



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00227-CV

KELLER SNF D/B/A HERITAGE
HOUSE AT KELLER NURSING
AND REHABILITATION

APPELLANT

V.

JOHN KOUTSOUFIS
INDIVIDUALLY AND ON BEHALF
OF THE ESTATE OF NIKI
KOUTSOUFIS

APPELLEE

FROM THE 141ST DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 141-274095-14

MEMORANDUM OPINION¹

Appellant Keller SNF d/b/a Heritage House at Keller Nursing and Rehabilitation (Heritage House) brings this interlocutory appeal² from the trial

¹See Tex. R. App. P. 47.4.

²See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(9) (West Supp. 2016).

court's order denying a motion to dismiss the health care liability claim brought by appellee John Koutsoufis individually and on behalf of the estate of Niki Koutsoufis (Koutsoufis). Heritage House contends that an amended expert report served by Koutsoufis does not satisfy the requirements of chapter 74 of the civil practice and remedies code³ because it does not adequately describe Heritage House's standard of care, how Heritage House breached the standard, and how any such breach caused the decedent's injuries or death. We affirm.

Background Facts

In August 2014, Koutsoufis sued several defendants, including Heritage House, for their alleged negligence and gross negligence in providing medical care to Niki, an elderly woman, and in contributing to her death in March 2014.⁴ Koutsoufis pled that Heritage House provided nursing care to Niki from March 2013 to March 2014 after other defendants had provided care from August 2012 through December 2012 in nursing home settings. Koutsoufis alleged that during these times, Niki was recovering from a stroke, and the defendants failed to provide skilled nursing care to meet her needs. Specifically as to Heritage House, Koutsoufis pled that when Niki resided there, she suffered from dehydration and urinary tract infections (UTIs) caused by Heritage House's negligence. Koutsoufis asserted that Heritage House "had direct prior notice of

³See Tex. Civ. Prac. & Rem. Code Ann. §§ 74.001–.507 (West 2011 & Supp. 2016).

⁴The claims against the other defendants are not at issue in this appeal.

[Niki's] high risk for dehydration [and] UTIs . . . yet failed to take any reasonable [preventative] action." Koutsoufis sought damages for Niki's physical pain, mental anguish, disfigurement, physical impairment, and medical expenses. Heritage House answered the suit by asserting a general denial and by asserting defenses and affirmative defenses, including "the defenses and/or liability limits as provided by Chapter 74."

Koutsoufis served upon each defendant an expert report written by Dr. Lige Rushing. Dr. Rushing's report recited his background and experience⁵ and stated that he had reviewed records related to the care of Niki, who was eighty years old when she died in March 2014. According to the report, Niki had a history of experiencing several medical difficulties, and certain conditions—including UTIs—continued or arose during her stays at retirement villages and rehabilitation centers.

Dr. Rushing's report stated that during Niki's stay at Heritage House, she was admitted to various hospitals on several occasions for conditions such as chest pains, respiratory failure, UTIs, dehydration, and pneumonia. According to the report, when Niki died, she was suffering from "respiratory insufficiency atrial fibrillation with rapid ventricular response, [UTIs], dehydration, seizure[,] and dementia." She "succumbed to her illnesses on March 17, 2014. Her death

⁵Dr. Rushing graduated from Baylor University College of Medicine. He is board certified in internal medicine, rheumatology, and geriatrics, and he practices in those areas in Dallas.

certificate list[ed] cerebrovascular accident as her cause of death.” In summary, Dr. Rushing’s report faulted Heritage House for not recognizing Niki’s risk of developing UTIs and dehydration and for not monitoring conditions—such as inadequate urine output and inadequate fluid intake—that led to those maladies. With respect to causation, the report stated in part,

The failure of the facility Defendants . . . and their management companies to provide appropriate care to [Niki] relating to her incontinence, hydration, and UTIs, as noted above, complicated her conditions, and resulted in an overall decline in her health with associated suffering. Had reasonable steps been taken to adequately care for [Niki’s] incontinence with appropriate monitoring of her fluid intake and urine output to a reasonable degree of medical probability, [she] would have suffered less in her final days and would have had a better chance of recovery in her condition.

