IN THE SUPREME COURT OF TEXAS

No. 10-0603

TEXAS WEST OAKS HOSPITAL, LP AND TEXAS HOSPITAL HOLDINGS, LLC, PETITIONERS,

v.

FREDERICK WILLIAMS, RESPONDENT

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

JUSTICE LEHRMANN, joined by JUSTICE MEDINA and JUSTICE WILLETT, dissenting.

"A whole new world [of health care liability claims], hinted by opinions in the last few years, is here." *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 470 (Tex. 2008) (Wainwright, J. dissenting). Interpreting a law designed to *reduce* the number of medical malpractice suits, the Court holds that an employee's claims against his employer for providing an unsafe workplace and inadequate training are health care liability claims. The Court's strained reading of the statute runs counter to express statutory language, the Legislature's stated purposes in enacting the current version of chapter 74, and common sense. Further, the Court's decision undermines the balance struck by the Legislature to encourage employers to become subscribers under the Workers Compensation Act. For these reasons, I am compelled to respectfully express my dissent.

I. The Medical Liability Act Contemplates a Patient/Physician Relationship Between the Parties

A. The Act's plain language indicates that it applies to claims alleging a breach of a health care provider's duty to a patient.

Our primary objective in construing a statute "is to ascertain and give effect to the Legislature's intent by first looking at the statute's plain and common meaning." *Tex. Natural Res. Conservation Comm'n v. Lakeshore Util. Co.*, 164 S.W.3d 368, 378 (Tex. 2005). We divine that intent by reading the statute as a whole, and we interpret the legislation to give effect to the entire act. *Id.* (citing *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003)). Furthermore, we may look to the statutory context to determine a term's meaning. *City of Boerne*, 111 S.W.3d at 25. All of those tools lead to the conclusion that Williams's claims are not health care liability claims.

Under the Medical Liability Act, § 74.001 *et seq.*, a health care liability claim is

> 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). The Court concludes that Williams's suit against his employer for providing an unsafe workplace and inadequate training alleges health care liability claims, despite the lack of any physician-patient relationship between the health care provider and the claimant. ____ S.W.3d at ___. The Court first determines that Williams's claims are for a departure from health care standards because they "involve a patient-physician relationship." ____ S.W.3d at ___. Although that determination is more than enough to decide the case, the Court then

reaches out to further expand the Act's scope by deciding that a claim under the "safety" prong of the health care liability claim definition need not be directly related to health care — even though Williams's claim *is*, in the Court's view — directly related to health care. Both conclusions are inconsistent with plain statutory language and sound statutory construction. The Act is replete with provisions indicating that a health care liability claim must be founded on a health care provider's alleged breach of a professional duty towards a patient. *See Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 851, 854 (Tex. 2005). The Court's interpretation renders some of those provisions meaningless or nonsensical.

1. Williams's claims are not "health care" claims, as the Court concludes.

The Act 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) (emphasis added). Plainly, the Legislature contemplated that a health care liability claim based upon a departure from standards of health care would stem from medical treatment directed toward a particular patient — "the patient" whose care, treatment, or confinement is the subject of the lawsuit.

Based largely on the Legislature's use of the term "claimant" rather than "patient" in the health care liability claim definition, the Court determines that a claim falls under the health care prong of the definition even absent a physician-patient relationship so long as a physician-patient relationship is "involved." ____ S.W.3d at ____. As set out in section I.B. below, the Court's analysis of the significance of the Legislature's use of "claimant" in the definition flows from an

erroneous premise and is deeply flawed; the Court's reliance on the change ignores the fact that the Legislature used the term throughout the Act's predecessor, including in its statement of legislative purpose. More importantly, the Legislature did not say that a health care claim must "involve" a patient. Indeed, the word is found nowhere in the definition of health care or health care liability claim. Instead, health care claims arise from "act[s] or treatment furnished or that should have been furnished 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) (emphasis added). Williams's claims allege that West Oaks failed to provide *him*, not the patient, adequate training and a safe work place.

