UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MELISSA HICKSON, Individually and MELISSA HICKSON as the DEPENDENT ADMINISTRATOR of the ESTATE OF MICHAEL HICKSON, DECEASED, and MELISSA HICKSON AS NEXT FRIEND OF MACKENZIE HICKSON; MACEO HICKSON and MADISON HICKSON, all minors, AND MARQUES HICKSON,	§	
Plaintiffs,	§	
v.	§	
	§	Cause No. 1:21-cv-514
ST. DAVID'S HEALTHCARE PARTNERSHIP, L.P., LLP, doing business as ST. DAVID'S SOUTH AUSTIN MEDICAL CENTER, DR. DEVRY ANDERSON, Individually, HOSPITAL INTERNISTS OF TEXAS, DR. CARLYE MABRY CANTU, Individually, DR. VIET VO, Individually,	§	
Defendants.	§	

DEFENDANTS' JOINT MOTION FOR FULL AND FINAL SUMMARY JUDGMENT

TO THE HONORABLE U.S. DISTRICT COURT JUDGE ALAN ALBRIGHT:

COME NOW, Defendants St. David's Healthcare Partnership, L.P., LLP, Dr. Viet Vo, Dr. Mabry Cantu, and Hospital Internists of Texas (collectively **"Defendants"**),[1] and pursuant to Federal Rule of Civil Procedure 56, jointly file this motion requesting a full and final summary judgment in this medical malpractice lawsuit.

[1] On September 8, 2022, Defendant Dr. Devry Anderson filed a Motion requesting the Court to dismiss him from the lawsuit, and on October 5, 2022, Judge Yeakel issued an Order granting Dr. Anderson's Motion. *See* Dkt. Nos. 48 & 49.

In sum, Defendants are entitled to a full and final summary judgment for two independent reasons:

(1) It is well established under Texas law that Plaintiffs are required to present expert testimony in order to carry their burden on the only remaining claims in this healthcare liability lawsuit, which are claims for medical malpractice. However, despite receiving at least four extensions of their deadline(s), Plaintiffs did ***not*** designate an expert to support the essential elements of their claims for medical malpractice.

(2) Defendants timely designated experts, and applying well-established precedent from the Texas Supreme Court, the defense experts' testimony affirmatively negates the causation element of Plaintiffs' medical malpractice claims.

As support for their request for the Court to grant a full and final summary judgment in this case, Defendants respectfully offer the following evidence, arguments, and binding legal authorities.

I.
FACTUAL AND PROCEDURAL BACKGROUND

The following factual and procedural background places the current motion into context and demonstrates that Defendants are entitled to summary judgment as a matter of law.

A. THE DECEDENT, MR. HICKSON

This healthcare liability lawsuit arises from the death of Michael Hickson (**"Mr. Hickson"**) after he contracted COVID-19. *See generally* Dkt. No. 1 (Pl. Compl.); **Exhibit C**. As set forth in Plaintiffs' Complaint, in May of 2017, Mr. Hickson suffered a cardiac arrest that resulted in multiple chronic conditions, including quadriplegia and an anoxic brain injury. *See* Dkt. No. 1 (Pl. Compl.) at ¶¶2 & 25. After suffering those chronic injuries, "Mr. Hickson required assistance in certain activities of daily living such as eating, dressing, grooming, bathing, bowel and bladder management, transferring to and from his wheelchair, among other activities." *Id.* at ¶25. Plaintiffs report that, "[i]n the three years post-injury, Mr. Hickson had multiple hospitalizations for recurring urinary tract infections, sepsis and pneumonia which, unfortunately, occur with great frequency to persons with the disabilities that Mr. Hickson had." *Id.* at ¶27.

