Opinion issued July 19, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00596-CV

ALEX DAVIS, II, M.D., Appellant

V.

JOHN AND WALTRAUD SWAIM, Appellees

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Case No. 2020-53760

MEMORANDUM OPINION

In this interlocutory appeal,[1] appellant, Alex Davis, II, M.D. ("Dr. Davis"), challenges the trial court's order denying his motion to dismiss the health care

[1] *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).

liability claim[2] brought against him by appellees, John and Waltraud Swaim. In his sole issue, Dr. Davis contends that the trial court abused its discretion in denying his motion because the Swaims failed to present an adequate medical-expert report[3] on the issue of causation.

We affirm.

Background

In their amended petition, John and his wife, Waltraud, alleged that, on November 9, 2019, John fell at home and went to Houston Methodist The Woodlands Hospital (the "Hospital") for treatment. The next day, Dr. Davis, an orthopedic surgeon, performed surgery on John to repair a hip fracture. After the surgical procedure was complete, but while John was still on the operating table and under anesthesia, John fell from the operating table, landing on his head and violently extracting his endotracheal tube. Members of Davis's surgical team found John face down on the floor.

John was taken from the post-operative unit for a computerized tomography (CT) scan of his head and neck. A Hospital neurosurgical team diagnosed John with a concussion, and he was admitted to the intensive care unit, where his condition rapidly deteriorated. He suffered a heart attack and aspiration pneumonia, and he

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2 *See id.* § 74.001(a)(13).

3 *See id.* § 74.351(a).

experienced feeding and swallowing difficulties, necessitating the placement of a feeding tube. Subsequently, John spent weeks in a skilled nursing facility before he was stabilized enough to return home. The Swaims alleged that John is now permanently disabled and unlikely to fully recover.

The Swaims sued Dr. Davis[4] for negligence, alleging that he failed to adequately supervise John's care and treatment, failed to appropriately monitor John and prevent his falling from the operating table while anesthetized, and failed to properly supervise the surgical team. Asserting that Davis's acts and omissions caused John's injuries, the Swaims sought damages for John's past and future medical expenses, pain and suffering, mental anguish, and impairment. They also sought damages for Waltraud's mental anguish and loss of consortium. To support their claims, the Swaims filed, and served upon Davis, medical expert reports authored by Ravi Karia, M.D. and Huma Haider, M.D.

To address the standard of care applicable to Dr. Davis, an orthopedic surgeon, and a breach of that standard, the Swaims presented the expert report of Dr. Karia. In his report and curriculum vitae, Karia states that he is a board-certified

[4] The Swaims also sued the Hospital, U.S. Anesthesia Partners of Texas, P.A., and members of the surgical team, including Roberto Ballivian, M.D., Stephanie Osmon, RNFA, and Dustin Spell, CRNA. These defendants did not challenge the sufficiency of the Swaims' expert reports or are not parties to this appeal.

orthopedic trauma surgeon and practices full time in the Department of Orthopedics at the University of Texas Health Science Center, San Antonio.

Dr. Karia notes, based on his review of John's medical records from the Hospital, that:

> [John] fell while attempting to get out of his chair November 9, 2019. He was taken via EMS to [the Hospital] where he was diagnosed with a right intertrochanteric femur (hip) fracture. He did not have any other notable acute injuries. He was admitted to the hospital and cleared for surgical repair.
>
> [Dr. Davis] was consulted for an orthopaedic evaluation regarding [John's] hip fracture. Surgery was indicated and scheduled for the following day. The surgical repair went well . . . .
>
> Unfortunately, after the surgery was completed, [John] fell from the operating room table. He was still under anesthesia with a breathing tube in place. As a result of the fall, [John] sustained head trauma.

Dr. Karia emphasizes the following notes from the nurse anesthetist at the close of surgery:

> The drapes were removed from the pt. Dr. Davis then removed the tape from across the patient's chest and right, arm which was folded across the pt chest. Dr. Davis then walked away from the pt. Believing Stephanie his assistant was still standing at the pts side. The pt began to slide off of the right side of the bed. I attempted to catch the pt but he fell too quickly and hit the ground face down appearing to strike the right side of his forehead. The pt was self-extubated in the fall. The OR team immediately stabilized the head and neck and returned the pt to a supine position. I immediately assessed the airway and obtained VS. The pt. was spontaneously ventilating and vital signs were stable. Informed surgeon and OR team that we needed to get a stat CT of the head. Notified Dr. Ballivian of the fall. Maintaining head an[d] neck stabilization the OR team lifted the pt to the hospital bed and the pt was placed on mobile monitors.