Heritage House objected to the adequacy of Dr. Rushing’s report, contending that the report failed to establish Dr. Rushing’s qualifications to discuss the standard of care, failed to sufficiently set forth the standard of care and how Heritage House breached it, and failed to explain how the alleged breach caused Niki’s injuries and death. Based on these alleged deficiencies, Heritage House asked the trial court to dismiss Koutsoufis’s claims. Koutsoufis filed a response to the objections. The trial court sustained the objections but granted Koutsoufis thirty days to cure the report’s deficiencies.

Koutsoufis served an amended report. The amended report stated in part,

I have been asked to determine whether or not the care and treatment provided by . . . Heritage House . . . to Niki . . . met the applicable standards of care, and, if the care did fall below such

standards, whether any injuries resulted from the breach of the standards. . . .

. . . .

[Niki] was born on April 1, 1933 and died on March 17, 2014. . . .

. . . .

Heritage House at Keller

On or about March 23, 2013, Niki . . . was admitted to Heritage House . . . for skilled nursing and hospice care. Her admitting diagnosis was COPD, generalized muscle weakness, stiffness of joint, muscular wasting and disuse atrophy, lack of coordination, hypertension, hyperlipidemia, esophageal reflux, depressive disorder, cerebrovascular disease, myotonic muscular dystrophy[,] and dysphagia. . . .

. . . .

On or about July 9, 2013, Niki . . . was admitted to Texas Health Harris Methodist Hospital—Fort Worth. Upon admission, [Niki] was diagnosed with a [UTI] and hypotension. She remained hospitalized until July 10, 2013.

. . . .

On or about December 14, 2013, [Niki] was hospitalized at Texas Health Harris Alliance for dehydration and [UTI]. She was discharged on December 18, 2013 after receiving treatment.

On or about March 2, 2014, [Niki] was rushed to Texas Health Harris Alliance Hospital. Upon admission, she was found to be suffering from respiratory insufficiency atrial fibrillation with rapid ventricular response, [UTI], dehydration, seizure[,] and dementia. She was treated and released from the hospital the following day. [Niki] was unable to fully recover, and succumbed to her illnesses on March 17, 2014. Her death certificate lists cerebrovascular accident as her cause of death.

. . . .

Standard of Care

The standard of care for . . . Heritage House . . . requires [it] provide that level of care and treatment that a reasonable, prudent[,] similar facility and staff would provide under the same or similar circumstances. Specifically, in order to meet the standard [of] care [of] a skilled nursing facility, [Heritage House] must maintain clinical records on each resident in accordance with the accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized. A complete clinical record contains an accurate and functional representation of the actual experience of the individual in the facility. It must contain enough information to show that the facility knows the status of the individual, has adequate plans of care, and provide[s] sufficient evidence of the effects of the care provided. . . .

In order to meet the standard of care, facilities . . . must also provide a safe environment for their nursing-home patients. This standard encompasses a range of duties relating to the patient's stay with the nursing home Defendants failed to provide a safe environment for [Niki], because they . . . failed to maintain clinical records and failed to prevent [Niki] from developing UTIs and dehydration, as set forth below. The standard of care is not met when a nursing home fails to properly investigate, monitor, treat[,] and document a patient's care and treatment over the course of time, which is what happened in [Niki]'s case.

. . . .

Heritage House – Standard of Care and Breach Re UTIs and Dehydration

The standard of care for Heritage House and its staff requires that they provide the necessary care and services to maintain or attain the highest practicable physical, mental, and psychosocial well-being To meet the standards of care, the facility and its staff was to ensure that a resident who is incontinent of bladder receives the appropriate treatment and services to prevent [UTIs] and to restore as much normal bladder function as possible. This standard of care includes . . . securing qualified personnel to render the appropriate and necessary care and services to meet the needs of the resident. . . . Heritage House failed to meet the Standards of Care whereby the nursing facility failed to prevent [Niki] from

developing [UTIs]. Despite having been identified as a risk for the development of UTIs, [Niki] contracted UTIs while a resident of the Interlochen skilled nursing facility. For each instance whereby Interlochen failed to prevent the development of a [UTI], a breach in the standard of care occurred.

