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## Duty of Nurses at Issue in Med-Mal Suit Over Solo's Suicide

by ANGELA MORRIS  
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Nearly seven years after lawyer Hermes Villarreal killed himself while hospitalized in McAllen, the Texas Supreme Court heard oral arguments on Feb. 9 in *Rio Grande Regional Hospital Inc., et al. v. Diana Lopez Villarreal, et al.*

The main issues are whether the 13th Court of Appeals created a duty for nurses to diagnose and treat psychological illness and whether the respondents established proximate

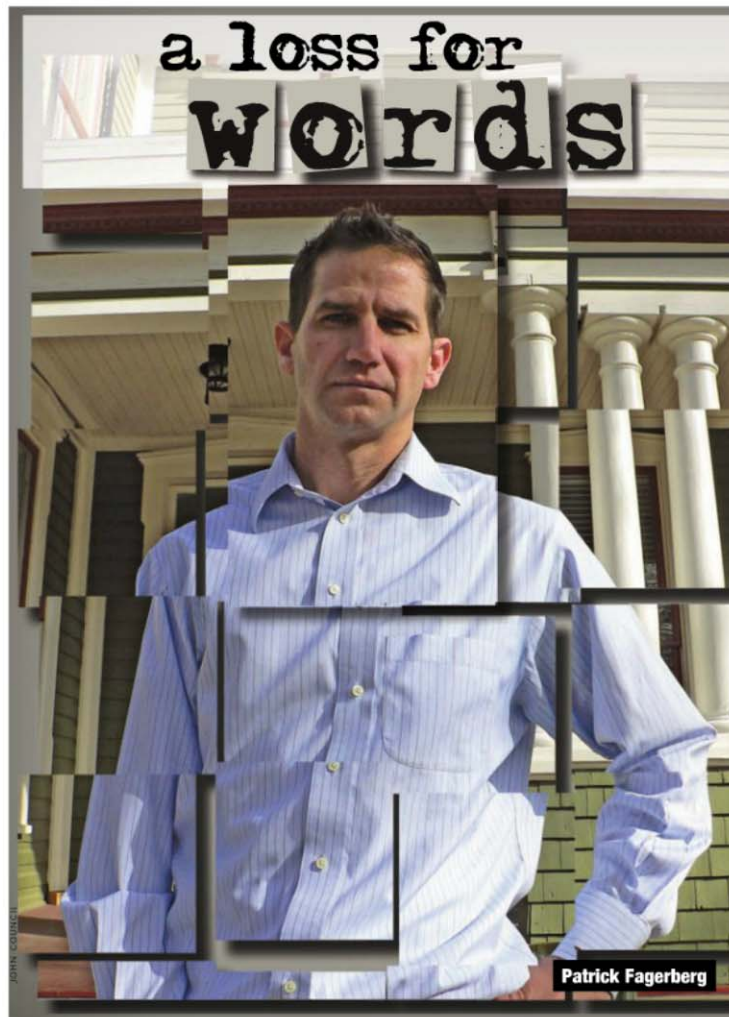
cause — specifically, was the suicide foreseeable, and were the two nurses' alleged acts or omissions the cause-in-fact of Villarreal's death?

Mike Hatchell, who represents the petitioners, says the high court's decision in *Villarreal* on what constitutes proximate cause is important for the practices of personal-injury lawyers. "The case will ultimately come down to a discussion on important elements of causation . . ." he adds.

In its Sept. 30, 2010, opinion, the 13th Court, which sits

in Corpus Christi and Edinburg, laid out the background in the case: On April 16, 2005, Hermes Villarreal was admitted to Rio Grande Regional Hospital with headaches, anxiety, nervousness, sleeplessness and exhaustion, among other things. Doctors prescribed him an antidepressant and an anti-anxiety medication. One suggested a psychiatric consultation, but Villarreal denied being depressed. A nurse's

▶ see *Duty*, page 21



Patrick Fagerberg

### Head Injury at SXSW Changes Lawyer's Life

by JOHN COUNCIL  
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Last March, Austin lawyer Patrick Fagerberg realized he'd lost the ability to use the only part of his body that really matters in the legal profession: his brain.

While attending the SXSW music festival in Austin, a large piece of camera equipment fell on Fagerberg's head during a concert. He was patched up at a local emergency room, he says, but two to three days later he began having trouble forming sentences and organizing his thoughts. The normally affable and quick-witted criminal-defense attorney noticed he was becoming more emotional and foul-tempered. Sometimes he couldn't even understand his friends' jokes.

And then there was his career. Fagerberg says Thomas, one of his eight siblings, called him last spring after the accident to ask why Patrick had not dealt with a routine matter in a case they were handling.

"My brother said, 'You've got to get back to work,'" Patrick recalls. "And I said . . . 'my brain isn't working right.'"

"Even family doesn't understand," says Patrick, 42, his eyes filling with tears. "You look the same and talk the same, but you're not the same."

Thomas, an Austin solo, says he knew something was wrong with his brother. "Outwardly he seemed so normal. But when I put pressure on

▶ see *A Loss*, page 20

## Lateral Hiring Red Hot at Large Firms

by BRENDA SAPINO JEFFREYS  
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Texas lawyers move from one firm to another for different reasons. Some flee client conflicts or hope to lower their billing rates. Others aspire to practice at national or international firms or, conversely, a boutique. Some are lured by the prospect of making more money, while others seek the challenge of building a branch office for an out-of-state firm.

Regardless of individual lawyers' motivations, lateral hiring at large firms in Texas was smoking hot in 2011, with 20 of the 25 largest firms in Texas hiring 46.8 percent more laterals than in 2010, according to data collected in *Texas Lawyer's* annual Lateral Moves Survey. That robust increase in 2011 is considerably higher than the 10.3 percent rise posted in 2010.

