**Affirmed and Memorandum Opinion filed June 25, 2020.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-18-00704-CV**

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**BABAJIDE OGUNLANA, D.P.M, Appellant**

**V.**

**DERRICK CUNNINGHAM, Appellee**

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**On Appeal from the 240th District Court**
**Fort Bend County, Texas**
**Trial Court Cause No. 18-DCV-247940**

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## MEMORANDUM OPINION

In this interlocutory appeal, appellant Dr. Babajide Ogunlana contends that the trial court abused its discretion by overruling his objections to the amended expert report of Dr. Keith Hollingsworth, arguing that the report did not meet the requirements of the Texas Medical Liability Act (the "Act").[1] Ogunlana presents two issues on appeal. In issue two, Ogunlana argues that the report does not show

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[1] *See* Tex. Civ. Prac. & Rem. Code §§ 74.001–.507 (Texas Medical Liability Act); Tex. Civ. Prac. & Rem. Code § 54.014(a)(9) (interlocutory appeals).

that Dr. Hollingsworth was qualified to testify as to wound care, and in issue one, that the report is insufficient to show causation. Because we conclude that the amended expert report complies with the Act, we affirm the trial court's order overruling the objections.

## I. Background

On March 7, 2016, appellee Derrick Cunningham was admitted to Kindred Hospital in Sugar Land ("Kindred") for treatment of a chronic wound on his right heel. On March 1, prior to his March 7 admission, Cunningham fell and fractured his left ankle. Emergency Room ("ER") doctors at Memorial Hermann hospital placed a splint on Cunningham's left ankle, which was in place on March 7 when Cunningham was admitted to Kindred by Dr. Johnson Agu.

The day after admission, a wound-care nurse noted wounds to Cunningham's left heel and toe. Dr. Ogunlana performed a wound consult that day and noted splint-and-fracture blistering on Cunningham's left foot. On March 15, Dr. Ogunlana ordered a Controlled Ankle Motion ("CAM") boot for Cunningham's left foot, but the boot was not provided until after March 21 and was too small. Dr. Ogunlana did not monitor Cunningham's left foot for skin breakdown even though Cunningham's medical history and co-morbidities put him at elevated risk. Dr. Ogunlana did not assess the skin wounds on Cunningham's left foot until Cunningham had been at Kindred for two weeks. When Dr. Ogunlana assessed Cunningham's left foot, he discovered severe wounds, one of which had not been present on admission. He noted that the splint was "rubbing significantly" on the ankle and that there was epidermolysis of the skin around the blister site. Dr. Ogunlana saw Cunningham again on March 24, noting the CAM boot was in place but was too small. Wound-care orders were not written for Cunningham's left foot until March 25.

On April 1, 2016, Cunningham was discharged from Kindred with wound-

care instructions. He followed up with an orthopedic surgeon on the same day he was discharged and was scheduled for surgery in stages to repair his left ankle and foot. Cunningham developed cardiac issues, which delayed the surgical intervention on his left foot until May 19. Although multiple surgeries were performed to repair his left foot and ankle (June and December of 2016 and February and April of 2017), on May 11, because of gangrene and osteomyelitis related to ulcerations, Cunningham's left leg was amputated below the knee.

Cunningham filed health-care liability claims alleging that Dr. Ogunlana, Dr. Agu, and Kindred staff's negligent failure to timely and properly assess, treat, and monitor the wounds to his left foot caused the wounds to severely worsen, and resulted in the amputation of his left leg below the knee.

Cunningham timely served an expert report from Dr. Hollingsworth. After Dr. Ogunlana objected to the report, Cunningham filed an amended report. Dr. Ogunlana filed objections to the amended report, asserting that the report is conclusory and that Dr. Hollingsworth is not qualified to opine about the "podiatric standard of wound care." Cunningham filed a response, together with the curriculum vitae ("CV") of Dr. Hollingsworth, requesting the overruling of Ogunlana's objections. Dr. Ogunlana filed a reply, arguing that Dr. Hollingsworth is not qualified because his CV does not show he practices wound care and that the report is conclusory. On July 24, 2018, the trial court signed an order finding that the amended report complies with the Act, overruling Dr. Ogunlana's objections.

