

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

HENRY CARREON — PETITIONER
(Your Name)

VS.

DR. JOSEPH KELLY, M.D. RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

☒ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

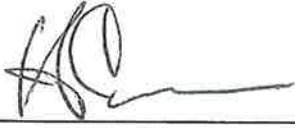
☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

11-13-2024



(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, HENRY CARREON, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You ✓	Spouse	You	Spouse ✓
Employment Disability	\$ N/A	\$ —	\$ —	\$ N/A
Self-employment	\$ N/A	\$ —	\$ —	\$ N/A
Income from real property (such as rental income)	\$ N/A	\$ —	\$ —	\$ N/A
Interest and dividends	\$ N/A	\$ —	\$ —	\$ N/A
Gifts	\$ N/A	\$ —	\$ —	\$ N/A
Alimony	\$ N/A	\$ —	\$ —	\$ N/A
Child Support	\$ N/A	\$ —	\$ —	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ N/A	\$ —	\$ —	\$ N/A
<u>Disability</u> (such as social security, insurance payments)	\$ 1,000.	\$ —	\$ —	\$ N/A
Unemployment payments	\$ N/A	\$ —	\$ —	\$ N/A
Public-assistance (such as welfare)	\$ N/A	\$ —	\$ —	\$ N/A
Other (specify):	\$ N/A	\$ —	\$ —	\$ N/A
Total monthly income:	\$ 1,000.	\$ —	\$ —	\$ —

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
N/A			\$
N/A			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			\$
N/A			\$
N/A			\$

4. How much cash do you and your spouse have? \$ ONLY MAY DISABILITY CHECK
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
	\$	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value DO NOT KNOW

☐ Other real estate
Value

☒ Motor Vehicle #1
Year, make & model 2005 JAGUAR
Value DO NOT KNOW
PROBABLY \$3,000.

PERSONAL TRANSPORTATION

☒ Motor Vehicle #2
Year, make & model KIA 2013
Value DO NOT KNOW

☐ Other assets
Description NON P
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
<u> </u>	\$ <u> </u>	\$ <u> </u>
<u> </u>	\$ <u> </u>	\$ <u> </u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>NONE I OWN MY HOUSE</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>60.00</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>N/A</u>	\$ <u>N/A</u>
Food	\$ <u>200</u>	\$ <u>N/A</u>
Clothing	\$ <u>N/A</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>N/A</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>MEDICARE</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>N/A</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>N/A</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>N/A</u>	\$ <u>N/A</u>
Life	\$ <u>N/A</u>	\$ <u>N/A</u>
Health	\$ <u>MEDICARE</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u> </u>	\$ <u> </u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u> </u>	\$ <u> </u>
Alimony, maintenance, and support paid to others	\$ <u>N/A</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ <u>1,000.00</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

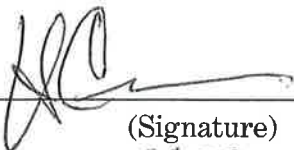
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Disability and I live only of my Social Security check

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 13, 2024


(Signature)
HENRY CARREON

I

QUESTIONS PRESENTED for REVIEW

Can a trial judge and an Appeals Justice ignore the death and murder of an innocent lady of 88 years old, patient, committed in the hospital ? done by a negligent Doctor that by mistake injected to her Fentanyl at 6:45 am and no one did anything to help her all day and was left to die and died that day at 9 PM, can this injurious act prosecutable in a criminal proceeding be forgotten and hidden by a trial judge that dismiss this case???
*Is it correct for the judge to exclude the evidence and try to hide this death of patient Alicia B. Carreon?

- 1.- Is it legal that the 4th court of appeals “Justice” supports this crime and claims “ they gave me nothing for review”?
- 2.- Are these the judges here to make justice or what?
- 3.- Can a murder be hidden and ignored by a trial judge and by an Appeals justice? Like in the instant case.

“Alleging that the expert report was not “adequate”?
expert report or no expert report, a crime was committed and this death has to be investigated and the murderer must be punished.

II

LIST OF ALL PARTIES

All the parties appear in the caption of the case on the cover page.

