DISMISS in part, AFFIRM in part, REVERSE and REMAND in part and Opinion Filed August 25, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-01369-CV

PEACEFUL TOUCH HOSPICE AND PALLIATIVE CARE, LLC, PAMELA EKOR-TARH EYAMBE AND AISHA NOBLE, M.D., Appellants
V.
SHANNON DEANN HOUSER, INDIVIDUALLY AND AS INDEPENDENT ADMINISTRATOR OF THE ESTATE OF CHARLES WESLEY ABBOTT, Appellee

On Appeal from the 493rd District Court
Collin County, Texas
Trial Court Cause No. 493-00699-2024

MEMORANDUM OPINION

Before Justices Goldstein, Lewis, and Lee
Opinion by Justice Lee

Peaceful Touch Hospice and Palliative Care, LLC and Pamela Eyambe appeal the trial court's denial of their motion to dismiss the suit brought by appellee Shannon Houser, individually and as independent administrator of the Estate of Charles Abbott (Houser). Appellants sought dismissal under § 74.351 of the civil practice and remedies code because Houser failed to serve an expert report. We conclude some but not all of Houser's claims against Peaceful Touch

and Eyambe are health care liability claims and therefore affirm in part and reverse and remand in part.

Aisha Noble, M.D., similarly filed a notice of appeal of the trial court's order denying her motion to dismiss; however, she and Houser subsequently filed a joint motion to dismiss Noble's appeal because they have settled their dispute and seek to dismiss her appeal. Accordingly, we grant the motion and dismiss her appeal.

I. Background

Appellant Peaceful Touch Hospice & Palliative Care, LLC was hired to provide in-home hospice services for Linda Abbott, who suffered from terminal cancer. During the time Linda received care from Peaceful Touch, her husband Charles Abbott died in their home. He was found with Fentanyl patches on his chest, and the medical examiner concluded he died as a result of Fentanyl toxicity.

Charles's daughter, Shannon Houser, individually and as independent administrator of Charles's estate, sued Peaceful Touch as well as its Director, Pamela Eyambe; Dr. Aisha Noble; and Shirley D. Simmons.

The original petition reflected the above facts and included the following allegations. Charles did not have any medical conditions requiring Fentanyl, nor was he ever prescribed Fentanyl. The petition further alleged that, after Charles's death, Peaceful Touch, Eyambe, Dr. Noble, and Simmons created false documents, including a do-not-resuscitate order and documents reflecting that Charles had

been diagnosed with Alzheimer's or dementia. Eyambe and Dr. Noble were indicted in Collin County for Tampering/Fabricating Physical Evidence. According to a police affidavit,

> Eyambe wrote in a written statement to police that on Friday morning (February 4, 2022) at 6:44 AM, she received a call from the sitter in the house who told her that Charles did not appear to be breathing. Eyambe had instructed her not to call 911 earlier and told the sitter that she would respond to the house. Both the sitter (Oluwatosin Ogunba b/f 03-26-86) and Eyambe told Affiant that it took approximately two hours for Eyambe to arrive, and that Charles received no medical attention during that time.

Plaintiffs alleged Peaceful Touch and Eyambe were negligent in supervising a controlled substance they had prescribed to Linda and in failing to call 911 or otherwise get medical assistance for Charles. Thus, they alleged Peaceful Touch and Eyambe were responsible for the wrongful death of Charles.

Plaintiffs further alleged Peaceful Touch, Eyambe, Dr. Noble, and Simmons committed fraud by "trying to cover up the negligence" of Peaceful Touch and Eyambe. The police investigation examined a computer found at Peaceful Touch's office and discovered documents titled "Charles Abbott DNR.pdf" and "Charles Abbott Physician Orders.pdf," which were created after Charles's death. Dr. Noble signed the DNR one week after Charles's death, Simmons notarized it, and Eyambe provided it to the police. Plaintiffs also alleged the defendants lied on Charles's death certificate, claiming Alzheimer's or dementia caused his death.

Based on the foregoing, Houser and the Estate asserted claims for negligence and wrongful death against Peaceful Touch and Eyambe. As to negligence, they alleged the defendants failed to maintain control over Linda's prescribed controlled substances, failed to supervise Charles, failed to call 911, and prepared fraudulent documents in order to hide their negligent conduct.

