

TEXAS COURT OF APPEALS FOR THE FIRST DISTRICT AT HOUSTON

Townsen Memorial Hospital, Southeast Texas Medical Ventures LLC
D/B/A Townsen Memorial Hospital, and Markus Baloney, RN v.
Cedric Wheeler

Townsen Memorial Hospital v. Wheeler · No. 01-24-00369-CV · Decided March 24, 2026

SUMMARY

The Texas First Court of Appeals affirmed the denial of a motion to dismiss health care liability claims against Townsen Memorial Hospital and a nurse under Texas Civil Practice and Remedies Code section 74.351. The court held that the neurosurgeon’s expert report adequately established his qualifications, the applicable nursing standard of care, breach, and causation sufficiently to constitute a good-faith effort at the early litigation stage. The opinion also addresses challenges to the report’s applicability to the nurse and the evidentiary limitations of reviewing only the report’s four corners.

CASE DETAILS

COURT	Texas Court of Appeals for the First District at Houston
WRITING FOR THE COURT	David Gunn; Rivas-Molloy; Gunn; Caughey
JURISDICTION	Texas Court of Appeals for the First District
DECIDED	March 24, 2026
DOCKET	01-24-00369-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a motion to dismiss health care liability claims based on alleged deficiencies in an expert report under Texas Civil Practice and Remedies Code section 74.351.
STANDARD OF REVIEW	The denial of a motion to dismiss based on the adequacy of a health care liability expert report is reviewed for abuse of discretion. The appellate court considers only the information within the four corners of the report, and close calls go to the trial court.
PRECEDENTIAL VALUE	Published opinion; the text identifies the decision as a memorandum opinion.

PARTIES

Townsen Memorial Hospital, Southeast Texas Medical Ventures LLC
d/b/a Townsen Memorial Hospital, Markus Baloney, RN v. Cedric
Wheeler

TOPICS

health law

interlocutory appeal

appellate procedure

standard of review

waiver

PRACTICE AREAS

health law

medical malpractice

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether Dr. Mullin was qualified under Texas Civil Practice and Remedies Code section 74.402 to provide an expert opinion concerning the standard of care applicable to Townsen and its nurses.
2. Whether Dr. Mullin's amended expert report adequately stated the applicable standard of care and alleged breach.
3. Whether the amended expert report adequately explained causation.
4. Whether the amended report implicated Markus Baloney's conduct even though it did not identify him by name, and whether Baloney waived objections by failing to timely object.
5. Whether the appeal was frivolous and warranted damages under Texas Rule of Appellate Procedure 45.

HOLDINGS

1. Dr. Mullin was qualified to render an expert opinion on the standard of care applicable to Townsen and its nursing staff because his report established his extensive neurosurgical experience and his regular supervision, direction, and collaboration with nurses in postoperative care of patients who underwent comparable spinal procedures.
2. The amended expert report adequately addressed the standard of care and breach because it identified the postoperative evaluations, documentation, physician reporting, and chain-of-command actions that the nursing staff allegedly should have performed but did not.
3. The amended expert report adequately addressed causation because it explained that timely nursing identification and reporting of Wheeler's neurological symptoms would have led to physician evaluation and surgical intervention, preventing the development or progression of cauda equina syndrome.
4. The amended report implicated Baloney even though it did not name him because it addressed the conduct of the nursing staff, and Baloney waived any objection to the report by failing to object within twenty-one days of service of the report or his answer.
5. The appeal was not frivolous, and the court declined to award damages under Texas Rule of Appellate Procedure 45.

