NO. 12-25-00038-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

GREGORY A. HAMON, M.D, APPELLANT	***§***	***APPEAL FROM THE 37TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
SANDRA L. JIMENEZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOHN A. JIMENEZ, SR., DECEASED, APPELLEE	***§***	***BEXAR COUNTY, TEXAS***

MEMORANDUM OPINION

Gregory A. Hamon, M.D. appeals the trial court's denial of his motion to dismiss pursuant to Chapter 74 of the Texas Civil Practice and Remedies Code. In his sole issue, Dr. Hamon challenges the sufficiency of the expert report provided by Appellee, Sandra L. Jimenez, individually and on behalf of the estate of John A. Jimenez, Sr., deceased.[1] We affirm.[2]

BACKGROUND

On April 19, 2023, Jimenez underwent an elective robot-assisted laparoscopic ventral incisional hernia repair performed by Dr. Hamon at Methodist Stone Oak Hospital.[3] After the

[1] For clarity and brevity, we will refer to John A. Jimenez, Sr. by his surname, and we will refer to his spouse, Sandra L. Jimenez, by her first name.

[2] This case was transferred to this Court from the Fourth Court of Appeals in San Antonio, Texas, pursuant to a docket equalization order. *See* TEX. GOV'T CODE ANN. § 73.001(a) (West Supp. 2024).

[3] This is an interlocutory appeal filed early in the litigation. Because the facts have not been established, our discussion relies upon the facts as alleged in the petition and recited in Dr. Mauricio Pinto's expert report.

surgery, Jimenez experienced nausea, black vomit, dark urine, and a distended abdomen. Jimenez eventually required a nasogastric tube. Green output from the nasogastric tube was observed. On April 22, a screening for severe sepsis revealed that Jimenez was septic, and he began a seven-day course of Zosyn and remained hospitalized. On April 23, Jimenez began desaturating, became tachycardic, and was transferred to a higher level of care. "ABG was ordered and obtained[,]" and the results showed a bowel obstruction. Jimenez reported abdominal pain and nausea, and he "was obtunded with a confused and lethargic appearance, distended abdomen, and decreased breath sounds." Upon reviewing the ABG results, Dr. Hamon determined that perforation was unlikely. Nurses paged Dr. Hamon several times, but Dr. Hamon did not respond or enter further orders.

The next day, Jimenez's bowel sounds were abnormal, he was not passing flatus, his abdomen was distended and rigid, and output from his nasogastric tube continued. On April 26, a CT scan showed a small bowel obstruction, and nursing staff noticed a large amount of greenish and blackish output from Jimenez's nasogastric tube. Nurses paged Dr. Hamon three times on that date, but he never returned their pages or entered further orders. A second screening on April 28 was positive for sepsis, and Jimenez continued to experience high output from his nasogastric tube. On April 29, nurses notified physicians that Jimenez tested positive for sepsis. Jimenez's course of Zosyn ended on April 30, but his white blood cell count was not checked on that date, and he required supplemental oxygen to maintain 95% oxygen saturation. On May 1, a physical therapist noted that Jimenez walked with a guarded posture and decreased cadence. Later that day, Dr. Hamon physically assessed Jimenez and reviewed his previous lab results but did not order repeat labs or imaging. At 12:25 p.m., Dr. Hamon noted that Jimenez could be discharged "once cleared by med[,]" and at 12:48 p.m., a hospitalist, Dr. Saad Mansoor, ordered Jimenez discharged but did not assess him before doing so. At 12:58 p.m., nursing staff documented that Jimenez's stools were entirely liquid and he experienced stomach pain and cramping, but they did not alert the physicians of their observations. Jimenez was discharged from Methodist at approximately 2:30 p.m.

A few hours later, emergency medical services were dispatched to Jimenez's home. After arriving at Methodist's emergency department, Jimenez was found to be in septic shock with acute encephalopathy and acute hypoxemic respiratory failure due to acute perforated viscus. Jimenez was ultimately admitted to the hospital and underwent an exploratory laparotomy by Dr. Hamon on May 2, but Dr. Hamon stopped the surgery and returned Jimenez to the intensive care unit when

Jimenez experienced blood pressure issues. Jimenez was ultimately diagnosed as suffering from worsening metabolic acidosis, acute kidney injury with hyperkalemia, and significant hypotension. Jimenez underwent washout surgical procedures on May 8, 10, 14, and 18, but his condition continued to deteriorate, and he died on May 20, 2023. The cause of death was identified as severe sepsis and bowel perforation.