Dr. Ogunlana filed an interlocutory appeal of this order.

## II. ANALYSIS

### A. STANDARD OF REVIEW

"We review a trial court's decision to grant or deny a motion to dismiss based on the adequacy of an expert report for an abuse of discretion." *Abshire v. Christus Health Se. Tex.*, 563 S.W.3d 219, 223 (Tex. 2018). A trial court abuses its discretion if it acts arbitrarily or unreasonably or without reference to guiding rules or principles. *Samlowski v. Wooten*, 332 S.W.3d 404, 410 (Tex. 2011). When reviewing matters committed to the trial court's discretion, a court of appeals may not substitute its own judgment for the trial court's judgment. *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002) (per curiam).

The Act defines an "expert report" as:

> a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

TEX. CIV. PRAC. & REM. CODE § 74.351(r)(6). An expert report is sufficient under the Act if it provides a fair summary of the expert's opinions regarding the applicable standards of care, the manner in which the care rendered failed to meet the standards, and the causal relationship between the failure and the injury. *Abshire*, 563 S.W.3d at 223. Importantly, the trial court need only conclude that the report constitutes a "good faith effort" to comply with the statutory requirements. TEX. CIV. PRAC. & REM. CODE § 74.351(l); *Abshire*, 563 S.W.3d at 223. An expert report demonstrates a "good faith effort" when it (1) informs the defendant of the specific conduct called into question and (2) provides a basis for the trial court to conclude the claims have merit. *Id.*; *Baty v. Futrell*, 543 S.W.3d 689, 693–94 (Tex. 2018). A report need not marshal all the claimant's proof, but a report that merely states the expert's

conclusions about the standard of care, breach, and causation is insufficient. *Abshire*, 563 S.W.3d at 223.

To meet these minimum standards, "'the expert must explain the basis of his statements to link his conclusions to the facts.'" *Wright*, 79 S.W.3d at 52 (quoting *Earle v. Ratliff*, 998 S.W.2d 882, 890 (Tex. 1999)). The expert need not use "magical words"; nor is the report held to the same standards as evidence offered on summary judgment or at trial. *Jelinek v. Casas*, 328 S.W.3d 526, 540 (Tex. 2010). Rather, a valid expert report must discuss the standard of care, breach, and causation with sufficient specificity to meet the Act's stated goals. *Baty*, 543 S.W.3d at 689. The purpose of the expert-report requirement is to weed out frivolous malpractice claims in the early stages of litigation, not to dispose of potentially meritorious claims. *Abshire*, 563 S.W.3d, *at* 223–24. As this court has previously recognized, the expert reports "are simply a preliminary method to show a plaintiff has a viable cause of action that is not frivolous or without expert support." *Kelly v. Rendon*, 255 S.W.3d 665, 678 (Tex. App.—Houston [14th Dist.] 2008, no pet.). "In analyzing a report's sufficiency under this standard, we consider only the information contained within the four corners of the report." *Abshire*, 563 S.W.3d at 223.

**B. QUALIFICATIONS OF DR. HOLLINGSWORTH**

In his second issue, Dr. Ogunlana argues that the amended report of Dr. Hollingsworth, an orthopedic surgeon, fails to establish or explain how he is qualified to testify as to the standard of care for wound care. He asserts that Dr. Hollingsworth does not possess specialized experience in wound care.

