

Opinion issued August 25, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00094-CV

GERALD A. WHITMIRE, M.D., CYNTHIA D. MCNEIL, M.D., WINNIE R. GELERA, R.N., AND MEMORIAL HERMANN HEALTH SYSTEM D/B/A MEMORIAL HERMANN SOUTHWEST HOSPITAL, Appellants

V.

TRINASHA FEATHERS, INDIVIDUALLY, ON BEHALF OF THE ESTATE OF E.B., DECEASED, AND AS NEXT FRIEND OF E.B., A MINOR, Appellee

**On Appeal from the 125th District Court
Harris County, Texas
Trial Court Case No. 2018-41615**

MEMORANDUM OPINION

In this interlocutory appeal,¹ appellants, Gerald A. Whitmire, M.D., Cynthia D. McNeil, M.D., Winnie R. Gelera, R.N., and Memorial Hermann Health System, doing business as Memorial Hermann Southwest Hospital (“Memorial Hermann”) (collectively, “appellants”), challenge the trial court’s orders overruling their objections and denying their motions to dismiss the health care liability claims² brought against them by appellee, Trinasha Feathers, individually, on behalf of the estate of E.B., deceased, and as next friend of E.B., a minor, in Feathers’ suit for negligence. In multiple issues, appellants contend that the trial court erred in overruling their objections and denying their motions to dismiss Feathers’ claims against them.³

We affirm.

Background

In her petition, Feathers alleges that from April 8, 2016 to July 2, 2016, she was pregnant with twins, E.B., deceased (“Twin A”), and E.B., a minor child (“Twin B”). During that time, Dr. Whitmire provided prenatal care to Feathers. Feathers had two prior pregnancies that were carried to full term. Between April 8, 2016 and July 2, 2016, Whitmire saw Feathers four times for prenatal care.

¹ See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9).

² See *id.* § 74.001(a)(13) (defining “[h]ealth care liability claim” (internal quotations omitted)).

³ See *id.* § 74.351(a) (governing expert reports).

On or about April 20, 2016, Feathers received an ultrasound, which showed that each twin was healthy without abnormalities and that the twins “sonographic fetal age range [was] approximately seventeen weeks and [five] days.” On or about June 24, 2016, Feathers saw Dr. Whitmire because she was experiencing abnormal vaginal discharge. Whitmire told Feathers that the discharge was normal, and he sent her home.

On or about June 29, 2016, after experiencing abdominal pain and with concerns about “persistent vaginal discharge,” Feathers went to Memorial Hermann where she was evaluated by Nurse Gelera and Dr. McNeil. According to Feathers, Nurse Gelera and Dr. McNeil were agents, employees, or ostensible agents of Memorial Hermann. While at Memorial Hermann, Feathers was told that she was “a bit dehydrated,” and she was given an injection of concentrated electrolytes. She was then sent home with directions to keep her next appointment with Dr. Whitmire.

On or about July 2, 2016, Feathers, at twenty-seven-weeks’ pregnant, arrived at Memorial Hermann’s emergency room, “stating that she was going into labor.” Within twelve minutes of arrival, Feathers began to deliver Twin A vaginally. Twin A was in a breeched position, and her head “remained trapped in the birth canal until the delivery doctor, Dr. Rachana Sutaria, arrived to fully deliver [her].” After being delivered, Twin A did not breathe or cry; she required resuscitation and was admitted into the neonatal intensive care unit (“NICU”). While being treated in the NICU,

Twin A was diagnosed with “Grade III-IV intraventricular hemorrhage and hydrocephalus.” Twin A was transferred to another hospital “to undergo a hydrocephalus shunt.” On or about August 9, 2016, “after no signs of improvement or response,” Twin A passed away.

Following Twin A’s delivery, Twin B was delivered by “a STAT C-section.” Twin B was also admitted into the NICU where she stayed for about two and a half months. Twin B was discharged on or about September 16, 2016.

Feathers brings health care liability claims against Dr. Whitmire, Dr. McNeil, and Nurse Gelera for negligence. Feathers alleges that Dr. Whitmire was negligent in:

- Failing to recognize and manage Feathers’ pregnancy with the twins as a high-risk pregnancy;
- Failing to recognize, diagnose, and treat Feathers’ preterm labor;
- Failing to diagnose Feathers as susceptible to premature rupture of membranes (“PROM”) after she presented with systemic signs of PROM;
- Failing to properly treat Feathers in order to prevent PROM;
- Failing to counsel Feathers regarding the impact of PROM and the potential risks and benefits of expectant management; and
- Failing to admit Feathers to a hospital after she presented with signs of preterm labor.

According to Feathers, Dr. Whitmire’s negligent acts and omissions directly and proximately caused her injuries and damages.

As to Dr. McNeil, Feathers alleges that she was negligent in:

- Failing to diagnose and treat Feathers' preterm labor;
- Failing to diagnose Feathers as susceptible to PROM after she presented with systematic signs of preterm labor;
- Failing to administer glucocorticoids during gestation to accelerate fetal lung maturity when Feathers presented with signs of preterm labor;
- Failing to properly treat Feathers in order to prevent PROM;
- Failing to admit Feathers after she presented with signs of preterm labor; and
- Prematurely discharging Feathers from Memorial Hermann.

According to Feathers, Dr. McNeil's negligent acts and omissions directly and proximately caused her injuries and damages.

As to Nurse Gelera, Feathers alleges that she was negligent in:

- Failing to identify Feathers' symptoms as risk factors for preterm labor;
- Failing to properly assess Feathers after she presented with systemic signs of preterm labor;
- Failing to properly treat Feathers in order to prevent PROM;
- Failing to follow proper policies and procedures in evaluating and assessing a patient with systemic signs of preterm labor; and
- Prematurely discharging Feathers from Memorial Hermann and failing to initiate the chained command to prevent Feathers from being discharged from Memorial Hermann.

According to Feathers, Nurse Gelera's negligent acts and omissions directly and proximately caused her injuries and damages.

Feathers also brings health care liability claims against Memorial Hermann for negligence. Regarding Feathers' direct-liability negligence claim against Memorial Hermann, Feathers alleges that it was negligent in:

- Failing to identify Feathers' symptoms as risk factors for preterm labor;
- Failing to diagnose Feathers as susceptible to PROM after she presented with systemic signs of preterm labor;
- Failing to properly treat Feathers in order to prevent PROM;
- Failing to admit Feathers after she presented with signs of preterm labor;
- Failing to have policies and procedures in place for properly diagnosing and treating a patient with systemic signs of preterm labor; and
- Failing to have proper policies and procedures in place for discharging a patient who presents with systemic signs of preterm labor.

According to Feathers, Memorial Hermann's negligent acts and omissions directly and proximately caused her injuries and damages. Feathers also alleges that Memorial Hermann is vicariously liable for the negligent acts and omissions of its actual and ostensible agents, employees, vice principals, borrowed servants, and limited partners. These, according to Feathers, include Nurse Gelera and Dr. McNeil.

As to damages, Feathers alleges that as a result of the above negligent acts and omissions by appellants, she, individually, suffered loss of companionship, past and future mental anguish, and future medical expenses related to the care and

treatment of Twin B. Feathers, on behalf of the estate of Twin A, suffered physical pain and mental anguish prior to death, death, reasonable and necessary medical expenses, and funeral and burial expenses. And Feathers, as next of friend of Twin B, suffered past and future physical pain and mental anguish, past and future disfigurement, past and future physical impairment, future medical expenses, and loss of future earning capacity.

To support her claims, Feathers timely served upon appellants a medical expert report authored by Michael L. Hall, M.D., FACOG.⁴ In his report, Dr. Hall states that he is a physician and a Board-Certified Obstetrician-Gynecologist. He is currently licensed to practice medicine in the State of Colorado. Dr. Hall received his medical degree from the University of Oregon Health Sciences Center in Portland, Oregon. He did a year internship in Obstetrics and Gynecology at St. Joseph Hospital in Denver, Colorado, and he completed his residency in Obstetrics and Gynecology there. He is certified by the American Board of Obstetrics and Gynecology, is a fellow of the American Board of Obstetrics and Gynecology, and is on the active staff of St. Joseph Hospital, Presbyterian-St. Luke's Hospital, and Rose Memorial Medical Center in Denver, Colorado. He has either served as, or is

⁴ Dr. Hall attached his curriculum vitae ("CV") to his expert report. His CV lists his "major clinical interests" as electronic fetal monitoring, high risk obstetrics, gynecologic surgery, ultrasonography in obstetrics, gynecology, and infertility, laparoscopic surgery, endometriosis, intrauterine septum, recurrent pregnancy loss, ruptured uterus, vaginal breech delivery, and ectopic pregnancy.

currently serving as, a Clinical Instructor with the Department of Obstetrics and Gynecology at St. Joseph Hospital, a Clinical Instructor and Consultant with the Department of Family Practice at St. Anthony Central Hospital in Denver, Colorado, a Clinical Instructor and Consultant with the Department of Family Practice at Swedish Medical Center in Englewood, Colorado, a Clinical Instructor in the Department of Obstetrics and Gynecology at the University of Colorado Health Sciences Center School of Medicine, and an Assistant Clinical Professor in the Department of Family Medicine at the University of Colorado Health Sciences Center School of Medicine. He is a member of the Denver Medical Society, the Colorado Medical Society, the Central Association of Obstetrics and Gynecology, the American Institute of Ultrasound in Medicine, the Colorado Obstetrics and Gynecology Society, and the American Medical Society.

Dr. Hall states that he currently practices medicine and was practicing medicine when Feathers' claims arose. As part of his medical practice, he has been involved in, and is currently involved in, the diagnosis, care, and treatment of pregnant patients with twin pregnancies, i.e., patients with a condition that is the same or similar to that experienced by Feathers. He also has been involved in, or is currently involved in, the diagnosis, care, and treatment of patients during labor and delivery with the same condition as, or like, the preterm labor and delivery experienced by Feathers and the resulting neurological injuries suffered by the twins.

Dr. Hall states that he is familiar with the evaluation, diagnosis, care, and treatment of pregnant patients experiencing a regular delivery and those patients who are at risk for a difficult delivery and high-risk delivery, as well as pregnancies involving preterm labor, premature birth, and twins. His training as an obstetrician is similar to the obstetric training that Dr. Whitmire and Dr. McNeil received. Before forming his opinions related to Feathers, Dr Hall reviewed Feathers' prenatal records from Dr. Whitmire and the medical records from Memorial Hermann.

In his report, Dr. Hall states that Feathers, a twenty-five-year-old female, had two prior pregnancies and two live births before she became pregnant with the twins. Feathers' estimated due date for the twins was September 28, 2016. On April 8, 2016, Feathers began seeing Dr. Whitmire for prenatal care. On April 20, 2016, she received a first trimester ultrasound, which identified a "twin pregnancy." At the time, Twin A was in a cephalic presentation with the placenta anterior, while Twin B was in a breech position with placenta being posterior. There was no evidence of placenta previa or abruption related to either twin.