Sandra brought a health care liability claim against Dr. Hamon,[4] asserting that he was negligent by failing to (1) properly assess and plan for Jimenez's care; (2) properly, adequately, and timely assess and evaluate Jimenez's medical condition; (3) administer proper medical care and treatment to Jimenez; (4) properly discharge Jimenez; (5) enter proper orders; and (6) provide Jimenez "with the necessary care and services to prevent him from suffering severe septic shock and acute kidney failure with tubular necrosis." In an attempt to comply with Section 74.351 of the Texas Civil Practice and Remedies Code, Sandra provided a report by Dr. Mauricio Pinto. Hamon filed objections to Dr. Pinto's report, and on July 18, 2024, Judge Nadine M. Nieto of the 285th District Court signed an order denying Dr. Hamon's objections to the expert report. Judge Nieto's order stated that "Plaintiff's claims relate to failure to timely diagnose bowel perforation prior to discharge (premature discharge)[,] not negligent hernia repair or negligent post-operative surgical intervention." Dr. Hamon subsequently filed a motion to dismiss, in which he asserted that (1) Dr. Pinto's report and curriculum vitae do not demonstrate that he has experience, education, or training that qualify him to opine on the standard of care for a general surgeon in failing to diagnose a bowel perforation; (2) as "a family practice physician who also works as a hospitalist[,]" Dr. Pinto is not qualified to address causation; and (3) Dr. Pinto's report does not adequately address the causal relationship between Dr. Hamon's alleged acts or omissions and the injury claimed.[5] On December 27, 2024, Judge Antonia Arteaga of the 57th District Court of Bexar County, Texas, signed an order denying Dr. Hamon's motion to dismiss.[6] This appeal followed.

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[4] Sandra also brought health care liability claims against Methodist Healthcare System of San Antonio, Ltd., L.L.P. d/b/a Methodist Stone Oak Hospital and Dr. Saad Mansoor, but they are not parties to this appeal.

[5] On appeal, Dr. Hamon does not challenge the adequacy of Dr. Pinto's explanation of the causal relationship between the alleged departures from accepted standards of care and the claimed injury. Rather, Dr. Hamon only challenges Dr. Pinto's qualifications to offer an expert opinion regarding said causal relationship.

[6] At the hearing on Dr. Hamon's motion to dismiss, Judge Arteaga noted Judge Nieto's order overruling Dr. Hamon's objections and denied the motion to dismiss without hearing arguments.

JURISDICTION

We must first address our jurisdiction before reaching Dr. Hamon's issue. In her brief, Sandra argues that this Court lacks jurisdiction and urges us to dismiss Dr. Hamon's appeal. Sandra contends that because the trial court denied Dr. Hamon's objections to the expert report in July 2024, Dr. Hamon's subsequent motion to dismiss "was, in substance, a motion for the trial court to reconsider its July 18, 2024 order wherein the objections filed pursuant to 74.351(l) were denied." Sandra asserts that a physician may only move for dismissal pursuant to Section 74.351(b) when the 120-day window has closed and no report has been served, and she urges that Dr. Hamon could not seek dismissal under Section 74.351(b) because the trial court found Dr. Pinto's report sufficient in July 2024, when it ruled on Dr. Hamon's objections. We disagree.

Section 74.351(a) of the Texas Medical Liability Act (TMLA) requires a claimant to serve an expert report and curriculum vitae no later than the 120th day after the defendant files an original answer. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a) (West Supp. 2024). Section 74.351(b) provides that if, as to a defendant physician, "an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected physician . . . shall, subject to Subsection (c)," enter an order awarding reasonable attorney's fees and costs to the physician and dismissing the claim with prejudice. ***Id***. § 74.351(b) (West Supp. 2024).