Section 74.401(a) of the Act states the following requirements for qualifications for an expert:

> In a suit involving a health care liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness

> on the issue of whether the physician departed from accepted standards of medical care only if:
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> (1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;
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> (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
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> (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

TEX. CIV. PRAC. & REM. CODE § 74.401(a). In assessing whether the witness has the required knowledge, skill, experience, or training, the court shall consider whether the witness is: (1) board certified or has other substantial training or experience "in an area of medical practice relevant to the claim" and (2) is actively practicing medicine "in rendering medical care services relevant to the claim." *Id*. § 74.401(c). The expert report and curriculum vitae must establish the witness's knowledge, skill, experience, training, or education regarding the specific issue before the court. *See Baylor Coll. of Med. v. Pokluda*, 283 S.W.3d 110, 118–19 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The expert must do more than show that he is a physician, but he "need not be a specialist in the particular area of the profession for which testimony is offered." *Id.* at 117. An expert must know the "accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim." TEX. CIV. PRAC. & REM. CODE § 74.401(a)(2).

By its plain language, the Act does not focus on the defendant doctor's area of expertise, but on the condition involved in the claim. *See Blan v. Ali*, 7 S.W.3d 741, 746 (Tex. App.—Houston [14th Dist.] 1999, no pet.). A physician may be qualified to provide an expert report, even when his specialty differs from that of the defendant, "if he has practical knowledge of what is usually and customarily done by other practitioners under circumstances similar to those confronting the

malpractice defendant" or "if the subject matter is common to and equally recognized and developed in all fields of practice." *Keo v. Vu*, 76 S.W.3d 725, 732 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

Dr. Hollingsworth, who obtained his medical degree from the Ohio State University College of Medicine, is a board-certified orthopedic surgeon who is a member of the American Academy of Orthopedic Surgeons, completed residencies in orthopedic and general surgery at the University of California, and completed a fellowship in sports medicine/shoulder at the Orthopedic and Fracture Clinic in Oregon. His CV states, among other qualifications, that he has participated in research on fixation of the lateral malleolus and external fixations.

While not a podiatrist, Dr. Hollingsworth's amended report indicates there is much overlap between podiatry, orthopedic surgery, and internal medicine pertaining to wound care. His report states:

> The injury, illness, and condition involved in this claim is one that is substantially developed in more than one field. Podiatrists and orthopedic surgeons both frequently treat patients like Mr. Cunningham with wounds. As an orthopedic surgeon, I have training, education, and experience in wound care because wound care often coincides with the practice of orthopedic surgery. This is true whether the wound [sic] from the underlying injury or results from treatment. As I indicated in the preceding paragraph, one of my roles as the orthopedic surgeon is to engage in preventative measures that are designed to prevent my patients from suffering avoidable wounds from treatment I have proposed. It also includes providing the appropriate treatment to wounds at the first sign of wound development to prevent those wounds from becoming severe.

Dr. Hollingsworth's amended report indicates that he has cared for patients like Cunningham at facilities like Kindred, including "patients who are at risk of skin breakdown, and who have the same comorbidies as Cunningham does, like diabetes." He also states that he routinely uses preventative measures and medicine

to treat his patients to insure that they do not suffer injuries from wounds, and that he is familiar with and has received training on complications that can arise from poor wound care in cases like Cunningham's.

Regarding his knowledge and training on the standards of care applicable to wound care, Dr. Hollingsworth's amended report states:

> I also received training on the complications that could stem from the management of the condition, illness, or injury my patients may experience. I know which complications are the result of poor care and which complications can result even with the best of care. Having treated many patients like Derrick Cunningham, I have seen patients like Derrick Cunningham who received care that met the applicable standard of care set forth in this report who did not suffer the injuries that Derrick Cunningham did. On the other hand, I am familiar with patients like Derrick Cunningham where the standard of care was not met and patients suffered the same or similar injuries that Derrick Cunningham suffered in this case. In addition, I have had a considerable amount of experience with patients like Derrick Cunningham who have comorbidities, like diabetes mellitus, that place them at a higher risk for complications, like skin breakdown. Therefore, I am qualified based on my education, training and experience to render the opinions in this report.

He explains that his practice of orthopedic surgery coincides with and requires knowledge of wound care. Therefore, his amended report establishes that he is familiar with the accepted standards of medical care for the treatment of wounds for patients like Cunningham.