Section 74.051 of the Act highlights the Court's error in concluding that the mere peripheral involvement of a patient transforms an ordinary negligence claim into a health care claim. That section requires health care liability claimants to provide notice by certified mail to any health care provider against whom the claim is asserted sixty days before the claim is filed. TEX. CIV. PRAC. & REM. CODE § 74.051(a). The notice must be accompanied by a form authorizing the release of the medical records of *"the patient"* whose treatment is the subject of the claim. *Id.* §§ 74.051(d)("All parties shall be entitled to obtain complete and unaltered copies of the patient's medical records . . . ."); 74.052(c)A, B. Under the Court's reading of the statute, Williams would be required to authorize or obtain authorization for the release of Vidaurre's medical records to pursue his suit against his employer. Obviously, medical privacy laws prevent Williams from authorizing the release of Vidaurre's medical records. 45 C.F.R. § 164.502(f) (providing that Health Insurance Privacy and Portability Act restrictions apply to deceased individuals). While the Legislature sought to reduce frivolous claims against health care providers, it sought to do so without unduly restricting

claims with merit. It is inconceivable that the Legislature intended to require health care claimants with meritorious claims to be blocked by the refusal of third parties (the patients "involved") to authorize release of their medical records.

Moreover, even if Williams were somehow able to obtain authorization from Vidaurre's estate, the records would not serve the purpose sections 74.051 and 74.052 were designed to serve: to "'provide[ ] an opportunity for health care providers to investigate claims and possibly settle those with merit at an early stage.'" *Jose Carreras, M.D., P.A. v. Marroquin*, 339 S.W.3d 68, 73 (Tex. 2011) (quoting *In re Collins,* 286 S.W.3d 911, 916–17 (Tex. 2009)). Vidaurre's psychiatric diagnosis and violent tendencies are undisputed, and the records would have no bearing on the merits of Williams's claims against West Oaks for allegedly providing an unsafe workplace and inadequate training.

The Court discounts the import of these sections, finding no language to suggest that employee/employer disputes like this case are not health care liability claims. But section 74.052, which describes the statutory authorization form that must accompany the statutory notice provides:

> (c) The medical authorization required by this section shall be in the following form[]:
>
> (A) I, __________ (name of *patient* [*not* claimant] or authorized representative), hereby authorize _____________ (name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose . . . the protected health information described below . . . .

Other provisions of the Act, which provide the relevant statutory context, *see City of Boerne*, 111 S.W.3d at 25, shore up the conclusion that health care liability claims arise from a health care provider's breach of a duty toward a particular patient. I examine several below.

2. The Court's interpretation is inconsistent with provisions governing the expert reports and the qualifications of experts.

The Court reverses the court of appeals' judgment and remands to the trial court, instructing it to dismiss because Williams failed to comply with the expert report requirement of section 74.351. But the very definition of "expert report" belies the Court's conclusion that Williams's allegations state claims for health care liability. An "expert report" is defined 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)(emphasis added). The emphasized language clearly contemplates that the defendant health care provider has delivered health care services to a patient, who has allegedly been injured by the provider's departure from applicable standards. The Court minimizes the definition's significance by noting that "[t]he fact that experts submitting reports have knowledge of the alleged standards deviated from does not logically lead to a conclusion that only a patient's suit against a health care provider can constitute an HCLC . . . ." ___ S.W.3d at ___. That suggestion, however, overlooks the provision's reference to the health care provider's rendition of care.

The sections of the Act governing the qualifications of experts who may author reports similarly show that a health care liability claim arises only from a patient/health care provider relationship. Section 74.041 establishes the necessary qualifications for an expert in a suit against a physician. Among other qualifications, the expert must "ha[ve] knowledge of 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)(emphasis added). The definitions thus contemplates that the lawsuit will center on a physician's treatment of a patient's illness, injury, or condition, not on the adequacy of a workplace or the training provided to an employee.

3. The jury instruction mandated by the Legislature contemplates that the claim arises from a health care provider's treatment of a patient.