While pregnant, Feathers saw Dr. Whitmire every four weeks. On June 7, 2016, she had a second trimester ultrasound. The ultrasound showed that her cervix was 3.8 centimeters in length and closed. There were two placentas without previa; Twin A had an anterior placenta with normal cord origin and Twin B had a posterior fundal placenta with normal cord origin. Feathers saw Dr. Whitmire for

an appointment on June 24, 2016 when she was twenty-six weeks' pregnant. Dr. Whitmire told her to return for an appointment in three weeks.

On June 29, 2016, Feathers, at twenty-seven-weeks' pregnant, arrived at Memorial Hermann complaining of "mucousy discharge" over the past five days and abdominal pain, which had begun about three hours before she arrived at the hospital. Nurse Gelera first saw Feathers and noted that Feathers described her abdominal pain as "cramping" and sharp, with a pain level of four out of ten. Feathers also reported a history of constipation and diarrhea over the previous day and that she had been experiencing mild-intensity contractions. An external fetal monitor was placed on her.

Dr. McNeil then examined Feathers. She noted that Feathers was not having contractions, pelvic pain, vaginal bleeding or leakage of fluid, but Feathers had been having "a mucoid vaginal discharge for [the past five] days." Dr. McNeil performed a speculum examination and did not find that Feathers was dilated or effaced. A specimen of the "white mucousy discharge was sent for a wet prep and a clean catch urine specimen was obtained." The "wet prep was negative," and the urinalysis showed some bacteria and white blood cells. The external fetal monitor showed uterine irritability. At the time, Twin A's fetal heartrate ranged from 150-160 beats per minute and Twin B's fetal heartrate was 140 beats per minute. When Twin B experienced a prolonged deceleration of fetal heartrate, Feathers was placed on her

left side and given intravenous fluids. Dr. McNeil called Dr. Whitmire, who stated that he would see Feathers in his office for her regular appointment on July 15, 2016. After less than two hours at Memorial Hermann, Feathers was discharged with instructions to follow up with Dr. Whitmire at her regular appointment on July 15, 2016.

On July 2, 2016, Feathers arrived at Memorial Hermann's emergency room in active labor. Upon arrival, she complained that "the babies were about to be delivered." Feathers had "bright red vaginal bleeding with heavy drainage with a foul odor," and the amniotic sac was protruding from her vagina. When the amniotic sac ruptured, it showed Twin A being delivered in a breech position. Dr. Sutaria, an obstetrician, arrived in the emergency room and found Twin A in a breech presentation, with her head stuck in Feathers' cervix. After five minutes, Twin A was delivered; she had a heartrate of less than 100 beats per minute, without respirations, was limp and blue, and had a weak cry. Twin A was transferred to the NICU, where she began having seizures. She was diagnosed with grade IV intraventricular hemorrhage on the left side of her brain and grade II intraventricular hemorrhage on the right side of her brain with post-hemorrhagic hydrocephalus.

Following Twin A's birth, an ultrasound was performed and "the decision was made to deliver [Twin B] vaginally." But the placenta for Twin A had not been delivered vaginally and bleeding from the placenta persisted. When Twin B's fetal

heartrate fell, an emergency-cesarean-section delivery was performed. Twin B was delivered by a cesarean section with a heartrate of less than 100 beats per minute, without respirations, and with limp muscle tone and blue coloration.

After their births, Twin A remained hospitalized for months, with ongoing neurological injuries that required continued medical care. Twin B also remained hospitalized for several months, but she did not have “the same neurological injuries” as Twin A.

In regard to preterm labor generally, Dr. Hall, in his report, states that preterm labor occurs when a patient begins to go into labor before she is thirty-seven-weeks’ pregnant. There are several known risk factors for preterm labor, including a multiple gestation pregnancy. Symptoms of preterm labor include increased vaginal discharge, abdominal cramps that may occur with or without diarrhea, pelvic pressure, backache, usually in the lower back, contractions, and vaginal bleeding or spotting. Several medical interventions can be used to stop preterm labor, including giving a patient medications to stop contractions and to relax the uterus, providing medications to speed up the development of the babies’ lungs and organs, giving the patient intravenous fluids, giving the patient antibiotics, and admitting the patient to the hospital and placing her on bedrest.

According to Dr. Hall, when Feathers arrived at Memorial Hermann on June 29, 2016, she complained of uterine contractions, “cramping pain,” and increased

vaginal discharge. She also reported abdominal pain with diarrhea. As noted by Dr. Hall, uterine contractions, cramping, abdominal pain with diarrhea, and increased vaginal discharge are all symptoms of preterm labor. Although Feathers' cervix was not dilated or effaced at the time, the constellation of Feathers' other symptoms together with her elevated risk for preterm labor should have resulted in serial examinations of Feathers over several hours and a diagnosis of preterm labor.

As to the standard of care, breach of the standard of care, and causation related to Dr. Whitmire, Dr. Hall explains that “[t]he standard of care required . . . [Dr.] Whitmire to recognize that . . . Feathers [had an] increased risk of preterm labor due to her twin pregnancy,” to recognize the symptoms of preterm labor, to have Feathers admitted to Memorial Hermann, and to come to the hospital to examine her. Thus, when Dr. McNeil called Dr. Whitmire to tell him that Feathers had arrived at Memorial Hermann on June 29, 2016 with “increased vaginal discharge, abdominal pain with diarrhea[,] and uterine irritability,” Dr. Whitmire should have recognized the symptoms as consistent with preterm labor and ordered that Feathers be admitted to Memorial Hermann for observation. Because Dr. Whitmire did not recognize Feathers' symptoms as consistent with preterm labor, did not order Feathers admitted to Memorial Hermann, and did not come to the hospital to examine her, he breached the applicable standard of care.

According to Dr. Hall, if Dr. Whitmire had acted within the standard of care, an ultrasound would have been ordered which would have further identified any cervical changes that would have indicated that Feathers was in preterm labor. And Feathers' preterm labor would have been diagnosed and treated. Still yet, after receiving a diagnosis of preterm labor, Feathers would have been given medications to stop her contractions and to relax her uterus. Feathers also would have been given steroids to mature the twins' fetal lungs and organs, which would have improved their health if they were delivered prematurely. Had Dr. Whitmire acted within the standard of care, in reasonable medical probability, Feathers' pregnancy would have been extended, the twins would not have been born at twenty-seven-weeks' gestation, and they would not have suffered neurological injuries.

As to the standard of care, breach of the standard of care, and causation related to Dr. McNeil, Dr. Hall states:

The standard of care required Dr. McNeil . . . to recognize that . . . Feathers was in early preterm labor. Rather than discharge her in less than two hours [after she arrived at Memorial Hermann], the standard of care required that Dr. McNeil admit . . . Feathers [to Memorial Hermann] for observation. The standard of care further required that Dr. McNeil order an ultrasound to further assess cervical changes [in Feathers] before discharging . . . Feathers without any instructions regarding preterm labor.

By not recognizing the symptoms of early preterm labor in Feathers, not admitting Feathers to Memorial Hermann, not monitoring Feathers over a period of several hours, not obtaining an ultrasound for Feathers, a patient who was at risk for preterm

labor and who presented at the hospital with symptoms consistent with preterm labor, and discharging Feathers without instructions regarding preterm labor, Dr. McNeil breached the standard of care.

According to Dr. Hall, if the standard of care had been met by Dr. McNeil and Feathers had been admitted to Memorial Hermann, Feathers would have undergone additional diagnostics and serial examinations over several hours, which would have identified cervical changes, and in reasonable medical probability, her preterm labor would have been diagnosed. A diagnosis of preterm labor would have led to medical interventions, such as medications to stop her contractions and to relax her uterus. She also would have been given steroids to mature the twins' fetal lungs and organs to improve their health in case they were delivered prematurely. The medical interventions would have stopped Feathers' preterm labor and prevented her from delivering the twins at twenty-seven-weeks' gestation. The failure to admit Feathers to Memorial Hermann caused her preterm labor to go undiagnosed until it progressed to a premature delivery of the twins on July 2, 2016 and resulted in neurological injuries to the twins.

As to the standard of care, breach of the standard of care, and causation related to Nurse Gelera, Dr. Hall states that the standard of care required Nurse Gelera to recognize the symptoms of preterm labor in Feathers, recognize that Feathers was in early preterm labor, and monitor Feathers over a period of hours before she was

discharged. Nurse Gelera breached the applicable standard of care by failing to recognize the symptoms of preterm labor that Feathers was exhibiting on June 29, 2016, failing to recognize that Feathers was in preterm labor, and failing to monitor Feathers over a period of hours before she was discharged. Instead, Feathers was discharged from Memorial Hermann and her preterm labor went undiagnosed and untreated. As a result, Feathers' preterm labor persisted until it progressed and ended in the delivery of the twins at twenty-seven-weeks' gestation. According to Dr. Hall, if the standard of care had been met, Feathers would have been admitted to Memorial Hermann, she would have undergone additional diagnostics, and she would have had serial examinations over several hours, which, in reasonable medical probability, would have identified cervical changes and resulted in a diagnosis of preterm labor. A diagnosis of preterm labor, in reasonable medical probability, would have led to medical interventions⁵ which would have relaxed Feathers' uterus, stopped her preterm labor, and prevented her from delivering the twins at twenty-seven-weeks' gestation. And had the twins not been delivered at twenty-seven-weeks' gestation,

⁵ In his report, Dr. Hall cites various medical interventions that could have been used to stop Feathers' preterm labor, such as giving her medications to stop her contractions and to relax her uterus, providing medications to speed up the development of the twins' lungs and organs, giving Feathers intravenous fluids, giving Feathers antibiotics, and admitting Feathers to the hospital and placing her on bedrest.

they, in reasonable medical probability, would not have developed severe neurological injuries often seen in infants born prematurely.

Dr. Whitmire objected to Dr. Hall's expert report on several grounds and requested that Feathers' health care liability claim against him be dismissed. Dr. Whitmire asserted that Dr. Hall's report fails to establish causation by explaining how the alleged negligence of Dr. Whitmire, in failing to order that Feathers be admitted to Memorial Hermann on June 29, 2016, was "a substantial factor in causing the twins' premature birth and injuries and without which the harm would not have occurred" or the outcome "would have changed." Instead, Dr. Hall "offers the conclusory opinion," based on speculation and supposition, that if Dr. Whitmire "had ordered . . . Feathers admitted to the hospital on [June 29, 2016], . . . Feathers would not have presented to the hospital three days later[,] on [July 2, 2016,] in active labor and delivered [the] twins prematurely." According to Dr. Whitmire, Dr. Hall has "no way to know whether premature labor could have been successfully prevented, if the twins would have been born anyways at [twenty-seven-weeks' gestation] or [at] another premature date, or what the condition of the twins would have been."

