

# Supreme Court of Texas deems suit against medical spa a health care liability claim

The Texas Supreme Court reversed an appellate court ruling on February 25, in finding that a lawsuit alleging treatments at a medical spa that caused skin scarring and discoloration constitutes a health care liability claim.

Brent Cooper, a Dallas attorney representing Texas Alliance for Patient Access, noted that the court's ruling in *Lake Jackson Medical Spa* emphasized that "the underlying nature of claims, rather than their label, control their characterization."

The *Lake Jackson Medical Spa v. Gaytan* case centered on the statutory cutoff to submit an expert report in a healthcare liability suit required by the Texas Medical Liability Act. The chief question addressed by the Court was whether a plaintiff can amend their claims after the 120-day deadline to submit an expert report. The Court ruled that a plaintiff could amend their claims after the statutory deadline, so long as they are for health care liability.

Erika Gaytan sued Lake Jackson Medical Spa, Ltd., its employee, aesthetician Jamie Gutzman, and its owner, Dr. Robert Yarish M.D, asserting numerous errors and omissions by Dr. Yadish and Gutzma. Those errors included negligently allowing Gutzman to administer medical treatments, and failure to properly assess, document, and request medical history, including medications.

Texas Civil Practice & Remedies Code § 74.351 requires a plaintiff in a health care liability suit to serve expert reports against each defendant health care provider or physician within 120 days of the defendant's answer date. The report's purpose is to state the applicable standard of care, how the care rendered by the health care provider failed to meet those standards, and the causal relationship between that failure and the damages suffered by the plaintiff. If a plaintiff fails to serve an expert report within the 120-day window, the defendant may file a motion to dismiss the claim.

Gaytan failed to serve an expert report on the defendants despite notice of her obligation to provide a report. On the eve of the hearing on the defendants' dismissal motion, Gaytan filed an amended petition recasting her healthcare claims as "cosmetic claims" to avoid the statutory requirement to dismiss the case. The trial court denied the defendants' motion to dismiss, and the defendants appealed the court's decision. The court of appeals affirmed the trial court decision, and the Texas Supreme Court granted the defendant's petition to review the case.

The Supreme Court reversed the decision of the trial and intermediate courts. It found that the 120-day requirement to serve an expert report warranted dismissal because while Gaytan was entitled to amend her petition after the statutory deadline, her attempts to recast the claim as non-healthcare liability claims were unsuccessful. In reaching its decision, the court ruled whether a claim constitutes a healthcare liability claim depends on “the facts underlying the claim, not the form of, or artfully phrased language in the plaintiff’s pleadings describing the facts or legal theories asserted.”

The Act describes three necessary elements for a healthcare claim: (1) the defendant must be a physician or healthcare provider; (2) the claim must concern the treatment, lack of treatment, or departure from accepted standards of medical or health care; and (3) the defendant’s conduct must proximately cause the injury. The Court found the first and third elements clearly established by the record that the defendants are healthcare providers, and Gaytan alleged that her injuries resulted from Defendants’ conduct. The majority of the Court’s discussion focused on the second element, treatment. Despite the plaintiff’s contention that the various treatments received-- including, phototherapy, skin pen treatment microdermabrasion, and chemical skin peels-- were purely “cosmetic”, the court disagreed, finding these treatments undisputedly medical. In reaching this conclusion, the court looked to the requirement of many of these treatments to be performed or supervised by a physician, their public availability, and classification by the Food and Drug Administration and American Academy of Dermatology Associations.

The court ruled that Ms. Gaytan’s claims against the defendants constitute health care liability claims and are subject to the Texas Medical Liability Act’s expert-report requirements. Because she failed to comply with the statute’s procedural requirements, the Court held that the law required dismissal of the claims. The trial court remanded the case to determine the reasonable award of the defendants’ attorney’s fees and costs.