Sandra asserts that she properly set Dr. Hamon's objections for hearing before the 120-day window closed. We agree that our sister court in San Antonio held that the trial court may rule on objections to an expert report during the 120-day window.[7] ***Christus Santa Rosa Health Care Corp. v. Vasquez***, 427 S.W.3d 451, 454 (Tex. App.—San Antonio 2014, no pet.). In an attempt to extend the scope of ***Vasquez***, Sandra essentially argues that because she sought a ruling on Dr. Hamon's objections to the expert report before the 120-day window ended, Dr. Hamon can neither move to dismiss her claim nor seek interlocutory appellate review of the trial court's adverse ruling on his motion to dismiss.

Section 51.014(a)(9) of the Texas Civil Practice and Remedies Code permits a physician to appeal from an interlocutory order that "denies all or part of the relief sought by a motion under Section 74.351(b)[.]" TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (West Supp. 2024). Section 74.351(l) provides a mechanism for challenging expert reports but does not mention dismissal or attorney's fees. ***Id***. § 74.351(l) (West Supp. 2024); ***Lewis v. Funderburk***, 253 S.W.3d

[7] As a transferee court, we follow the precedent of the transferor court. TEX. R. APP. P. 41.3.

204, 207 (Tex. 2008). On the other hand, Section 74.351(b) directs trial courts to dismiss a cause with prejudice and award attorney's fees and costs if no report is timely served. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b) (West Supp. 2024). Cases in which an expert report "has not been served" include "cases in which an inadequate report *has* been served[.]" ***Funderburk***, 253 S.W.3d at 207 (emphasis in original).

In the instant case, Dr. Hamon's motion sought dismissal, attorney's fees, and costs, which are only available pursuant to Section 74.351(b). *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b); ***Funderburk***, 253 S.W.3d at 207-08 (holding that because only subsection (b) of Section 74.351 provides for dismissal and attorney's fees, order denying motion that sought dismissal and attorney's fees is reviewable by interlocutory appeal); ***Ctr. for Neurological Disorders, P.A. v. George,*** 253 S.W.3d 217, 217-18 (Tex. 2008) (citing ***Funderburk*** and concluding that denial of motion seeking dismissal and fees was reviewable by interlocutory appeal); ***Stonebrook Manor SNF LLC v. Mendoza***, No. 04-19-00780-CV, 2020 WL 3547986, at *2 (Tex. App.—San Antonio July 1, 2020, no pet.) (mem. op.) (holding that appellate court had jurisdiction because although trial court's order explicitly stated that it denied relief pursuant to Section 74.351(l), health care provider's motion sought dismissal with prejudice and award of attorney's fees, both of which are only available under Section 74.351(b)). We conclude that ***Vasquez*** does not support Sandra's argument that Dr. Hamon cannot seek interlocutory appellate review of the denial of his motion to dismiss. *See* ***Funderburk***, 253 S.W.3d at 207-08; ***Mendoza***, 2020 WL 3547986, at *2; *see generally* ***Vasquez***, 427 S.W.3d at 454-55. Accordingly, we further conclude that the trial court's December 2024 interlocutory order denying Dr. Hamon's motion to dismiss is appealable pursuant to Section 51.014(a)(9) of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9); ***Funderburk***, 253 S.W.3d at 207; ***George***, 253 S.W.3d at 217-18; ***Mendoza***, 2020 WL 3547986, at *2.

EXPERT REPORT

In his sole issue, Dr. Hamon argues that the expert report does not constitute a good faith effort to comply with Chapter 74 because Dr. Pinto is not qualified to opine on the standard of care for management of surgical patients and the causal relationship between the alleged departure from accepted standards of care and the claimed injury.

Standard of Review

We review a trial court's ruling on a motion to dismiss under Chapter 74 for an abuse of discretion. ***Abshire v. Christus Health Se. Tex.***, 563 S.W.3d 219, 223 (Tex. 2018); ***Van Ness v. ETMC First Physicians***, 461 S.W.3d 140, 142 (Tex. 2015); ***Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios***, 46 S.W.3d 873, 875, 877 (Tex. 2001). A trial court abuses its discretion if it acts arbitrarily or unreasonably, without reference to guiding rules or principles. ***Van Ness***, 461 S.W.3d at 142; ***Jelinek v. Casas***, 328 S.W.3d 526, 539 (Tex. 2010). In exercising its discretion, the trial court must review the report, sort out its content, resolve any inconsistencies, and decide whether the report demonstrated a good faith effort to show that the plaintiff's claims have merit. *See* ***Van Ness***, 461 S.W.3d at 144. When reviewing matters committed to the trial court's discretion, an appellate court may not substitute its judgment for that of the trial court. ***Gray v. CHCA Bayshore L.P.***, 189 S.W.3d 855, 858 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Expert Report Requirements