Additionally, Texas appellate courts have repeatedly recognized that the care and treatment of an open wounds and infection are common to and equal in all fields of medicine and that doctors in every field of practice are therefore qualified to testify on this subject. *See Blan*, 7 S.W.3d at 745–46 ("[I]f the subject matter is common to and equally recognized and developed in all fields of practice, any physician familiar with the subject may testify as to the standard of care"); *New Med.*

*Horizons, II, Ltd. v. Milner*, 575 S.W.3d 53, 62–63 (Tex. App.—Houston [1st Dist.] 2019, no pet.); *Clavijo v. Fomby*, No. 01-17-00120-CV, 2018 WL 2976116, at *6–9 (Tex. App.—Houston [1st Dist.] June 14, 2018, pet. denied) (mem. op.) (holding that trial court did not abuse its discretion in concluding cardiologist was qualified to testify on standard of care applicable to internist for treatment of open wound and infection prevention); *Gonzalez v. Padilla*, 485 S.W.3d 236, 248 (Tex. App.—El Paso 2016, no pet.) ("As we noted previously, both wound care and infection prevention are subjects common to all fields of medical practice"); *Legend Oaks–S. San Antonio, L.L.C. v. Molina*, No. 04-14-00289-CV, 2015 WL 693225, at *4 (Tex. App.—San Antonio Feb. 18, 2015, no pet.) (mem. op.) ("[T]he care and treatment of open wounds and the prevention of infection are subjects common to and equally recognized and developed in all fields of practice, thus any physician familiar with and experienced in the subject may testify as to the standard of care");. Because he is a licensed physician, Dr. Hollingsworth is qualified to testify as to the standard of care for wounds and infection.

Based on the statements in his amended report, the trial court could have reasonably concluded that Dr. Hollingsworth was qualified to provide opinions as to the standard of care for the treatment of Cunningham. The trial court did not abuse its discretion in overruling Dr. Ogunlana's objection that Dr. Hollingsworth is not qualified. We overrule Dr. Ogunlana's second issue.

### C. SUFFICIENCY OF THE AMENDED REPORT AS TO CAUSATION

We next turn to Ogunlana's first issue, arguing that the amended report is insufficient to show causation.

"'[A]n expert must explain, based on the facts set forth in the report, how and why [a health care provider's] breach [of the standard of care] caused the injury. A bare expert opinion that the breach caused the injury will not suffice.'" *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 459–60 (Tex. 2017) (quoting *Van Ness v. ETMC First Physicians*, 461 S.W.3d 140, 142 (Tex. 2015)). The report need not use the words "proximate cause," "foreseeability," or "cause in fact." *Zamarripa*, 526 S.W.3d at 460. A report's adequacy does not depend on whether the expert uses any particular "magical words." *Id*. An expert's simple say so is insufficient to establish a matter; rather, the expert must explain the basis of his statements to link his conclusions to the facts. *Id.* A report may be sufficient to establish causation if it states a chain of events that begin with a health care provider's negligence and end in a personal injury. *See Patel v. Williams*, 237 S.W.3d 901, 905 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

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. TEX. CIV. PRAC. & REM. CODE § 74.351(r)(6); *see Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 630 (Tex. 2013). "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." *Id*. (emphasis added). "If a health care liability claim contains at least one viable liability theory, as evidenced by an expert report meeting the statutory requirements, the claim cannot be frivolous." *Id*. at 631. In *Potts*, the Texas Supreme Court held that because