Houser and the Estate also asserted claims for fraud by nondisclosure and civil conspiracy against Peaceful Touch, Eyambe, Dr. Noble, and Simmons. They alleged the defendants committed fraud when they represented to others that Charles died as a result of Alzheimer's or dementia rather than Fentanyl toxicity. Houser and the Estate argued the defendants had a duty to disclose the truth, yet created false documents intending that Houser, law enforcement, and the public rely on the documents. As to civil conspiracy, Houser and the Estate alleged that the defendants entered into a civil conspiracy to conceal their neglect and fraud and to avoid potential prosecution or liability relating to Charles's death.

As pertinent here, Peaceful Touch and Eyambe filed a motion to dismiss arguing the plaintiffs failed to comply with the expert report requirements of Chapter 74 of the civil practice and remedies code. They argued Houser's claims were health care liability claims because they "center around the medical treatment Charles Abbott[] received when he was found unresponsive at his home." Thus, they urged, Houser was required to serve an expert report under § 74.351(a) within 120 days of the filing of their answer. Because Houser had failed to serve such a

report, they argued dismissal with prejudice was required. They also requested attorney's fees and costs. Dr. Noble also filed a motion to dismiss under Chapter 74, arguing that she was sued "as a medical doctor in her role as Medical Director of Peaceful Touch," and "[a]s such, this is a healthcare liability claim against Dr. Noble."

Houser and the Estate responded. They contended that Chapter 74's requirements did not apply to their claims as Charles "was neither a patient nor did he require any procedures that are the subject of § 74.351."

Following a hearing on the motions to dismiss, the parties filed supplemental briefs addressing whether the claims at issue are health care liability claims. The trial court denied the motions to dismiss, and this appeal followed.[1]

II. Discussion

A. Standard of review and applicable law

Generally, we review the denial of a Chapter 74 motion to dismiss for an abuse of discretion. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 875 (Tex. 2001). However, the determination of whether a claim is a health care liability claim is a legal question we review de novo. *Baylor Scott & White Hillcrest Med. Ctr.*, 575 S.W.3d 357, 363 (Tex. 2019). If a claim is a health care liability claim, the trial court has no discretion to deny a motion to dismiss if

[1] The interlocutory appeal is authorized by TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).

the plaintiff fails to file an expert report as required by § 74.351 of the Texas Civil Practice and Remedies Code. *Badiga v. Lopez*, 274 S.W.3d 681, 683 (Tex. 2009).

The Texas Medical Liability Act (TMLA) codified in Chapter 74 requires a claimant who asserts a health care liability claim to serve one or more expert reports describing the applicable standards of care, how the defendant's conduct failed to meet those standards, and how those failures caused the claimant harm. TEX. CIV. PRAC. & REM. CODE § 74.351(a), (r)(6). If a claimant fails to serve a compliant report within 120 days after the defendant files its original answer, the trial court must dismiss the claim with prejudice and award the defendant attorney's fees and costs. *Id.* § 74.351(b).

The TMLA defines a health care liability claim as:

> a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

TEX. CIV. PRAC. & REM. CODE § 74.001(a)(13). This definition encompasses three elements: (1) the defendant must be a physician or health care provider; (2) the claim must concern "treatment, lack of treatment, or a departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care"; and (3) the defendant's conduct must

proximately cause the claimant's injury or death. *Lake Jackson Med. Spa, Ltd. v. Gaytan*, 640 S.W.3d 830, 840 (Tex. 2022).

The TMLA defines "health care" as "any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement." TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10). It defines "medical care" as "any act defined as practicing medicine under Section 151.002, Occupations Code, performed or furnished, or which should have been performed, by one licensed to practice medicine in this state for, to, or on behalf of a patient during the patient's care, treatment, or confinement." *Id*. § 74.001(a)(19). It defines "professional or administrative services" as "those duties or services that a physician or health care provider is required to provide as a condition of maintaining the physician's or health care provider's license, accreditation status, or certification to participate in state or federal health care programs." *Id.* § 74.001(a)(24).