III

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TABLE OF AUTHORITIES

1. Civil rights Act of 1964.

Petitioner doesn't know of any "authority" that protects (criminal like - Doctors) that murder a patient and later the trial judge and appeals judge let him go as if nothing had happen, like in the instant case, Dr. Joseph Kelly killed Alicia Carreon at the Hospital and the Doctor is free as if nothing happened and the judges "thank you very much".

JURISDICTION

Petition for review of the Supreme Court of Texas was denied on JULY 25 2024. Petitioner invokes this Court jurisdiction under 28 USC 1257, (90) days of the Supreme Court of Texas Order. See appendix 1a. 90 days to file writ of certiorari would be October 12, 2024 and not October 10, 2024. Petitioner to comply with this court due to sickness filed a Motion to direct the clerk of this court to file this Petition for Writ of Certiorari out of time and is attached a medical certificate. Marked as Exhibit 2.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Amendment XIV

All persons born or naturalized in the U.S. and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any Law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the "equal – Protection of the Law". The right to n attorney was ignored.

STATEMENT OF THE CASE

On September 14, 2017 Dr. Joseph Kelly, MD, around 6:30 am approx. went into Alicia Carreon's room, patient at the Metropolitan Hospital in September 14, 2017, Dr. Kelly and his nurse Amy injected to Alicia Carreon through the IV 50 to 75 mgs of Fentanyl, Alicia Carreon did not need this drug, this was a mistake of Dr. Kelly for not reading the medical records first. Dr. Kelly was not her Doctor and had no business with her and he had no right to give to her this potent drug without permission or justification for it. After that Alicia Carreon got very sick and was left to died, that same day at 9:30 pm she could not breath, and she was a patient with Cardio-respiratory problems and was being treated for this by her Pulmonologist Dr. Gerardo Garza.

My former Lawyer in accordance with the Doctors Lawyers finally filed the lawsuit after dragging my case several months for wrongful death against Dr. Joseph Kelly in August 29, 2019 with a medical expert report as required by the Law and statute.

Petitioner's had to fire his attorney for bad legal representation. The expert report first was admitted by Judge Angelica Jimenez but Dr. Kelly Lawyers managed to change judge Jimenez for Judge Rosy Alvarado who did not admitted the report.

Judge Alvarado excluded the evidence, didn't want to check it, this evidence incriminated Dr. Kelly and the Hospital for negligence and the murder of Patient Alicia Carreon. See the attached expert report. Dr. Kelly Lawyers filed a Motion to Dismiss alleging that the medical

expert report of Dr. Michael Dorsa was no good and that it was not an adequate expert report under **section 74.351 Texas Civil Practice and Remedies Code**. This is not true and Judge Rosie Alvarado dismissed the lawsuit in November 12, 2021 with a Motion to Dismiss.

Appellant was Pro Se with no legal representation and this Judge Alvarado did not consider these violations of ,
Civil rights Amendment XIV.

**These are Constitutional Rights Amendment XIV violations and of
The equal rights protection of the Law. (right to an Attorney)**

After that, Petitioner appealed to the 4th court of Appeals and the same thing a back up from the court of appeals Justice Irene Rios, to all these violations and to the negligence of Dr. Kelly and the Metropolitan Hospital that with vague illegal excuses to denied the death of Alicia Carreon. The 4th court of Appeals Justice Irene Rios denied the case and affirmed the trial court judgment.

Petitioner appealed to the Supreme Court and the same thing the death of Alicia Carreon ignored and hidden.

The 4th court of Appeals **justice Irene Rios** in her order commented

**“that we did not give her nothing to review”! and I ask what about
the “death” of my mother Mrs. Carreon?**

This Appeal Justice Irene Rios could have done a lot, that is if, she had wanted. That is why we are here with the U.S. Supreme Court looking for Justice because a “death” a “crime” cannot be hidden as they have tried to do in accordance with the Doctors Lawyers.

REASON FOR PETITION FOR WRIT OF CERTIORARI

I respectfully request this Court for a writ of certiorari to review the judgment of the 4th court of appeals and of the trial Court of Bexar County Texas both are illegal wrong out of Law and context and because a death cannot be ignored dismissed and hidden as if nothing had happen, the death of my mother Mrs. Carreon has to be investigated correctly, with fairness and justice and this case has to be litigated correctly and decided by a jury , not by one only.