Dr. Karia also emphasizes the following notes from Dr. Davis:

> At the conclusion of the procedure, the patient sustained a fall from the operative table. He was found face down on the floor of the operating room. He was flipped into the supine position, where he was assessed. A formal assessment was performed, he was found to be breathing spontaneously. His circulation and heart rate was assessed and found to be in normal sinus rhythm. His mental status was not assessed due to the persistence of the anesthesia.
>
> Due to the concern for a head trauma, the patient was placed on a hospital bed, and brought to the CT scan for an assessment of an intra-cranial injury. CT of the head and neck region were interpreted as negative. The patient was then transferred to the ICU for monitoring . . . .

Dr. Karia further notes that the Hospital neurology team determined that John was "best taken care of in the Intensive Care Unit (ICU)" and that they subsequently "diagnosed John with a concussion." The team noted that John was experiencing intermittent drowsiness, disoriented conversation, hallucinations, difficulty eating, and confusion, such as "want[ing] to eat paper instead of writing." The team recommended that post-operative rehabilitation focus on neurological recovery, in addition to the recovery from the hip surgery, and issued further orders to diminish the severity of delirium.

Dr. Karia notes that, over the next few days, John's condition deteriorated. The Hospital cardiology team diagnosed John with a myocardial infarction (heart attack), and the pulmonary team was consulted for pneumonia, thought to be secondary to an aspiration episode. The gastrointestinal and interventional radiology

teams fitted John with a permanent feeding tube. On November 27, 2019, John was discharged to a skilled nursing center.

Dr. Karia opines that the "standard of care applicable to the orthopedic surgeon and the entire operating room team is to prevent a sedated patient from falling from the [operating room] table." And, "[p]atient safety is the integral theme shared by all healthcare providers and the basis for the standard of care. When a patient is under anesthesia, vigilance is required by the OR team to prevent injuries as the patient is a vulnerable state." Karia opines: "By allowing [John] to fall in the operating room, the surgical team breached the standard of care by not providing the constant awareness necessary to manage an anesthetized patient."

To address causation, the Swaims presented the expert report of Dr. Haider. In her report and curriculum vitae, Dr. Haider states that she is a traumatic brain injury specialist and is board-certified in anesthesiology and in neurocritical care. She is the Medical Director of the National Brain Injury Institute and the past Medical Director of the Texas Brain Center, Concussion and Traumatic Brain Injury Program. Her experience includes working in hospitals as an attending anesthesiologist and neuro intensivist.

Dr. Haider's report reflects that she reviewed John's medical records from the Hospital and performed a physical examination and evaluation of John. Haider states that the Hospital's records show that, after John fell at his home on November

9, 2019, the Hospital performed CT scans to evaluate his head, neck, and pelvis, and the "[r]esults were normal with the exception of a fractured right hip, which was scheduled for surgery the following day." Haider identifies the "Date of Injury" as the next day, "11/10/2019," when, at the completion of his hip surgery and while "still intubated and under anesthesia," John "fell face down from the OR table." Haider notes that John was taken directly from the operating room for a CT scan of his head, and no intracranial injury was found. However, John later began showing changes in his mental status, and the Hospital's neurology team diagnosed him with a concussion. She notes that John suffered from an "inability to speak, slurred speech, dysnomia, and word-finding difficulties following the injury while hospitalized." She also notes that he "began experiencing dysphagia [difficulty swallowing] following his fall from the OR table" and that a feeding tube was placed.

Dr. Haider states that, during her physical examination and evaluation of John on June 8, 2020, he displayed symptoms of vestibular dysfunction, which she described as including dizziness, balance deficits, vertigo, visual impairment, and auditory changes. He also showed "mild apraxia of speech for diadochokinetic rate," which she described as an "acquired oral motor speech disorder which affects volitional and sometimes automatic speech" in those with "traumatic brain injury after damage to the parts of the brain that control muscle movement occur." She notes that "[s]ince the incident, [John] has been suffering from short term memory

deficits" and "experiences daily fatigue." She opines that John's "ongoing and/or significant neurocognitive signs/symptoms" "will require ongoing and perhaps lifelong care." Haider opines, based on her review and examination, that John "has likely suffered a traumatic brain injury secondary to the fall occurring after his operative procedure."