In section 74.303(e) of the Act, the Legislature mandated the inclusion of two express jury instructions "[i]n any action on a health care liability claim that is tried by a jury in any court in this state." The second of those is:

> A finding of negligence may not be based solely on *evidence of a bad result* to the claimant in question, but *a bad result may be considered* by you, along with other evidence, in determining the issue of negligence. You are the sole judges of the weight, if any, to be given to this kind of evidence.

Id. § 74.303(e)(2). This instruction reflects the long-recognized principle that a physician who exercises ordinary care, within his school or specialty, is not liable to a patient for a bad outcome. *See Bowles v. Bourdon*, 219 S.W.2d 779, 782 (Tex. 1949). Clearly, the instruction only makes sense where a patient or the patient's proxy is dissatisfied by health care services delivered by a health care provider. In the context of the present case, in which the health care provider acted as an employer, the instruction becomes nonsensical.

B. The Court's Interpretation Is Contrary to Our Prior Interpretations and Attaches Undue Importance to the Alteration of the Definition of "Health Care Liability Claim."

Noting that "our focus . . . is not the status of the claimant," ___ S.W.3d at ___, the Court rejects out of hand Williams's contention that the lack of a patient-physician relationship between him

and West Oaks places his suit outside of the Act. It is true, as the Court asserts, that in *Diversicare* we placed great importance upon the essence of the claims, "the alleged wrongful conduct and the duties allegedly breached." 185 S.W.3d at 851. But in rejecting Rubio's contention that her claim for a sexual assault by another patient should be treated as an ordinary premises liability claim, we attached equal importance to the claimant's status as a patient between the parties: "There is an important distinction in the relationship between premises owners and invitees on one hand and health care facilities and their patients on the other. The latter involves health care." *Id.* at 850. And we emphasized that, were we to agree with Rubio's position, "our decision would have the effect of lowering the standard from professional to ordinary care." *Id.* at 854. The presence of a doctor-patient relationship was undeniably important to our determination that Rubio's allegations amounted to health care liability claims.

The Court attaches much significance to the Legislature's alteration in 2003 of the definition of "health care liability claim." The Act's predecessor, the Medical Liability and Insurance Improvement Act, former article 4590i, defined the term 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 which proximately results in injury or death of the *patient*, whether the *patient*'s claim or cause of action sounds in tort or contract.

Act of May 30, 1977, 65th Leg., R.S., ch. 817, § 1.03(a)(4), 1997 Tex. Gen. Laws 2039, 2041, *repealed by* Act of June 2, 2003, 78th Leg., R.S., ch 204, § 10.09 2003 Tex. Gen. Laws 847, 884 (emphasis added). In 2003, the Legislature replaced the word "patient" with the term "claimant." TEX. CIV. PRAC. & REM. CODE § 74.001(13). Without regard to the abundant indicia to the contrary

throughout the Act, the Court concludes that this change contemplated health care liability claims that do not arise from the physician-patient relationship.

While claimant is a new term in the definition of health care liability claim, the word was used throughout the MLIIA before the Legislature made that change. In fact, the Legislature used the term in describing the Act's very purpose: to alleviate a perceived health care crisis "in a manner that will not unduly restrict a *claimant's* rights any more than necessary to deal with the crisis." Act of May 30, 1977, 65th Leg., R.S., ch. 817, § 1.02(13)(3), 1977 Tex. Gen. Laws 2039, 2040, *repealed by* Act of June 2, 2003, 78th Leg., R.S., ch 204, § 10.09 2003 Tex. Gen. Laws 847, 884 The term was also used and defined in section 13 of article 4590i. That section, the precursor of sections 74.351 and 74.352 of the current act, among other things, required a claimant in a health care liability claim to file an expert report within 180 days. Act of May 1, 1995, 74th Leg., R.S., ch. 971, § 1, sec. 13.01(d), (e), 1995 Tex. Gen Laws 985, 985-986, *repealed by* Act of June 2, 2003, 78th Leg., R.S., ch 204, § 10.09, 2003 Tex. Gen. Laws 847, 884. "Claimant" was defined as

> a party who files a pleading asserting a claim. All plaintiffs claiming to have sustained damages as the result of the bodily injury or death of a single person are considered to be a single claimant.