CONCLUSION

Respectfully Henry Carreon son of Alicia B. Carreon respectfully request this court for “good cause shown” a writ of certiorari to review the judgments of the 4th court of Appeals and of the trial court.

Date: November 12, 2024

Respectfully submitted



Henry Carreon, ProSe

Petitioner

318 Rexford Dr.

San Antonio, Texas. 78216

210-367-8259

FILE COPY

RE: Case No. 24-0360 DATE: 5/24/2024
COA #: 04-21-00538-CV TC#: 2019-CI-17867
STYLE: CARREON v. KELLY

Today the Supreme Court of Texas dismissed for want of jurisdiction the petition for review in the above-referenced case. See TEX. R. APP. P. 53.7(a).

MR. PETER CARIO
WAGNER, CARIO, VEALE & ZUBER, LLP
7705 BROADWAY STREET
SAN ANTONIO, TX 78209
* DELIVERED VIA E-MAIL *

FILE COPY

RE: Case No. 24-0360 DATE: 7/12/2024
COA #: 04-21-00538-CV TC#: 2019-CI-17867
STYLE: CARREON v. KELLY

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. PETER CARIO
WAGNER, CARIO, VEALE & ZUBER, LLP
7705 BROADWAY STREET
SAN ANTONIO, TX 78209
* DELIVERED VIA E-MAIL *



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00538-CV

Henry **CARREON**,
Appellant

v.

Joseph **KELLY**, MD, Waqar Hussain, MD, and Methodist Healthcare System of San Antonio,
Ltd, LLP d/b/a Metropolitan Methodist Hospital,
Appellees

From the 285th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-CI-17867
Honorable Rosie Alvarado, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 31, 2023

AFFIRMED

In this medical malpractice case, appellant Henry Carreon appeals the trial court's judgment dismissing with prejudice his claims against appellees Joseph Kelly, MD, Waqar Hussain, MD, and Methodist Healthcare System of San Antonio, Ltd., L.L.P. d/b/a Metropolitan Methodist Hospital ("Methodist") (collectively "the appellees") for failure to serve the appellees with an adequate expert report under section 74.351 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(*l*). We affirm.

BACKGROUND

According to Carreon's second amended petition, Carreon's mother, Alicia Carreon ("Alicia"), sought health treatment at Methodist "[o]n or about September 9, 2017." Alicia was diagnosed with pneumonia and a urinary tract infection and admitted to the intensive care unit at Methodist. In his petition, Carreon alleges Dr. Kelly prescribed Fentanyl to Alicia on September 14, 2017. Alicia died later that day.

Carreon filed a wrongful death suit claiming Dr. Kelly, Dr. Hussain, and Methodist committed medical malpractice and their negligence caused Alicia's death. Carreon alleged Dr. Kelly negligently prescribed Fentanyl to a patient with respiratory distress and pneumonia. Carreon alleged it was not necessary to prescribe the Fentanyl because Alicia was not in pain and neither Alicia, nor her family, consented to the administration of Fentanyl.

Carreon alleged Methodist "breached the standard of care when it moved [Alicia], failed to appropriately care for her, failed to appropriately monitor [Alicia], and administered Fentanyl without [e]nsuring proper authorization from the Carreons." Carreon alleged Dr. Hussain "violated the standard of care when he moved [Alicia] from the intensive care unit to the regular rooms, and failed to continue to monitor her"

Carreon timely served the appellees with an expert report written by Michael J. Dorsa, MD, in accordance with the timeline set forth in subsection 74.351(a) of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a). The appellees timely objected to the expert report arguing Dr. Dorsa was not qualified to provide an expert report in this case and arguing the report was deficient. The appellees filed motions to dismiss the case for failure to serve a sufficient expert report under chapter 74 of the Texas Civil Practice and Remedies Code. The trial court sustained the appellees' objections, denied the appellees' respective motions

to dismiss, and granted Carreon a thirty-day extension to serve the appellees with an amended expert report that cured the deficiencies in the original expert report. *See id.* § 74.351(c).

Carreon timely served the appellees with an amended expert report written by Dr. Dorsa.¹ The appellees filed amended motions to dismiss the case arguing the amended expert report did not establish Dr. Dorsa's qualification to provide expert opinions and arguing the amended expert report did not cure the deficiencies in the original report. The trial court granted the appellees' amended motions to dismiss the case with prejudice. *See id.* § 74.351(b). Carreon appeals.

