

Reversed and Remanded and Memorandum Opinion filed June 17, 2021.



In The

Fourteenth Court of Appeals

NO. 14-20-00131-CV

HARRY READER, Appellant

V.

DONALD E. HAUSER M.D., Appellee

**On Appeal from the 334th District Court
Harris County, Texas
Trial Court Cause No. 2019-23446**

MEMORANDUM OPINION

The Texas Medical Liability Act requires a health care claimant to furnish a written expert report early in the proceedings summarizing the applicable standards of care and explaining how the provider's alleged negligence caused the claimant's injury. Appellant Harry Reader sued Dr. Donald E. Hauser for injuries Reader allegedly received as a result of detoxification treatment at the Right Step Behavioral Center. Contending that Reader failed to comply with the Texas Medical Liability Act by filing a deficient expert report, Hauser filed a motion to dismiss Reader's

claim pursuant to the Texas Medical Liability Act. *See* Tex. Civ. Prac. & Rem. Code § 74.351(r)(6). After finding the initial expert report deficient and permitting Reader to file an amended expert report, the trial court granted Hauser’s motion to dismiss. Reader timely appealed. Concluding the amended expert report represents an objective good faith effort to comply with the statutory requirements, we reverse the trial court’s judgment of dismissal and remand for further proceedings.

BACKGROUND

Reader sought admission to the Right Step Behavioral Care facility seeking detoxification treatment for alcohol and opiate dependence. Reader was treated with Phenobarbital, Lorazepam, and Suboxone. He also received a dose of Risperidone prescribed for visual and auditory disturbances. Reader was treated pursuant to two sets of orders, one for alcohol, and another for opiates. Reader did not remember anything from his stay at Right Step other than being told to sleep on a top bunk. The next thing Reader remembered was waking up at Houston Methodist Hospital after experiencing an altered mental state.¹ After several days of treatment for barbiturate overdose Reader was discharged from the hospital.

According to the expert report, medical records indicated Reader received 129.6 milligrams of Phenobarbital for withdrawal symptoms on January 19, 2017, the first day Reader was admitted. However, no withdrawal symptoms were documented. The next day, January 20, Reader received three doses of 64.8 milligrams of Phenobarbital despite no withdrawal symptoms being documented. On January 21, Reader received two more 64.8 milligram doses with no documentation of withdrawal symptoms. Reader also received several two-milligram doses of Lorazepam over the three days in addition to the antipsychotic

¹ The parties describe Reader’s “altered mental state” as not being unconscious, but also not fully awake and aware.

drug Risperidone. Risperidone was prescribed as needed for auditory and visual disturbances, but none were documented. Reader also received two 100-milligram doses of trazodone for insomnia despite no documentation of insomnia.

On January 22, after sleeping most of the previous night and day, Reader was unresponsive except to strong pain stimuli. At that time Reader was transported to Methodist Hospital where he was diagnosed with accidental drug overdose associated with acute hypercapnic respiratory failure. Reader responded to a large dose of Narcan to counteract Suboxone, which was a substantial contribution to his altered mental status. Reader was safely discharged from the hospital five days later.

Reader filed suit on April 2, 2019 against Hauser alleging negligence. Reader served Hauser with the expert report of Dr. Stephen E. Hall on August 14, 2019. Hauser objected to Hall's report and moved to dismiss the case. *See* Tex. Civ. Prac. & Rem. Code § 74.351(b). The trial court sustained the objections and granted Reader 30 days to amend the report. *See id.* § 74.351(c). Reader served Hauser with Hall's amended expert report on November 7, 2019.

Hauser again objected and moved to dismiss the case. Hauser contended the report was inadequate because the expert failed to (1) outline the standard of care for a physician like Hauser; (2) explain how Hauser allegedly breached the standard of care; and (3) adequately establish a causal connection between the alleged breach and the complained-of injury. The trial court agreed with Hauser's objections and dismissed Reader's suit.

ANALYSIS

In two issues Reader asserts that (1) the amended expert report complied with the statutory requirements of section 74.351 of the Civil Practice and Remedies Code; and (2) the trial court abused its discretion in granting Hauser's motion to

dismiss on the basis of a deficient expert report. We address appellant’s issues together.

I. Standard of Review and Applicable Law

Chapter 74 of the Civil Practice and Remedies Code, also known as the Texas Medical Liability Act (“the Act”), requires health care liability claimants to serve an expert report upon each defendant not later than 120 days after that defendant’s answer is filed. Tex. Civ. Prac. & Rem. Code § 74.351(a). The purpose of the expert report requirement is to weed out frivolous malpractice claims in the early stages of litigation, not to dispose of potentially meritorious claims. *Abshire v. Christus Health Se. Tex.*, 563 S.W.3d 219, 223 (Tex. 2018). (“[Expert report] requirements are meant to identify frivolous claims and reduce the expense and time to dispose of any that are filed.”). In accordance with that purpose, the Act provides a mechanism for dismissal of the claimant’s suit in the event of an untimely or deficient report. Tex. Civ. Prac. & Rem. Code § 74.351(b).