Dr. Whitmire also asserted that Dr. Hall is not qualified to opine on the causation of the twins' neurological injuries because Dr. Hall is an obstetrician

gynecologist and nothing in his expert report or in his attached CV indicates that he has expertise in the areas of neurology or neonatology.

Dr. McNeil also objected to Dr. Hall's expert report on several grounds and requested that Feathers' health care liability claim against her be dismissed. Dr. McNeil asserted that Dr. Hall, in his report, "fails to provide a reasoned basis for his standard of care opinions as to Dr. McNeil," which renders his opinion conclusory. Also, his opinions on standard of care and breach of the standard of care are intentionally vague.

Dr. McNeil further asserted that Dr. Hall's opinion "of a causal link between the breach of the standard of care and damages is . . . speculative and conclusory." Although Dr. Hall states that Feathers should have been admitted to Memorial Hermann for observation on June 29, 2016, he fails to explain how and why he knows that Feathers' preterm labor would have been diagnosed had she been admitted. Dr. Hall does not explain for how long Feathers should have been observed and how this observation would have led to a diagnosis of preterm labor. Instead, Dr. Hall speculates that upon being admitted and diagnosed with preterm labor, Feathers would have received medications to stop her contractions and to relax her uterus. He fails to state what those medications would have been or what the likelihood is of the medications preventing Feathers' premature delivery of the twins on July 2, 2016. And Dr. Hall does not state what Dr. McNeil could have done to

prevent Feathers' preterm labor or premature delivery of the twins. He "fails to explain how and why any alleged breach of the standard of care by Dr. McNeil would have led to a different outcome" for Feathers' pregnancy or for the twins.

Dr. McNeil also asserted that Dr. Hall is not qualified to opine on the causation of the twins' neurological injuries because he is an obstetrician gynecologist and his expert report and CV do not show that he has expertise in the areas of neurology or neonatology.

Nurse Gelera and Memorial Hermann objected to Dr. Hall's expert report on several grounds and requested that Feathers' health care liability claims against them be dismissed. They asserted that Dr. Hall's expert report does not address any standard of care or breach of a standard of care related to Feathers' direct-liability claim against Memorial Hermann. As to Nurse Gelera, Dr. Hall's expert report is vague and lacks specific information about the standard of care and breach of the standard of care attributed to Nurse Gelera. The report also does not inform Nurse Gelera or Memorial Hermann of the specific care that was expected of Nurse Gelera in response to Dr. Whitmire's decision to only see Feathers "on an outpatient basis" or Dr. McNeil's decision to discharge Feathers from Memorial Hermann on June 29, 2016.

Nurse Gelera and Memorial Hermann also asserted that Dr. Hall's opinion on causation in his report related to Nurse Gelera and Feathers' direct- and

vicarious-liability claims against Memorial Hermann, is conclusory and speculative and does not establish “the how and the why,” by sufficiently linking any alleged negligent conduct by Nurse Gelera and Memorial Hermann to the delay in the diagnosis and treatment of Feathers’ preterm labor. Dr. Hall offers no explanation with factual support to establish that it would have been foreseeable to Nurse Gelera or Memorial Hermann that Nurse Gelera’s alleged breaches of the standard of care would have resulted in the failures of Dr. Whitmire and Dr. McNeil to diagnose Feathers’ preterm labor, Dr. McNeil’s ordering that Feathers be discharged from Memorial Hermann, or the twins’ neurological injuries. The expert report also does not address cause-in-fact and does not demonstrate an act or omission by Nurse Gelera or Memorial Hermann that was a substantial factor in the outcome. Dr. Hall assumes that some unspecified action or communication from Nurse Gelera “permitted or facilitated Dr. Whitmire’s and Dr. McNeil’s medical judgment with regard to diagnosis, treatment, and [Feathers’] discharge.” Dr. Hall also fails to explain how and why some unspecified action by Nurse Gelera or Memorial Hermann would have changed the medical judgment of Dr. Whitmire or Dr. McNeil and resulted in a diagnosis and treatment of preterm labor, a doctor’s order for Feathers to be admitted to Memorial Hermann, or the avoidance of the twins’ neurological injuries.

After Feathers filed responses to appellants' objections and motions to dismiss,⁶ the trial court, in multiple orders, overruled appellants' objections to Dr. Hall's expert report and denied appellants' motions to dismiss Feathers' health care liability claims against them.

Standard of Review

We review a trial court's decision on a motion to dismiss a health care liability claim for an abuse of discretion. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 875 (Tex. 2001); *Gray v. CHCA Bayshore L.P.*, 189 S.W.3d 855, 858 (Tex. App.—Houston [1st Dist.] 2006, no pet.). We apply the same standard to a trial court's determination that an expert is qualified. *See Broders v. Heise*, 924 S.W.2d 148, 151–52 (Tex. 1996); *San Jacinto Methodist Hosp. v. Bennett*, 256 S.W.3d 806, 811 (Tex. App.—Houston [14th Dist.] 2008, no pet.). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to guiding rules or principles. *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010). When reviewing matters committed to a trial court's discretion, we may not substitute our own judgment for that of the trial court. *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002). A trial court does not abuse its discretion merely because it decides a discretionary matter differently than an

⁶ Dr. McNeil filed a reply to Feathers' response to her objections and motion to dismiss.

appellate court would in a similar circumstance. *Harris Cty. Hosp. Dist. v. Garrett*, 232 S.W.3d 170, 176 (Tex. App.—Houston [1st Dist.] 2007, no pet.). However, a trial court has no discretion in determining what the law is or in applying the law to the facts. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992). In conducting our review, we always bear in mind that the Legislature’s goal in requiring expert reports was to deter baseless claims, not block earnest ones. *Jackson v. Kindred Hosps. Ltd. P’ship*, 565 S.W.3d 75, 81 (Tex. App.—Fort Worth 2018, pet. denied); *Gonzalez v. Padilla*, 485 S.W.3d 236, 242 (Tex. App.—El Paso 2016, no pet.); *see also Scoresby v. Santillan*, 346 S.W.3d 546, 554 (Tex. 2011) (“The purpose of the expert report requirement is to deter frivolous claims, not to dispose of claims regardless of their merits.”).

Sufficiency of Expert Report

In his first and second issues, Dr. Whitmire argues that the trial court erred in overruling his objections to Dr. Hall’s expert report and denying his motion to dismiss Feathers’ health care liability claim against him because Dr. Hall “is not qualified to render an expert opinion on the issue of causation of the [twins’] neurologic[al] injuries” and the expert report does not adequately address causation related to Dr. Whitmire.

In her first and second issues, Dr. McNeil argues that the trial court erred in overruling her objections to Dr. Hall’s expert report and denying her motion to

dismiss Feathers' health care liability claim against her because Dr. Hall "is [not] [q]ualified to [p]rovide [an] [o]pinion[] on the [c]ause of the [twins'] . . . [u]ltimate [i]njuries" and the expert report does not adequately address the standard of care, breach of the standard of care, and causation related to Dr. McNeil.

In her sole issue, Nurse Gelera argues that the trial court erred in overruling her objections to Dr. Hall's expert report and in denying her motion to dismiss Feathers' health care liability claim against her because the expert report does not adequately address the standard of care, breach of the standard of care, and causation related to Nurse Gelera.

In its sole issue, Memorial Hermann argues that the trial court erred in overruling its objections to Dr. Hall's expert report and in denying its motion to dismiss Feathers' health care liability claims against it because the expert report does not adequately address the standard of care, breach of the standard of care, and causation related to Memorial Hermann.

Under the Texas Medical Liability Act ("TMLA"), a plaintiff asserting health care liability claims must timely serve each defendant physician and health care provider⁷ with at least one expert report, with a CV for the expert whose opinion is

⁷ *See id.* § 74.001(a)(12)(A) ("Health care provider" means "any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including: . . . a registered nurse [and] a health care institution" (internal quotations omitted));

offered, to substantiate the merits of the plaintiff’s claims. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a), (i); *see also Mangin v. Wendt*, 480 S.W.3d 701, 705 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The expert report must provide a “fair summary” of the expert’s opinions regarding (1) the applicable standard of care, (2) the manner in which the care rendered by the defendant physician or health care provider failed to meet the standard of care, and (3) the causal relationship between that failure and the injury, harm, or damages claimed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *see also Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 630 (Tex. 2013). A “fair summary” of the expert’s opinions means that, at the least, the report must state more than the expert’s mere conclusions as to the standard of care, breach, and causation; it must instead explain the basis of the expert’s opinion so as to link the conclusions to the facts of the case. *See Jelinek*, 328 S.W.3d at 539; *Wright*, 79 S.W.3d at 52.

If a plaintiff fails to timely serve an expert report, then on the motion of a defendant physician or health care provider, the trial court must dismiss the pertinent health care liability claim with prejudice and award attorney’s fees. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b); *Baty v. Futrell*, 543 S.W.3d 689, 692 (Tex. 2018). But if a plaintiff timely serves an expert report and a defendant physician or health

see also id. § 74.001(a)(11)(G) (“Health care institution” includes “hospital” (internal quotations omitted)).

care provider files a motion challenging the adequacy of that report, then the trial court may only grant the motion “if it appears to the court, after [a] hearing, that the report does not represent an objective good faith effort to comply with the [TMLA’s] definition of an expert report.” TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(l); *Baty*, 543 S.W.3d at 692–93 (internal quotations omitted); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6) (“Expert report” means “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.” (internal quotations omitted)).

An expert report qualifies as an “objective good faith effort” to avoid dismissal if it discusses each element with sufficient specificity so that it (1) informs the defendant physician or health care provider of the specific conduct that the plaintiff questions or about which the plaintiff complains and (2) provides a basis for the trial court to conclude that the plaintiff’s health care liability claim has merit. *Miller v. JSC Lake Highlands Operations, LP*, 536 S.W.3d 510, 513 (Tex. 2017) (internal quotations omitted); *see also Baty*, 543 S.W.3d at 693–94. The expert report is not required to use any particular words, and it may be informal, “but bare conclusions will not suffice.” *Scoresby*, 346 S.W.3d at 555–56.