The 20 Lone Star State firms that participated in the Lateral Moves Survey hired 298 laterals in 2011, compared to 203 at those same firms in 2010. [See "*Lateral Hiring in Large Firms in Texas*," page 23.]

"There's been a lot of pent-up demand," says Stephen Mims, executive director of Prescott Legal Search in Houston, Dallas and Austin.

Mims says lawyers who have been reluctant to pull the trigger on a lateral move for a couple of years because of the uncertain economy "finally see the tide turning and they want to be on the front

▶ see *Lateral*, page 22

INSIDE

Approach the Bench:  
Judge Bill Moody

4



Litigator of the  
Week: Jennifer Doan

14



Special Report:  
Bankruptcy Law

24-29



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# Duty of Nurses at Issue in Med-Mal Suit Over Lawyer's Suicide

continued from page 1

assessments of him noted he required no risk-behavior precautions. Around 5 a.m. on April 19, Villarreal asked that same nurse for a razor to shave his chest, and he took a shower. A second nurse checked on him at 7:30 a.m. and got help removing the locked bathroom door. Hospital employees found Villarreal's body at 8:25 a.m. He used the razor to cut his neck and arms, and he bled to death. [See "Attorney, Interrupted," Texas Lawyer, April 28, 2008, page 1.]

Villarreal's wife, Diana, their three children and his mother sued Rio Grande Regional Hospital Inc. and Columbia Rio Grande Healthcare LP, alleging wrongful death and medical malpractice. They also alleged the two hospital entities were responsible for the negligent actions of the nurses under respondeat superior. The plaintiffs sought damages under the wrongful death and survival provisions of the Texas Civil Practice & Remedies Code.

A jury found Rio Grande and Columbia Rio Grande were negligent in their treatment of Hermes Villarreal, assigning them 75 percent of the proportionate responsibility. Jurors also assigned Diana Villarreal 15 percent and Hermes Villarreal 10 percent of the proportionate responsibility. The jury awarded "several million" in damages, which the trial court reduced according to statutory caps, and awarded the plaintiffs \$685,000 in actual damages, \$43,381 in prejudgment interest, and court costs.

Both sides appealed, and the 13th Court

affirmed the trial court on most issues but reversed on the issue of Hermes Villarreal's proportionate responsibility. The hospital entities then appealed to the Texas Supreme Court.

## Duty and Foreseeability

In a brief to the high court, the hospital entities argue that the 13th Court improperly created a duty for the nurses "to properly assess and treat Hermes's psychiatric condition" and that the Villarreal's did not establish proximate cause because the suicide was not foreseeable and the nurses' alleged negligent acts or omissions were not the cause-in-fact of the suicide.

But the Villarreal's argue in a brief that the "Nurse Practice Act" requires nurses to make "nursing diagnoses," and the 13th Court "was referring to nursing diagnoses — not medical diagnoses — when it discussed breaches of the nursing standard of care."

The Villarreal's argue there was sufficient evidence to find proximate cause, as the 13th Court described numerous breaches of duty, including failures to assess and treat Hermes Villarreal, to monitor him after he took medications, to check on him frequently, and to observe and assist him in shaving his chest.

At oral argument, Hatchell, of counsel at Locke Lord in Austin, said nurses do not have a duty to diagnose and treat patients because doctors alone can make medical diagnoses, and the Nurse Practice Act says nurses' duties are to "follow doctor's orders."

Chief Justice Wallace Jefferson said, "And also to diagnose. What does nursing diagnosis mean?"

Hatchell replied that statutes don't define "nursing diagnosis," but case law makes clear nurses cannot make medical diagnoses.

"Do they have the duty to monitor a patient after certain medications are administered?" asked Justice Eva Guzman, noting Hermes Villarreal had been given Xanax and another medication for depression. Later, she asked if a nurse had a duty to monitor a patient who took a shower with a razor.

Hatchell said nurses must observe the effects of medications, report effects to a doctor and note them in the patient's record. In this case, Villarreal's medications could make him unstable, but there was no evidence of that effect and "certainly the suicide was not foreseeable."

Beginning her arguments, the respondents' lawyer Brandy Wingate said the case was never about a nurse failing to diagnose a patient.

But Guzman said, "[T]he court of appeals opinion seems to rest on this notion that nurses have a duty to diagnose and treat."

Wingate said she would agree if the high court wants to state that nurses do not have a duty to make medical diagnoses. But she added, "I don't think it changes the outcome of this case one bit."



Mike Hatchell

ANGELA WOLVITZ



Brandy Wingate

ANGELA WOLVITZ

The nurses should have known that one doctor's notes indicated Villarreal could have been depressed, and the nurses should have known he had been given an antidepressant, one side effect of which was an increased risk of suicide, argued Wingate, of counsel at the Smith Law Group in McAllen. She also maintained nurses improperly assessed Villarreal's mental state and did not properly question his odd behavior of taking three showers in 24 hours.

Justice Dale Wainwright asked Wingate to imagine she was counsel for a hospital and asked, "[W]hat should we tell our nurses to make sure we satisfy the standard of care, and . . . not get sued by patients?"

Wingate replied that nurses should make sure they provide a safe environment, know a patient's diagnoses and medications, and never give a patient an "instrumentality of death," then leave him alone for three hours.

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**WEB EXTRA**

Documents related to *Rio Grande Regional Hospital Inc., et al. v. Diana Lopez Villarreal, et al.* are online at [www.texaslawyer.com](http://www.texaslawyer.com). Look for the links within the online version of this article.



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