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 its decision is arbitrary, unreasonable, and without reference to any guiding principles and rules." *Peterson Reg'l Med. Ctr. v. O'Connell*, 387 S.W.3d 889, 892 (Tex. App.—San Antonio 2012, pet. denied). "In reviewing the trial court's decision, we may not substitute our judgment for that of the trial court regarding factual matters." *Thilo Burzlaff, M.D., P.A. v. Weber*, 582 S.W.3d 314, 320 (Tex. App.—San Antonio 2018, 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.

DISCUSSION

In his first issue, Carreon—who is pursuing this appeal pro se—asserts the trial court erred in excluding critical evidence. In his second issue, Carreon asserts there is insufficient evidence

¹ Carreon also served the appellees with the affidavit of Thomas Cook, PAC. Carreon does not mention Cook's affidavit in his brief, and we do not address it here.

to support the trial court's judgment. We construe Carreon's first and second issues as a challenge to the trial court's order dismissing the case for failure to provide a sufficient expert report.

EXPERT QUALIFICATION

The appellees argue the trial court did not abuse its discretion when it dismissed the case because Dr. Dorsa is not qualified to render an expert opinion regarding whether they departed from the accepted standard of care and, therefore, is not qualified to provide an expert report.

"A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition on an expert report in [s]ubsection (r)(6)." TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(*I*). Subsection 74.351(r)(6) states an expert report "means 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." *Id.* § 74.351(r)(6).

Subsection 74.351(r)(5) states:

"Expert" means:

- (A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of [s]ection 74.401;
- (B) with respect to a person giving opinion testimony regarding whether a health care provider departed from accepted standards of health care, an expert qualified to testify under the requirements of [s]ection 74.402

Id. § 74.351(r)(5)(A), (B).

"An expert must establish that he is qualified to provide an acceptable report." *Harrington v. Schroeder*, No. 04-15-00136-CV, 2015 WL 9001573, at *3 (Tex. App.—San Antonio Dec. 16, 2015, pet. denied) (mem. op.). "Qualifications of an expert must appear in the expert report and

curriculum vitae and cannot be inferred.” *Id.* “Analysis of the expert’s qualifications under section 74.351 is limited to the four corners of the expert report and the expert’s curriculum vitae.” *Id.* (citing *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 463 (Tex. 2008) (orig. proceeding)). We review the trial court’s determination of an expert’s qualifications under an abuse-of-discretion standard and “[c]lose calls must go to the trial court.” *Larson v. Downing*, 197 SW.3d 303, 304 (Tex. 2006); *see also E.D. by and through B.O. v. Tex. Health Care, P.L.L.C.*, 644 S.W.3d 660, 664 (Tex. 2022) (internal quotation marks, alterations, and citations omitted) (“This adequacy inquiry is confined to the four corners of the report, taken as a whole, and under an abuse-of-discretion standard, close calls must go to the trial court.”).

(A) With Respect to Dr. Kelly and Dr. Hussain

“To be qualified to provide opinion testimony regarding whether a physician departed from the accepted standard of medical care, the expert must satisfy section 74.401.” *Harrington*, 2015 WL 9001573, at *3. Under section 74.401, the expert must be a physician who:

- (1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;
- (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
- (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 ANN. § 74.401(a). “[P]racticing medicine’ or ‘medical practice’ includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.” *Id.* § 74.401(b). “In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness: (1) is 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).

Here, there are contradictory statements in Dr. Dorsa’s amended expert report and his curriculum vitae (“CV”) regarding whether he was actively practicing medicine at the time he provided the amended expert report or at the time the claim arose.

In an attempt to satisfy the qualification requirements under section 74.401, Dr. Dorsa’s amended expert report states:

At the time Alicia B. Carreon died on September 14, 2017, I maintained an active physicians license and still saw her independently during this time. I was actively practicing medicine in rendering medical services relevant to the claim in the present case. To wit, I diagnosed and treated patients and specifically geriatric patients up to and including the date of death of Alicia Carreon. I actively consulted with patients concerning their advanced age, the impact their advanced age had on their medical conditions, including respiratory problems, and in the use of pain medications, including specifically the pain medication Fentanyl.