In determining whether an expert report constitutes an “objective good faith effort” to address each element, “a trial court may not draw inferences; instead, it must exclusively rely upon the information contained within the four corners of the report.” *Puppala v. Perry*, 564 S.W.3d 190, 197 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (internal quotations omitted). And when the issue of adequacy hinges on an expert’s qualifications, the trial court may also consider the “four corners” of the expert’s CV. *Id.*; *see also Mangin*, 480 S.W.3d at 706. Courts must view the report in its entirety, rather than isolating specific portions or sections, to determine whether it is sufficient. *See Baty*, 543 S.W.3d at 694; *Van Ness v. ETMC First Physicians*, 461 S.W.3d 140, 144 (Tex. 2015); *see also Austin Heart, P.A. v. Webb*, 228 S.W.3d 276, 282 (Tex. App.—Austin 2007, no pet.) (“The form of the report and the location of the information in the report are not dispositive.”). In reviewing the adequacy of an expert report, a trial court may not consider an expert’s credibility, the data relied upon by the expert, or the documents that the expert failed to consider at this pre-discovery stage of the litigation. *See Gonzalez*, 485 S.W.3d at 245; *Mettauer v. Noble*, 326 S.W.3d 685, 691 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

A. Qualifications of Dr. Hall

In both of their second issues, Dr. Whitmire and Dr. McNeil argue that the trial court erred in overruling their objections to Dr. Hall’s expert report and denying

their motions to dismiss Feathers' health care liability claims against them because Dr. Hall is not qualified to render an expert opinion on the issue of causation of the twins' neurological injuries.

An expert report by a person not qualified to testify does not constitute a good-faith effort to comply with the TMLA's definition of an expert report and warrants dismissal. *See Mettaufer*, 326 S.W.3d at 693; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(l), (r)(6). Whether an expert witness is qualified to offer an expert opinion lies within the sound discretion of the trial court. *Cornejo v. Hilgers*, 446 S.W.3d 113, 121 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). The expert's qualifications must appear within the four corners of the expert report or in the expert's accompanying CV. *Puppala*, 564 S.W.3d at 202; *see also Cornejo*, 446 S.W.3d at 121.

To be qualified to opine on the causal relationship between a defendant physician's alleged failure to meet an applicable standard of care and the plaintiff's claimed injury, harm, or damages, the author of an expert report must be a physician who is qualified to render opinions on such causal relationships under the Texas Rules of Evidence. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.403(a); *see id.* § 74.351(r)(5)(C) ("Expert" means "with respect to a person giving opinion testimony about the causal relationship between the injury, harm, or damages claimed and the alleged departure from the applicable standard of care in any health

care liability claim, a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence.” (internal quotations omitted)); *Cornejo*, 446 S.W.3d at 120.

An expert witness may be qualified on the basis of knowledge, skill, experience, training, or education to testify on scientific, technical, or other specialized subjects if the testimony would “assist the trier of fact” in understanding the evidence or determining a fact issue. *Cornejo*, 446 S.W.3d at 121 (internal quotations omitted); *see* TEX. R. EVID. 702. Thus, a plaintiff must show that her expert has “knowledge, skill, experience, training, or education” regarding the specific issue before the court that would qualify the expert to give an opinion on that particular subject. *Broders*, 924 S.W.2d at 153–54 (internal quotations omitted); *Cornejo*, 446 S.W.3d at 121.

Not every licensed physician is qualified to testify on every medical question. *Broders*, 942 S.W.2d at 152–53; *Cornejo*, 446 S.W.3d at 121. Yet, a physician need not practice in the particular field about which he is testifying so long as he can demonstrate that he has knowledge, skill, experience, training, or education regarding the specific issue before the court that would qualify him to give an opinion on that subject. *Cornejo*, 446 S.W.3d at 121. In other words, what is required is that the physician demonstrate that he is qualified to opine on the specific issue before the court. *Puppala*, 564 S.W.3d at 202.

Dr. Whitmire and Dr. McNeil argue that “Dr. Hall is not qualified to render an expert opinion on the issue of causation of the [twins’] neurologic[al] injuries” because he does not have “expertise with the specific neurological injuries allegedly suffered” by the twins and is not “a pediatric neurologist, neurosurgeon, or pediatrician.”

In his report, Dr. Hall states that he is a physician and a Board-Certified Obstetrician-Gynecologist. He is currently licensed to practice medicine in the State of Colorado. Dr. Hall received his medical degree from the University of Oregon Health Sciences Center in Portland. He did a year internship in Obstetrics and Gynecology at St. Joseph Hospital in Denver, and he completed his residency in Obstetrics and Gynecology there. He is certified by the American Board of Obstetrics and Gynecology, is a fellow of the American Board of Obstetrics and Gynecology, and is on the active staff of St. Joseph Hospital, Presbyterian-St. Luke’s Hospital, and Rose Memorial Medical Center in Denver. He has either served as, or is currently serving as, a Clinical Instructor with the Department of Obstetrics and Gynecology at St. Joseph Hospital, a Clinical Instructor and Consultant with the Department of Family Practice at St. Anthony Central Hospital in Denver, a Clinical Instructor and Consultant with the Department of Family Practice at Swedish Medical Center in Englewood, a Clinical Instructor in the Department of Obstetrics and Gynecology at the University of Colorado Health Sciences Center School of

Medicine, and an Assistant Clinical Professor in the Department of Family Medicine at the University of Colorado Health Sciences Center School of Medicine. He is a member of the Denver Medical Society, the Colorado Medical Society, the Central Association of Obstetrics and Gynecology, the American Institute of Ultrasound in Medicine, the Colorado Obstetrics and Gynecology Society, and the American Medical Society. His “major clinical interests” include electronic fetal monitoring, high risk obstetrics, gynecologic surgery, ultrasonography in obstetrics, gynecology, and infertility, recurrent pregnancy loss, ruptured uterus, and vaginal breech delivery.

Dr. Hall currently practices medicine and was practicing medicine when Feathers’ claims arose. As part of his medical practice, he has been involved in, and is currently involved in, the diagnosis, care, and treatment of pregnant patients with twin pregnancies, i.e., patients with a condition that is the same or similar to that experienced by Feathers. He also has been involved in, or is currently involved in, the diagnosis, care, and treatment of patients during labor and delivery with the same condition as, or like, the preterm labor and delivery experienced by Feathers and the resulting neurological injuries suffered by the twins. Dr. Hall is familiar with the evaluation, diagnosis, care, and treatment of pregnant patients experiencing a regular delivery and those patients who are at risk for a difficult delivery and high-risk delivery, as well as pregnancies involving preterm labor, premature birth, and twins.

His training as an obstetrician is similar to the obstetric training that Dr. Whitmire and Dr. McNeil received.

This case is not unlike others where courts have been asked to review whether a practicing obstetrician and gynecologist is qualified to opine on the causal relationship between an infant's neurological injury and complications that arose during pregnancy, labor, or delivery. *See, e.g., Rouhani v. Morgan*, No. 01-16-00957-CV, 2017 WL 3526719, at *6–8 (Tex. App.—Houston [1st Dist.] Aug. 17, 2017, no pet.) (mem. op.); *Cornejo*, 446 S.W.3d at 120–23 (addressing whether Dr. Hall was qualified to address issue of causation between infant's neurological issues and defendant physician's failure to recognize pregnancy complications and take appropriate actions); *see also Abilene Reg'l Med. Ctr. v. Allen*, 387 S.W.3d 914, 922–23 (Tex. App.—Eastland 2012, pet. denied) (expert obstetrician and gynecologist qualified “to offer his opinion on the causal relationship between labor and delivery and the complications that stem from labor and delivery, including a newborn's neurological injuries”); *Livingston v. Montgomery*, 279 S.W.3d 868, 873–77 (Tex. App.—Dallas 2009, no pet.) (addressing whether expert obstetrician and gynecologist qualified to opine on causation of neurological injuries or conditions, including pediatric neurological injuries).

Like the expert witnesses in those other cases, Dr. Hall is board certified in obstetrics and gynecology, licensed to practice medicine, affiliated with several

hospitals, and has experience educating and supervising physicians in training. *See Rouhani*, 2017 WL 35626719, at *7. Dr. Hall has been involved in, and is currently involved in, diagnosing, caring for, and treating pregnant patients with twin pregnancies, i.e., patients with a condition that is the same or similar to that experienced by Feathers. He also has been involved in, or is currently involved in, diagnosing, caring for, and treating patients during labor and delivery with the same condition as, or like, the preterm labor and delivery experienced by Feathers and the resulting neurological injuries suffered by the twins. Dr. Hall is familiar with the evaluation, diagnosis, care, and treatment of pregnant patients experiencing a regular delivery and those patients who are at risk for a difficult delivery and high-risk delivery, as well as pregnancies involving preterm labor, premature birth, and twins. *See id.* His “major clinical interests” include high risk obstetrics and vaginal breech delivery.

The law does not require Dr. Hall to be a “pediatric neurologist, neurosurgeon, or pediatrician” before he can opine on causation. *See Cornejo*, 446 S.W.3d at 123 (“The law does not require [Dr. Hall] to be certified in neonatology, pediatric neurology, or maternal-fetal medicine or treat newborns to be qualified to so opine.” (internal quotations omitted)); *see also Broders*, 924 S.W.2d at 153 (rejecting notion “only a neurosurgeon can testify about the cause in fact of death from an injury to the brain”); *Monga v. Perez*, No. 14-16-00961-CV, 2018 WL 505263, at *9 (Tex.

App.—Houston [14th Dist.] Jan. 23, 2018, pet. denied) (mem. op.) (“There is no per se requirement that an expert be a pediatric neurologist to opine on causes of fetal brain injury occurring during labor and delivery.” (emphasis omitted)); *Livingston*, 279 S.W.3d at 874 (physicians who are not neurologists may still be qualified to testify as to cause of neurological injuries); *Keo v. Vu*, 76 S.W.3d 725, 732 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (“Courts of appeals have also recognized that an expert witness need not be a specialist in the particular branch of the medical profession for which the testimony is offered.”). And the causation issue here relates to the defendant physicians’ and health care providers’ failures to recognize, diagnose, and treat Feathers’ preterm labor as well as their failure to take appropriate actions and the claimed injury, harm, or damages. *See Livingston*, 279 S.W.3d at 877 (“[Doctor was] an expert in managing labor and delivery, and his expertise qualifie[d] him to opine on the causal relationship between labor and delivery and the complications that stem from labor and delivery, including a newborn’s neurological injuries.”); *see also Rouhani*, 2017 WL 3526719, at *6–7. Dr. Hall’s knowledge, skill, experience, training, and education qualify him to opine on the causal relationship between Feathers’ undiagnosed and untreated preterm labor and the resulting complications, including the twins’ neurological injuries. *See Monga*, 2018 WL 505263, at *9–10 (expert’s experience dealing with all aspects of

labor and delivery qualified him to opine on complications that can occur during deliveries, including birth injuries).

We hold that the trial court did not err in overruling Dr. Whitmire's and Dr. McNeil's objections and in denying their motions to dismiss Feathers' health care liability claims against them on the ground that Dr. Hall is not qualified to render an opinion related to causation.