In this particular case, Heritage House and its staff knew, or should have known that [Niki] was at risk for the development of [UTIs] due to her bladder and bowel incontinence, multiple medical conditions[,] and recent history of UTIs. The nursing staff, per the standard of care, was required to implement a plan of care specifically to prevent and decrease [Niki's] risk for the development of UTIs. Nursing interventions defining the amount and type of necessary care required to meet the needs of [Niki] were to be implemented to ensure that [Niki] did not develop UTIs while a resident at Interlochen. In this case, interventions should have included, but not to be limited to, encourage fluids to promote adequate hydration to include eliminating caffeinated fluids, encourage resident to use call light for assistance to toilet and for incontinent care as needed, assist and encourage resident to empty bladder every 2 hours and as needed, encourage resident to empty bladder completely, monitor input and output every 8 hours, monitor urine and report any changes in color, odor[,] and/or sediment, encourage proper perineal care and if necessary provide perineal care for resident following any episodes of incontinence, apply moisture barrier creams to prevent skin breakdown, notify provider of any changes in elimination patterns and/or status, review medications for potential effects of renal toxicity, and review laboratory results and report any abnormal findings to provider.

Further, per the standard, [Heritage House] knew or should have known that elderly women are particularly prone to the development of [UTIs]. Elderly women likewise frequently have bacteria in the urine without having any symptoms. As long as the urine outflow is adequate the urine literally washes the bacteria out . . . before there is time for the development of an infection. This is why a normal urine production outflow is necessary in these types of patients. When the urine flow is decreased and the bacteria are not literally washed out of the urinary tract[,] it is then that infection begins.

Heritage House and its staff assessed and identified [Niki] as being at risk for complications secondary to Urinary Incontinence

when she was admitted to the . . . skilled nursing facility. [Niki] developed increased Urinary Incontinence which resulted in actual harm as evidenced by the . . . [UTIs] developed while a resident at Heritage House.

. . . Based upon the medical records from all three nursing facilities, Defendants breached the standard of care in failing to document [Niki]'s urine output and failed to note [Niki]'s condition that should have prompted intervention and treatment with the appropriate antibiotics. This did not properly occur at any of the facilities while [Niki] was a resident. As a result, [Niki] continued to needlessly suffer from [UTIs], which would have resolved with proper care.

Similarly, [Niki] became dehydrated at Heritage House, as noted in her records upon the hospitalizations identified above. The standard of care requires nursing facilities like Heritage House to ensure that residents receive appropriate fluid intake at all times. Specifically[,] nursing homes must provide each resident with sufficient fluids to maintain proper hydration and health by providing a plentiful supply of water or other beverages and be given any help or encouragement needed to drink. This must be documented in the records along with the resident's urine output. The records reflect a failure by Heritage House to properly document fluid intake and urine output. It is clear that [Niki] became dehydrated as a result of a failure to provide proper monitoring of [Niki]'s intake and output, which was a breach in the standard of care.

. . . .

Causation

It is my opinion to a reasonable degree of medical probability that the events and failures set forth in this report proximately caused [Niki's] injuries.

. . . .

. . . [A]s a result of [Heritage House's] conduct and numerous breaches in the standard of care, including failure to provide appropriate care related to [Niki's] incontinence and need for [UTI] prevention, [Niki] suffered numerous UTIs while a resident [Heritage House] failed to implement proper protocol with regards to [Niki's] incontinence and high risk for the development of UTIs,

causing her urine flow to decrease and the bacteria to stay in her urinary tract, resulting in infection.

Had reasonable steps been taken to ensure that [Niki] did not suffer from complications secondary to urinary incontinence, specifically the development of [UTIs], to a reasonable degree of medical probability, [Niki] would not have contracted multiple bacterial [UTIs] while she was a resident Due to [Heritage House's] . . . failures, [Niki] endured unnecessary and preventable suffering, related to [UTIs], that severely diminished her quality of life.

. . . .

Further, . . . Heritage House . . . failed to provide adequate hydration to [Niki], resulting in her becoming dehydrated. . . . It is clear that . . . Heritage House . . . did not provide [Niki] with sufficient fluids to maintain proper hydration and health, causing her to become dehydrated.

The failure of . . . Heritage House . . . to provide appropriate care to [Niki] relating to her hydration, as noted above, complicated her conditions, and resulted in an overall decline in her health with associated suffering.