KEY QUOTATIONS

“This is a “modest requirement at this early stage of litigation.”” (p. 6)

“We review a trial court’s decision to deny a motion to dismiss based on the adequacy of an expert report for an abuse of discretion.” (p. 7)

“A health care liability claimant is not required “to present evidence in the report as if it were actually litigating the merits.”” (p. 18)

“The report merely needed to provide a straightforward link between the alleged breach of the standard of care and the injuries.” (p. 23)

“Although we conclude that Townsen and Baloney’s appellate arguments are not meritorious, their arguments have not crossed the line into the territory of the frivolous.” (p. 26)

FACTUAL BACKGROUND

After a car accident, Cedric Wheeler underwent lumbar spinal surgery at Townsen Memorial Hospital in late 2020. Following discharge, he experienced bladder-control problems and difficulty ambulating; subsequent evaluation revealed severe lumbar stenosis and disc bulges, and Dr. Bradford Mullin diagnosed modified cauda equina syndrome and performed additional surgery. Mullin attributed Wheeler's condition to nursing failures to assess, document, and report postoperative neurological symptoms and to invoke the chain of command before discharge.

PROCEDURAL HISTORY

Wheeler sued Townsen and other defendants after developing cauda equina syndrome and related injuries following spinal surgery. The trial court initially sustained objections to Dr. Mullin's expert report but granted Wheeler a thirty-day extension to cure deficiencies; it later overruled renewed objections to the amended report. After Baloney was added as a defendant, Townsen and Baloney moved to dismiss, reasserting challenges to the report and arguing that it was no report as to Baloney. The trial court denied the motion to dismiss and declined Wheeler's request for sanctions. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Bush v. Columbia Med. Ctr. of Arlington Subsidiary, L.P., 714 S.W.3d 536, 543-45, 549, 551 (Tex. 2025)
- Baty v. Futrell, 543 S.W.3d 689, 693-94 (Tex. 2018)
- Scoresby v. Santillan, 346 S.W.3d 546, 549 (Tex. 2011)
- Samlowski v. Wooten, 332 S.W.3d 404, 409-10 (Tex. 2011) (plurality op.)
- Abshire v. Christus Health Se. Tex., 563 S.W.3d 219, 223-27 (Tex. 2018) (per curiam)
- E.D. ex rel. B.O. v. Tex. Health Care, P.L.L.C., 644 S.W.3d 660, 664, 667 (Tex. 2022) (per curiam)
- Pankaj v. Hernandez, 695 S.W.3d 900, 919-21 (Tex. App.—Houston [1st Dist.] 2024, no pet.)

- Harvey v. Kindred Healthcare Operating, Inc., 578 S.W.3d 638, 647 (Tex. App.—Houston [14th Dist.] 2019, no pet.)
- Olveda v. Sepulveda, 141 S.W.3d 679, 683 (Tex. App.—San Antonio 2004, pet. denied)
- Baylor Med. Ctr. at Waxahachie v. Wallace, 278 S.W.3d 552, 559 (Tex. App.—Dallas 2009, no pet.)
- American Transitional Care Centers of Tex., Inc. v. Palacios, 46 S.W.3d 873, 880 (Tex. 2001)
- Columbia Valley Healthcare System, L.P. v. Zamarripa, 526 S.W.3d 453, 458, 460-61 (Tex. 2017)
- Miller v. JSC Lake Highlands Operations, LP, 536 S.W.3d 510, 517 (Tex. 2017) (per curiam)
- Gannon v. Wyche, 321 S.W.3d 881, 888-93 (Tex. App.—Houston [14th Dist.] 2010, pet. denied)
- Walker v. Baptist St. Anthony's Hosp., 703 S.W.3d 339, 343-44 (Tex. 2024) (per curiam)
- Jelinek v. Casas, 328 S.W.3d 526, 539-40 (Tex. 2010)
- Sinha v. Thurston, 373 S.W.3d 795, 800 (Tex. App.—Houston [14th Dist.] 2012, no pet.)
- Golucke v. Lopez, 658 S.W.3d 686, 697 (Tex. App.—El Paso 2022, no pet.)
- Mendez-Martinez v. Carmona, 510 S.W.3d 600, 606 (Tex. App.—El Paso 2016, no pet.)
- Ogletree v. Matthews, 262 S.W.3d 316, 321-22 (Tex. 2007)
- Smith v. Brown, 51 S.W.3d 376, 381 (Tex. App.—Houston [1st Dist.] 2001, pet. denied)