B. THE APPOINTMENT OF MR. HICKSON'S LEGAL GUARDIAN

In 2018 and in 2019, Mr. Hickson's wife – Plaintiff Melissa Hickson (**"Mrs. Hickson"**) – twice applied to become Mr. Hickson's permanent legal guardian, but Mr. Hickson's sister contested the application. *Id.* at ¶28. "Pending a hearing for permanent guardianship, the probate court appointed [non-party] Family Eldercare, Inc. ('Family

Eldercare'), an Austin- based nonprofit guardianship program, as Mr. Hickson's temporary guardian," and non-parties "Ashley Nicole Yates ('Ms. Yates'), a Family Eldercare employee, was specifically assigned as his temporary guardian until April 1, 2020, when one of her trainee-subordinates, Jessica Drake ('Ms. Drake'), assumed those duties." *Id.* (brackets added).

C. MR. HICKSON'S ADMISSION TO ST. DAVID'S SOUTH AUSTIN MEDICAL CENTER

On May 8, 2020, Mr. Hickson "tested positive COVID–19 but was asymptomatic." *Id.* at ¶29. On June 2, 2020, "Mr. Hickson was taken to St. David's South Austin Medical Center for acute respiratory illness due to pneumonia, urinary tract infection, sepsis and suspected COVID–19." *Id.* at ¶¶5 & 30. Plaintiffs admit that when he was admitted, Mr. Hickson "was seriously ill," but Plaintiffs maintain that "each of those conditions was treatable." *Id.* at ¶31. "Between June 3 and June 5, 2020, Mr. Hickson's health fluctuated." *Id.* at ¶35.

D. THE LEGAL GUARDIAN'S DECISION TO SUSPEND LIFE-SUSTAINING TREATMENT

Ultimately, "[o]n June 5, 2020, [Defendant] Dr. Vo completed and executed a Family Eldercare Treatment Decision Form, which he sent to Ms. Drake" recommending that Mr. Hickson be transferred to hospice care and "coded DNR [Do Not Resuscitate]." *Id.* at ¶¶42, 99, & 100 (brackets added). Mrs. Hickson did not agree with the medical recommendation, but "she was informed that only Ms. Drake [*i.e.* Mr. Hickson's legal guardian] could make that request" to decline the physicians' medical recommendations. *Id.* at ¶45 (brackets added).

It is undisputed that upon receiving the physicians' medical recommendations, Ms. Drake consented to "the change of Mr. Hickson's code to DNR, his transfer to hospice and the withholding of all life-sustaining treatment[.]" *Id.* It is also undisputed that, "Mrs. Hickson did not have legal authority to refuse consent" to the physicians' recommendations. *Id.* at ¶116. Mr. Hickson passed away on June 11, 2020. *Id.* at ¶52.

E. PLAINTIFFS' SEPARATE LAWSUIT IN STATE COURT

On March 10, 2021, Plaintiffs filed a lawsuit in State court against Family Eldercare, Inc., Ansley Yates, and Jessica Drake. *See* **Exhibit A**. Plaintiffs asserted claims against those three defendants for gross negligence and for intentional infliction of emotional distress. *Id.* Plaintiffs' counsel and the defendants' counsel in the State court case have both reported that those parties recently settled the case pending in State court.

F. THE PRESENT LAWSUIT

Plaintiffs also filed this lawsuit in federal court more than three years ago on June 10, 2021. In their Original Complaint, Plaintiffs asserted the following causes of action against five different defendants: **(1)** alleged violations of Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. §794; **(2)** alleged violations of the Patient Protection and Affordable Acre Act, codified at 42 U.S.C. §18001; **(3)** multiple theories of negligence; **(4)** violations of 42 U.S.C. §1983; **and (5)** intentional infliction of emotional distress. *Id.* at ¶¶56-74, 121-142, & 153-177. Plaintiffs asserted those claims in their individual capacities under the Texas Wrongful Death Act, and Mrs. Hickson is also presenting claims on behalf of Mr. Hickson's Estate under the Texas Survival Act. *Id.* & ¶¶143-152.