We overrule Dr. Whitmire's and Dr. McNeil's second issues.

B. Standard of Care and Breach Related to Dr. McNeil

In a portion of her first issue, Dr. McNeil argues that the trial court erred in overruling her objections to Dr. Hall's expert report and denying her motion to dismiss Feathers' health care liability claim against her because Dr. Hall's report does not adequately address the standard of care and breach of the standard of care as to her. Dr. McNeil asserts that Dr. Hall's opinions are vague and conclusory.

As stated above, an expert report must provide a "fair summary" of the expert's opinions regarding (1) the applicable standard of care, (2) the manner in which the care rendered by the defendant physician failed to meet the standard of care, and (3) the causal relationship between that failure and the injury, harm, or damages claimed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *see also Potts*, 392 S.W.3d at 630.

Identifying the standard of care in a health care liability claim is critical. *Palacios*, 46 S.W.3d at 880. To adequately identify the standard of care, an expert report must set forth “specific information about what the defendant should have done differently.” *Abshire v. Christus Health Se. Tex.*, 563 S.W.3d 219, 226 (Tex. 2018) (internal quotations omitted). Thus, related to standard of care and breach, the expert report must explain what the defendant physician should have done under the circumstances and what the physician did instead. *Palacios*, 46 S.W.3d at 880; *see also Kline v. Leonard*, No. 01-19-00323-CV, 2019 WL 6904720, at *7 (Tex. App.—Houston [1st Dist.] Dec. 19, 2019, pet. denied) (mem. op.) (“[A]n expert report must provide a fair summary of the expert’s opinion regarding the applicable standard of care and the manner in which the care rendered by the health care provider failed to meet the standard.” (internal quotations omitted)). It is not sufficient for the expert to simply state that he knows the standard of care and concludes that it was or was not met. *Palacios*, 46 S.W.3d at 880.

As to the applicable standard of care related to Dr. McNeil, Dr. Hall states in his expert report that the standard of care required Dr. McNeil to recognize that Feathers was in early preterm labor on June 29, 2016. It also required Dr. McNeil to admit Feathers to the hospital for observation rather than discharging her in less than two hours of her arrival at the hospital. And the standard of care required Dr.

McNeil to order an ultrasound to further assess any cervical changes before discharging Feathers without any instructions regarding preterm labor.

As to breach of the applicable standard of care, Dr. Hall explains that when Feathers arrived at Memorial Hermann on June 29, 2016, she complained of uterine contractions, “cramping pain,” and increased vaginal discharge. She also reported abdominal pain with diarrhea. Uterine contractions, cramping, abdominal pain with diarrhea, and increased vaginal discharge are all symptoms of preterm labor. Although Feathers’ cervix was not dilated or effaced at the time, the constellation of Feathers’ other symptoms together with her elevated risk for preterm labor, required serial examinations over several hours and a diagnosis of preterm labor. Thus, by not recognizing the symptoms of early preterm labor in Feathers, not admitting Feathers to Memorial Hermann, not monitoring Feathers over a period of several hours, not obtaining an ultrasound for Feathers, a patient who was at risk for preterm labor and who presented at the hospital with symptoms consistent with preterm labor, and discharging Feathers without instructions regarding preterm labor, Dr. McNeil breached the standard of care. *See Baty*, 543 S.W.3d at 694 (courts must view report in its entirety, rather than isolating specific portions or sections, to determine whether it is sufficient); *Webb*, 228 S.W.3d at 282 (“The form of the report and the location of the information in the report are not dispositive.”).

Dr. Hall’s statements about the applicable standard of care and breach of that standard are not vague or conclusory. Rather, the expert report identifies the specific actions that should have been taken by Dr. McNeil but were not. *See Abshire*, 563 S.W.3d at 226–27; *see also Baty*, 543 S.W.3d at 695 (report not conclusory where it did not require one to infer what physician defendant should have done differently); *Keepers v. Blessett*, No. 01-18-01020-CV, 2019 WL 1523368, at *5 (Tex. App.—Houston [1st Dist.] Apr. 9, 2019, no pet.) (mem. op.) (expert report is adequate where it informs defendant of expert’s opinion on what defendant should have done and what the defendant did instead). The level of detail requested by Dr. McNeil is simply not required at this stage of the litigation.⁸ *See Baty*, 543 S.W.3d at 697; *see also Keepers*, 2019 WL 1523368, at *5–6 (“At times, the standard of care can be ‘fairly basic.’”) (quoting *Baty*, 542 S.W.3d at 694)). Dr. Hall clearly identifies the applicable standard of care related to Dr. McNeil and her breaches of that standard. The report provides “enough information” for the trial court to have concluded that

⁸ To the extent that Dr. McNeil disputes that Dr. Hall has accurately stated the applicable standard of care, that complaint does not support a dismissal at this stage of the litigation. *See Aggarwal v. Trotta*, No. 01-19-00012-CV, 2019 WL 2426172, at *4 n.5 (Tex. App.—Houston [1st Dist.] June 11, 2019, no pet.) (mem. op.) (“To the extent [that the defendant] disputes that [the expert] has accurately stated the standard of care, his complaint does not support a Chapter 74 dismissal.”); *Engh v. Reardon*, No. 01-09-00017-CV, 2010 WL 4484022, at *8 (Tex. App.—Houston [1st Dist.] Nov. 10, 2010, no pet.) (mem. op.) (“The doctors also challenge the accuracy of [the expert’s] opinions with respect to standard of care. Whether [the expert’s] opinions regarding the applicable standards of care are correct, however, is an issue for summary judgment, not a motion to dismiss under Chapter 74.”).

it constitutes a good-faith effort to set forth the applicable standard of care and breach related to Dr. McNeil. *See Miller*, 536 S.W.3d at 517; *New Med. Horizons, II, Ltd. v. Milner*, 575 S.W.3d 53, 64 (Tex. App.—Houston [1st Dist.] 2019, no pet.); *see also Mettauwer*, 326 S.W.3d at 691 (not court’s role to determine truth or falsity of expert’s opinion, or truth or falsity of facts upon which expert bases such opinions, but only to act as gatekeeper in evaluating sufficiency of report itself).

We conclude that the trial court could have reasonably concluded that Dr. Hall’s expert report represents an “objective good faith effort” to inform Dr. McNeil of the specific conduct called into question, the standard of care that should have been followed, and what Dr. McNeil should have done differently. Thus, we hold that the trial court did not err in overruling Dr. McNeil’s objections and in denying her motion to dismiss Feathers’ health care liability claim against her on the ground that Dr. Hall’s report does not adequately address the standard of care and breach of the standard of care as to her.

We overrule this portion of Dr. McNeil’s first issue.

C. Causation Related to Dr. McNeil

In another portion of her first issue, Dr. McNeil argues that the trial court erred in overruling her objections to Dr. Hall’s expert report and denying her motion to dismiss Feathers’ health care liability claim against her because Dr. Hall’s report does not adequately address causation related to her. Dr. McNeil asserts that Dr.

Hall’s opinion as to causation is conclusory and speculative. He fails to “link his conclusions to the facts,” “requires the court to make numerous impermissible assumptions and inferences to create a causal link,” and his opinion “contains an analytical gap because he fails to provide a straightforward link between the alleged breach of the standard of care and the injur[ies] claimed in the case.”

An expert report must provide a “fair summary” of the expert’s opinions regarding the causal relationship between the failure of a defendant physician to provide care in accord with the applicable standard of care and the claimed injury, harm, or damages. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *see also Potts*, 392 S.W.3d at 630. For causation, the expert report must explain how and why the defendant physician’s breach proximately caused the plaintiff’s injury. *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 459–60 (Tex. 2017). But an expert report need not marshal all the plaintiff’s proof necessary to establish causation at trial, and it need not anticipate or rebut all possible defensive theories that may ultimately be presented to the trial court. *Wright*, 79 S.W.3d at 52; *Cornejo*, 446 S.W.3d at 123.

Causation consists of two components: (1) cause-in-fact and (2) foreseeability. *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018). A physician’s breach was a cause-in-fact of the plaintiff’s injury if the breach was a substantial factor in bringing about the harm, and absent the breach the harm would not have

occurred. *Id.* Even if the harm would not have occurred absent the defendant physician's breach, "the connection between the defendant and the plaintiff's injuries simply may be too attenuated" for the breach to qualify as a substantial factor. *Allways Auto Grp., Ltd. v. Walters*, 530 S.W.3d 147, 149 (Tex. 2017) (internal quotations omitted). A breach is not a substantial factor if it "does no more than furnish the condition that makes the plaintiff's injury possible." *Id.* (internal quotations omitted). A defendant physician's breach is a foreseeable cause of the plaintiff's injury if a physician of ordinary intelligence would have anticipated the danger caused by the negligent act or omission. *Puppala*, 564 S.W.3d at 197.

As stated above, the applicable standard of care related to Dr. McNeil required her to recognize the symptoms of early preterm labor in Feathers on June 29, 2016, to admit Feathers to the hospital, to order an ultrasound for Feathers to further assess any cervical changes, and to monitor Feathers over a period of several hours before discharging Feathers. Dr. McNeil breached this standard of care by not recognizing the symptoms of early preterm labor in Feathers, not admitting Feathers to Memorial Hermann, not monitoring Feathers over a period of several hours, not obtaining an ultrasound for Feathers after she, a patient who was at risk for preterm labor, presented at the hospital with symptoms consistent with preterm labor, and discharging Feathers without instructions regarding preterm labor.

As to causation, Dr. Hall, in his report, states that if Dr. McNeil had not breached the applicable standard of care, Feathers would have been admitted to the hospital and she would have undergone additional diagnostics and serial examinations over several hours, which would have identified cervical changes, and in reasonable medical probability, her preterm labor would have been diagnosed. A diagnosis of preterm labor would have led to medical interventions, such as medications to stop her contractions and to relax her uterus.⁹ She also would have been given steroids to mature the twins' fetal lungs and organs in case delivery occurred prematurely. The medical interventions would have stopped Feathers' preterm labor and prevented her from delivering the twins at twenty-seven-weeks' gestation. The failure to admit Feathers to Memorial Hermann caused her preterm labor to go undiagnosed until it progressed to a premature delivery of the twins on July 2, 2016 and resulted in neurological injuries to the twins.