We consider "the underlying nature of the plaintiff's claim rather than its label" in determining whether a claim is a health care liability claim under the TMLA. *Baylor Scott & White, Hillcrest Med. Ctr. v. Weems*, 575 S.W.3d 357, 363 (Tex. 2019). Thus, a party cannot avoid Chapter 74's requirements and limitations through artful pleading. *Id.* We focus "on the facts underlying the claim, not the form of, or artfully-phrased language in, the plaintiff's pleadings describing the

facts or legal theories asserted." *Loaisiga v. Cerda*, 379 S.W.3d 248, 255 (Tex. 2012). "[C]laims premised on facts that could support claims against a physician or health care provider for departures from accepted standards of medical care, health care, or safety or professional or administrative services directly related to health care are HCLCs,[2] regardless of whether the plaintiff alleges the defendant is liable for breach of any of those standards." *Id.*

B. Analysis

1. Negligence and wrongful death

We conclude Houser's negligence and wrongful death claims are health care liability claims under Chapter 74. "The broad language of the TMLA evidences legislative intent for the statute to have expansive application." *Id.* at 256. Thus, when a claim brought against a health care provider is "based on facts implicating the defendant's conduct during the course of a patient's care, treatment, or confinement," a rebuttable presumption arises that it is a health care liability claim for purposes of the TMLA. *Id.*

Houser's pleadings invoke the presumption here. Houser's claims center on Peaceful Touch and Eyambe's provision of hospice services, during the course of which Linda was prescribed Fentanyl patches, which they were allegedly "negligent in supervising" so that Charles was able to access and use the patches.

[2] That is, health care liability claims.

They further allege Peaceful Touch and Eyambe failed to adequately respond to Charles's use of such patches when it was discovered. Thus, even if Charles was not a hospice patient – which the parties dispute – Houser's claims at the very least allege conduct occurring during the course of the care and treatment of Linda. *See Weems*, 575 S.W.3d at 363 (concluding HCLC presumption applied when non-patient complainant sued hospital alleging injury resulting from falsification of a hospital patient's medical records). Given this, Houser's negligence and wrongful death claims are presumed to be health care liability claims. *See Loaisiga*, 379 S.W.3d at 252.

However, the presumption may be rebutted in some instances where "the only possible relationship between the conduct underlying a claim and the rendition of medical services or healthcare [is] the healthcare setting (i.e., the physical location of the conduct in a health care facility), the defendant's status as a doctor or health care provider, or both." *Id.* at 256.

Because the presumption applies, the burden shifts to the claimant to rebut the presumption that her negligence and wrongful death claims are health care liability claims. *See Lake Jackson Medical*, 640 S.W.3d at 844. For the reasons explained below, we conclude Houser has not done so.

There is no dispute before us relating to the first or third elements of a health care liability claim. *See id.* at 840. The parties' only disagreement is whether Houser's claims concern "treatment, lack of treatment, or a departure from

accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care." We will accordingly limit our discussion.

Peaceful Touch and Eyambe argue that Houser's claims concern departures from health care standards, safety standards, and professional or administrative services directly related to health care. We will consider whether these claims concern departures from health care standards.

In *Tex. W. Oaks Hosp., LP v. Williams*, 371 S.W.3d 171, 180 (Tex. 2012), a non-patient employee brought claims against his employer. Given this non-patient status, one of the questions presented in the case was whether the plaintiff's claims constituted departures from accepted standards of health care. The TMLA defines "health care" as "any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement." TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10). Thus, "[b]ecause a claim under the health care prong of [the definition of health care liability claim] incorporates the definition of 'health care,' such a claim must *involve a patient-physician relationship*." *Williams*, 371 S.W.3d at 180 (emphasis added).

The facts of *Williams*, however, make clear that although a health-care-standard-departure claim must "involve a patient-physician relationship," it does not follow that the claimant and the patient must be the same person. The plaintiff

and claimant in that case was not a patient; he sued the hospital he worked for after he was injured by a patient for whom he was providing health care services. He alleged the hospital's "judgments, concerning his training and psychiatric institutional protocols, departed from accepted standards of care and caused his injury." *Williams*, 371 S.W.3d at 181. The Supreme Court concluded that the plaintiff's claims were health care liability claims based on claimed departures from accepted standards of health care. *Williams*, 371 S.W.3d at 181.