Dr. Davis moved to dismiss the Swaims' claim against him on the grounds that Dr. Karia did not adequately address the standard of care, breach, and causation, and that Dr. Haider failed to adequately address causation.

At a hearing on the motion to dismiss, the trial court sustained Dr. Davis's objections in part, ruling that the Swaims' report on the standard of care and breach, i.e., that of Dr. Karia, was deficient in that it did not specifically attribute a standard of care and breach to Davis. Rather, Karia applied these elements to the entire surgical team. The trial court granted the Swaims an extension to file a report addressing the specificity of the standard of care and breach only, as follows:

> [Swaims' Counsel]: . . . . And so I understand, specifically the deficiency is to the breach of the standard of care? Is that the manner in which the expert report is being found deficient?
>
> [Trial Court]: The specificity for the standard of care and the breach for the particular defendant complaining of the report.
>
> [Swaims' Counsel]: Understood. Thank you, Your Honor.
>
> . . . .

[Swaims' Counsel]: Your Honor, may I just ask a form of clarification? . . .

[Trial Court]: Yes, sir.

[Swaims' Counsel]: Is the court finding, then, that the causation report is sufficient? That was also complained of in the—I just want to make sure that we're not being required to amend any more reports than the standard of care with regard to Dr. Davis and the breach thereof.

[Trial Court]: I'm only requiring on standard and breach.

After the hearing, the trial court signed an order granting the Swaims 30 days to file a "supplemental/amended expert report with regard to the standard of care for Dr. Davis and a breach of that standard of care."

Subsequently, the Swaims filed a supplemental report authored by Dr. Karia. In his supplement, Karia opines that the "event of a patient fall in the operating room is considered a 'never' event in the medical community meaning that the only acceptable incidence rate is zero." And, it is the "duty of the entire operating room team to prevent this occurrence." Karia opines that Dr. Davis, "individually and as leader of the OR team," breached the standard of care by failing "to ensure safety straps/tape were in place at the time of the fall from the operating room table"; "to ensure that when the straps/tape are removed, that appropriate personnel are in direct position to prevent a fall and prepare the patient for transfer to a hospital bed"; "to delegate someone to stand and remain in the appropriate position if one member

needs to step away"; and "to provide the constant awareness required in order to prevent falls with an anesthetized patient."

Dr. Davis then filed a second motion to dismiss the Swaims' claim, asserting that Dr. *Karia* was not qualified to address *causation* and that he had failed to adequately address the causation element in his supplemental report. In their response, the Swaims noted that they presented Karia's report to address the standard of care and breach, and they presented Dr. Haider's report to address causation. They noted that the trial court ordered only that they supplement their report "with regard to the standard of care for Dr. Davis and breach of that standard of care." Accordingly, they presented Karia's supplemental report.

At a hearing on the second motion to dismiss, Dr. Davis stated that his challenge was "just [as to] causation." At the close of the hearing, the trial court noted that Davis had thus conceded that the Swaims had cured the deficiency with regard to the standard of care and breach. In addition, the trial court found that the Swaims had presented "sufficient evidence of causation to support [their] cause of action." The trial court then denied Davis's motion to dismiss the Swaims' claim.

Expert Report

In his sole issue, Dr. Davis argues that the trial court erred in denying his motion to dismiss the Swaims' claim because they failed to present an expert report adequately addressing the element of causation. With respect to Dr. Haider, Davis

argues that her report is conclusory because she fails to "explain[] how Dr. Davis's alleged negligence caused the Swaims' 'injury, harm, or damages.'"

A. Standard of Review and Principles of Law

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.). 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 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).

A health care liability claimant must timely provide each defendant health care provider with an expert report. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(a). An 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." *Id.* § 74.351(r)(6). If a defendant challenges the adequacy of a claimant's expert report, the trial court must grant the motion only if it appears, after a hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report or is not sufficiently specific to provide a basis for the trial court to conclude that the claims have merit. *Id.* § 74.351(*l*); *Scoresby v. Santillan*, 346 S.W.3d 546, 555–56 (Tex. 2011).