Potts's reports sufficiently addressed one liability theory, the trial court correctly denied the motion to dismiss. 392 S.W.3d at 633–34. Therefore, if a court of appeals determines that an expert report adequately addresses one pleaded theory of liability, it need not address the appellant's other arguments. *See Methodist Hosp. v. Addison*, 574 S.W.3d 490, 502 (Tex. App.—Houston [14th Dist.] 2018, no pet.) ("Because we have determined that Dr. Cohen's report adequately addressed one theory of liability against Methodist, we need not address Methodist's remaining arguments . . . that the trial court abused its discretion when it denied Methodist's motion to dismiss. *See* TEX. R. APP. P. 47.1; *Potts*, 392 S.W.3d at 632."). Further, if an expert report adequately addresses at least one liability theory, such report satisfies the statutory requirement of the Act even if it does not adequately address all of the plaintiff's alleged damages. *See Lopez v. Brown*, 356 S.W.3d 599, 605 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (Expert report that failed to address all of plaintiff's damages but adequately addressed one liability theory satisfied the statutory requirement); *McGraw–Wall v. Giardino*, No. 14–10–00838–CV, 2011 WL 1419608, at *4 (Tex. App.—Houston [14th Dist.] Apr. 14, 2011, pet. denied) (mem. op.) ("Therefore, although the amended expert report here does not address all of Giardino's alleged damages, it adequately addresses at least one liability theory and that satisfies the statutory requirements.").

Cunningham's petition alleges that Ogunlana's negligent breach of the standard of care caused Cunningham to develop severe wounds while under Ogunlana's care, and that these wounds eventually led to infection and the amputation of Cunningham's left leg. His petition seeks recovery for physical pain, mental anguish, physical impairment, physical disfigurement, and medical expenses. Thus, Cunningham has pleaded claims for two different injuries, namely, a claim that Ogunlana's negligence caused the wound to become worse and severe (the

"wound exacerbation claim") and a claim that Ogunlana's negligence did not just exacerbate the wound, but caused the amputation (the "amputation claim"). The "wound exacerbation claim" seeks damages for pain and suffering, mental anguish, and medical expenses, whereas the "amputation claim" seeks these damages in greater amounts, plus damages for impairment and disfigurement.

In his first issue, Dr. Ogunlana contends that Dr. Hollingsworth's amended report is insufficient to support proximate cause of either the "wound exacerbation claim" or the "amputation claim." As discussed below, we conclude that amended report is sufficient to support causation of at least one pleaded theory of recovery—the "wound exacerbation claim." We therefore need not decide or address whether the amended report is also sufficient to support causation of the "amputation claim," and we decline to do so. *See Methodist Hosp.*, 574 S.W.3d at 502.

Dr. Hollingsworth's amended report states the following causation opinion with regard to the "wound exacerbation claim":

> The breaches by Mr. Cunningham's podiatrist, Dr. Ogunlana, listed above also caused Mr. Cunningham to develop very serious left foot wounds under his splint. Much like the nurses, Dr. Ogunlana should have inspected Mr. Cunningham's left foot at each of his visits. This clearly did not happen on his visit on 3/15/16. This failure resulted in a delay in care of his left foot wounds, which caused further ulceration and infection. In addition, the fact that Dr. Ogunlana did not write an order for daily skin checks, or at the very least, advise the nurses to check under the splint everyday caused a delay in diagnosis and treatment of the left ankle and foot wounds. This delay resulted in the consistent rubbing of the splint against Mr. Cunningham's skin, which he could not feel because of his neuropathy. This rubbing and irritation caused the wounds to his left foot and ankle to develop and progress during the time from the first assessment on 3/8/16 until the next assessment on 3/21/16. By the time Dr. Ogunlana re-examined his left foot and ankle wounds they had significantly deteriorated. Due to his comorbidities, Mr. Cunningham was unable to heal the wounds caused by the splint, they became infected, and eventually he required an

> amputation. It is more likely than not, and within a reasonable degree of medical probability, that had Dr. Ogunlana checked Mr. Cunningham's left foot regularly at his visits, and ensured the nursing staff was checking his skin underneath he splint daily, Mr. Cunningham's wounds would not have progressed due the constant rubbing and irritation caused by the splint. This would have avoided the development of severe pressure wounds, infections, and the eventual amputation. . . .
>
> Furthermore, even if one rejected the notion that the amputation more likely than not was caused by the wound Mr. Cunningham developed, the same wound also resulted in the needed for extensive wound care that would not have been necessary had the wound been appreciated on the day it first began. This is because it is far more likely than not an area of irritation would have been appreciated before it was a "hemorrhagic blister" that measured 2 x 1 cm. It has been my experience that these areas of irritation can be addressed by removal and discontinuation of the irritating surface and minor wound care. As it was, this wound was not appreciated until it was already severe and as the facts show, too late.