Heritage House objected to Dr. Rushing's amended report. Specifically, Heritage House argued that the amended report failed to sufficiently set forth the applicable standard of care, how Heritage House breached the standard, and how any breach resulted in injury or death to Niki. Heritage House asked the trial court to dismiss Koutsoufis's claim and to award attorney's fees and costs. Koutsoufis filed a response to the objections. The trial court overruled Heritage House's objections to the amended report and denied the motion to dismiss. Heritage House brought this appeal.

The Sufficiency of Dr. Rushing's Report

On appeal, Heritage House raises four issues. In the first three issues, Heritage House contends, respectively, that Dr. Rushing's report inadequately describes the standard of care, the breach of that standard, and how the breach caused Niki's injuries or death. In the fourth issue, Heritage House argues that based on a positive resolution of one of the first three issues, the trial court erred by denying the motion to dismiss and request for attorney's fees.

In a health care liability claim, a plaintiff must serve each defendant with a report and a curriculum vitae of the report's author. Tex. Civ. Prac. & Rem. Code Ann. § 74.351(a). The report must be written by an expert qualified to give an opinion on the matters in the report, must inform the defendant of specific conduct called into question, and must provide a basis for a court to determine that the plaintiff's claim has merit. See *id.* § 74.351(r)(5)–(6); *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002); see also *Hebner v. Reddy*, 498 S.W.3d 37, 41–42 (Tex. 2016) (explaining that chapter 74 aims to eliminate frivolous claims while preserving claims of potential merit).

A report has not been “served” under the statute when it has been physically served but it is found deficient. *Moore v. Gatica*, 269 S.W.3d 134, 139 (Tex. App.—Fort Worth 2008, pet. denied) (op. on remand). A report is deficient only if it does not represent an objective good-faith effort to comply with the statutory requirements. Tex. Civ. Prac. & Rem. Code Ann. § 74.351(a)–(b), (l); see *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 879

(Tex. 2001) (explaining that a report does not meet the good-faith standard if it merely states the expert's conclusions or if it omits any of the statutory requirements).

While the expert report “need not marshal all the plaintiff’s proof,” *Palacios*, 46 S.W.3d at 878, it must provide a fair summary of the expert’s opinions as to the “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.” Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6). The information in the report “does not have to meet the same requirements as the evidence offered in a summary-judgment proceeding or at trial.” *Palacios*, 46 S.W.3d at 879. When reviewing the adequacy of a report, the only information relevant to the inquiry is the information contained within the four corners of the document. *Id.* at 878. “This requirement precludes a court from filling gaps in a report by drawing inferences or guessing as to what the expert likely meant or intended.” *Moore*, 269 S.W.3d at 140.

We review a trial court’s denial of a motion to dismiss alleging the inadequacy of an expert report for an abuse of discretion. *Id.* at 139. A trial court abuses its discretion if the court acts without reference to any guiding rules or principles. *Id.*

Standard of care

In its first issue, Heritage House contends that Dr. Rushing's amended report is insufficient because it does not adequately describe the standard of care owed from Heritage House to Niki. Specifically, Heritage House contends that Niki was admitted to Heritage House for skilled nursing care and hospice care, and the amended report is insufficient because it fails to describe how the standard of care might be different in those two areas. Heritage House contends,

Dr. Rushing claims "nursing homes" like Heritage House were required to monitor [Niki's] urine production and to provide her with sufficient fluids to maintain proper hydration. . . . However, nothing in [the amended report] states whether this standard of care is the same for hospice patients—leaving the Court to improperly infer that the standards are the same. . . .

. . . Dr. Rushing's [amended report] wholly fails to acknowledge any distinction between standard nursing care and hospice care.

Koutsoufis responds by contending that Heritage House has not challenged the sufficiency of the report to set forth the standard of care for skilled nursing care and that the unchallenged skilled nursing care theory of liability should allow the entire case to proceed. In *Certified EMS, Inc. v. Potts*, the Texas Supreme Court stated,

No provision of [chapter 74] requires an expert report to address each alleged liability theory. . . .

. . . A valid expert report has three elements: it must fairly summarize the applicable standard of care; it must explain how a physician or health care provider failed to meet that standard; and it

must establish the causal relationship between the failure and the harm alleged. A report that satisfies these requirements, *even if as to one theory only*, entitles the claimant to proceed with a suit against the physician or health care provider.