Although the report need not marshal all the plaintiff's proof, it must include the expert's opinions on the statutory elements, i.e., the standard of care, breach, and causation. *See Palacios*, 46 S.W.3d at 878–79. To be considered a good-faith effort, the report must inform the defendant of the specific conduct that the plaintiff calls into question and provide a basis for the trial court to conclude that the claims have merit. *Id*. at 879. A report that merely states the expert's conclusions does not fulfill these purposes. *Id*. The expert must explain the basis of her statements and link her conclusions to the facts. *Wright*, 79 S.W.3d at 52.

In assessing the sufficiency of a report, a trial court may not draw inferences, but instead must rely exclusively on the information contained within the four corners of the report and curriculum vitae. *See In re McAllen Med. Ctr., Inc*., 275

S.W.3d 458, 463 (Tex. 2008). However, section 74.351 does not prohibit experts from making inferences based on medical history. *Granbury Minor Emergency Clinic v. Thiel*, 296 S.W.3d 261, 265 (Tex. App.—Fort Worth 2009, no pet.). Whether an expert's factual inferences in the report are accurate is an issue for trial and should not be considered when ruling on a section 74.351 motion to dismiss. *Hood v. Kutcher*, No. 01-12-00363-CV, 2012 WL 4465357, at *4 (Tex. App.—Houston [1st Dist.] Sept. 27, 2012, no pet.) (mem. op.); *see Gannon v. Wyche*, 321 S.W.3d 881, 892 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).

B. Causation

With respect to causation, an expert report must provide a "fair summary" of the expert's opinions regarding the causal relationship between the failure of a health care provider to provide care in accordance with the applicable standard of care and the injury claimed. TEX. CIV. PRAC. & REM. CODE § 74.351(r)(6). A causal relationship is established by proof that a negligent act or omission constituted a substantial factor in bringing about harm and, absent the act or omission, the harm would not have occurred. *Owens v. Handyside*, 478 S.W.3d 172, 187 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). However, an expert report need not marshal all of 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 v. Hilgers*, 446 S.W.3d 113, 123

(Tex. App.—Houston [1st Dist.] 2014, pet. denied). The expert must simply provide some basis that a defendant's act or omission proximately caused injury. *Owens*, 478 S.W.3d at 187–88. Although no "particular words or formality are required," "bare conclusions will not suffice." *Scoresby*, 346 S.W.3d at 556. An expert's statement is conclusory if she simply "asserts a conclusion with no basis or explanation." *Windrum v. Kareh*, 581 S.W.3d 761, 768 (Tex. 2019). Again, an expert must explain the basis of her statements and link her conclusions to the facts. *Id.*

Here, the Swaims were required to present an expert report setting out the causal relationship between Dr. Davis's breach of the standard of care and John's alleged injury. To set out the standard of care applicable to Dr. Davis, an orthopedic surgeon, and a breach of the standard, the Swaims presented the report of Dr. Karia, a board-certified orthopedic trauma surgeon. To address the issue of causation of John's injury, the Swaims presented the report of Dr. Haider, a traumatic-brain-injury specialist board-certified in anesthesiology and neurocritical care.

We note that section 74.351(i) expressly authorizes a claimant to satisfy the statutory requirements by presenting separate experts on liability and causation issues for a physician, as follows:

> Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the

> conduct of a physician or health care provider, such as issues of liability and causation. *Nothing in this section shall be construed to mean that a single expert must address* all liability and causation issues with respect to all physicians or health care providers or with respect to *both liability and causation issues for a physician* or health care provider.

TEX. CIV. PRAC. & REM. CODE § 74.351(i) (emphasis added). When plaintiffs rely on one report to address the standard of care and breach and a second report to address causation, we look to both reports to determine whether the breach identified in the first report is sufficiently linked to the cause of the alleged injury in the second. *Nexion Health at Beechnut, Inc. v. Moreno*, No. 01-15-00793-CV, 2016 WL 1377899, at *4 (Tex. App.—Houston [1st Dist.] Mar. 19, 2016, no pet.) (mem. op.).

