

Opinion issued March 1, 2012.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-11-00136-CV

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**RAJESWARI THIAGARA RAJAN, M.D., Appellant**

**V.**

**CHARLES AND JAMIE STOCKDALE, INDIVIDUALLY AND AS REPRESENTATIVES OF THE ESTATE OF CHARLES WILLIAM STOCKDALE, III AND JAMES AND TOREN DUKES, AS LEGAL GUARDIANS OF MINOR CHILDREN A. L. S. AND C. W. S., IV, Appellees**

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**On Appeal from the 133rd Judicial District Court  
Harris County, Texas  
Trial Court Case No. 2008-10581**

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**MEMORANDUM OPINION ON REHEARING**

Appellant, Rajeswari Rajan, M.D., has moved for rehearing. We grant rehearing, withdraw our opinion and judgment of December 15, 2011, and issue the following in their stead.

This is an interlocutory appeal from an order finding a medical expert report sufficient to proceed with a medical malpractice case.<sup>1</sup> Charles and Jamie Stockdale, individually and as representatives of the estate of Charles Stockdale, III, and James and Toren Dukes, as legal guardians of the decedent's minor children (collectively, "the Stockdales"), sue Rajan for medical malpractice arising out of Charles's death from a prescription drug overdose. Rajan moved to dismiss the claims against her, challenging the sufficiency of the Stockdales' expert report. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(l) (West 2011).

Rajan contends that the trial court abused its discretion in denying her motion to dismiss, because the Stockdales' expert report does not comply with the statutory expert report requirements. *See id.* § 74.351(r)(6). We conclude that the expert report does not proffer the required causal relation between the alleged malpractice and the injury ascribed to it. Accordingly, we reverse the order of the trial court and render judgment dismissing the Stockdales' claims against Rajan with prejudice.

On rehearing, Rajan observes that our December 15 opinion failed to address attorney's fees. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b)(1) provides that the Court shall enter an order that "awards to the affected physician

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<sup>1</sup> *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (West 2008) (allowing interlocutory appeal when trial court "denies all or part of the relief sought under Section 74.351(b)").

or health care provider reasonable attorney's fees and costs of court . . . ." We hold that the Stockdales did not serve a sufficient expert report and dismiss their claims against Rajan with prejudice. Thus, an award of attorney's fees is proper. *See id.* We modify the judgment to remand the cause to the trial court for consideration of reasonable attorney's fees to be awarded to Rajan.

### **BACKGROUND**

The facts, as set forth in the disputed expert report, are as follows: Rajan was a physician with the Gulf Coast Medical Group, practicing in the same group as Steven Kloeris, M.D., her co-defendant in the trial court. In November 2005, Charles Stockdale visited Kloeris, complaining of severe anxiety and panic attacks. Charles informed Kloeris that he was taking 2 mg of alprazolam (Xanax) twice per day. Kloeris diagnosed Charles with generalized anxiety disorder, panic disorder, and migraines. He prescribed ninety tablets of alprazolam (2 mg) and twenty-eight tablets of hydrocodone (Vicodin, 7.5 mg). Charles returned to Kloeris sixteen days later and received prescription refills. On this visit, Kloeris prescribed an additional ninety tablets of alprazolam and sixty tablets of hydrocodone (10 mg).

Charles's wife, Kristen, was also a patient of the Gulf Coast Medical Group. Her chart included a statement that, a year before the overdose, she "confided to the nurse [at Clear Lake Regional Medical Center] that she regularly visits

emergency rooms complaining of different areas of pain in order to get Vicodin [hydrocodone] prescriptions for her husband.” Most of Kristen’s medical records refer to her by her maiden name, Arsement; however, the occasional record refers to her as “Kristen Stockdale” and mentions her husband, Charles Stockdale. Her medical records contain a copy of her driver’s license, listing her name as “Kristen Stockdale.”

On December 2, 2005, Kristen presented to Rajan as an assault victim, stating that her mother-in-law had hit her. She complained of lower back pain. Rajan prescribed hydrocodone and a sleeping aid for Kristen. Eight days later, Rajan refilled Kristen’s prescription for hydrocodone (12 tablets). Rajan never treated Charles, nor prescribed him any drugs.

