

IN THE SUPREME COURT OF TEXAS

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No. 05-0575
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IN RE METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO, LTD., D/B/A
METROPOLITAN METHODIST HOSPITAL, RELATOR

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ON PETITION FOR WRIT OF MANDAMUS
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PER CURIAM

Zacharias Favela was admitted to the hospital to rule out myocardial infarction. Dr. Jairo Ramirez, after monitoring Favela, decided he needed a left heart catheterization, possible angioplasty, and possible stent placement. A Jehovah's Witness, Favela signed a form consenting to surgery but not the use of blood or blood products. Several hours after surgery, Dr. Ramirez discovered a large hematoma on Favela's left groin. Blood was withheld in accordance with Favela's wishes and he died seven hours later due to internal bleeding. His wife and estate sued Dr. Ramirez and Methodist Healthcare System of San Antonio.

As required by statute, within 180 days of filing the Favelas served curricula vitae and expert reports signed by Dr. Mandeep Dhadly, Jenny Beerman, R.N., and Sherri Ozawa, R.N. supporting their claim. TEX. REV. CIV. STAT. art. 4590i, § 13.01(d) (repealed 2003). Methodist moved for dismissal and sanctions on the ground that the expert reports were inadequate. *Id.* § 13.01(e). Specifically, Methodist claimed the reports omitted the appropriate standard of care as to the hospital

and contained conclusory statements regarding causation. The trial court denied the motion, and Methodist filed a petition for writ of mandamus.

The court of appeals, by memorandum opinion, denied mandamus relief “because an appellate remedy by appeal exists.” ___S.W.3d___. For the reasons stated in *In re McAllen Medical Center*, ___ S.W.3d ___ (Tex. 2008), we hold that an appeal is not always an adequate remedy in these circumstances. Accordingly, we conditionally grant the writ of mandamus without hearing oral argument, *see* TEX. R. APP. P. 52.8(c), and instruct the court of appeals to withdraw its previous opinion and reconsider in light of our opinion in *McAllen*. We are confident that the court of appeals will comply, and our writ will issue only if it does not.

OPINION DELIVERED: June 6, 2008