1. Judge Yeakel's Prior Dismissal of Plaintiffs' Claims

In response to Plaintiffs' Complaint, Defendants filed four separate Rule-12(b)(6) Motions requesting Judge Yeakel to dismiss numerous causes of action and theories of liability. *See* Dkt. No. 11, 13, & 48. On August 8, 2022, Magistrate Judge Lane issued a Report recommending for Judge Yeakel to grant the defendants' Motions to Dismiss in their entirety and to dismiss six of Plaintiffs' 10 "Counts" in their Complaint. *See* Dkt. No. 44.

On October 5, 2022, Judge Yeakel fully adopted Magistrate Judge Lane's Report and Recommendation. *See* Dkt. Nos. 47 & 49. Thereafter, on October 5, 2022, Judge Yeakel issued an Order granting Dr. Anderson's Motion in its entirety, and no claims remain pending against Dr. Anderson. *See* Dkt. No. 49. Pursuant to Judge Yeakel's Orders, the only causes of action that now remain pending in this lawsuit are Plaintiffs' medical-malpractice claims against the four defendant who are filing the present motion. *Id.*

2. Plaintiffs' Only Remaining Claims

More specifically, the following medical-malpractice claims remain pending that Plaintiff Melissa Hickson is asserting under the Texas Survival Act in her capacity as "the Dependent Administrator of the Estate of Micheal Hickson":

- **Count III:** Negligence against Dr. Vo and Dr. Cantu;
- **Count IV:** Negligence *per se* against Dr. Cantu and Dr. Vo for the alleged violation of §166.044(d) of the Texas Health & Safety Code; **and**
- **Count VII:** Negligence against "the Defendant Hospital and Defendant Hospital Internists"

Compare Dkt. Nos. 47 & 49 (Dismissal Orders) *with* Dkt. No. 1 (Pl. Compl.) at ¶¶75-93 & 121-129. In addition to the above, Plaintiffs' Count IX remains pending. *Compare* Dkt. Nos. 47 & 49 (Dismissal Orders) *with* Dkt. No. 1 (Pl. Compl) at ¶¶143-152. In Count IX, Plaintiff Melissa Hickson is asserting a medical malpractice claim under the Texas Wrongful Death Statute "against all Defendants (except, [dismissed defendant] Dr. Anderson)." *Id.* (brackets added).[2] Plaintiff Melisa Hickson is asserting the wrongful death claim in her individual capacity and in her capacity as Next Friend of the three minor Plaintiffs (Mackenzie Hickson, Maceo Hickson, and Madison Hickson), and Plaintiff Marques Hickson is also asserting the wrongful death claim in his individual capacity. *Id.*

3. Plaintiffs did not Designate Experts in this Lawsuit

Upon receiving the Court's Orders on Defendants' Motions to Dismiss, counsel for all of the parties conducted a Rule-26 conference, and based upon that conference, the parties submitted an ***agreed*** proposed Scheduling Order on January 18, 2023. *See* Dkt. No.

[2] "The Texas Survival Statute" is codified in Section 71.021 of the Texas Civil Practice and Remedies Code and "permits a decedent's heirs, legal representatives, and estates to bring actions for personal injuries the decedent suffered before his death[.]" *THI of Texas at Lubbock I, LLC v. Perea*, 329 S.W.3d 548, 568 (Tex. App.—Amarillo 2010, pet. denied). On the other hand, the "Texas Wrongful Death Act" is codified in Section 71.004 of the Texas Civil Practice and Remedies Code and "confers a cause of action upon the surviving spouse, children, and parents of a decedent for their damages resulting from the decedent's death." *Id.* "The difference between the two statutes is the nature of the damages that may be recovered and who may collect them." *Id.* But the common element between the two causes of action is that "[t]he right to maintain such actions 'is entirely derivative of the decedent's right to have sued for his own injuries immediately prior to his death, and is subject to the same defenses to which the decedent's action would have been subject.'" *Diaz v. Westphal*, 941 S.W.2d 96, 98 (Tex. 1997). Thus, in order "[t]o establish a cause of action under either statute, the claimant must establish a death and the occurrence of a wrongful act." *THI of Tex.*, 329 S.W.3d at 568.