In determining whether an expert's causation opinion is conclusory, we must remain mindful that expert-report challenges are made at an early, pre-discovery stage in the litigation, not when the merits of the health care liability claim are being

⁹ In his report, Dr. Hall cites various medical interventions that could have been used to stop Feathers' preterm labor, such as giving her medications to stop her contractions and to relax her uterus, providing medications to speed up the development of the twins' lungs and organs, giving Feathers intravenous fluids, giving Feathers antibiotics, and admitting Feathers to the hospital and placing her on bedrest.

presented to the factfinder to determine liability. *Puppala*, 564 S.W.3d at 198. To provide more than a conclusory statement on causation, an expert report must simply include an “explanation tying the conclusion to the facts” and showing “how and why the breach caused the injury based on the facts presented.” *Jelinek*, 328 S.W.3d at 539–40; *see also Puppala*, 564 S.W.3d at 197. The expert report need only provide some basis that the defendant physician’s act or omission proximately caused injury. *Owens v. Handyside*, 478 S.W.3d 172, 187–88 (Tex. App.—Houston [1st Dist.] 2015, pet. denied); *see also Palacios*, 46 S.W.3d at 879 (explaining “a plaintiff need not present evidence in the report as if it were actually litigating the merits. . . . [T]he information in the report does not have to meet the same requirements as the evidence offered in a summary-judgment proceeding or at trial”).

Here, Dr. Hall’s causation opinion is in line with other health-care-liability cases where experts have opined that had a defendant physician not breached the standard of care, a proper diagnosis and medical intervention would have been achieved and the plaintiff’s injury, harm, or damages would have been avoided. *See, e.g., Puppala*, 564 S.W.3d at 198–99; *Owens*, 478 S.W.3d at 187–91; *Patterson v. Ortiz*, 412 S.W.3d 833, 839 (Tex. App.—Dallas 2013, no pet.) (holding sufficient report “show[ing] that performing the tests and examinations would have led to the diagnosis of pneumonia and [the patient’s] admission to the hospital, where he

would have received ‘early, aggressive treatment [that], more likely than not, would have saved his life’” (second alternation in original)). An expert may show causation by explaining a chain of events that begins with the defendant physician’s negligence and ends in injury to the plaintiff. *See Owens*, 478 S.W.3d at 189; *McKellar v. Cervantes*, 367 S.W.3d 478, 485–86 (Tex. App.—Texarkana 2012, no pet.); *see also Christus Spohn Health Sys. Corp., v. Hinojosa*, No. 04-16-00288-CV, 2016 WL 7383819, at *6 (Tex. App.—San Antonio Dec. 21, 2016, no pet.) (mem. op.) (expert report specified signs and symptoms that should have prompted defendant physician to admit patient to hospital for treatment; expert then opined that if patient had been admitted at least two things would have occurred). Here, Dr. Hall’s expert report explains the connection between Dr. McNeil’s negligent conduct and the claimed injury, harm, or damages. *See THN Physicians Ass’n v. Tiscareno*, 495 S.W.3d 599, 614 (Tex. App.—El Paso 2016, no pet.) (“[T]he expert must at a minimum explain the connection between [the] doctor’s conduct and the injury to the patient.”); *see also Owens*, 478 S.W.3d at 189 (expert may show causation by explaining chain of events that begins with defendant physician’s negligence and ends in injury to plaintiff); *McKellar*, 367 S.W.3d at 485–86.

Finally, we note that Dr. McNeil asserts that Dr. Hall’s expert report is inadequate as to causation because he does not address what might have happened if Dr. McNeil had not breached the standard of care or because even if she had

adhered to the applicable standard of care, the same result might have occurred. But an expert report need not address all hypothetical scenarios. *See VHS San Antonio Partners LLC v. Garcia*, No. 04-09-00297-CV, 2009 WL 3223178, at *6 (Tex. App.—San Antonio Oct. 7. 2009, pet. denied) (mem. op.). And although the law requires an expert report to link the expert’s conclusion on causation with the alleged breach of the standard of care, nothing requires the expert report to address or rule out all other possible scenarios. *See Garcia*, 2009 WL 3223178, at *6; *see also Owens*, 478 S.W.3d at 187 (report “need not anticipate or rebut all possible defensive theories that may ultimately be presented” in case); *Meyer v. Strahan*, 578 S.W.3d 165, 172 (Tex. App.—Tyler 2019, pet. denied) (“Nothing in [s]ection 74.351 suggests the preliminary report is required to rule out every possible cause of the injury, harm or damages claimed, especially given that [s]ection 74.351(s) limits discovery before the report is filed.”). The correctness of Dr. Hall’s opinion is not at issue in this stage of the litigation. *See Potts*, 392 S.W.3d at 632.

We conclude that the trial court could have reasonably concluded that Dr. Hall’s expert report represents an “objective good faith effort” to inform Dr. McNeil of the causal relationship between her failure to provide care in accord with the applicable standard of care and the claimed injury, harm, or damages. *See Zamarripa*, 526 S.W.3d at 460 (as long as report makes “good-faith effort to explain, factually, how proximate cause is going to be proven,” it satisfies statute’s threshold

requirement); *Kelly v. Rendon*, 255 S.W.3d 665, 679 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (emphasizing expert reports “are simply a preliminary method to show a plaintiff has a viable cause of action that is not frivolous or without expert support”). Thus, we hold that the trial court did not err in overruling Dr. McNeil’s objections and in denying her motion to dismiss Feathers’ health care liability claim against her on the ground that Dr. Hall’s report does not adequately address causation as to her.

We overrule this portion of Dr. McNeil’s first issue.

D. Causation Related to Dr. Whitmire

In his first issue, Dr. Whitmire argues that the trial court erred in overruling his objections to Dr. Hall’s expert report and denying his motion to dismiss Feathers’ health care liability claim against him because Dr. Hall’s report does not adequately address causation related to him. Dr. Whitmire argues that the expert report does not show a causal relationship between his alleged breach of the standard of care and the claimed injury, harm, or damages because Dr. Hall does not explain “how the outcome would have been different ‘but for’ the alleged breaches of [the] standard of care”; “[t]here is no factual support for Dr. Hall’s assumption that Dr. Whitmire received information from Dr. McNeil that would have caused him to recognize that Feathers was in preterm labor, admit her[,] and institute any treatment”; Dr. Hall’s expert report “contains no factual basis to support a conclusion that . . . Feathers

would have been found to be in pre[term] labor if she had been admitted to the hospital on June 29[, 2016]”; and Dr. Hall’s opinions about causation are conclusory and speculative.

Dr. Hall states in his report that the applicable standard of care related to Dr. Whitmire required that Dr. Whitmire “recognize that . . . Feathers [had an] increased risk of preterm labor due to her twin pregnancy,” recognize the symptoms of preterm labor, have Feathers admitted to the hospital, and come to the hospital to examine Feathers. Thus, when Dr. McNeil called Dr. Whitmire to tell him that Feathers had arrived at Memorial Hermann on June 29, 2016 with “increased vaginal discharge, abdominal pain with diarrhea[,] and uterine irritability,” Dr. Whitmire should have recognized the symptoms as consistent with preterm labor and ordered that Feathers be admitted to Memorial Hermann for observation. Because Dr. Whitmire did not recognize Feathers’ symptoms as consistent with preterm labor, order that Feathers be admitted to Memorial Hermann, and come to the hospital to examine her, he breached the standard of care.

As to causation, Dr. Hall’s expert report explains that had Dr. Whitmire not breached the standard of care, an ultrasound would have been ordered “which would have further identified any cervical changes” that would have indicated that Feathers was in preterm labor. Thus, Feathers’ preterm labor would have been diagnosed and treated. Upon receiving such a diagnosis, Feathers would have been given

medications to stop her contractions and to relax her uterus. Feathers also would have been given steroids to mature the twins' fetal lungs and organs, which would have improved their health if they were delivered prematurely. Had Dr. Whitmire acted within the standard of care, in reasonable medical probability, Feathers' pregnancy would have been extended, the twins would not have been born at twenty-seven-weeks' gestation, and they would not have developed severe neurological injuries.

Dr. Hall's causation opinion as to Dr. Whitmire is in line with other health care liability cases where experts have opined that had a defendant physician not breached the standard of care, a proper diagnosis and medical intervention would have been achieved and the plaintiff's injury, harm, or damages would have been avoided. *See, e.g., Puppala*, 564 S.W.3d at 198–99; *Owens*, 478 S.W.3d at 187–91; *Patterson*, 412 S.W.3d at 839 (holding sufficient report “show[ing] that performing the tests and examinations would have led to the diagnosis of pneumonia and [the patient's] admission to the hospital, where he would have received ‘early, aggressive treatment [that], more likely than not, would have saved his life’” (second alteration in original)). An expert may show causation by explaining a chain of events that begins with the defendant physician's negligence and ends in injury to the plaintiff. *See Owens*, 478 S.W.3d at 189; *McKellar*, 367 S.W.3d at 485–86; *see also Hinojosa*, 2016 WL 7383819, at *6. Here, Dr. Hall's expert report explains the connection

between Dr. Whitmire’s negligent conduct and the claimed injury, harm, or damages. *See Tiscareno*, 495 S.W.3d at 614 (“[T]he expert must at a minimum explain the connection between [the] doctor’s conduct and the injury to the patient.”); *see also Owens*, 478 S.W.3d at 189 (expert may show causation by explaining chain of events that begins with defendant physician’s negligence and ends in injury to plaintiff); *McKellar*, 367 S.W.3d at 485–86. Nothing prevents Dr. Hall from making inferences related to causation based on Feathers’ medical history. *See Polone v. Shearer*, 287 S.W.3d 229, 233 (Tex. App.—Fort Worth 2009, no pet.); *see also* TEX. R. EVID. 703 (expert may draw inferences from the facts or data in particular case); TEX. R. EVID. 705 (expert may testify in terms of opinions and inferences).

We remain mindful that expert-report challenges are made at an early, pre-discovery stage in the litigation, not when the merits of the health care liability claim are being presented to the factfinder to determine liability. *Puppala*, 564 S.W.3d at 198. The expert report is not required to prove the defendant physician’s liability but only to provide notice of the conduct forming the basis of the plaintiff’s claim. *Gracy Woods I Nursing Home v. Mahan*, 520 S.W.3d 171, 189 (Tex. App.—Austin 2017, no pet.). An expert report need not marshal all the plaintiff’s proof necessary to establish causation at trial, and it need not anticipate or rebut all possible defensive theories that may ultimately be presented to the trial court. *Wright*, 79

S.W.3d at 52; *Cornejo*, 446 S.W.3d at 123. “Nothing in [s]ection 74.351 suggests the preliminary report is required to rule out every possible cause of the injury, harm or damages claimed” *Meyer*, 578 S.W.3d at 172. Dr. Hall’s expert report identifies the specific conduct of Dr. Whitmire that has been called into question by Feathers and provides a sufficient basis for the trial court to conclude that Feathers’ claim has merit. *See Mahan*, 520 S.W.3d at 189–90; *Harrington v. Schroeder*, No. 04-15-00136-CV, 2015 WL 9001573, at *5–7 (Tex. App.—San Antonio Dec. 16, 2015, pet. denied) (mem. op.) (concluding expert report adequately addressed causation where it informed defendant physician of conduct plaintiffs had called into question and provided basis for trial court to conclude plaintiffs’ claims had merit). The correctness of Dr. Hall’s opinion is not at issue at this stage of the litigation. *See Potts*, 392 S.W.3d at 632.