An expert report must fairly summarize the expert's opinions regarding (1) the applicable standard of care, (2) the manner in which the care provided failed to meet the standard of care, and (3) the causal relationship between said failure and the injury, harm, or damages claimed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6) (West Supp. 2024); ***Certified EMS, Inc. v. Potts***, 392 S.W.3d 625, 630 (Tex. 2013); ***Palacios***, 46 S.W.3d at 877. The purpose of evaluating expert reports is to deter frivolous claims, not to dispose of claims regardless of their merits. ***Potts***, 392 S.W.3d at 631. The report need not marshal all the plaintiff's proof or meet the same requirements as the evidence offered in a summary judgment proceeding or at trial. ***Palacios***, 46 S.W.3d at 878-79.

To constitute an objective good faith effort to comply with the requirements of Chapter 74, an expert report must (1) inform the defendant of the specific conduct the plaintiff has called into question and (2) provide a basis for the trial court to conclude that the claims have merit. ***Loaisiga v. Cerda***, 379 S.W.3d 248, 260 (Tex. 2012); ***Palacios***, 46 S.W.3d at 879; ***Leland v. Brandal***, 217 S.W.3d 60, 62 (Tex. App.—San Antonio 2006), *aff'd*, 257 S.W.3d 204 (Tex. 2008). To determine whether the report is sufficient, courts must view the report in its entirety rather than by isolating specific portions or sections. ***Baty v. Futrell***, 543 S.W.3d 689, 694 (Tex. 2018).

When determining whether the report constitutes a good faith effort to comply with Chapter 74, the trial court is limited to the four corners of the report or the expert's curriculum vitae that accompanies the report. ***Jelinek***, 328 S.W.3d at 539; ***Palacios***, 46 S.W.3d at 878; ***Cornejo v. Hilgers***, 446 S.W.3d 113, 121 (Tex. App.—Houston [1st Dist.] 2014, pet. denied); ***Mem'l Hermann Healthcare Sys. v. Burrell***, 230 S.W.3d 755, 758 (Tex. App.—Houston [14th Dist.] 2007, no pet.). In reviewing the sufficiency of an expert report under Chapter 74, courts may not consider the expert's credibility. ***E.D. v. Tex. Health Care, P.L.L.C.***, 644 S.W.3d 660, 664 (Tex. 2022) (holding that at expert report stage, credibility of expert's explanations is not relevant to analysis of whether expert's opinion constitutes good-faith effort to comply with Chapter 74); ***Abshire***, 563 S.W.3d at 226 (holding that at expert report stage, it is not court's role to weigh report's credibility); ***Apollo Healthcare at Willowbrook, LLC v. McCammon***, No. 01-20-00801-CV, 2022 WL 2720460, at *3 (Tex. App.—Houston [1st Dist.] July 14, 2022, no pet.) (mem. op.) (holding that in reviewing sufficiency of expert report at early stage of litigation, trial court may not consider expert's credibility). Whether an expert's "opinion is correct or even reasonable is not relevant with respect to whether his opinion constitutes a good-faith effort to meet the statute's requirements." ***Arevalo v. Mendoza***, No. 01-22-00003-CV, 2022 WL 16841604, at *10 (Tex. App.—Houston [1st Dist.] Nov. 10, 2022, no pet.) (mem. op.); *see* ***Tenet Hosps. Ltd. v. Boada***, 304 S.W.3d 528, 542 (Tex. App.—El Paso 2009, pet. denied) (holding that "[w]hether an expert's opinions are correct is an issue for summary judgment, not a motion to dismiss under Chapter 74.")