Here, Houser's claims that the defendants failed to properly supervise a controlled substance – and then failed to adequately respond once discovery of said substance's misuse was discovered – allege a departure from accepted standards of health care because it alleges acts performed or that should have been performed for, to, or on behalf of a patient during the patient's medical care or treatment. *Cf. Randol Mill Pharmacy v. Miller*, 465 S.W.3d 612, 622 (Tex. 2015) (claims that pharmacist was negligent in compounding drug and inclusion of inadequate warnings and instructions regarding its use "rather clearly allege[d] that the pharmacist defendants departed from accepted standards of health care"). These claims "involve a patient-physician relationship" as they involve, at the very least, the patient-physician relationship between the defendants and Linda Abbott. The claims revolve around drugs prescribed for Linda and "acts performed or that should have been performed" in relation to the drugs. *See Williams*, 371 S.W.3d at 181.

Accordingly, because Houser failed to submit an expert report as required under the TMLA, we conclude the trial court erred to the extent that it failed to dismiss with prejudice Houser's negligence and wrongful death claims.

2. Fraud and civil conspiracy

Next, we consider whether we need to address Houser's other claims, or whether – as Peaceful Touch contended during oral argument – finding that the negligence and wrongful death claims were health care liability claims requires dismissal of the whole suit.

We observe that, under the TMLA, failure to serve an expert report as required by the Act requires dismissal of "the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim." TEX. CIV. PRAC. & REM. CODE § 74.351(b)(2). This language suggests we should engage in a claim-by-claim determination in an appeal from the denial of a Chapter 74 motion to dismiss, and indeed, this is consistent with the regular practice of this Court. *See, e.g.*, *Mazow v. Peoples*, No. 05-24-00350-CV, 2024 WL 5165185, at *8 (Tex. App.—Dallas Dec. 19, 2024, pet. filed) (mem. op.) (separately considering whether breach of contract and negligence claims were HCLCs).[3]

[3] We note, however, that the nature of the underlying factual allegations in certain cases allows for a unified analysis of multiple claims. *See, e.g.*, *Baylor Scott & White Health v. Roughneen*, No. 05-18-00966-CV, 2020 WL 3055904, at *5 (Tex. App.—Dallas June 9, 2020, pet. denied) (mem. op.).

Moreover, the Texas Supreme Court has, as our sister court put it, at least "tacitly recognized that"[4] a claimant in certain cases might assert a cause of action constituting an HCLC while also asserting a separate cause of action that is not an HCLC. *See Marks v. St. Luke's Episcopal Hosp.*, 319 S.W.3d 658, 660–64 (Tex. 2010) (plurality op., Medina, J., joined by Hecht, J.) (distinguishing HCLCs predicated on hospital acts and omissions related to "patient supervision and staff training" from complaint about condition of hospital bed, which it separately analyzed and ultimately concluded was an HCLC); *id.* at 674, 674–75 & n.2 (Jefferson, C.J., dissenting, joined by Green, Guzman, and Lehrmann, JJ.) (distinguishing patient-supervision and staff-training claims from bed-related claim and urging that the latter was not an HCLC).

Given this, and because we find no authority supporting Peaceful Touch's contention that the failure to serve an expert report as to one HCLC requires dismissal of an entire lawsuit, even when the suit separately alleges non-HCLCs, we turn to consider whether Houser's fraud and civil conspiracy claims are recast HCLCs.

Assuming without deciding that the *Loaisiga* presumption applies to these claims as well, we conclude Houser has necessarily rebutted the presumption and that Houser's fraud and civil conspiracy claims are not health care liability claims.

[4] *Cardwell v. McDonald*, 356 S.W.3d 646, 658 (Tex. App.—Austin 2011, no pet.).

Peaceful Touch and Eyambe argue the fraud and civil conspiracy claims are HCLCs because the alleged fabrication of diagnostic and health records constitutes professional or administrative services directly related to health care. They rely on two cases: *Weems*, 575 S.W.3d 357, and *CHRISTUS Health Gulf Coast v. Carswell*, 505 S.W.3d 528 (Tex. 2016).