It is undisputed that Alicia died on September 14, 2017. Dr. Dorsa’s amended expert report is dated October 19, 2020. The amended expert report provides a timeline of Dr. Dorsa’s experiences actively practicing medicine through 2007. The amended expert report then states:

Due to injuries I sustained in a [motor vehicle accident], I was forced to leave active medical practice and enter into a medical sabbatical to undergo numerous surgeries on my neck and spine. Just prior to leaving active practice he² was employed by Visiting Physicians Associates (VPA); a practice group that catered to house call only practice of mostly geriatric house bound patients.

Dr. Dorsa’s CV states he was associated with Visiting Physicians Associates through 2011. The amended expert report continues: “My last five years of practice I dealt with geriatric patients, including surgery with geriatric patients.” However, the amended expert report does not provide a timeline of the five years to which Dr. Dorsa is referring and does not provide any dates for

² Dr. Dorsa’s report changed from first-person narration to third-person narration.

hospitals or medical providers he is associated with after 2011. The only reference to Dr. Dorsa's practice after 2011 is a section in his CV that states:

Present

Limited Practice. I was in a serious accident and it has prevented m[e] from maintaining an active daily practice. I continue to maintain my license and provide medical consultations, primarily to family and friends. It so happens that Alicia Carreon was one of my patients prior to my accident and I continued to consult and advise her on all of her medical issues, including medications, up until her death.

While Dr. Dorsa's amended expert report states he "was actively practicing medicine in rendering medical services relevant to the claim[,]" this statement is directly contradicted by Dr. Dorsa's CV, which states after 2011 "a serious car accident . . . has prevented [him] from maintaining an active daily practice." In determining Dr. Dorsa's qualifications to provide the expert opinions, the trial court was required to consider whether Dr. Dorsa was practicing medicine at the time he provided the amended expert report or was practicing medicine at the time the claim arose. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.401(a)(1).

Here, the contradictory statements in Dr. Dorsa's amended expert report and CV created a factual dispute on whether Dr. Dorsa was practicing medicine at the time he provided the amended expert report or at the time the claim arose. The trial court could have resolved this factual dispute against Carreon and determined that Dr. Dorsa was not practicing medicine at the time he rendered his expert opinion or at the time the claim arose. We defer to the trial court's determination of factual matters and do not substitute our judgment for the trial court's judgment. *See Thilo Burzlaff, M.D., P.A.*, 582 S.W.3d at 320. Therefore, we cannot say it was outside the zone of reasonable disagreement for the trial court to determine that Dr. Dorsa's report failed to show he was qualified to provide expert opinion regarding applicable standards of care and whether appellees departed from those standards of care. *See Diamond Offshore Servs. Ltd. v. Williams*,

542 S.W.3d 539, 545 (Tex. 2018) (“The trial court has extensive discretion in evidentiary rulings, and we will uphold decisions within the zone of reasonable disagreement.”).

Furthermore, in determining whether Dr. Dorsa was qualified on the basis of training or experience, the trial court was required to consider whether Dr. Dorsa was actively practicing medicine in rendering medical care services relevant to the claim. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.401(c)(2). Dr. Dorsa does not state anywhere in his amended expert report that he was actively practicing medicine in a hospital setting or overseeing patients who were in intensive care at the time he rendered his expert opinion or at the time the claim arose. Dr. Dorsa’s amended expert report states:

I *had* privileges in Christus Santa Rosa for many years and *during that time*, I was the treating physician in the hospital setting, responsible [for] all treatment and care of the patients, including the use of prescription pain medication. I made the decisions on whether and when to transport patients to and from the ICU, and am familiar with the standard of care related to those decisions.

Dr. Dorsa’s report indicates that he actively practiced medicine in the hospital setting some time in the past, but—at the time he prepared his report—he no longer maintained hospital privileges. Dr. Dorsa’s CV indicates his residency in family medicine at Christus Santa Rosa occurred from 1997 to 2000. His CV further indicates that after completing his residency, Dr. Dorsa “practiced out of Santa Rosa Hospital and Southwest General Hospital[] as a fully privileged physician.” However, Dr. Dorsa’s CV provides no other dates in which he may have maintained hospital privileges after the year 2000. The trial court could have reasonably determined Dr. Dorsa was not qualified—on the basis of training or experience—to render expert opinions because he was not actively practicing medicine in the hospital setting or overseeing intensive care patients at the time he provided the amended expert report or at the time the claim arose. *See id.*; *see also* *O’Connell*, 387 S.W.3d at 892 (“A trial court abuses its discretion if its decision is arbitrary, unreasonable, and without reference to any guiding principles and rules.”).