Expert Qualifications

The proponent of an expert report bears the burden of showing that the expert is qualified. ***Broders v. Heise***, 924 S.W.2d 148, 151 (Tex. 1996); ***Leland***, 217 S.W.3d at 62. To offer an expert opinion regarding whether a physician departed from accepted standards of medical care, the expert must be qualified to testify under the requirements set forth in Section 74.401 of the TMLA. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(5)(A) (West Supp. 2024). Section 74.401(a) provides that a person may qualify as an "expert" on the question of whether the physician departed from the accepted standard of care only if the person is a physician who:

> (1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;
>
> (2) has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

Id. § 74.401(a) (West 2017). In determining whether the expert is qualified on the basis of training or experience, courts consider whether he is (1) board certified or has other substantial training or experience in an area of medical practice relevant to the claim and (2) actively practicing medicine in rendering medical care services relevant to the claim. ***Id***. § 74.401(c) (West 2017). A physician need not practice in the same specialty as a defendant to qualify as an expert if he demonstrates that he possesses knowledge, skill, experience, training, or education regarding the specific issue before the court that would qualify him to opine on the condition involved in the claim. *See* ***Cornejo***, 446 S.W.3d at 121; *see also* ***Broders***, 924 S.W.2d at 153-54. The plain language of the statute "focuses *not* on the defendant doctor's area of expertise, *but on the condition involved in the claim*." ***Blan v. Ali***, 7 S.W.3d 741, 746 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (emphasis in original); *see* TEX. CIV. PRAC. & REM. CODE ANN. § 74.401(c). Accordingly, "[t]he proper inquiry concerning whether a doctor is qualified to testify is not his area of practice but his familiarity with the issues involved in the claim before the court." ***Foster v. Richardson***, 303 S.W.3d 833, 843 (Tex. App.—Fort Worth 2009, no pet.). In other words, an expert "who is not of the same school of medicine [as the defendant physician] . . . is competent to testify if he has practical knowledge of what is usually and customarily done by a practitioner under circumstances similar to those confronting the defendant." ***Ehrlich v. Miles***, 144 S.W.3d 620, 625 (Tex. App.—Fort Worth 2004, pet. denied). Furthermore, certain standards of medical care apply to multiple schools of practice and to any physician. ***Olveda v. Sepulveda***, 189 S.W.3d 740, 742 (Tex. 2006); ***Menefee v. Ohman***, 323 S.W.3d 509, 514 (Tex. App.—Fort Worth 2010, no pet.); ***Cooper v. Arizpe***, No. 04-07-00734-CV, 2008 WL 940490, at *4 (Tex. App.—San Antonio May 29, 2008, pet. denied) (mem. op.); ***Blan***, 7 S.W.3d at 746.

A person may qualify as an expert witness on the issue of the causal relationship between a physician's alleged departure from accepted standards of care and the claimed injury "only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence." TEX. CIV. PRAC. & REM. CODE ANN. § 74.403(a) (West Supp. 2024). Under the Texas Rules of Evidence, an expert witness may be qualified on the basis of "knowledge, skill, experience, training, or education" to testify in the form of an opinion if his

scientific, technical, or other specialized knowledge would "help the trier of fact to understand the evidence or to determine a fact in issue." TEX. R. EVID. 702. The expert's report must 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 particular subject. ***Roberts v. Williamson***, 111 S.W.3d 113, 121 (Tex. 2003); ***Broders***, 924 S.W.2d at 153-54. Every licensed medical doctor is not automatically qualified to testify as an expert on every medical question, and the proponent of the testimony must show that the expert has special knowledge regarding the matter on which he proposes to give an opinion. ***Ehrlich***, 144 S.W.3d at 625. The issue of whether an expert witness is qualified under Texas Rule of Evidence 702 lies within the sound discretion of the trial court. ***Cornejo***, 446 S.W.3d at 121.

Dr. Pinto's Qualifications

Dr. Pinto's expert report and curriculum vitae state that he (1) is board certified in family medicine and (2) completed a post-graduate fellowship in hospitalist medicine.[8] Dr. Pinto's report indicates that he served as Facility Medical Director and Hospitalist Director at St. David's Round Rock Medical Center, where he continues to treat patients. Additionally, Dr. Pinto served as Director of Hospitalists at Medical Center Hospital in Odessa, Texas, "and as an Urgent Care and Emergency Medicine physician in hospitals and facilities throughout Texas." Dr. Pinto's report and curriculum vitae also detail his experience serving as medical director and treating physician at skilled nursing facilities, hospice care, and assisted living facilities in Texas. The report further explains that Dr. Pinto is actively practicing medicine and rendering medical care services relevant to the issues presented by the instant case, "including managing the postoperative care of patients admitted to the hospital for abdominal surgery." Dr. Pinto has served as a hospitalist since 2012 and served as chairman of the department of internal medicine at St. David's Round Rock Medical Center from 2016 to the present. Moreover, in 2008, he completed a course on controlling infection in the hospital setting.