The two-fold purpose of an expert report under section 74.351 is to inform the defendant of the specific conduct the plaintiff has called into question and to provide the trial court with a basis to determine whether the plaintiff’s claims have merit. *Bailey v. Amaya Clinic, Inc.*, 402 S.W.3d 355, 366–67 (Tex. App.—Houston [14th Dist.] 2013, no pet.). A report that merely states the expert’s conclusions about the standard of care, breach, and causation does not fulfill these two purposes. *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 879 (Tex. 2001). Rather, the expert must explain the basis of his statements to link his conclusions to the facts. *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010); *see also Davis v. Spring Branch Med. Ctr.*, 171 S.W.3d 400, 406 (Tex. App.—Houston [14th Dist.] 2005, no pet.) (“[T]he expert report has to set out, in nonconclusory language, the expert’s opinion about [the] three [statutorily required] elements of the claim.”).

An expert report is sufficient under the Act if it “provides a fair summary of the expert’s opinions . . . regarding applicable standards of care, the manner in which the care rendered . . . failed to meet the standards, and the causal relationship between that failure and the injury.” Tex. Civ. Prac. & Rem. Code § 74.351(r)(6). Importantly, the trial court need only find that the report constitutes a “good faith effort” to comply with the statutory requirements. *Id.* § 74.351(1); *see also Palacios*, 46 S.W.3d at 878. An expert report demonstrates a “good faith effort” when it “(1) inform[s] the defendant of the specific conduct called into question and (2) provid[es] a basis for the trial court to conclude the claims have merit.” *Baty v. Futrell*, 543 S.W.3d 689, 693–94 (Tex. 2018).

We review a trial court’s decision to grant a motion to dismiss based on the adequacy of an expert report for an abuse of discretion. *Palacios*, 46 S.W.3d at 877. In analyzing a report’s sufficiency under this standard, we consider only the information contained within the four corners of the report. *Id.* at 878.

A report that satisfies three requirements is sufficient: it must fairly summarize the applicable standard of care; it must explain how a physician or healthcare provider failed to meet that standard; and it must establish the causal relationship between the failure and the harm alleged. *Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 630 (Tex. 2013). A report that meets these requirements, even only as to one theory, entitles the claimant to proceed with a suit against the healthcare provider. *Id.* However, a report that merely states the expert’s conclusions about the standard of care, breach, and causation does not meet these requirements. *Palacios*, 46 S.W.3d at 879.

With these standards in mind, we turn to Hall’s report.

II. Standard of Care.

Identifying the standard of care is critical. *Univ. of Tex. Med. Branch at*

Galveston v. Qi, 370 S.W.3d 406, 410 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Whether the standard was violated cannot be determined absent specific information about what the defendant should have done differently. *Palacios*, 46 S.W.3d at 880. Though the “fair summary” of the expert’s opinions required by the expert report is something less than a full statement of the applicable standard of care and how that standard was breached, the report must still set out what care was expected, but not given. *Id.*; see also Tex. Civ. Prac. & Rem. Code § 74.351(r)(6).

In Hall’s report, he addressed the standard of care as follows:

While it is within the standard of care to issue telephone orders for a patient undergoing withdrawal and medical detoxification treatment, appropriate treatment then would require an in-person assessment by a physician or other appropriately licensed clinician, and monitoring of physiologic, mental and behavioral signs of withdrawal and response to intervention, especially medications with a potential for adverse side effects.

The standard of care for monitoring a patient who is being given powerful sedative medications should include, at a minimum, regular vital signs, monitoring of level of arousal with communication back to the nursing staff who administer both scheduled and as-needed medications, and physician supervision of the entire process.

Standard of care is defined by what an ordinarily prudent health care provider or physician would have done under the same or similar circumstances. *Palacios*, 46 S.W.3d at 880; *Kingwood Pines Hosp., LLC v. Gomez*, 362 S.W.3d 740, 747 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Hauser argues that Hall’s report only stated a standard of care for the staff and did not address the standard of care for an attending physician. We disagree.

