the epidural site to rule it out as a source of bleeding, and failure of the nursing supervisor to ensure the nurses caring for Mrs. Hernandez had appropriate nursing skills. Dr. Miller stated after each of these breaches, in varying language, that the failure to adhere to the standard of care "caused an unreasonable delay in [Mrs. Hernandez's] care and contributed to her eventual death by exsanguination."

D. Conclusion Concerning Adequacy of Dr. Miller's Report

"The expert report is not required to prove the defendant's liability, but rather to provide notice of what conduct forms the basis for the plaintiff's complaints." *Hayes*, 314 S.W.3d at 508. Doctors Hospital and Price's disagreement with Dr. Miller's report does not render the report conclusory or inadequate. *See Fagadau*, 311 S.W.3d at 139. Also, whether the trier of fact may later disagree with Dr. Miller and find in favor of Doctors Hospital and Price does not render Dr. Miller's report inadequate. *See Hayes*, 314 S.W.3d at 508. We conclude that Dr. Miller's report provides adequate notice to Doctors Hospital and Price of the conduct that forms the basis for the Hernandezes' lawsuit and also provides a basis for the trial court to conclude the Hernandezes' claims have merit. *See Palacios*, 46 S.W.3d at 879. We, therefore, hold that the trial court did not abuse its discretion in denying the motion to dismiss.

We overrule Doctors Hospital's and Price's second issue.[2]

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[2] Doctors Hospital and Price included a first issue in their brief. However, the entire first issue is a statement of the law that an expert report must be served in healthcare liability claims. Within this "issue," Doctors Hospital and Price do not assert that the trial court erred in any way. Because it raises no purported error for this Court to review, we overrule Doctors Hospital and Price's first issue.

Additionally, within their brief, Doctors Hospital and Price contend that the expert report of Nurse McManaman-Bridges is not adequate. Having concluded the report of Dr. Miller is adequate concerning both Doctors Hospital and Price, we need not address the adequacy of McManaman-Bridges's report. *See Bakhtari v. Estate of Dumas*, 317 S.W.3d 486, 489 (Tex. App.—Dallas 2010, no pet.)

Conclusion

We affirm the order of the trial court.

Elsa Alcala
Justice

Panel consists of Justices Jennings, Alcala, and Higley.

(declining to address challenges to second expert report where court found one expert report adequate) (citing TEX. R. APP. P. 47.1).