. . . .

. . . If the trial court decides that *a liability theory is supported*, then the claim is not frivolous, and the suit may proceed.

392 S.W.3d 625, 630–31 (Tex. 2013) (emphasis added); see *TTHR Ltd. P’ship v. Moreno*, 401 S.W.3d 41, 42 (Tex. 2013) (“[A]n expert report satisfying the requirements of [chapter 74] as to a defendant, even if it addresses only one theory of liability alleged against that defendant, is sufficient for the entire suit to proceed against the defendant.”); *SCC Partners v. Ince*, 496 S.W.3d 111, 115 (Tex. App.—Fort Worth 2016, pet. abated) (“[I]f at least one alleged . . . theory . . . has expert support, then the legislative intent of deterring frivolous suits has been satisfied. Carving out . . . alternative ‘theories of liability[.]’ . . . at the beginning of the suit before discovery has occurred would be akin to requiring a plaintiff to meet the summary judgment standard of proof.”); see also *Harlingen Med. Ctr., L.P. v. Andrade*, Nos. 13-14-00700-CV, 13-15-00119-CV, 2016 WL 1613297, at *3–4 (Tex. App.—Corpus Christi Apr. 21, 2016, pet. filed) (mem. op.) (applying *Potts* and declining to address an alternative negligence theory of liability after holding that a report was adequate as to one theory).

Dr. Rushing’s report states that Niki was admitted to Heritage House for “skilled nursing *and* hospice care.” [Emphasis added.] The report then discusses the standard of care for Heritage House as a “skilled nursing facility,”

including engaging in certain “[n]ursing interventions.” The report faults Heritage House for failing to document Niki’s fluid intake and urine output and failing to treat her with appropriate antibiotics, thus causing her to become dehydrated and to “needlessly suffer from [UTIs].”

Heritage House does not argue on appeal that it was not a skilled nursing facility (in addition to a hospice facility),⁶ that there was not a skilled nursing component (in addition to a hospice component)⁷ of Niki’s care, or that its duties as a skilled nursing facility (as opposed to a hospice facility) differed from the other defendants’ duties in that regard. Also, in its first issue, Heritage House does not contend that the amended report inadequately describes the standard of care for Heritage House as a skilled nursing facility, as opposed to (or in addition to) a hospice facility. Heritage House’s argument in this issue rests on an assumption that its standard of care as a hospice facility concerning the prevention of a patient’s UTIs or dehydration differs from its standard of care as a skilled nursing facility to prevent those maladies. However, Heritage House does not direct us to any authority establishing that its liability could not rest on its acts or omissions in providing skilled nursing care to Niki even if it could not rest on its

⁶Koutsoufis’s first amended petition—the live pleading—refers to Heritage House as a “skilled nursing facility” that provided care to Niki.

⁷In its reply brief, Heritage House contends that it was a “different type of provider, *at times*, than the other defendants because it provided hospice care while the other defendants did not.” [Emphasis added.] Thus, Heritage House appears to concede that on some occasions, it provided skilled nursing services akin to the services provided by the other defendants.

acts or omissions in providing hospice care. Thus, even if we were to agree with Heritage House's contention that Dr. Rushing's amended report inadequately describes the standard of care related to hospice services, because Heritage House does not challenge the adequacy of the description of the standard of care related to Niki's skilled nursing care, we conclude that the amended report is sufficient to allow the suit against Heritage House to proceed under at least one theory. See *Moreno*, 401 S.W.3d at 42; *Potts*, 392 S.W.3d at 630–31; *Ince*, 496 S.W.3d at 115.⁸ We hold that the trial court did not abuse its discretion by denying Heritage House's motion to dismiss on the ground that Dr. Rushing's amended report failed to sufficiently set forth a standard of care, and we overrule Heritage House's first issue. See *Moore*, 269 S.W.3d at 139–40.

Breach of the standard of care

In its second issue, Heritage House contends that Dr. Rushing's amended report does not adequately describe Heritage House's alleged breach of the standard of care. Similar to its argument above, Heritage House first contends that the report is insufficient because it does not "adequately address the issue of [Niki's] hospice care and does not put Heritage House on notice of the complained-of conduct given the hospice orders." We reject that argument for the reasons already stated.