On December 16, 2005, one day after Charles’s second visit to Kloeris, he died of a prescription drug overdose. The Harris County Medical Examiner listed Charles’s official cause of death as “the toxic effects of Hydrocodone, Alprazolam, and Diazepam [Valium].”

The Stockdales sued both Kloeris and Rajan for negligence, gross negligence, and wrongful death. Pursuant to section 74.351 of the Civil Practice and Remedies Code, within 120 days of filing suit, the Stockdales served an expert report by Dr. Hugh Poindexter. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a) (West 2011). Kloeris and Rajan both objected to its sufficiency and moved to

dismiss the case against them due to the insufficiency of the report. The trial court denied the motions. Kloeris and Rajan appealed the trial court's ruling. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (West 2008).

On appeal, we held that the report was sufficient as to Kloeris but not as to Rajan; we remanded the case to the trial court to determine whether to grant the Stockdales an extension to cure the report's deficiencies with respect to Rajan. *Kloeris v. Stockdale*, No. 01-09-00711-CV, 2010 WL 1241305 (Tex. App.—Houston [1st Dist.] Apr. 1, 2010, pet. denied) (mem. op.). The trial court granted an extension, and the Stockdales filed a supplemental report. Dr. Poindexter's amended report reads in pertinent part:

The standard of care required that Dr. Rajan not prescribe controlled substances to a person she knew or should have known was seeking drugs as a proxy for someone else. Dr. Rajan knew or should have known that Charles and Kristen were married and cross-using prescription drugs. Dr. Rajan practiced in the same medical group as Dr. Kloeris. They shared the same patient files, and Kristen Stockdale was seen by both Dr. Rajan and Dr. Kloeris within a very short period of time. Dr. Kloeris actually treated Kristen and Charles within days of one other. Kristen's medical records identify her as "Kristen Stockdale" and her husband as "Charles Stockdale." Moreover, Kristen's medical records raise clear warnings of prescription drug abuse—more specifically that Kristen was obtaining prescription drugs to pass to Charles. In fact, records state so explicitly. Although Kristen first presented to Dr. Rajan as an alleged assault victim, given that Kristen's medical records make it clear that she was passing drugs on to her husband Charles, Dr. Rajan should not have prescribed narcotic drugs. Instead, Dr. Rajan should have prescribed non-steroidal anti-inflammatory drugs or non-addictive muscle relaxants. The standard of care required that Dr. Rajan read Kristen's medical records, recognize the cross-use and not prescribe controlled

substances to Kristen. *Had Dr. Rajan not prescribed these drugs to Kristen, then, to a reasonable degree of medical certainty, Mr. Stockdale would not have died.*

(emphasis added) Rajan again moved to dismiss the case due to its insufficiency; the trial court denied the motion. Rajan appeals.

## DISCUSSION

Rajan contends that the trial court erred in denying her motion to dismiss because (1) the expert report was not timely filed and (2) does not represent a good faith effort to comply with section 74.351 of the Civil Practice and Remedies Code because, among other reasons, it fails to identify the standard of care or to describe the causal relationship between Rajan's alleged negligence and Charles's death.

We first note that the expert report was timely filed. Section 74.351(c) permits a trial court to grant a medical malpractice plaintiff a thirty-day extension if an expert report "has not been served within the period specified by Subsection (a) because elements of the report are found deficient." TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(c). If the claimant receives notice of the court's ruling after the initial 120-day deadline has passed, then the extension runs from the date the plaintiff first received notice. *Id.* Here, the Stockdales filed an expert report within the 120-day deadline. After our court concluded that the initial report was deficient with respect to Rajan, the trial court granted the Stockdales a thirty-day extension to amend the report, after the 120-day deadline

lapsed. The Stockdales had thirty days from October 11, 2010 to file their report (the date the trial court granted an extension); they timely filed it on November 10.

### *Standard of Review*

We review the trial court's decision on a section 74.351 motion to dismiss for abuse of discretion. *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001) (addressing predecessor statute to section 74.351). The trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles. *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010) (quoting *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 51–52 (Tex. 2002)).