In the former case, Weems allegedly shot a man, who was examined by a nurse at the hospital. *Weems*, 575 S.W.3d at 361. Weems sued the hospital, alleging the nurse falsified the complainant's medical records by fraudulently describing his injury as a "point-blank" "gunshot wound" to the head. *Id.* The Supreme Court explained that the rebuttable presumption of a health care liability claim under *Loaisiga* applied because Weems's claim was against a health care provider based on facts implicating the defendant's conduct during the course of a patient's care, treatment, or confinement. *Id.* at 363. The Supreme Court concluded that, "at minimum, Weems's record-falsification claim is premised on an alleged departure from accepted standards of 'professional or administrative services directly related to health care.'" *Id.* at 364.

The claim met the definition because "accurately recording diagnoses, among other things, is a service health care providers and physicians must provide as a condition of maintaining their respective licenses." *Id.* Further, the creation and maintenance of accurate health records is a professional or administrative service directly related to health care because the maintenance of health records

has a close relationship with the treatment of patients – in that case, Weems's alleged victim. *Id.* at 365.

The instant case is distinguishable from *Weems*. Houser alleges Charles Abbott was not a patient of Peaceful Touch and the records were not created in the course of the health care provided Linda Abbott. She alleges the records were created for the purpose of falsely showing a patient relationship with Charles, resulting in a false "do not resuscitate" order related to Charles, which then excused their alleged negligence in failing to seek emergency care for Charles.

In *Carswell,* the Supreme Court considered whether a claim based on post-mortem conduct concerned "professional or administrative services directly related to health care." 505 S.W.3d at 536. The plaintiff alleged, among other things, that hospital staff fraudulently induced her into signing a permission form allowing an affiliated hospital to perform an autopsy of her deceased husband, who had been a patient at the hospital. *Id.* at 531. Specifically, she alleged she signed the form after a nurse misrepresented to her that the medical examiner's office "did not take the case and would not be performing an autopsy or investigating" her husband's death. *Id.* A jury found in favor of the plaintiff on that issue and awarded actual and exemplary damages. *Id.* at 533.

On appeal, the hospital argued that the suit should have been dismissed under the TMLA because the plaintiff's claims were based on "professional or

administrative services directly related to health care" and yet the plaintiff failed to file an expert report. *Id.* In response, the plaintiff argued that,

> because neither the hospital nor [the plaintiff] had authority to go forward with an autopsy without first contacting the [medical examiner's office] and making disclosures required by law, the autopsy was necessarily "separable from health care" and "separated from health care providers" so it could not have been "an inseparable or integral part of the rendition of health care."

Id. at 534. The plaintiff further contended that the autopsy was not "medical care" or "health care" because her husband ceased to be a "patient" of the hospital at the time of his death. *Id.*

In examining the nature of the plaintiff's claims, the Supreme Court first observed that her allegations factually implicated the hospital's requirements for licensure and the potential revocation of the licensure under the Texas Code of Criminal Procedure, Texas Health and Safety Code, and Texas Administrative Code. *Id.* at 534–35. Therefore, the suit involved "professional or administrative services" as defined in the statute. *Id.* (citing TEX. CIV. PRAC. & REM. CODE § 74.001(a)(24)).

The court then considered whether those services were "directly related to health care." *Id.* at 535–36. In doing so, the court first set forth the TMLA's definitions of "health care" and "medical care." *Id.* at 535 (citing TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10), (a)(19)). Then, referring to the plaintiff's argument

that her claim is not an HCLC because her husband was not a "patient" at the time of the autopsy, the court explained the following:

> Even if persons can no longer be patients after they die, a question we need not decide today, the inquiry does not end there. As to a claim based on professional or administrative services, the statute does not require that the person alleging injury was a patient during the relevant period. Neither does it require that the alleged injury must have occurred during or contemporaneously with health care, nor that the alleged injury was caused by health care. Rather, the [TMLA] applies to a claim for injury or death proximately caused by a "departure from accepted standards of medical care, or health care, or safety or professional or administrative services *directly related to* health care." [TEX. CIV. PRAC. & REM. CODE] § 74.001(a)(13) (emphasis added). Here, the question is whether the post-mortem claims by the [plaintiff] were directly related to health care—that is, directly related to an act or treatment that was or should have been performed or furnished by the hospital for, to, or on behalf of [her husband] during his treatment or confinement.