It is evident from the amended report that it is not conclusory as to the causation of the "wound exacerbation claim." Rather, it adequately explains how Dr. Ogunlana's negligence in not inspecting the wound for over two weeks and failing to detect and prevent the rubbing and irritation caused by the splint caused the development of severe pressure wounds and a hemorrhagic blister.

Dr. Ogunlana asserts that the last description of Cunningham's left foot wounds while a patient at Kindred noted that all the wounds were intact and without exudate or necrotic tissue. Dr. Ogunlana argues that Dr. Hollingsworth improperly dismisses the six weeks between Cunningham's discharge from Kindred with uninfected diabetic wounds and Dr. Beaver's first debridement or wound care on May 19, 2016. Dr. Ogunlana therefore contends that Dr. Hollingsworth's opinion of negligence remains too attenuated from the need for extensive wound care; thus, his

amended report is insufficient on causation of the "wound exacerbation claim." We disagree.

Dr. Hollingsworth's opinion that the undetected rubbing of the splint caused the wound to become worse is supported by Dr. Ogunlana's own records, in which he states "it appears that the posterior splint is rubbing significantly along the medial aspect of the ankle"). Throughout his amended report, Dr. Hollingsworth discusses the importance of timely recognizing and treating wound development before it becomes severe. He states that these wounds "resulted in the need for extensive wound care that would not have been necessary had the wound been appreciated on the day it first began." He backs this up with his own clinical experience that there would have been an "area of irritation" before a hemorrhagic blister and it is his "experience that these areas of irritation can be addressed by removal and discontinuation of the irritating surface and minor wound care." Due to Dr. Ogunlana's negligence, the splint was allowed to rub and irritate the skin on the foot of a diabetic patient with poor blood flow for two weeks. By the time Dr. Ogunlana inspected the wounds two weeks later, there was already hemorrhagic blisters, necrotic skin, and a large wound measuring 9.0 x 6.0 cm. Dr. Hollingsworth states that these debilitating wounds were the source of much pain and suffering for Mr. Cunningham. Regardless of whether the wounds were infected when Cunningham was discharged from Kindred, the amended report is clear that Dr. Ogunlana's negligence exacerbated the wounds and caused pain and suffering. These statements in the amended report are sufficient to support causation of the "wound exacerbation claim."

The Texas Supreme Court and our court has found causation opinions sufficient in cases with even more attenuated facts than the facts relied on by Dr. Hollingsworth. *See Abshire*, 563 S.W.3d at 225–26 (expert report satisfied Act's

requirements when it drew line directly from nurses' failure to properly document Abshire's symptoms to delay in diagnosis and proper treatment); *see also Mem'l Hermann Health Sys. v. Heinzen*, 584 S.W.3d 902, 922 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (expert report sufficiently addressed causation by drawing line from failure of Memorial Hermann's nursing staff to properly document plaintiff's complaint to delay in her diagnosis and treatment, and then to her resulting vision loss). In *Patel*, 237 S.W.3d at 905–06, we held that an expert report sufficiently set forth causation when it presented a chain of events beginning with an allegedly negligent prescription and ending with the patient's death. In that case, Dr. Patel prescribed Williams an anti-dementia drug while he was a patient in the hospital. *Id*. at 903. The report explained that the drug was not FDA approved for patients with Williams's ailment and that known side-effects of the drug included restlessness or a need to keep moving. *Id*. Williams's family withdrew consent for the drug, but Dr. Patel continued to prescribe it. *Id*. Williams was being fed *via* a feeding tube, and allegedly due to the restlessness from the drug, she removed the tube. *Id*. The report identified nurses' notes that described Williams as agitated and stated that she kept pulling at her feeding tube. *Id*. The nursing staff improperly re-inserted the tube, causing a small cut, which became infected because of the contents of the feeding tube entered the cut. *Id*. The cut developed into an abscess requiring multiple surgeries. *Id*. The report concluded that Williams's death was caused by the infection from the improperly re-inserted feeding tube. *Id*. at 904. We held the report was not conclusory or speculative because it showed a causal connection between Dr. Patel's negligent prescription and Williams's death. *Id*. at 905–06.