⁸Heritage House does not address the *Potts* holding (or the application of that holding in subsequent cases) in either its brief or reply brief.

Heritage House also contends that the amended report is insufficient concerning its statement of Heritage House's alleged breach because it "continuously refers to [Niki's] development of [UTIs] at another facility." As recited above, in the part of Dr. Rushing's amended report where he discusses Heritage House's standard of care and alleged breach, he states in part,

[Niki] contracted UTIs while a resident of the *Interlochen* skilled nursing facility. For each instance whereby *Interlochen* failed to prevent the development of a [UTI], a breach in the standard of care occurred.

. . . Nursing interventions defining the amount and type of necessary care required to meet the needs of [Niki] were to be implemented to ensure that [Niki] did not develop UTIs while a resident at *Interlochen*. [Emphases added.]

Heritage House relies on these references to "Interlochen" to contend that the explanation of the breach of standard of care is insufficient as to Heritage House. It contends that this court is "left to infer that this was an error and that Dr. Rushing intended to refer to Heritage House Such an inference should not be required." While it appears to us that Dr. Rushing's references to "Interlochen" are likely inadvertent typographical errors, we should "not have to fill in missing gaps in a report by drawing inferences or resorting to guess work." *THN Physicians Ass'n v. Tiscareno*, 495 S.W.3d 914, 919 (Tex. App.—El Paso 2016, no pet.); see *Moore*, 269 S.W.3d at 140.

Nonetheless, even given these references to "Interlochen," we conclude that Dr. Rushing's amended report adequately explains Heritage House's breach of the standard of care. The report states,

In this case, interventions should have included, but not to be limited to, encourage fluids to promote adequate hydration to include eliminating caffeinated fluids, . . . [and] monitor input and output every 8 hours

Further, per the standard, [Heritage House] knew or should have known that elderly women are particularly prone to the development of [UTIs]. Elderly women likewise frequently have bacteria in the urine without having any symptoms. As long as the urine outflow is adequate the urine literally washes the bacteria out of the kidney, ureter, bladder[,] and urethra before there is time for the development of an infection. . . .

. . . .

When Heritage House accepted [Niki], the standard of care required that they knew or should have known that she was a high risk for dehydration and [UTIs] due to her bladder and bowel incontinence, multiple medical conditions and recent history of UTIs. . . . *Thus nursing homes such as Heritage House are required, per the standard, to carefully monitor urine production and have sufficient documentation of findings. Based upon the medical records from all three nursing facilities, Defendants breached the standard of care in failing to document [Niki]'s urine output and failed to note [Niki]'s condition that should have prompted intervention and treatment with the appropriate antibiotics. This did not properly occur at any of the facilities while [Niki] was a resident. As a result, [Niki] continued to needlessly suffer from [UTIs], which would have resolved with proper care.*

Similarly, [Niki] became dehydrated at Heritage House, as noted in her records upon the hospitalizations identified above. The standard of care requires nursing facilities like Heritage House to ensure that residents receive appropriate fluid intake at all times. *Specifically nursing homes must provide each resident with sufficient fluids to maintain proper hydration and health by providing a plentiful supply of water or other beverages and be given any help or encouragement needed to drink. This must be documented in the records along with the resident's urine output. The records reflect a failure by Heritage House to properly document fluid intake and urine output. It is clear that [Niki] became dehydrated as a result of a failure to provide proper monitoring of [Niki]'s intake and output, which was a breach in the standard of care. [Emphases added.]*

We conclude that this language provided a fair summary of Dr. Rushing’s opinions on Heritage House’s breaches of the standards of care; the language explained the need of Heritage House to properly monitor Niki’s intake and outflow of fluids and emphasized Heritage House’s alleged failures to do so based on Dr. Rushing’s review of her medical records.⁹ See Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6); *Moore*, 269 S.W.3d at 139–40. We overrule Heritage House’s second issue.