Carswell, 505 S.W.3d at 535. The court concluded:

> The [plaintiff's] post-mortem fraud claim was essentially that immediately following [her husband's] death, the hospital began covering up for the deficient health care provided to him. That was done, [she] claimed, by the hospital's failing to notify the [medical examiner's office] of [her husband's] death and the circumstances surrounding it, but rather . . . immediately obtaining [the plaintiff's] consent for an autopsy at an affiliated hospital by an associated pathology practice group. Even though the jury refused to find that [the hospital] negligently caused [her husband's] death, it remains that the [plaintiff's] post-mortem fraud claim was that the hospital's obtaining [her] consent for the autopsy was based on and for the purpose of concealing the hospital's malpractice that caused [her husband's] death. Given these circumstances, the claim was directly related to acts or treatments the [plaintiff] alleged were improperly performed or furnished, or that should have been performed or furnished, to [her husband] during his treatment and confinement. As such, the fraud claim was an HCLC.

Id. at 536 (citation omitted).

In reaching that conclusion, the Supreme Court rejected the plaintiff's argument that her post-mortem fraud claim was not an HCLC because the plaintiff was not a patient. The court first pointed out that the TMLA "does not limit its reach to persons receiving or having received health or medical care—it applies to 'claimants.'" *Id.* at 537 (citing TEX. CIV. PRAC. & REM. CODE § 74.001(a)(13)). Furthermore:

> As to professional or administrative services, it applies when the claimed injury is directly related to health care of *some* patient. *See id.* § 74.001(a)(10), (13). As noted above, the professional or administrative services underlying the [the plaintiff's] complaint were directly related to the improper health care they alleged Jerry Carswell received, or health care they alleged he should have received but did not.

Id. (emphasis in original).

We do not agree that *Weems* and *Carswell* support Peaceful Touch's argument here. In *Weems*, the maintenance of accurate health records was a professional or administrative service directly related to health care because the records at issue were those of a hospital patient. In *Carswell*, the professional or administrative services underlying the claim were directly related to the improper health care allegedly received by Carswell, who had been a hospital patient prior to his death. Thus, for a claim to be an HCLC under these circumstances, the claimed injury must be "directly related to health care of *some* patient." *See Carswell*, 505 S.W.3d at 537. Here, we cannot conclude the alleged fabrication of medical

records are directly related to health care of a patient because, for purposes of Houser's claims, Charles was not a patient. Nor can we conclude the alleged falsification of records was directly related to the health care of Linda. We fail to see how the fabrication of records concerning Charles directly relates to "any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of" Linda during her "medical care, treatment, or confinement." *See* TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10) (defining "health care"); *see also Roughneen*, 2020 WL 3055904, at *5 ("the services must relate directly to an act or treatment that was or should have been performed or furnished for, to, or on behalf of a patient"). Although the fraud and civil conspiracy claims have some relationship to the health care of Linda given that Houser alleges the defendants committed the conduct in order to cover up negligence that occurred during the time they were providing Linda care, it is not a "direct" relationship, which requires "an uninterrupted, close relationship or link between the things being considered." *Carswell*, 505 S.W.3d at 536. The alleged falsification of records related to Charles does not have an "uninterrupted" relationship with Linda's health care. We therefore conclude the fraudulent conduct in question directed at Charles is, at most, indirectly related to the health care of Linda.

Thus, we reject Peaceful Touch's argument that it makes no difference whether Charles was its patient when it comes to considering "professional or

administrative services." And to the extent Peaceful Touch argues the evidence it submitted shows that Charles *was* its patient, we are not in a position to resolve this factual dispute between the parties in this preliminary, threshold proceeding. It is true that the relevant facts are not limited to those alleged in a claimant's live pleading and instead should be drawn from the "entire court record," including "pleadings, motions and responses, and relevant evidence properly admitted." *Collin Creek Assisted Living Ctr., Inc. v. Faber*, 671 S.W.3d 879, 886 (Tex. 2023). However, our focus in an appeal from the denial of a Chapter 74 motion to dismiss is on the set of operative facts underlying the plaintiff's claim, *see Loaisiga*, 379 S.W.3d at 255, which here includes Houser's allegations that Peaceful Touch fabricated medical records relating to Charles, including the forms reflecting that Charles was a patient.[5] We may not substitute our judgment for that of the trial court regarding "the resolution of fact issues or matters committed to the trial court's discretion." *In re Mem'l Hermann Hosp. Sys.*, 464 S.W.3d 686, 698 (Tex. 2015) (orig. proceeding) (quoting *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992)).