Because we defer to the trial court's determination on factual matters and—under the appropriate standard of review—“close calls must go to the trial court[,]” we hold the trial court did not abuse its discretion when it dismissed Carreon's case against Dr. Kelly and Dr. Hussain for failure to serve an adequate expert report. *See E.D. by and through B.O.*, 644 S.W.3d at 664 (alterations omitted).

(B) With Respect to Methodist

To be qualified to provide opinion testimony regarding whether a health care provider departed from the accepted standard of care, the expert must satisfy section 74.402 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(5)(B). Section 74.402 provides:

In a suit involving a health care liability claim against a health care provider, a person may qualify as an expert witness on the issue of whether the health care provider departed from accepted standards of care only if the person:

- (1) is practicing health care in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider, if the defendant health care provider is an individual, at the time the testimony is given or was practicing that type of health care at the time the claim arose;
- (2) has knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and
- (3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.

Id. § 74.402(b). “In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness: (1) is certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience,

in the area of health care relevant to the claim; and (2) is actively practicing health care in rendering health care services relevant to the claim.” *Id.* § 74.402(c).

Dr. Dorsa claims Methodist “was also a proximate cause of [Alicia’s] death” because the hospital staff failed to properly monitor Alicia or record any changes to her condition throughout the day that she died. Dr. Dorsa also claims Methodist’s nurses, due to a language barrier, incorrectly reported Alicia’s pain level.³ Dr. Dorsa opines if the nurses had correctly reported Alicia’s pain level to her physician, then Fentanyl would not have been prescribed to her.

Dr. Dorsa’s amended expert report states: “I oversaw nurses in my practice and in hospital settings and am familiar with the nursing standards of care in a hospital setting.” This is the only statement Dr. Dorsa makes in his amended expert report purporting to show his qualifications to provide an opinion on the standard of care provided by Methodist. As mentioned above, the trial court was well within its discretion to determine Dr. Dorsa was not actively practicing health care in a hospital setting or overseeing nurses at the time he prepared his report or at the time the claim arose. The trial court could have reasonably concluded Dr. Dorsa was not qualified on the basis of training or experience to provide an expert opinion on whether Methodist departed from the accepted standard of care relevant to Carreon’s claims against the hospital. Therefore, we hold the trial court did not abuse its discretion when it dismissed Carreon’s case against Methodist for failure to serve an adequate expert report.

Accordingly, Carreon’s first and second issues are overruled.

NEFARIOUS ACTS

In his third issue, Carreon asserts the law partner of an attorney representing one of the appellee doctors attempted to coerce Carreon to “end this case” and not pursue an appeal “or else

³ According to Dr. Dorsa’s amended expert report, Alicia only spoke Spanish and the nurses caring for Alicia did not speak Spanish.

he was going to take action against [Carreon] with the help of the trial judge[.]” Specifically, Carreon alleges the attorney told Carreon he was going to ask the trial court to assess between \$75,000.00 to \$100,000.00 in attorney’s fees if Carreon chose to appeal the trial court’s order dismissing the case with prejudice.

“[A] pro se litigant is held to the same standards as licensed attorneys and must comply with applicable laws and rules of procedure.” *Strange v. Cont’l Cas. Co.*, 126 S.W.3d 676, 677 (Tex. App.—Dallas 2004, pet. denied). “On appeal, as at trial, the pro se appellant must properly present its case.” *Id.* at 678. “It is well-settled that an appellant’s brief must contain clear and concise arguments with appropriate citations to authorities and the record.” *Neira v. Scully*, No. 04-14-00687-CV, 2015 WL 4478009, at *1 (Tex. App.—San Antonio July 22, 2015, no pet.) (mem. op.). “[I]t is the appellant’s burden to discuss his assertions of error, and we have no duty—or even right—to perform an independent review of the record and applicable law to determine whether there was error.” *Id.* (alterations omitted). “[W]e cannot speculate as to the substance of the specific issues appellant claims we must address.” *Strange*, 126 S.W.3d at 678. “An issue on appeal unsupported by argument or citation to any legal authority presents nothing for the court to review.” *Id.*

Here, Carreon has presented nothing for us to review. The only reference to the record Carreon provides in his third issue is a reference to his pro se motion to recuse the trial judge. Carreon does not provide any references to the record substantiating his claims that he was coerced, threatened, or that the attorney and the trial court colluded to threaten or coerce Carreon. Nor does Carreon cite any authority supporting his third issue. Because Carreon’s brief does not adequately present his third issue for review, we must overrule Carreon’s third issue.