We conclude that the trial court could have reasonably concluded that Dr. Hall’s expert report represents an “objective good faith effort” to inform Dr. Whitmire of the causal relationship between his failure to provide care in accord with the applicable standard of care and the injury, harm, or damages claimed. *See Zamarripa*, 526 S.W.3d at 460 (as long as report makes “good-faith effort to explain, factually, how proximate cause is going to be proven,” it satisfies the statute’s threshold requirement); *Kelly*, 255 S.W.3d at 679 (emphasizing expert reports “are simply a preliminary method to show a plaintiff has a viable cause of action that is

not frivolous or without expert support”). Thus, we hold that the trial court did not err in overruling Dr. Whitmire’s objections and in denying his motion to dismiss Feathers’ health care liability claim against him on the ground that Dr. Hall’s report does not adequately address causation as to him.

We overrule Dr. Whitmire’s first issue.

E. Standard of Care and Breach Related to Nurse Gelera

In a portion of her sole issue, Nurse Gelera argues that the trial court erred in overruling her objections to Dr. Hall’s expert report and in denying her motion to dismiss Feathers’ health care liability claim against her because the report does not adequately address the standard of care and breach of the standard of care related to Nurse Gelera. Nurse Gelera asserts that Dr. Hall’s expert report is vague and lacks “specific information about what [she] should have done differently in order to adhere to the standard of care.”

As stated above, an expert report must provide a “fair summary” of the expert’s opinions regarding (1) the applicable standard of care, (2) the manner in which the care rendered by the defendant health care provider failed to meet the standard of care, and (3) the causal relationship between that failure and the injury, harm, or damages claimed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *see also Potts*, 392 S.W.3d at 630.

As to the standard of care related to Nurse Gelera, Dr. Hall, in his expert report, states that when Feathers arrived at Memorial Hermann on June 29, 2016, she was first seen by Nurse Gelera. Feathers, who was twenty-seven-weeks' pregnant at the time, complained of a "mucousy discharge" over the past five days and abdominal pain, which had begun about three hours before she arrived. Nurse Gelera saw Feathers and noted that she described her abdominal pain as "cramping" and sharp, with a pain level as four out of ten. Feathers also reported a history of constipation and diarrhea over the previous day and that she had been experiencing mild-intensity contractions. The applicable standard of care required Nurse Gelera to recognize the symptoms of preterm labor in Feathers, to recognize that Feathers was in early preterm labor, and to monitor Feathers over a period of hours before she was discharged.

According to Dr. Hall, preterm labor occurs when a patient begins to go into labor before she is thirty-seven-weeks' pregnant. A multiple gestation pregnancy is a risk factor for preterm labor. Symptoms of preterm labor include increased vaginal discharge, abdominal cramps, which may occur with or without diarrhea, pelvic pressure, backache, contractions, and vaginal bleeding or spotting. Feathers complained to Nurse Gelera of contractions, abdominal pain with diarrhea, cramping, and increased vaginal discharge—all symptoms of preterm labor.

According to Dr. Hall, Nurse Gelera breached the applicable standard of care by failing to recognize the symptoms of preterm labor that Feathers was exhibiting on June 29, 2016, failing to recognize that Feathers was in early preterm labor, and failing to monitor Feathers over a period of hours before she was discharged.

To adequately identify the standard of care, an expert report must set forth “specific information about what the defendant should have done differently.” *Abshire*, 563 S.W.3d at 226 (internal quotations omitted). Thus, related to standard of care and breach, the expert report must explain what the defendant health care provider should have done under the circumstances and what the health care provider did instead. *Palacios*, 46 S.W.3d at 880; *see also Kline*, 2019 WL 6904720, at *7 (“[A]n expert report must provide a fair summary of the expert’s opinion regarding the applicable standard of care and the manner in which the care rendered by the health care provider failed to meet the standard.” (internal quotations omitted)).

Here, Dr. Hall identifies the applicable standard of care related to Nurse Gelera and her breaches of that standard. Dr. Hall’s expert report is not vague or conclusory; rather, his report identifies the specific actions that should have been taken by Nurse Gelera but were not. *See Abshire*, 563 S.W.3d at 226–27; *see also Baty*, 543 S.W.3d at 695 (report not conclusory where it did not require one to infer what physician defendant should have done differently); *Keepers*, 2019 WL 1523368, at *5 (expert report is adequate where it informs defendant of expert’s

opinion on what defendant should have done and what the defendant did instead). The level of detail requested by Nurse Gelera is simply not required at this stage of the litigation. *See Columbia Plaza Med. Ctr. of Fort Worth v. Jimenez*, No. 02-15-00275-CV, 2016 WL 2586738, at *4 (Tex. App.—Fort Worth May 5, 2016, no pet.) (mem. op.); *see also Palacios*, 46 S.W.3d at 879 (explaining “a plaintiff need not present evidence in the report as if it were actually litigating the merits”); *Hardy v. Marsh*, 170 S.W.3d 865, 868 (Tex. App.—Texarkana 2005, no pet.) (“To constitute a good-faith effort to establish the causal relationship element under [the TMLA], the expert report need not marshal all of the plaintiff’s proof, or present evidence as if the plaintiff was actually litigating the merits.”).

To the extent that Nurse Gelera asserts that “Dr. Hall’s standard of care opinion as to [her] . . . is that she failed to diagnose preterm labor” and that “[n]urses do not have the power to diagnose a condition and decide [the patient’s] treatment,”¹⁰ we disagree with Nurse Gelera’s characterization of the applicable standard of care as described by Dr. Hall. Here, Dr. Hall states that the standard of care required Nurse Gelera to recognize the symptoms of preterm labor in Feathers and to monitor Feathers over a period of hours. Courts have held that an expert report adequately states the standard of care applicable to nurses where the report explains that the

¹⁰ *See generally Methodist Hosp. v. German*, 369 S.W.3d 333, 342–44 (Tex. App.—Houston [1st Dist.] 2011, pet. denied).

nurse was required to recognize a patient’s symptoms or condition or the worsening of a patient’s symptoms or condition. *See, e.g., Hinojosa*, 2016 WL 7383819, at *5; *Jimenez*, 2016 WL 2586738, at *4–5 (expert report stated applicable standard of care to hospital staff required them to observe, monitor, and recognize symptoms or conditions); *Renaissance Healthcare Sys., Inc. v. Swan*, 343 S.W.3d 571, 586 (Tex. App.—Beaumont 2011, no pet.) (standard of care required nurses to recognize signs and symptoms). The failure of a nurse to recognize the symptoms of a patient’s condition does not require a nurse to diagnose a patient’s medical condition. *See Columbia Med. Ctr. of Arlington Subsidiary L.P. v. Shelby*, No. 05-17-01358-CV, 2018 WL 6187437, at *8 (Tex. App.—Dallas Nov. 27, 2018, no pet.) (mem. op.); *Renaissance Healthcare*, 343 S.W.3d at 586. Still yet, a defendant health care provider’s argument that an expert report states an inappropriate standard of care for a nurse should be the subject of a motion for summary judgment or an issue at trial; it is not an appropriate argument in a motion to dismiss concerning the sufficiency of an expert report. *See Renaissance Healthcare*, 343 S.W.3d at 586; *Methodist Hosp. v. Shepherd-Sherman*, 296 S.W.3d 193, 199 n.2 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

We conclude that the trial court could have reasonably concluded that Dr. Hall’s expert report represents an “objective good faith effort” to inform Nurse Gelera of the specific conduct called into question, the standard of care that should

have been followed, and what Nurse Gelera should have done differently. Thus, we hold that the trial court did not err in overruling Nurse Gelera's objections and in denying her motion to dismiss Feathers' health care liability claim against her on the ground that Dr. Hall's report does not adequately address the standard of care and breach of the standard of care as to her.

We overrule this portion of Nurse Gelera's sole issue.

F. Causation Related to Nurse Gelera

In another portion of her sole issue, Nurse Gelera argues that the trial court erred in overruling her objections to Dr. Hall's expert report and in denying her motion to dismiss Feathers' health care liability claim against her because the report does not adequately address causation related to Nurse Gelera. She asserts that Dr. Hall's opinion as to causation is conclusory and speculative and it fails to provide a straightforward link between the alleged breach of the standard of care and the claimed injury, harm, or damages.

Dr. Hall states in his expert report that the applicable standard of care required Nurse Gelera, who saw Feathers first on June 29, 2016 when she arrived at Memorial Hermann, to recognize the symptoms of preterm labor in Feathers, to recognize that Feathers was in early preterm labor, and to monitor Feathers over a period of hours before she was discharged. And Nurse Gelera breached the standard of care by not doing any of those things. Instead, Feathers was discharged from Memorial

Hermann and her preterm labor went undiagnosed and untreated. As a result, Feathers' preterm labor persisted until it progressed and ended in the delivery of the twins at twenty-seven-weeks' gestation.

As to causation, Dr. Hall, in his report, explains that if Nurse Gelera had complied with the applicable standard of care, Feathers would have been admitted to Memorial Hermann, she would have undergone additional diagnostics, and she would have had serial examinations over several hours, which, in reasonable medical probability, would have identified cervical changes and resulted in a diagnosis of preterm labor. A diagnosis of preterm labor, in reasonable medical probability, would have led to medical interventions¹¹ which would have relaxed Feathers' uterus, stopped her preterm labor, and prevented her from delivering the twins at twenty-seven-weeks' gestation. Had the twins not been delivered at twenty-seven-weeks' gestation, they, in reasonable medical probability, would not have developed severe neurological injuries often seen in premature infants.

Although mere observation, monitoring, testing, and evaluation of a patient, by itself, may not cause the claimed injury, harm, or damages, it may provide the

¹¹ As noted, in his report, Dr. Hall cites various medical interventions that could have been used to stop Feathers' preterm labor, such as giving her medications to stop her contractions and to relax her uterus, providing medications to speed up the development of the twins' lungs and organs, giving Feathers intravenous fluids, giving Feathers antibiotics, and admitting Feathers to the hospital and placing her on bedrest.

information physicians and health care providers need to take some action related to a patient that would alter the outcome. *See Patterson*, 412 S.W.3d at 839. If the action based on the observation, monitoring, testing, and evaluation of a patient would have avoided the claimed injury, harm, or damages, then there is a causal relationship between the failure to do so and the claimed injury, harm, or damages. *See id.* at 839–40. An expert report must explain why the action that the defendant health care provider should have taken, either by herself or in coordination with the actions of others, would have prevented the claimed injury, harm, or damages. *See id.* at 840.