Nor can we conclude these claims constitute a departure from accepted health care standards. To reiterate, a health care liability claim includes a cause of action against a health care provider or physician for treatment, lack of treatment,

[5] Houser submitted an affidavit with her petition in which she stated that the signature on the consent for care form provided by Peaceful Touch did not appear to be in Charles's handwriting.

or other claimed departure from accepted standards of medical care or health care. TEX. CIV. PRAC. & REM. CODE § 74.001(a)(13). And "health care" means "any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement." *Id.* § 74.001(a)(10). Thus, "[b]ecause a claim under the health care prong of [the definition of health care liability claim] incorporates the definition of 'health care,' such a claim must involve a patient-physician relationship." *Williams*, 371 S.W.3d at 180.

Unlike the negligence and wrongful death claims discussed above, Houser's allegations here do not involve a patient-physician relationship because they do not pertain to acts or treatment performed or furnished, or that should have been performed or furnished, by Peaceful Touch for, to, or on behalf of Linda during her care or treatment. *See* TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10); *Williams*, 371 S.W.3d at 180.

Therefore, we conclude the trial court did not err in denying Peaceful Touch and Eyambe's motion to dismiss as to Houser's fraud and civil conspiracy claims.

C. Attorney's fees

Finally, § 74.351(b) of the civil practice and remedies code requires the trial court to dismiss the plaintiff's claim and award a health care provider reasonable attorney's fees and costs of court incurred by the health care provider if the plaintiff fails to serve an expert report with the prescribed time limit. *See* TEX. CIV.

PRAC. & REM. CODE § 74.351(b); *see also Cardwell*, 356 S.W.3d at 658 (where some claims should have been dismissed as HCLCs for failure to serve expert report and other claims were not HCLCs, concluding defendant was entitled to award of attorney's fees and court costs incurred in defending HCLC claims that should have been dismissed). Because we conclude that Houser's negligence and wrongful death claims were subject to the expert report requirement and no report was served, the trial court erred by failing to dismiss those claims and to consider an award to Peaceful Touch and Eyambe of reasonable attorney's fees and costs of court incurred in defending the negligence and wrongful death claims.

III. Conclusion

We grant Noble and Houser's motion to dismiss Noble's appeal. *See* TEX. R. APP. P. 42.1(a)(2).

We sustain Peaceful Touch and Eyambe's issues as to the negligence and wrongful death claims and reverse and remand to the trial court with instructions to render judgment dismissing those claims with prejudice and to consider an award of attorney's fees and court costs pursuant to § 74.351(b) of the Texas Civil Practice and Remedies Code as to those claims. We otherwise affirm the order of the trial court.

/Mike Lee/
MIKE LEE
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PEACEFUL TOUCH HOSPICE AND PALLIATIVE CARE, LLC, PAMELA EKOR-TARH EYAMBE AND AISHA NOBLE, M.D., Appellants

No. 05-24-01369-CV V.

SHANNON DEANN HOUSER, INDIVIDUALLY AND AS INDEPENDENT ADMINISTRATOR OF THE ESTATE OF CHARLES WESLEY ABBOTT, Appellee

On Appeal from the 493rd District Court, Collin County, Texas
Trial Court Cause No. 493-00699-2024.
Opinion delivered by Justice Lee.
Justices Goldstein and Lewis participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal of AISHA NOBLE, M.D.

It is **ORDERED** that each party bear its own costs of AISHA NOBLE, M.D.'s appeal.

In accordance with this Court's opinion of this date, the order of the trial court as to appellants PEACEFUL TOUCH HOSPICE AND PALLIATIVE CARE, LLC and PAMELA EKOR-TARH EYAMBE is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's order as to the claims for negligence and wrongful death. In all other respects, the trial court's order is **AFFIRMED**. We **REMAND** to the trial court with instructions to dismiss the claims for negligence and wrongful death with prejudice and to consider an award to PEACEFUL TOUCH HOSPICE AND PALLIATIVE CARE,

LLC and PAMELA EKOR-TARH EYAMBE of attorney's fees and court costs as to those claims and for further proceedings consistent with this opinion.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 25th day of August 2025.