Act of May 1, 1995, 74th Leg., R.S., ch. 971, § 1, sec. 13.01(d), (e), 1995 Tex. Gen Laws 985, 985-986, *repealed by* Act of June 2, 2003, 78th Leg., R.S., ch 204, § 10.09 2003 Tex. Gen. Laws 847, 884. Accordingly, even though "health care liability claim" referred to injury to or the death of a patient, the statute contemplated that others could pursue claims under article 4590i. And what parties could claim to have damages as the result of the injury or death of a patient but spouses or relatives with their own claims for loss of support or consortium or mental anguish, or others acting in a

representative capacity, such as an estate or next friend? In light of that history, it seems fairly obvious that the Legislature broadened the definition of "health care liability claim" in 2003 to harmonize the definition with its previous recognition that parties other than patients might suffer injuries as the result of a health care provider's departure from accepted standards in rendering health care services to a patient.[1]

II. Safety Under the Act

Although its holding that Williams has asserted a claim for breach of a health care standard is dispositive, the Court reaches out to decide an issue that isn't even presented: whether a claim for safety under the Act must be directly related to health care. That issue isn't presented because, at least in the Court's view, Williams's claim *is* directly related to health care. West Oaks itself argued that Willams's claims "are inextricably interwoven with the rendition of health care services." Even if the question were properly before us, though, I would reach a different conclusion than the Court. I would hold that a claim for safety under the Health Care Liability Act must arise from a breach of a health care provider's duty to adequately ensure a patient's safety in providing health care services.

The Court's conclusion that a health care liability claim for breach of a safety standard depends entirely on the last antecedent doctrine, ___ S.W.3d at ____, or the notion that "'[m]odifiers should come, if possible, next to the words they modify.'" ___ S.W.3d at ___ (quoting William

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[1] The Court also makes much of the Act's definition of "representative," a term used in the Act's medical records disclosure provision. TEX. CIV. PRAC. & REM. CODE § 74.001(a)(25), .052. "Representative" is defined as the "agent of the patient *or* claimant." The Court concludes this "indicat[es] that patient and claimant do not necessarily refer to the same category of persons." I agree, but my conclusion that "claimant" refers to parties with claims derived from a health care provider's breach of a duty toward a particular patient, such as guardians, executors, survivors, and next friends, is far more consistent with other provisions of the Act than the Court's.

Strunk, Jr. & E.B. White, THE ELEMENTS OF STYLE R. 20 (4th ed. 2000)). In the Court's view, then, the Legislature would have had to frame the definition 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 . . . safety *directly related to health care* 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. Neither Strunk and White's instructions nor the last antecedent doctrine are so absolute as to require such redundancy. *See City of Dallas v. Stewart,* 361 S.W.3d 562, 571 n.14 (Tex. 2012). Instead, we should read the word in harmony with the other provisions I have discussed, and in conjunction with the words surrounding "safety," which all clearly implicate claims arising from a health care provider's delivery of medical care to a patient. *See City of Boerne*, 111 S.W.3d at 29 (citing *Cty. of Harris v. Eaton*, 573 S.W.2d 177, 179 (Tex. 1978)).

The Court's reading of the term "safety" — "untouched by danger, not exposed to danger; secure from danger, harm or loss" — is so broad that almost any claim against a health care provider can now be deemed a health care liability claim. If a hospital cook leaves an unlit gas burner on and causes an explosion, claims for any resulting injuries might be health care liability claims. If a nurse's deranged spouse arrives at a clinic and shoots her, her claim that the facility provided inadequate security will also fall under the statute. Surely the Legislature did not intend to make professional liability insurers responsible for such claims in order to solve an insurance availability crisis.