50. Pursuant to the parties' agreement, Plaintiffs' deadline to designate experts was on **June 30, 2023**. *See* Dkt. No. 50-1 at ¶2.

On January 24, 2023, Judge Yeakel issued an Order approving of the parties' proposed deadlines and expressly mandating that the parties "**shall comply with the dates set forth in paragraphs 1 through 7 of such proposed order pending the initial pretrial conference.**" *See* Dkt. No. 51 (emphasis added). Pursuant to that Order, Plaintiffs' initial deadline to designate experts was more than a year ago on **June 30, 2023**. *See* Dkt. No. 50-1 at ¶2; Dkt. No. 51.

a. Plaintiffs' First Failure to Timely Designate Experts

On June 7, 2023, the case was re-assigned to Judge Albright. *See* Dkt. No. 61. Significantly, in the ensuing three weeks, Plaintiffs did ***not*** designate experts on or before their deadline of June 30, 2023, and Plaintiffs also did ***not*** seek leave of court to extend their expert deadline before the deadline expired.

On July 17, 2023 – which was three weeks ***after*** Plaintiffs' deadline to designate experts expired – Plaintiffs filed a "Motion to Re-Set Tentative Discovery Schedule." *See* Dkt. No. 62. Contrary to the title of Plaintiffs' Motion, there was nothing "tentative" about the deadlines that Judge Yeakel ordered the parties to comply with in this case, and although the title of the Motion suggested that Plaintiffs only sought to extend the deadline for discovery, the Motion actually requested the Court to extend, *inter alia*, the deadline for Plaintiffs to designate experts. *Id.*

b. Plaintiffs' Second Failure to Timely Designate Experts

Judge Albright granted Plaintiffs' motion, and on August 10, 2023, Judge Albright issued an Amended Scheduling Order in this case. *See* Dkt. Nos. 65 & No. 67. Pursuant to Judge Albright's First Amended Scheduling Order, Plaintiffs' first *extended* deadline to designate experts was on **November 24, 2023**. *See* Dkt. No. 67 at p. 2. Plaintiffs did ***not*** designate experts on or before that extended deadline.

c. Three Additional Extensions Granted to Plaintiffs to Designate Experts

On November 14, 2023, Plaintiffs filed a motion requesting a 30-day extension of the deadlines in the Amended Scheduling Order due to the illness of Plaintiffs' counsel, and Defendants did ***not*** oppose the request. *See* Dkt. No. 68. Before Judge Albright could issue a ruling, Plaintiffs filed another Motion requesting the Court to stay the proceedings until January 31, 2024 and to extend the deadlines. *See* Dkt. No. 69. Defendants did ***not*** oppose the Motion, and the Court granted Plaintiffs' Motion.

On January 31, 2024, Plaintiffs filed a Motion requesting the Court to continue its stay of the proceedings until March 15, 2024. *See* Dkt. No. 71. Defendants did ***not*** oppose the request, and the Court granted the Motion.

On March 15, 2024, Plaintiffs filed a motion informing the Court that they had retained new lead counsel and requesting the Court to extend the stay of proceedings until March 22, 2024. *See* Dkt. No. 72. Defendants did ***not*** oppose the request, and the Court granted the Motion.

d. Plaintiffs' Third Failure to Timely Designate Experts

On March 22, 2024, the parties – including Plaintiffs' new lead counsel of record – jointly submitted another proposed Amended Scheduling Order, and the Court issued a Second Amended Scheduling Order. *See* Dkt. Nos. 76 & 79. Pursuant to the parties' request and agreement, the Court ordered Plaintiffs to designate experts on or before **July 15, 2024**, which was ***more than one year after*** Plaintiffs' initial deadline in Judge Yeakel's Scheduling Order. *See* Dkt. No. 79 at p. 2. However, yet again, Plaintiffs did ***not*** designate any experts, and Plaintiffs also failed to seek an extension of the Court's deadline. As explained below, Plaintiffs cannot carry their burden on their remaining claims without expert testimony.

e. Defendants Timely Designated their Experts

Defendants' deadline to designate experts was on or before September 4, 2024, and Defendants timely designated their experts in this case. *See* **Exhibits B-1, B-2, & B-3**. As explained further below, the opinions of Defendants' expert(s) also confirm that Plaintiffs cannot carry their burden on their remaining claims. *See* **Exhibit C**. Accordingly, Defendants now file this Motion respectfully requesting a full and final summary judgment in this case.