Here, Dr. Hall’s expert report does just that. The report explains the connection between Nurse Gelera’s negligent conduct and the claimed injury, harm, or damages. *See Tiscareno*, 495 S.W.3d at 614 (“[T]he expert must at a minimum explain the connection between [the health care provider’s] conduct and the injury to the patient.”). It explains how the failure to recognize Feathers’ symptoms of preterm labor and failure to monitor Feathers over a period of hours made a difference in the outcome. *Cf. Chava v. Hubbard*, No. 14-17-00158-CV, 2018 WL 1918462, at *5–7 (Tex. App.—Houston [14th Dist.] Apr. 24, 2018, no pet.) (mem. op.) (report explained how and why through various monitoring and treatment that could have been performed, patient would not have progressed to cardiac arrest had defendant physician not breached standard of care); *see also Owens*, 478 S.W.3d at

189 (expert may show causation by explaining chain of events that begins with defendant health care providers' negligence and ends in injury to plaintiff). By stating what Nurse Gelera should have done and what happened because she failed to do so, Dr. Hall's expert report sufficiently addresses the element of causation. *See Adeyemi v. Guerrero*, 329 S.W.3d 241, 245 (Tex. App.—Dallas 2010, no pet.); *Moore v. Sutherland*, 107 S.W.3d 786, 791 (Tex. App.—Texarkana 2003, pet. denied). The correctness of Dr. Hall's opinion is not at issue in this stage of the litigation. *See Potts*, 392 S.W.3d at 632.

We conclude that the trial court could have reasonably concluded that Dr. Hall's expert report represents an "objective good faith effort" to inform Nurse Gelera of the causal relationship between her failure to provide care in accord with the applicable standard of care and the injury, harm, or damages claimed. *See Zamarripa*, 526 S.W.3d at 460 (as long as report makes "good-faith effort to explain, factually, how proximate cause is going to be proven," it satisfies the statute's threshold requirement); *Kelly*, 255 S.W.3d at 679 (emphasizing expert reports "are simply a preliminary method to show a plaintiff has a viable cause of action that is not frivolous or without expert support"). Thus, we hold that the trial court did not err in overruling Nurse Gelera's objections and in denying her motion to dismiss Feathers' health care liability claim against her on the ground that Dr. Hall's report does not adequately address causation as to her.

We overrule this portion of Nurse Gelera’s sole issue.

G. Liability as to Memorial Hermann

In its sole issue, Memorial Herman argues that the trial court erred in overruling its objections to Dr. Hall’s expert report and in denying its motion to dismiss Feathers’ health care liability claims against it because the report does not adequately address the standard of care, breach of the standard of care, and causation related to Memorial Hermann. Memorial Hermann asserts that the expert report does not address any standard of care or breach of the standard of care related to any direct liability of Memorial Hermann and Dr. Hall’s opinion on causation, related to Memorial Hermann’s direct liability, is conclusory and speculative and “does not establish . . . how and why” any alleged negligence by Memorial Hermann caused the claimed injury, harm, or damages. Memorial Hermann also asserts that Feathers cannot proceed on her vicarious-liability claim against it because Dr. Hall’s expert report does not adequately address the standard of care, breach of the standard of care, and causation related to Nurse Gelera.

The Texas Supreme Court has made clear that the TMLA requires a plaintiff to timely file an adequate expert report as to each defendant in a suit involving a health care liability claim, but it does not require an expert report as to each liability theory alleged against that defendant. *See TTHR Ltd. P’ship v. Moreno*, 401 S.W.3d 41, 45 (Tex. 2013) (“[B]ecause the trial court did not abuse its discretion in finding

[the plaintiff's] reports adequate as to her theory that [the hospital] is vicariously liable for the doctor's actions, her suit against [the hospital]—including her claims that the hospital has direct liability and vicarious liability for actions of the nurses—may proceed.”); *Potts*, 392 S.W.3d at 632 (“[W]hen a health care liability claim involves a vicarious liability theory, either alone or in combination with other theories, an expert report that meets the statutory standards as to the employee is sufficient to implicate the employer’s conduct under the vicarious theory. And if any liability theory has been adequately covered, the entire case may proceed.”). Thus, the report need not cover every alleged liability theory to make the defendant health care provider aware of the conduct that is at issue, nor is it required that the report include “litigation-ready” evidence. *Potts*, 392 S.W.3d at 630–31; *see also SCC Partners, Inc. v. Ince*, 496 S.W.3d 111, 114–15 (Tex. App.—Fort Worth 2016, pet. dism’d). An expert report that adequately addresses at least one pleaded liability theory against a defendant health care provider is enough to defeat that defendant’s motion to dismiss challenging the adequacy of the report. *See Moreno*, 401 S.W.3d at 45; *Potts*, 392 S.W.3d at 632; *McAllen Hosps., L.P. v. Gonzalez*, 566 S.W.3d 451, 457–58 (Tex. App.—Corpus Christi–Edinburgh 2018, no pet.).

In addition to her direct-liability claim against Memorial Hermann, Feathers’ in her petition alleges that Memorial Hermann is vicariously liable for the negligent acts and omissions of its actual and ostensible agents, employees, vice principals,

borrowed servants, and limited partners. Feathers alleges that “[a]t all times material,” Dr. McNeil and Nurse Gelera were “agent[s], employee[s,] and/or ostensible agents” of Memorial Hermann.

“[W]hen a health care liability claim involves a vicarious liability theory, either alone or in combination with other theories, an expert report that meets the statutory standards as to the employee is sufficient to implicate the employer’s conduct under the vicarious theory.” *Potts*, 392 S.W.3d at 632; *see also Gardner v. U.S. Imaging, Inc.*, 274 S.W.3d 669, 671–72 (Tex. 2008) (“When a party’s alleged health care liability is purely vicarious, a report that adequately implicates the actions of that party’s agents or employees is sufficient.”); *Owens*, 478 S.W.3d at 191. In other words, a report that is sufficient as to an employee, on whose alleged negligent conduct a vicarious-liability claim is based, is also sufficient as to the employer health care provider. *See Owens*, 478 S.W.3d at 191–92; *see, e.g., Ctr. for Neurological Disorders, P.A. v. George*, 261 S.W.3d 285, 295 (Tex. App.—Fort Worth 2008, pet. denied) (“[I]f the expert report is sufficient as to the claims against [the doctor employee], and we have held that it is[,] . . . then the report is sufficient as to claims against [the employer health care provider] that are based on [employee’s] alleged negligence.” (footnote omitted)).

Here, we have held that the trial court did not err in overruling Dr. McNeil’s objections and in denying her motion to dismiss Feathers’ health care liability claim

against her because Dr. Hall’s expert report represents an “objective good faith effort to comply with the [TMLA’s] definition of an expert report.”¹² TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(l); *Baty*, 543 S.W.3d at 692–93 (internal quotations omitted); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6) (“Expert report” means “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.” (internal quotations omitted)). Thus, because Feathers may proceed on her health care liability claim against Dr. McNeil, she may also proceed on her vicarious-liability claim against Memorial Hermann based on the conduct of Dr. McNeil. *See Potts*, 392 S.W.3d at 632; *Gardner*, 274 S.W.3d at 671–72; *Owens*, 478 S.W.3d at 191–92.

We have also held that the trial court did not err in overruling Nurse Gelera’s objections and in denying her motion to dismiss Feathers’ health care liability claim

¹² Memorial Hermann does not argue that Dr. Hall’s expert report is inadequate related to Dr. McNeil. To the extent that the parties disagree as to whether or not Memorial Hermann is vicariously liable for the acts or omissions of Dr. McNeil, such an argument is not a proper basis for dismissing a health care liability claim at this stage of the litigation. *See McAllen Hosps., L.P. v. Gonzalez*, 566 S.W.3d 451, 459 & n.5 (Tex. App.—Corpus Christi–Edinburg 2018, no pet.); *see also Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 862 (Tex. 2009) (“A hospital ordinarily is not liable for the negligence of an independent contractor physician.”).

against her because Dr. Hall’s expert report represents an “objective good faith effort to comply with the [TMLA’s] definition of an expert report.” TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(l); *Baty*, 543 S.W.3d at 692–93 (internal quotations omitted); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6) (“Expert report” means “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.” (internal quotations omitted)). Thus, Feathers may proceed on her health care liability claim against Nurse Gelera. *See Potts*, 392 S.W.3d at 632; *Gardner*, 274 S.W.3d at 671–72; *Owens*, 478 S.W.3d at 191–92. And she may then also proceed on her vicarious-liability claim against Memorial Hermann based on the alleged negligent conduct of Nurse Gelera. *See Potts*, 392 S.W.3d at 629–33; *Gardner*, 274 S.W.3d at 671–72; *Owens*, 478 S.W.3d at 191–92; *see also Moreno*, 401 S.W.3d at 45 (holding plaintiffs’ vicarious-liability claim against hospital for actions of nurses could proceed because expert report adequate regarding plaintiffs’ vicarious-liability claim for negligent acts of doctors); *Huepers v. St. Luke’s Episcopal Hosp.*, No. 01-11-00074-CV, 2013 WL 1804470, at *3–5 (Tex. App.—Houston [1st Dist.] Apr. 30, 2013, no pet.) (mem. op.) (holding no further report required where amended petition added new theory of vicarious

liability against hospital based on nurse's negligence because initial report sufficient as to plaintiff's vicarious-liability claim against hospital based on doctor's conduct).

Still yet, because Feathers may proceed on her vicarious-liability claim against Memorial Hermann based on the conduct of Dr. McNeil, she may also proceed on her direct-liability claim against Memorial Hermann. *See Potts*, 392 S.W.3d at 629–33 (holding plaintiff's direct-liability claim against nursing staffing agency could proceed because expert report submitted by plaintiff supported her vicarious-liability claims); *Owens*, 478 S.W.3d at 191–93 (holding plaintiff could proceed on direct-liability claim against hospital because expert report adequate as to her vicarious-liability claim against hospital based on doctor's conduct); *Children's Med. Ctr. of Dallas v. Durham*, 402 S.W.3d 391, 403–04 (Tex. App.—Dallas 2013, no pet.) (concluding, because expert report valid as to vicarious-liability claims against hospital, plaintiffs' direct-liability claims against hospital could proceed as well).

Thus, we hold that the trial court did not err in overruling Memorial Hermann's objections and in denying its motion to dismiss Feathers' health care liability claims against it.

We overrule this portion of Memorial Hermann's sole issue.

Conclusion

We affirm the orders of the trial court.

Julie Countiss
Justice

Panel consists of Justices Lloyd, Landau, and Countiss.