As discussed above, Dr. Karia, in her report, opines that Dr. Davis, "individually and as leader of the OR team," breached the standard of care by failing "to ensure safety straps/tape were in place at the time of the fall from the operating room table"; "to ensure that when the straps/tape are removed, that appropriate personnel are in direct position to prevent a fall and prepare the patient for transfer to a hospital bed"; "to delegate someone to stand and remain in the appropriate position if one member needs to step away"; and "to provide the constant awareness required in order to prevent falls with an anesthetized patient."

In setting out the causal connection between Dr. Davis's omissions in failing to prevent John's fall from the operating table while anesthetized and the injuries alleged, Dr. Haider states in her report that the Hospital's records show that, after

John fell at his home on November 9, 2019, the Hospital performed CT scans to evaluate his head, neck, and pelvis, and that the "*[r]esults were normal* with the exception of a fractured right hip, which was scheduled for surgery the following day." (Emphasis added.) Haider identifies the "Date of Injury" at issue as the next day, "11/10/2019," when, at the completion of his hip surgery and while "still intubated and under anesthesia," John "fell face down from the OR table" onto the floor. Haider notes that John was taken directly from the operating room for a CT scan of his head. Although no intracranial injury was initially found, John began showing changes in his mental status, and the Hospital's neurology team diagnosed him with a concussion. She notes that John suffered from an "inability to speak, slurred speech, dysnomia, and word-finding difficulties following the injury while hospitalized." She also notes that he "began experiencing dysphagia [difficulty swallowing] following his fall from the OR table" and that a feeding tube was placed.

Dr. Haider states that, during her physical examination and evaluation of John on June 8, 2020, he displayed symptoms of vestibular dysfunction, which she described as dizziness, balance deficits, vertigo, visual impairment, and auditory changes. He also showed "mild apraxia of speech for diadochokinetic rate," which she described as an "acquired oral motor speech disorder which affects volitional and sometimes automatic speech" in those with "traumatic brain injury after damage to the parts of the brain that control muscle movement occur."

Dr. Haider opines, based on her review of John's medical records and her physical examination and evaluation of John, that he "suffered a traumatic brain injury" that was "likely . . . secondary to the fall occurring after his operative procedure."

Thus, Dr. Haider provides some basis that Dr. Davis's omissions in failing to prevent John's fall proximately caused his injury. *See Wright*, 79 S.W.3d at 52–53; *Owens*, 478 S.W.3d at 187–88. Haider explains the basis of her statements and links her conclusion to the facts. *See Windrum*, 581 S.W.3d at 768.

In *Nexion Health at Beechnut, Inc. v. Moreno*, this Court affirmed a trial court's finding that an expert report adequately reflected a causal relationship between the defendant's failure to adhere to the standard of care in monitoring and supervising a patient suffering from an impaired level of consciousness based on medications and the patient's resulting fall and injury. 2016 WL 1377899, at *4, 6. There, the plaintiff's first expert opined that the standard of care applicable to a facility charged with caring for frail, medically complex individuals was to provide proper supervision and that the defendant facility failed to adhere to that standard in allowing the patient to wander. *Id.* at *3–4. The plaintiff's second expert opined that such failure to properly supervise the patient was the proximate cause of the patient falling in a hallway and striking his head, which directly preceded his death. *Id*. at *4. We held that, "[k]eeping in mind that expert reports . . . are only a

preliminary method to show that a plaintiff has a viable cause of action that is not frivolous or without expert support," the expert report there represented a good faith effort to inform the defendant of the causal relationship between its failure to provide care in accordance with the standard of care and the alleged injury. *Id.* at *4–5.

Here, similarly, the trial court could have reasonably concluded that Dr. Haider's report represents a good faith effort to inform Dr. Davis of the causal relationship between his breach of the standard of care and John's injuries. *See id.*; *see also Est. of Birdwell v. Texarkana Mem'l Hosp., Inc*., 122 S.W.3d 473, 479–80 (Tex. App.—Texarkana 2003, pet. denied) (holding that expert's report gave fair notice to hospital of causal relationship between its breach of standard of care, in failing to provide restraints as fall protection, and patient's fall resulting in paralysis and diminished consciousness). Although Haider did not expressly use the term "causation," such "magic words" are not required. *Amjadi v. Mandujano*, No. 01-13-00479-CV, 2014 WL 554678, at *6 (Tex. App.—Houston [1st Dist.] Feb. 11, 2014, no pet.) (mem. op.); *see also Scoresby*, 346 S.W.3d at 556 (noting that no "particular words or formality are required" in expert reports). We determine whether a causation opinion is sufficient by considering the context of the entire report. *VHS San Antonio Partners LLC v. Garcia*, No. 04-09-00297-CV, 2009 WL 3223178, at *3 (Tex. App.—San Antonio, Oct. 7, 2009, pet. denied) (mem. op.).