II.
ARGUMENTS AND AUTHORITIES

Texas law applies to Plaintiffs' remaining claims for medical malpractice. *See, e.g., Patel v. Baluyot*, 384 F. App'x 405, 408 (5th Cir. 2010) ("We apply Texas substantive law in our analysis of Patel's medical malpractice claim."). "Texas authorizes civil actions both for wrongful death and for the survival of actions for personal injury when the injured person dies."[3] *Quijano v. United States*, 325 F.3d 564, 567–68 (5th Cir. 2003) (citing TEX. CIV. PRAC. & REM. CODE §§71.002 & 71.021). "When the negligence alleged is in the nature of medical malpractice, the plaintiff has the burden of proving (1) a duty by the physician or hospital to act according to an applicable standard of care; (2) a breach of that standard of care; (3) an injury, and (4) a causal connection between the breach of care and the injury." *Id.* (citations omitted) (applying Texas law).

With respect to each of these essential elements, "Texas courts have long recognized the necessity of expert testimony in medical-malpractice cases." *Am. Transitional Care Centers of Texas, Inc. v. Palacios*, 46 S.W.3d 873, 876–77 (Tex. 2001) (citing *Hart v. Van Zandt,* 399 S.W.2d 791, 792 (Tex.1965); *Bowles v. Bourdon,* 148 Tex. 1, 219 S.W.2d 779, 782 (1949)). "There can be no other guide [than expert testimony], and where want of skill and attention is not thus shown by expert evidence applied to the facts, there is no evidence of it proper to be submitted to the jury." *Id.* (brackets in original).

With specific regard to the first and second essential elements of Plaintiffs' claims, "[t]he standard of care is a threshold issue which the plaintiff must establish before the fact

[3] *Supra* n. 2 (addressing the difference between the two claims).

finder moves on to consider whether the defendant breached that standard of care to such a degree that it constituted negligence." *Quijano*, 325 F.3d at 567–68. When addressing that essential element, the expert "testimony must focus on the standard of care in the community in which the treatment took place or in similar communities." *Id.*

And with regard to the third and fourth essential elements of Plaintiffs' claim, "[t]he plaintiff must establish a definite causal connection between the defendant's negligence and the plaintiff's injury," and in doing so, "a plaintiff in a Texas medical malpractice action is required to provide expert medical testimony demonstrating familiarity with the pertinent standard of care, explaining that the defendant breached the standard of care, and indicating that the breach proximately caused the injury." *Rayburn v. United States*, 47 F.3d 426 (5th Cir. 1995) (citations omitted).

As set forth in detail below, Texas law mandates that Plaintiffs' remaining claims for medical malpractice must be dismissed for two independent reasons.

A. PLAINTIFFS CANNOT SATISFY THEIR BURDEN UNDER WELL-ESTABLISHED TEXAS LAW

First and foremost, Plaintiffs' remaining claims for medical malpractice fail as a matter of law because Plaintiffs did ***not*** designate an expert to support the following essential elements of their claims:

- The standard of care applicable to: St. David's Healthcare Partnership, L.P., LLP; Dr. Viet Vo; Dr. Mabry Cantu; and Hospital Internists of Texas;
- Any breach of the applicable standard of care by: St. David's

Healthcare Partnership, L.P., LLP; Dr. Viet Vo; Dr. Mabry Cantu; and Hospital Internists of Texas;

- A causal connection between any alleged breach of care by the Defendants and Mr. Hickson's death.