When a plaintiff brings a healthcare liability claim, section 74.351 requires the plaintiff to serve each health care provider defendant with an expert report that “provides a fair summary of the expert’s opinions . . . 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 relations between that failure and the injury, harm, or damages claimed.” TEX. CIV. PRAC. & REM. CODE ANN. §§ 74.351(a) and 74.351(r)(6). If a plaintiff timely files an expert report, the defendant may move to challenge its sufficiency. *Id.* § 74.351(a); *Palacios*, 46 S.W.3d at 877. The trial court must dismiss the case with prejudice if the court finds that the report does not represent a good-faith effort to comply with the

statute. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(1); *Palacios*, 46 S.W.3d at 877 (discussing predecessor statute).

An expert report represents a good faith effort to comply with section 74.351 if it provides enough information to inform the defendant of the specific conduct called into question by the plaintiff and provides a basis for the trial court to determine that the claims made by the plaintiff have merit. *Palacios*, 46 S.W.3d at 879. The report need not marshal all of the plaintiff's proof, but it must address all three statutory elements—standard of care, breach and causation. *See id.* at 878. The report must link the expert's conclusions to the facts upon which those conclusions rest. *See Jelinek*, 328 S.W.3d at 539 (citing *Bowie Mem'l Hosp.*, 79 S.W.3d at 52). An expert report that omits any of the statutory requirements is not a good faith effort. *Palacios*, 46 S.W.3d at 879. In reviewing the sufficiency of a report, we look only within the four corners of the document. *Id.* at 878.

#### *Sufficiency of Expert Report*

Dr. Poindexter's report does not comply with the statute's "causal relations" requirement. Poindexter's report concludes that, "Had Dr. Rajan not prescribed [hydrocodone and the sleeping aid] to Kristen, then, to a reasonable degree of medical certainty, Mr. Stockdale would not have died." The report says nothing further regarding causation. Kloeris prescribed Charles ninety tablets of alprazolam and sixty tablets of hydrocodone twice in the sixteen days before his



death, the most recent prescription given three days before. But Rajan never prescribed Charles any medication. Rajan attended only to Kristen, prescribing her twelve tablets of hydrocodone and the sleeping aid. Dr. Poindexter does not address the causal relationship between the medicines that Rajan prescribed for Kristen and Charles's overdose.

A bare assertion of causation does not meet the requirements of section 74.351(r)(6), because “[a]n expert report cannot simply opine that the breach caused the injury.” *Jelinek*, 328 S.W.3d at 539. No “magical words” such as “reasonable medical probability” demonstrate that the report complies with section 74.351(r)(6). See *Bowie Mem’l Hosp.*, 79 S.W.3d at 53; *Regent Care Ctr. of San Antonio II, Ltd. P’ship v. Hargrave*, 300 S.W.3d 343, 347 (Tex. App.—San Antonio 2009, pet. denied) (finding single sentence addressing causation did not demonstrate good-faith effort to comply with Act). Rather, to satisfy the element of causation, an expert must explain the basis of her statements and link her conclusions to the facts of the case. *Jelinek*, 328 S.W.3d at 539–40; *Bowie Mem’l Hosp.*, 79 S.W.3d at 52. Dr. Poindexter’s report concludes that Rajan caused Charles’s death by prescribing drugs to Kristen, but does not connect that conclusion to facts. The report does not explain how the prescriptions Rajan issued for Kristen caused the death of a patient Rajan had never treated. It does

not, for example, state that Charles ingested the drugs Rajan had prescribed for Kristen or allege that those drugs fell into Charles's hands.

A report does not represent a good-faith effort to comply with section 74.351(r)(6) and is conclusory if it simply contends that a doctor's breach caused injury to a person that the doctor never treated. *See Jelinek*, 328 S.W.3d at 539. Because Dr. Poindexter's report does not satisfy the statutory test with respect to Rajan's conduct, the trial court had no option but to conclude that the expert report is deficient in that respect. *See Palacios*, 46 S.W.3d at 879–80.

## **Conclusion**

Because Dr. Poindexter's expert report does not sufficiently address the causation elements that Chapter 74 requires, the report does not meet the section 74.351(r)(6) standards. Accordingly, we reverse the trial court's order and dismiss the Stockdales' claims against Rajan with prejudice. We remand the cause to the trial court for consideration of reasonable attorney's fees to be awarded to Rajan.

Jane Bland  
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.