Dr. Pinto's report recounts that he has "treated patients suffering from postoperative complications, including sepsis and septic shock, in a variety of medical settings, including emergency departments, hospitals, long term acute care facilities, and nursing homes." According

[8] A hospitalist is "[a] physician in charge of caring for hospitalized patients. These practitioners are rarely involved in outpatient care; they concentrate their efforts on caring for emergency patients, critical patients, and patients confined to wards." TABER'S CYCLOPEDIC MEDICAL DICTIONARY 964 (19th ed. 2001).

to Dr. Pinto, "[t]he standard of care is consistent regardless of the setting in which the patient is encountered." Dr. Pinto explains as follows in his report:

> *I am familiar with the standard of care applicable to the discharge of postoperative patients and have knowledge of and experience identifying and treating the signs and symptoms of sepsis. As a hospitalist, I have cared for and discharged numerous patients with the same or similar clinical circumstances such as those Mr. Jimenez experienced, including treating sepsis and investigating the source of infections following abdominal surgery. The standard of care for a General Surgeon, like Dr. Hamon, is the same as a Hospitalist, like myself and Dr. Mansoor, when discharging a patient from the hospital. The standard of care requires that a physician can only discharge a patient who is stable.* This includes providing a clinical examination of the patient, reviewing labs and imaging, and identifying and investigating the source of infections prior to recommending or ordering discharge. . . . Accordingly, I am qualified on the basis of training and experience to offer an expert opinion regarding these accepted standards of medical care in Bexar County, Texas. More specifically, I am qualified to offer expert opinions regarding the accepted standards of medical care applicable to Dr. Hamon . . . for the diagnosis, care[,] and treatment of Mr. Jimenez.
>
> *In addition, by virtue of my medical education, graduate[,] and post-graduate training, clinical practice, reading, knowledge and experience, I am competent to testify as an expert on the subject of medical causation. I am competent to render opinions regarding the causal relationship between the failure to meet accepted standard[s] of medical care and the injury, harm, or damages that are claimed to have resulted. Specifically, I am familiar with the types of problems experienced by Mr. Jimenez, including the deterioration of infections to sepsis, severe septic shock, acute kidney failure, and death. I have experience in treating patients in the hospital setting with similar underlying diagnosis as Mr. Jimenez. I know what should be done to prevent the development of sepsis and septic shock.* I have experience in diagnosing these conditions and giving opinions on the cause of injury or death in the hospital following the development of septic shock from a bowel perforation. I have extensive experience in evaluating patients with sepsis and have experience in treating such conditions and referring patients to other specialists in the hospital setting. I have experience in determining the cause of death and frequently determine the cause of death for patients, which I base on my own training, experience, and knowledge, and on my review of other health care providers' documentation. Based on my experience in treating patients with injuries and underlying diseases similar to Mr. Jimenez, and my knowledge, training, and experience as a physician, I am competent to opine on causation of injury in this case.

(emphasis added)

Dr. Pinto opined that "[t]he standard of care requires that patients are not discharged from hospitals in an unstable condition. . . . On 05/01/2023[,] Mr. Jimenez was discharged from Methodist Stone Oak in unstable condition. It is clear that he did not leave against medical advice and was discharged at the recommendation of Dr. Gregory Hamon and ordered by Dr. Saad Mansoor." Dr. Pinto explained that patients with suspected sepsis should receive antibiotic therapy and fluids, and such patients should also "have labs drawn that include CBC with lactic acid[.]" According to Dr. Pinto, "[i]dentifying the source of the infection and controlling it is important[,]" and "[t]he sooner the source is identified and controlled[,] the better the outcome." Dr. Pinto noted that Methodist's nursing staff "had difficulty communicating concerns about Mr. Jimenez's

condition with Dr. Hamon or getting their messages returned. At the end, it appears nursing staff stopped communicating changes to Mr. Jimenez's physicians altogether."