Absent expert testimony to support the above elements, well-established and binding precedent mandates that Plaintiffs' remaining claims fail a matter of law.

Accordingly, for this reason alone, Defendants are entitled to a full and final summary judgment in this case. *See, e.g., Patel v. Baluyot*, 384 F. App'x 405, 409 (5th Cir. 2010) ("In sum, Patel was required to present expert testimony to establish the applicable standard of care, to show how the care he received breached that standard, and to establish causation. It is undisputed that Patel neither designated nor hired an expert to testify on his behalf. By pointing out the need for, and lack of, expert testimony, Dr. Baluyot and Doctor's Hospital met their summary judgment burden"); *Stewart v. United States*, 293 F. App'x 272, 273 (5th Cir. 2008) ("Under Texas law, the plaintiff in a medical malpractice claim alleging lack of informed consent must present expert testimony to support his position. Stewart, however, neither timely designated an expert (i.e. told the district court the identity of the doctor who would testify on his behalf), nor requested additional time to do so. As a result, the district court determined that Stewart was not going to have an expert for trial and therefore correctly granted the United States summary judgment, determining it was entitled to judgment as a matter of law."); *Blank v. United States*, 713 F. App'x 400, 401 (5th Cir. 2018) (concluding that "[w]ith regard to Blank's remaining medical malpractice claims, the district court did not err in granting summary judgment given

Blank's failure to provide expert testimony as required by the relevant medical malpractice laws of Louisiana and Texas."); *Nichols v. United States*, No. 21-50368, 2022 WL 989467, at *4 (5th Cir. Apr. 1, 2022) (affirming summary judgment for the defendant because "Nichols' claims are health-care-related negligence claims. Therefore, expert testimony is required to establish the standard of care. It is also required to show causation").

B. DEFENDANTS' EVIDENCE AFFIRMATIVELY NEGATES THE ESSENTIAL ELEMENT OF CAUSATION

In addition to the above basis for summary judgment, Defendants are also entitled to summary judgment as a matter of law because the Texas Supreme Court has held that Texas law does ***not*** recognize a medical malpractice cause of action if the patient had a less than 50% chance of survival when the alleged negligence occurred – referred to as the "lost chance of survival doctrine" – and applying that doctrine, Defendants' evidence affirmatively negates the essential element of causation. *See Kramer v. Lewisville Mem'l Hosp.*, 858 S.W.2d 397 (Tex. 1993); *Park Place Hosp. v. Milo*, 909 S.W.2d 508 (Tex. 1995).

More specifically, under Texas law, "[p]roximate causation embraces two concepts: foreseeability and cause in fact." *Hodgkins v. Bryan*, 99 S.W.3d 669, 673–74 (Tex. App.—Houston [14 Dist.] 2003, no pet.) (citations omitted). "Cause in fact means that the defendant's act or omission was a substantial factor in bringing about the injury, which would not otherwise have occurred." *Id.*

And in a medical malpractice case, "[t]o prove cause in fact, the plaintiff must establish a causal connection between the negligent act and the injury based on reasonable

medical probability." *Id.* "The effect of this requirement is to bar recovery where the defendant's negligence deprived the plaintiff of only a fifty percent or less chance of avoiding the ultimate harm." *Id.* "[W]here pre-existing illnesses or injuries have made a patient's chance of avoiding the ultimate harm improbable even before the allegedly negligent conduct occurs—*i.e.*, the patient would die or suffer impairment anyway—the application of these traditional causation principles will totally bar recovery, even if such alleged negligence deprived the patient of a *chance* of avoiding the harm." *Id.* "Because the Wrongful Death Act authorizes recovery solely for injuries that cause death, the act does not authorize recovery for the loss of less than an even chance of avoiding death." *Id.* "If the patient's chance of avoiding death was less than fifty-one percent, recovery is not authorized under the Wrongful Death Act, the Survival Statute, or common law." *Id.* at 673-74.