From our review of the reporter’s record, we note the trial court acted with great judicial temperament, giving Carreon every opportunity to be heard and to explain his grievances. An

attorney for one of the appellee doctors asserted the accused attorney had never been involved in this case. The trial judge informed Carreon that she did not know the attorney—personally, professionally, or otherwise—who allegedly threatened Carreon. We also note that the administrative judge for this judicial region heard and denied Carreon’s motion to recuse the trial judge.

Here, the appellees were entitled to an award of reasonable and necessary attorney’s fees once the trial court dismissed the case with prejudice. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b)(1) (providing the affected physician or health care provider is entitled to reasonable attorney’s fees and costs of court when the trial court dismisses a case for failure to serve an adequate expert report). However, the appellees offered to waive their attorney’s fees if Carreon agreed to waive his right to appeal. Ultimately, the appellees still waived their attorney’s fees even though Carreon appealed. The trial court rendered judgment dismissing Carreon’s claims with prejudice, but did not assess attorney’s fees against Carreon. The record does not reflect any nefarious actions by the trial court or the attorneys representing the appellees.

CONCLUSION

We affirm the trial court’s judgment dismissing Carreon’s claims with prejudice.

Irene Rios, Justice

Henry Carreon
318 Rexford
San Antonio, Texas. 78216
210 367-8259

November 12, 2024

Ms. Sara Simmons
U.S. Supreme Court
Office of the Clerk
One First St. N.E.
Washington, D.C. 20543

Case Carreon vs. Kelly
TX SC 24-0360

Dear Ms. Simmons:

Thank you for your letter of October 31, 2024. Please here attached to you are the corrected Petition again dated November 12, 2024 with the Motion to direct the clerk to file the Petition out of time.

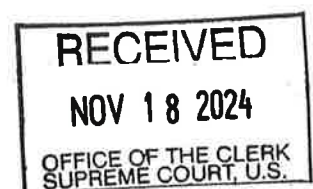
Ms. Simmons please let me know if I need to submit anything else and again thank you for all the help that you can give me on this.

Sincerely,



Henry Carreon

Enclosures as described above



**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

October 31, 2024

Henry Carreon
318 Rexford Dr.
San Antonio, TX 78216

RE: Carreon v. Kelly, et al. w/ Motion to Direct to File Out of Time
TX SC 24-0360

Dear Mr. Carreon:

The above-entitled petition for writ of certiorari was originally postmarked October 13, 2024 and received again with a motion to direct the Clerk to file out of time on October 31, 2024. The papers are returned for the following reason(s):

No notarized affidavit or declaration of indigency is attached. Rule 39. You may use the enclosed form.

The petition is not in the correct order. The questions presented for review must be followed by the list of parties (if all do not appear on the cover), corporate disclosure statement (if applicable), table of contents, table of authorities, citations of the official and unofficial reports of opinions and orders entered in the case, statement of the basis for jurisdiction, constitutional provisions, treaties, etc., statement of the case, reasons for granting the writ, and the appendix. Rule 14.1.

The lower court opinion(s) must be appended from the Texas Supreme Court .

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Sara Simmons
(202) 479-3023

Enclosures

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

October 18, 2024

Henry Carreon
318 Rexford Dr.
San Antonio, TX 78216

RE: Carreon v. Kelly, et al.
TX SC 24-0360

Dear Mr. Carreon:

The above-entitled petition for a writ of certiorari was postmarked October 13, 2024 and received October 18, 2024. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was July 12, 2024. Therefore, the petition was due on or before October 10, 2024. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

Sincerely,
Scott S. Harris, Clerk
By:

Sara Simmons
(202) 479-3023

Enclosures