Dr. Ogunlana attempts to rely on two decisions from the First Court of Appeals, *Shenoy v. Jean*, No. 01-10-01116-CV, 2011 WL 6938538 (Tex. App.—Houston [1st Dist.] Dec. 29, 2011, pet. denied) (mem. op.) (Sharp, J., dissenting) and

*Curnel v. Houston Methodist Hosp.-Willowbrook*, 562 S.W.3d 553 (Tex. App.—Houston [1st Dist.] 2018, no pet.). In *Shenoy*, the court held that Dr. Mazzei's expert report did not link the facts from Dr. Shenoy's alleged negligence to Jean's death. 2011 WL 6938538, at *9. "[Jean] did not suffer a cardiac arrest during or after the surgery; she suffered respiratory arrest and only after a premature extubation." *Id*. "Based on Mazzei's report, it appears that any patient—healthy or with a history of medical conditions—who is prematurely extubated will not sufficiently 'maintain the oxygenation in the blood' and therefore is at risk for respiratory arrest." *Id*. "The mere fact that [Jean] was cleared for surgery before her death does not mean that the clearance for surgery caused her death." *Id*. (citing *Jelinek*, 328 S.W.3d at 533 (cautioning against the post hoc ergo propter hoc fallacy, that is, reasoning that an earlier event caused a later event simply because it occurred first)). In other words, Mazzei's report did not establish that Dr. Shenoy's clearing Jean for surgery caused the premature extubation that resulted in Jean's respiratory arrest.

In *Curnel*, the plaintiff/patient Curnel was examined by a hospitalist, Dr. Michael Esantsi, who misdiagnosed her with viral hepatitis and admitted her to the hospital. 562 S.W.3d at 558. On the third day of her hospitalization, Curnel was examined by a gastroenterologist, who noted that she might be suffering from drug-induced liver injury. *Id*. He ordered a biopsy of Curnel's liver to test for other potential causes. *Id*. During the biopsy, the radiologist nicked Curnel's artery, causing severe injuries. *Id*. The court of appeals found that the misdiagnosis by Dr. Esantsi was too attenuated from Curnel's injuries to be considered a substantial factor in bringing those injuries about. *Id*. at 565. Dr. Esantsi's initial breaches, which occurred days before the biopsy and before she was even admitted to the hospital, did no more than furnish the condition that made Curnel's injury possible. *Id*. The First Court of Appeals held, "[g]iven the numerous different acts by other

physicians and nurses during the multiple days between Curnel's admission and her biopsy, Esantsi's initial breaches do not constitute a cause-in-fact of Curnel's injuries." *Id*.

In contrast to the reports found insufficient in *Shenoy* and *Curnel*, Dr. Hollingsworth's amended report establishes that Dr. Ogunlana's negligent failure to discover the rubbing of the splint for over two weeks exacerbated Cunningham's wounds and caused him pain and suffering. There was no intervening cause or break in the causal link. The amended report shows that Dr. Ogunlana's negligence did more than just furnish the condition that made the exacerbation of the wounds possible; it established a direct link between Dr. Ogunlana's negligence and the exacerbation of the wounds.

We therefore conclude the trial court did not abuse its discretion by overruling Dr. Ogunlana's objection that the amended report was insufficient to establish causation. We overrule Dr. Ogunlana's first issue.

## III. Conclusion

Because the trial court did not abuse its discretion by overruling Dr. Ogunlana's objections to the amended report, we affirm the trial court's July 24, 2018 order.

/s/ Margaret "Meg" Poissant
Justice

Panel consists of Justices Christopher, Spain, and Poissant.