Dr. Pinto also explained as follows: (1) because the results of treatment must be assessed frequently and adjusted when appropriate, frequent monitoring of vital signs, residuals, and repeat labs are necessary; (2) Jimenez's elevated white blood cell count indicated lack of improvement despite seven days of Zosyn and placement of a nasogastric tube; (3) despite the presence of sepsis, abnormal vital signs, lab work indicating that Jimenez's infection was not being controlled, and Jimenez's history of previous abdominal surgery, Dr. Hamon failed to order a repeat CT scan and labs; (4) Dr. Hamon breached the standard of care by failing to order repeat imaging and a complete blood count with lactate on May 1; (5) Dr. Hamon failed to perform an exploratory laparotomy to identify the source of Jimenez's infection; (6) if Dr. Hamon had ordered a CT scan, it likely would have shown a bowel perforation that could have been timely treated; (7) Jimenez likely had a bowel perforation and was septic on May 1, and Dr. Hamon breached the standard of care by failing to further investigate the source of Jimenez's infection and instead recommending discharge on that date; (8) if Dr. Hamon had investigated and treated the source of Jimenez's infection, he would have ordered antibiotics; (9) Jimenez's lab results indicate that he was not in kidney failure at discharge, and if Dr. Hamon's acts and omissions had not delayed diagnosis, Jimenez's severe septic shock and acute kidney failure with tubular necrosis could have been avoided with resumption of antibiotics; and (10) Dr. Hamon's delayed diagnosis caused Jimenez to develop severe septic shock and acute kidney injury with hyperkalemia, from which he would not recover. Dr. Pinto stated as follows:

> It is likely that the 05/01 discharge of Mr. Jimenez while he was suffering from sepsis was the cause of his severe septic shock, peritonitis, acute respiratory failure, and encephalopathy. If Methodist Stone Oak staff, Dr. Gregory Hamon, and Dr. Saad Mansoor had timely recognized and treated Mr. Jimenez's sepsis on 05/01, it is likely that he would not have been discharged on 05/01 and he would have received empiric antibiotics and surgical intervention to prevent septic shock and acute kidney injury. The death certificate is further evidence that the bowel perforation and sepsis was the proximate cause of Mr. Jimenez's death. Had the source of Mr. Jimenez's infection been timely identified and treated, as outlined above, it is likely Mr. Jimenez would have received appropriate antibiotic therapy and sepsis management to prevent him from suffering from severe septic shock with metabolic acidosis, acute renal failure with tubular necrosis, and death.
>
> . . .
>
> It is medically probable that Mr. Jimenez was suffering from sepsis due to a perforated bowel prior to his discharge from Methodist Stone Oak on May 1, 2023. It is my opinion, because the staff at Methodist Stone Oak, Dr. Gregory Hamon, and Dr. Saad Mansoor prematurely discharged Mr.

> Jimenez on May 1, 2023, Mr. Jimenez's condition deteriorated into peritonitis with septic shock, causing him to suffer acute renal failure with tubular necrosis, pain, and death. The CT scans and the treating physicians at Methodist Main Hospital stated that Mr. Jimenez had severe sepsis with shock due to intraabdominal process and peritonitis from perforated viscus late on May 1, 2023. This caused Mr. Jimenez to become acutely ill, which was likely due to septic shock. Had the nursing staff, Dr. Hamon, and Dr. Mansoor timely recognized and reported Mr. Jimenez's change in condition prior to his discharge on May 1, 2023, it is likely that sepsis management would have been provided and surgery would have been done to repair the bowel perforation and the injury would have been timely treated, and Mr. Jimenez's death prevented.

Lastly, Dr. Pinto opined that, in reasonable medical probability, the negligence of Methodist Stone Oak (i.e. Methodist's nursing staff), Dr. Hamon, and Dr. Mansoor proximately caused "the injuries, damages, and death of Mr. Jimenez[.]"