III. The Court's Holding Undermines the Balance Struck by the Legislature in the Workers Compensation Act

I dissent also because, by forcing an employee's negligence suit against his employer for on-the-job injuries into the health-care-liability-claim mold, the Court significantly disrupts the delicate balance between employee and employer interests the Legislature sought to implement when it enacted the Texas Workers Compensation Act (TWCA). The TWCA permits an employee to bring a negligence action against a nonsubscriber like West Oaks. *See* TEX. LAB. CODE § 406.033. By making the common law defenses of assumption of the risk, negligence of a fellow employee, and contributory negligence unavailable to a nonsubscribing employer under the TWCA, *id.* at § 406.033(a), it is clear that the Legislature intended to "penalize[] nonsubscribers" and make it easier for their employees to recover. *Kroger Co. v. Keng*, 23 S.W.3d 347, 349, 352 (Tex. 2000) (noting that "[t]o encourage employers to obtain workers' compensation insurance, [the TWCA] penalizes nonsubscribers by precluding them from asserting certain common-law defenses in their employees' personal injury actions" and that the "Legislature intended that an employee's fault would neither defeat nor diminish his or her recovery"). Under the Court's holding, employees of nonsubscribing healthcare providers will encounter procedural hurdles, such as the Act's notice and expert report requirements, that the TWCA does not contemplate. *See* TEX. CIV. PRAC. & REM. CODE §§ 74.051, 74.351. Failure to comply with these special requirements can result in harsh consequences, including dismissal of a claim with prejudice and assessment of attorneys fees against the plaintiff. *Id.* § 74.351(b). Rather than the health care provider being penalized for not subscribing to workers' compensation insurance, the Court's decision increases the burden and cost of pursuing negligence claims against nonsubscribers for employees of health care institutions. This will likely discourage healthcare workers from bringing smaller claims.

More importantly, the Act places strict limits on damages that may be recovered from health care providers. TEX. CIV. PRAC. & REM CODE §§ 74.301–.303. By conferring the benefit of the Act's statutory damages cap on nonsubscribing health care providers, the Court gives health care provider nonsubscribers a benefit that is at odds with the measures the Legislature implemented to penalize employers who opt not to participate in the workers compensation system. "In enacting section 406.033 and its predecessors, the Legislature intended to delineate explicitly the structure of an employee's personal-injury action against his or her nonsubscribing employer." *Kroger v. Keng*, 23 S.W.3d at 350–351. Today's decision redraws that delineation.

IV. The Court's Holding
Undermines the Legislature's Stated Purposes

In enacting chapter 74, the Legislature found that "the number of health care liability claims [had] increased since 1995 inordinately[,] caus[ing] a serious public problem in availability and affordability of adequate medical professional liability insurance." Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 10.11(a)(1), (4), 2003 Tex. Gen. Laws 847, 884. It adopted the Act to reduce the frequency and decrease the costs of those claims. *Id.* at § 10.11(b)(1), (2). By sweeping a whole new class of claims — negligence claims of employees of health care institutions — into chapter 74, the Court *increases* the number of health care liability claims and thwarts that purpose. Mystifyingly, the Court proclaims that its decision is "in harmony" with the Act's purposes because this new class of health care claimants will be required to file expert reports. __ S.W.3d at ___, n.5. To be sure, Williams's claim will be dismissed in the wake of today's decision — one claim will go away. But, in the future, employees in Williams's position will be forewarned that they must provide an expert

report and undoubtedly will do so. The upshot of the Court's decision is that medical professional liability insurers will be responsible for claims that normally would have fallen under a health care employer's workers compensation or comprehensive liability coverage.

The Court has previously declined to construe provisions of the Act in a way that would lead to absurd results. *Jose Carreras, M.D., P.A. v. Marroquin*, 339 S.W.3d 68, 72-73 (Tex. 2011). It should do so here.

V. Conclusion

The Court's conclusion that Williams's claim against his employer for providing inadequate training and an unsafe workplace is a health care liability claim is not only counterintuitive, it is inconsistent with the Act's express language and its underlying purposes. Furthermore, it alters the contours of employees' claims against nonsubscribing health care providers established in the Workers Compensation Act. For these reasons, I respectfully dissent.

____
Debra H. Lehrmann
Justice

OPINION DELIVERED: June 29, 2012