

In the last year-and-a-half, the Texas Supreme Court has issued two opinions that have left a significant imprint on health care litigation. In the first opinion – *Texas West Oaks Hospital, LP v. Williams* – the Texas Supreme Court laid the groundwork for expanding the definition of a health care liability claim (and the statutory requirements that go along with it) well beyond acts related to the provision of health care. In the second opinion – *Certified EMS, Inc. v. Potts* – the Court established the level of consistency (or lack thereof) that is required between the theories of liabilities that are plead and the acts of negligence set forth in the expert report(s) served under Chapter 74 of the Texas Civil Practice & Remedies Code.

***Texas West Oaks Hospital, LP v. Williams*, 371 S.W.3d 171 (Tex. 2012)**

In *Texas West Oaks*, the estate of a psychiatric patient brought a health care liability claim against the hospital and its employee following a physical altercation that resulted in the patient’s death and injuries to the employee. The employee brought a cross-claim of negligence against the hospital (a non-subscriber to the workers’ compensation scheme). The Texas Supreme Court was left to decide whether the employee’s cross-claims were a health care liability claims. The Court held that the claims were, by definition, health care liability claims subject to the requirements of Chapter 74 of the Texas Civil Practice & Remedies Code. The importance of the case, however, lies not as much in the Court’s ruling as it does with Court’s analysis and how it can be applied in other cases.

The Court performed a detailed examination of Chapter 74’s definitions of “claimant” and “health care liability claim” to determine their scope. Utilizing rules of grammar and statutory interpretation, the Court determined that a “claimant” under the statute expands beyond the patient population. The Court further determined that there was no requirement that a “health care liability claim” be directly related to health care. The opinion in *Texas West Oaks* facilitates the argument that negligence allegations that are seemingly non-medical in nature would be subject to the requirements of Chapter 74. By way of example, at least one Court of Appeals has determined that a visitor slip-and-fall is a health care liability claim requiring an expert report. *See Ross v. St. Luke’s Episcopal Hospital*, 2013 WL 1136613 (Tex.App.—Houston (14th Dist.) March 19, 2013).

***Certified EMS v. Potts*, 329 S.W.3d 625 (Tex. 2013)**

In *Certified EMS*, the plaintiff filed a health care liability claim against a nurse staffing agency in which she asserted vicarious liability allegations and directly liability allegations. Pursuant to Chapter 74, the plaintiff served expert reports; however, the reports only addressed the vicarious liability claims. The reports did not reference the direct liability claims against the staff agency. Given the deficiency, the nurse staffing agency filed a motion to dismiss seeking to have the unaddressed direct liability claims dismissed. The agency’s motion was based on precedent established by multiple Courts of Appeals. That is, prior to *Certified EMS*, multiple courts had determined that expert reports needed to address both the direct and vicarious liability claims in order to save those claims from being dismissed.

The Texas Supreme Court’s opinion overruled this prior precedent and put an end to the notion that an expert report needed to address all of the claims asserted against a party. Specifically, the

Court held that as long as patient's health care liability claim contained at least one viable liability theory, as evidenced by an expert report meeting the statutory requirements, the entire case was allowed to move forward. The distinction between vicarious liability and direct liability is immaterial. Similarly, it does not matter if any distinction can be made between multiple vicarious liability claims or direct liability claims. The expert report only needs to address one theory.

The ruling in *Certified EMS* has shut down what had been one of the more popular challenges to expert reports and an effective tool in limiting the scope of allegations against a health care provider.