Dr. Pinto explained that as a hospitalist, he has extensive experience treating post-operative hospital patients with similar underlying diagnoses as Jimenez, such as sepsis, and referring them to specialists, and he knows "what should be done to prevent the development of sepsis and septic shock." *See* ***Ehrlich***, 144 S.W.3d at 625. Dr. Pinto did not opine regarding a matter peculiar to the field of general surgery, and he did not offer opinions regarding Dr. Hamon's technique in performing Jimenez's various surgeries. *See* ***Roberts***, 111 S.W.3d at 121; ***Broders***, 924 S.W.2d at 153-54. Rather, Dr. Pinto opined that on May 1, 2023, an exploratory laparotomy was necessary to determine the source of Jimenez's sepsis, which was not improving despite seven days of treatment with Zosyn during his hospitalization. Dr. Pinto's report explains that Dr. Hamon did not perform an exploratory laparotomy until May 2, 2023.

Dr. Hamon takes issue with Dr. Pinto's assertion that the standard of care for postoperative patients, such as Jimenez, is the same for a general surgeon as for a hospitalist. According to Dr. Hamon, "[t]here is no evidence that the same standards apply to hospitalists and to surgeons." However, an assessment of Dr. Pinto's credibility or the correctness of his opinions is inappropriate at the expert report stage. *See* ***E.D.***, 644 S.W.3d at 664; ***Abshire***, 563 S.W.3d at 226; ***Arevalo***, 2022 WL 16841604, at *10; ***McCammon***, 2022 WL 2720460, at *3; ***Boada***, 304 S.W.3d at 542.

Dr. Pinto's report establishes that he (1) is currently practicing medicine and was doing so when he authored the report, (2) has knowledge of the accepted standards of medical care for the diagnosis, care, or treatment of postoperative infections, (3) is qualified on the basis of his training to offer an expert opinion regarding the accepted standards of medical care, (4) possesses substantial training and experience in an area of medical practice relevant to the claim, (5) is

actively practicing medicine in rendering medical care relevant to the claim, and (6) is familiar with the issues involved in the instant case. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.401(a), (c); ***Broders***, 924 S.W.2d at 153-54; ***Cornejo***, 446 S.W.3d at 121; ***Foster***, 303 S.W.3d at 843; ***Keeton v. Carrasco***, 53 S.W.3d 13, 22, 25-26 (Tex. App.—San Antonio 2001, pet. denied) (holding that expert physician who specialized in physical medicine, rehabilitation, and pain management and cared for post-operative patients after implantation of spinal cord stimulators was qualified to render expert opinion regarding duty to recognize and aggressively treat post-operative infections). We conclude that as a hospitalist with extensive experience caring for patients who have undergone abdominal surgery and suffered complications, including sepsis and septic shock, Dr. Pinto is qualified to opine regarding the standard of care applicable to Dr. Hamon in caring for Jimenez after surgery and the causal relationship between Dr. Hamon's alleged departures from accepted standards of care and the claimed injury. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 74.401(a), (c), 74.403(a); TEX. R. EVID. 702; ***Van Ness***, 461 S.W.3d at 142; ***Olveda***, 189 S.W.3d at 742; ***Roberts***, 111 S.W.3d at 121; ***Broders***, 924 S.W.2d at 153-54; ***Cornejo***, 446 S.W.3d at 121; ***Foster***, 303 S.W.3d at 843; ***Ehrlich***, 144 S.W.3d at 625; ***Keeton***, 53 S.W.3d at 25-26; ***Blan***, 7 S.W.3d at 746-47. Therefore, the trial court did not abuse its discretion by denying Dr. Hamon's motion to dismiss. We overrule issue one.

DISPOSITION

Having overruled Dr. Hamon's sole issue, we ***affirm*** the trial court's order denying the motion to dismiss.

JAMES T. WORTHEN
Chief Justice

Opinion delivered May 14, 2025.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

MAY 14, 2025

NO. 12-25-00038-CV

GREGORY A. HAMON, M.D,
Appellant
V.
SANDRA L. JIMENEZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOHN A. JIMENEZ, SR., DECEASED,
Appellee

Appeal from the 37th District Court
of Bexar County, Texas (Tr.Ct.No. 2023CI24638)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the trial court's order.

It is therefore ORDERED, ADJUDGED, and DECREED that the order of the court below denying GREGORY A. HAMON, M.D.'s motion to dismiss **be in all things affirmed**, that all costs of this appeal are hereby adjudged against the appellant, GREGORY A. HAMON, M.D., for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.