Hall’s report noted that while telephone orders were within the standard of care, the standard of care also required in-person assessment and monitoring for

adverse side effects. Hall elaborated that the standard of care required monitoring vital signs and level of arousal including “physician supervision of the entire process.” We conclude Hall’s report is not deficient as it addresses the standard of care in sufficient detail to apprise Hauser of Reader’s complaints regarding the standard of care. *See Kelly v. Rendon*, 255 S.W.3d 665, 679 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (concluding that expert report was not deficient and noting that expert reports are a preliminary method to show a plaintiff has a viable cause of action that is not frivolous or without expert support).

III. Breach of the Standard of Care

Hall opined generally that Hauser breached the standard of care when an in-person assessment was not conducted of Reader. But Hall elaborated:

- Reader was given medication without adequate monitoring of his physiological state of level of arousal;
- Over three days Reader was given standard doses of Phenobarbital prescribed for withdrawal symptoms although no withdrawal symptoms were diagnosed;
- No records of interim evaluations or vital signs were found;
- No evidence that clinical information was communicated to Hauser;
- The emergency department at Houston Methodist noted that Reader “had not been seen by a physician while at [Right Step].”
- No evidence that Reader was appropriately monitored, or that any clinical information on his condition was passed along to any physician;
- Hall concludes specifically, “To the extent that Dr. Hauser is ultimately responsible for the care of his patients, as well as for the overall organization of treatment at this facility, his actions did not meet the standard of care.”

Whether a defendant breached the standard of care cannot be determined

without “specific information about what the defendant should have done differently.” *Palacios*, 46 S.W.3d at 880. Hauser contends that Hall’s report did not detail how he breached the standard of care but only noted how the staff failed to properly monitor the patient. The report, however, noted that the standard of care required in-person assessment and physician supervision. Hall detailed in his report the standard for physician supervision and noted that at the time of presentation to the hospital, supervision was lacking in that Reader had not been seen by a physician during his entire stay at the facility. Accordingly, the report is not conclusory as to the purported breach of the applicable standard of care. *Harvey v. Kindred Healthcare Operating, Inc.*, 578 S.W.3d 638, 653 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (although report did not address each healthcare provider’s failures separately, report put defendant on notice of how the expert believed providers breached their duties).

IV. Causation

Hauser further objected that Hall’s causation opinion was conclusory and speculative. An expert report must include a fair summary of the expert’s opinions regarding the causal relationship between the failure of the healthcare provider to provide care in accordance with the pertinent standard of care and the injury, harm, or damages claimed. *Bailey*, 402 S.W.3d at 369 (citing Tex. Civ. Prac. & Rem. Code § 74.351(r)(6)). Under the Act, an expert must explain, based on the facts set forth in the report, how and why a healthcare provider’s breach of the standard of care caused the injury. *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 459–60 (Tex. 2017).

A causal relationship is established by proof that the negligent act or omission was a substantial factor in bringing about the harm, and that, absent this act or omission, the harm would not have occurred. *Gonzalez v. Padilla*, 485 S.W.3d 236,

252 (Tex. App.—El Paso 2016, no pet.). To determine whether the expert’s causation conclusions are detailed enough, as with standard of care and breach, we read the expert’s conclusions on causation in the context of the entire report, not piecemeal or in a vacuum. *See Harvey*, 578 S.W.3d at 653.

In addressing causation, Hall opined:

It is important to understand that each of these medications have sedative properties when given alone, and the effect is cumulative and potentially synergistic when given together. This was the case here, and evidently the medication burden led to an unintentional overdose of the patient.

Mr. Reader’s altered mental status, sedation, and respiratory depression were caused by a combination of excessive doses of phenobarbital, lorazepam, and Suboxone, all of which have the capacity to cause these symptoms when given alone to susceptible individuals. Because of his obesity, sleep apnea and COPD, Mr. Reader was someone who was more likely to have these complications. Because they were given together and without adequate monitoring, the medications led quickly to obtundation and might easily have caused coma or death.

In other words, but for the failure to monitor Reader and determine whether regular doses of sedative medication were needed, Reader allegedly would not have undergone a hospital stay to treat his overdose and the costs associated with that hospitalization. We conclude that Hall fairly summarized the causal relationship between the alleged failure of Hauser to monitor his patient’s progress and dosage to Reader’s alleged injuries. *See Gonzalez*, 485 S.W.3d at 252–53 (holding expert report was adequate as to causation when expert opined that the “failure to timely establish an appropriate treatment plan which provided for infection prevention” caused patient to develop infection resulting in amputation of his leg).

We sustain Reader’s issues on appeal.

CONCLUSION

Hall's amended expert report complies with the statutory requirements for an expert report. Accordingly, we hold the trial court abused its discretion in granting Hauser's motion to dismiss. We reverse the trial court's judgment and remand the case to the trial court for further proceedings.

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Wise, Zimmerer, and Poissant.