Also directly relevant to the well-established points of law set forth above, Texas law mandates that "a health care provider [in a medical malpractice case] may prove its right to summary judgment by establishing there is no causal connection between any breach of the standard of care and the injury." *Hevron v. Pearl*, No. 05-97-02067-CV, 2000 WL 190525, at *3 (Tex. App.—Dallas Feb. 17, 2000, pet denied) (brackets added); *accord, e.g., Purtell v. Baylor Univ. Med. Ctr.*, No. 05-96-01662-CV, 1998 WL 908906, at *3 (Tex. App.—Dallas Dec. 31, 1998, no pet.) (explaining the "doctor may also establish his right to summary judgment by negating the element of proximate cause.").

In this medical malpractice case, Defendants designated, *inter alia*, Carl G. Dahlberg, M.D., F.A.C.P., F.C.C.P. (**"Dr. Dahlberg"**), as a testifying expert. *See* **Exhibits**

B & C. Dr. Dahlberg is a physician licensed to practice medicine in the State of Texas, and he is certified by the American Board of Internal Medicine in Internal Medicine, in Pulmonary Disease, and in Critical Care Medicine. *See* **Exhibit C** at ¶2; **Exhibit C-1**. In sum, Dr. Dahlberg has offered the following causation opinions in this case:

- *"Mr. Hickson presented to St. David's Hospital South on June 2, 2020 with a severe, life-threatening clinical picture compatible with severe infection with SARS-Co-V-2 and urosepsis in a background of multiorgan failure;"*
- *"Recurrent infection with COVID-19 was clearly the major contributor to his death;"* and
- *"Given the clinical circumstances present at the time of his admission at 1238 on June 2, 2020, Mr. Hickson's medical condition was such that the likelihood of his survival through that hospitalization – even given the most aggressive medical care feasible* - ***was clearly less than 50% within reasonable medical probability****."*

See **Exhibit C** at ¶15 (emphasis added). The expert opinions set forth above affirmatively negate the cause-in-fact element of Plaintiffs' claims because they establish that Mr. Hickson's "chance of avoiding death was less than fifty-one percent." *Hodgkins*, 99 S.W.3d at 673-74. Consequently, applying the Texas Supreme Court's lost-chance-of-survival doctrine, "recovery is not authorized under the Wrongful Death Act, the Survival Statute, or common law." *Id.*

For this additional and independent reason, Defendants are entitled to a full and final summary judgment in this case. *See, e.g., Hernandez v. Calle*, 963 S.W.2d 918, 921 (Tex.

App.—San Antonio 1998, no pet.) (affirming summary judgment in medical-malpractice case because "Calle's uncontroverted affidavit denying any causal connection between his and Santa Rosa Hospital's acts or omissions and Hernandez's injuries is sufficient to conclusively negate an essential element of the plaintiff's cause of action."); *Hevron*, 2000 WL 190525, at *4 (holding "Pearl's summary judgment evidence conclusively negated an essential element of the Hevrons' claim. Accordingly, we find, as a matter of law, Pearl is not liable for any alleged malpractice and overrule the Hevrons' second issue."); *Word v. Sekhavat*, No. 05-96-01489-CV, 1999 WL 225778, at *2 (Tex. App.—Dallas Apr. 20, 1999, no pet.) (holding "Appellee's uncontroverted affidavit denying any causal connection between his acts or omissions and appellant's injuries established his entitlement to summary judgment.").

III.
CONCLUSION AND PRAYER FOR RELIEF

In conclusion, for all of the reasons set forth above, Defendants St. David's Healthcare Partnership, L.P., LLP, Dr. Viet Vo, Dr. Mabry Cantu, and Hospital Internists of Texas, respectfully request the Court to grant this Motion in its entirety, to dismiss Plaintiffs' remaining claims with prejudice, to enter Final Judgment in Defendants' favor, to award all taxable court costs to Defendants, and to award to Defendants all other relief to which they are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify by my signature below that a true and correct copy of the foregoing document was served on all attorneys of record on this 4th day of September 2024.

/s/ Ryan C. Bueche
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