Causation

In its third issue, Heritage House contends that Dr. Rushing’s amended report is deficient because it is conclusory concerning causation. “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.” *Tenet Hosps. Ltd. v. Barajas*, 451 S.W.3d 535, 547 (Tex. App.—El Paso 2014, no pet.). To constitute a fair summary on causation, the report must contain “sufficiently specific information to demonstrate causation beyond mere conjecture.” *Farishta v. Tenet Healthsystem Hosps. Dallas, Inc.*, 224 S.W.3d 448, 453 (Tex. App.—Fort Worth 2007, no pet.). Nothing in section 74.351 “suggests the preliminary report is required to rule out every possible cause of the injury, harm, or damages

⁹We reject Heritage House’s contention that the amended report is conclusory because it merely “summarizes the purported standard of care and then concludes that since [Niki] developed a [UTI], there must have been a breach.”

claimed.” *Baylor Med. Ctr. at Waxahachie v. Wallace*, 278 S.W.3d 552, 562 (Tex. App.—Dallas 2009, no pet.).

Heritage House contends that the amended report’s statement that the above-described alleged failures to meet the standards of care caused “unnecessary and preventable suffering . . . that severely diminished [Niki’s] quality of life” is “wholly conclusory.” Heritage House asserts that the amended report

does not state how a [UTI] or dehydration affected [Niki] or impacted her pre-existing conditions or contributed to any suffering or decline in her health. . . . There is nothing . . . to establish that [Niki] suffered as a result of her UTI and/or dehydration, much less how either “complicated her conditions” or “resulted in an overall decline in health.”

We conclude that the amended report is sufficient as to at least one theory because it describes how Niki’s UTIs and dehydration led to unnecessary suffering before her death.¹⁰ *Moreno*, 401 S.W.3d at 42; *Potts*, 392 S.W.3d at 630–31; *Ince*, 496 S.W.3d at 113–14, 118 (holding that an entire case could proceed because an expert report sufficiently addressed causation of pain and suffering in a survival claim even if it may not have explained how injuries led to a decedent’s death in a wrongful death claim); see also *Pinnacle Health Facilities of Tex. III, L.P. v. Steele*, No. 02-15-00230-CV, 2016 WL 3197846, at *4 (Tex. App.—Fort Worth June 9, 2016, no pet.) (mem. op.) (holding that because expert

¹⁰Koutsoufis has pled for damages based on Niki’s “pain and suffering leading up to her death.”

reports adequately addressed liability under one theory, the entire case could proceed without the court addressing causation on another theory). The amended report describes how the UTIs and dehydration that Niki developed while residing at Heritage House required her hospitalization—thus substantiating her deteriorating condition and discomfort—in July 2013, December 2013, and March 2014. The amended report also describes how Heritage House’s alleged failure to monitor fluid intake and outflow caused Niki’s UTIs by allowing bacteria to stay in her urinary tract. It states that because of Heritage House’s alleged failures, Niki “endured unnecessary and preventable suffering, related to [UTIs], that severely diminished her quality of life.”

We conclude that the amended report’s explanation of how Heritage House’s alleged failures to monitor Niki’s fluid intake and outflow resulted in dehydration and UTIs and how those conditions required her hospitalization provides a fair summary of Dr. Rushing’s opinions concerning causation of suffering before her death. See Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6); *Moore*, 269 S.W.3d at 139–40. We overrule Heritage House’s third issue.

Ruling on motion to dismiss and request for attorney’s fees

In its fourth issue, Heritage House contends that the trial court erred by denying its motion to dismiss and its request for attorney’s fees. For all of the reasons stated above, we hold that the trial court did not abuse its discretion by finding that Dr. Rushing’s amended report qualified as a good-faith attempt to

satisfy the requirements of section 74.351. See Tex. Civ. Prac. & Rem. Code Ann. § 74.351(l), (r)(6). Thus, we conclude that the trial court did not abuse its discretion by denying Heritage House's motion to dismiss and request for attorney's fees, and we overrule Heritage House's fourth issue. See *id.* § 74.351(b); *Moore*, 269 S.W.3d at 139.

Conclusion

Having overruled Heritage House's four issues, we affirm the trial court's order that overrules Heritage House's objections to Dr. Rushing's amended report and denies Heritage House's motion to dismiss and request for attorney's fees.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

PANEL: LIVINGSTON, C.J.; GABRIEL and SUDDERTH, JJ.

DELIVERED: January 12, 2017