Dr. Davis argues on appeal that Dr. Haider's causation opinions are conclusory because she asserts that John's brain-injury symptoms "developed after the second fall without explaining how or why she attributed them to the second fall (as opposed to the first fall or the hip surgery)."

As set out above, Dr. Haider's opinions are not conclusory because she explains the basis of her statements and links her conclusions to the facts. *See Windrum*, 581 S.W.3d at 768. Further, at this pre-discovery stage, the Swains' burden is not to prove a causal link by a preponderance of the evidence to the satisfaction of a factfinder or to rule out all other possible causes of injury. *See Palacios*, 46 S.W.3d at 879; *Puppala v. Perry*, 564 S.W.3d 190, 198, 202 (Tex. App.—Houston [1st Dist.] 2018, no pet.). An expert report "need not anticipate or rebut all possible defensive theories that may ultimately be presented." *Owens*, 478 S.W.3d at 187. The purpose of the expert-report requirement is simply to rule out frivolous lawsuits at the onset of litigation, before the parties have conducted full discovery. *Ross v. St. Luke's Episcopal Hosp*., 462 S.W.3d 496, 502 (Tex. 2015); *Puppala*, 564 S.W.3d at 197.

In support of his argument, Dr. Davis relies on *Jelinek v. Casas*, 328 S.W.3d 526 (Tex. 2010). There, the supreme court concluded that an expert report was inadequate as to the causation element because it offered "no more than a bare assertion" that a breach of the standard of care "resulted in increased pain and

suffering and a prolonged hospital stay." *Id.* at 540. The report lacked any explanation of how the breach, i.e., failing to discover that antibiotics were not being given, caused the injury, i.e., the patient's death, and thus did not allow the trial court to determine whether the lawsuit had merit. *Id*. at 530–31, 540. In the instant case, however, Dr. Haider's report provides enough information to inform Dr. Davis of the specific conduct the Swaims have called into question and provides a basis for the trial court to conclude that the claims have merit. *See Scoresby*, 346 S.W.3d at 556.

Dr. Davis also complains on appeal that the trial court "conflated causation with the other elements" and "failed to treat causation as a separate inquiry." He points to the following statement by the trial court to Davis at the second hearing:

> Based on your concession that they've cured the deficiency with regards to standard of care and breach, the court finds sufficient evidence of causation to support the plaintiffs' cause of action.

He asserts that the trial court thus "rel[ied] on a concession that other elements were sufficiently addressed in the amended report as a concession that causation was likewise sufficient."

The record of the second hearing does not support Dr. Davis's argument. When read in the context of the hearing, the trial court's statement notes that Davis, having limited his challenge in his second motion to dismiss to the causation element and having noted at the hearing that his challenge was "just [as to] causation," had

thus conceded that the Swaims had cured the deficiency with regard to the standard of care and breach. In addition, the trial court found that the Swaims had presented "sufficient evidence of causation to support [their] cause of action." The required statutory elements having been satisfied, the trial court then denied Davis's second motion to dismiss.

We conclude that the trial court reasonably concluded that Dr. Haider's report represents an objective, good-faith effort to inform Dr. Davis of the causal relationship between the failure to provide care in accordance with the pertinent standards of care and the injuries and damages claimed. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(l), (r)(6); *Scoresby*, 346 S.W.3d at 555–56; *Palacios*, 46 S.W.3d at 879; *Owens*, 478 S.W.3d at 187. Accordingly, we hold that the trial court did not err in denying the motion to dismiss the Swaims' health care liability claim on the ground that the expert report is inadequate with respect to causation.

We overrule Dr. Davis's sole issue.

Conclusion

We affirm the trial court's interlocutory order denying the motion to dismiss the Swaims' health care liability claim.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Countiss and Guerra.