STATE OF MINNESOTA
IN COURT OF APPEALS
A09-436

Corinne Ellen Glumack,
Appellant,

vs.

Duluth Clinic, Ltd., et al.,
Defendants,

Virginia Regional Medical Center,
Respondent,

Charles Albin Tietz,
Respondent.

Filed January 12, 2010
Affirmed
Bjorkman, Judge
Dissenting, Klaphake, Judge

St. Louis County District Court
File No. 69VI-CV-07-767

Stephen W. Cooper, Stacey R. Everson, The Cooper Law Firm, Chrtd., Minneapolis, MN (for appellant)

David D. Alsop, Brock P. Alton, Gislason & Hunter LLP, Minneapolis, MN (for respondent Virginia Regional Medical Center)

William Hart, Cecilie Morris Loidolt, Damon L. Highly, Meagher & Geer, P.L.L.P., Minneapolis, MN (for respondent Charles Albin Tietz)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the district court's dismissal of her medical-malpractice claim for failing to comply with the expert-disclosure requirements of Minn. Stat. § 145.682 (2008). Because we agree that the affidavits appellant submitted do not strictly comply with the statutory requirements, we affirm.

FACTS

On November 11, 2003, appellant Corinne Glumack underwent a laparoscopic supracervical hysterectomy, performed by respondent Charles Albin Tietz, M.D. at respondent Virginia Regional Medical Center (VRMC). A video of the surgery shows a disturbance during the procedure, likely related to the failure of an unidentified piece of medical equipment. Glumack's medical records note that her immediate postoperative condition was "good." Two days after the surgery, while recovering in the hospital, Glumack developed acute respiratory distress syndrome (ARDS), a potentially fatal condition. Glumack fell into a coma and was transferred to St. Mary's Medical Center in Duluth. She stabilized within 24 hours and was discharged later that week.

Glumack commenced this malpractice action against VRMC, Dr. Tietz, the Duluth Clinic, and Jack William Gordon, M.D. (Glumack's primary care doctor at Duluth Clinic). The complaint alleges that (1) the surgery was unnecessary; (2) the surgery and postoperative care did not meet the applicable standards of care; and (3) Glumack

sustained injury. Appellant states that she believed that the surgery was related to Crohn's disease. Respondents assert that the surgery was performed to treat chronic menorrhagia and anemia.

Within 180 days of filing the complaint, Glumack filed affidavits of David E. David, M.D. and John H. Bond, M.D to meet the requirements of the expert-disclosure statute, Minn. Stat. § 145.682.

Dr. David is a board-certified obstetrician and gynecologist. He has an active clinical practice and has performed "hundreds" of hysterectomies. The district court found that Dr. David is a qualified expert, and the parties do not contest this finding on appeal.

The key portions of Dr. David's affidavit address whether Glumack needed a hysterectomy:

> 21. The performance of a hysterectomy in this patient was unindicated and unwarranted.
>
> 22. I see no indication in the medical records that there was any diagnostic workup of the cause of her menorrhagia, if she suffered from it, nor of the cause of her anemia. The standard of care would require such steps to be taken prior to the decision to operate.
>
> 23. Likewise, I saw no documentation of any significant attempt at hormonal correction of any menorrhagia she may have had. The standard of care would require such steps be taken prior to undertaking a hysterectomy for menorrhagia.
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> . . . .
>
> 25. . . . the first surgical line of intervention for both diagnosis and therapeutic would have been a dilation and

> curettage, which is a much safer, easier and less risky procedure.
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> . . . .
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> 27. Under these facts, to perform a hysterectomy did not meet the standard of care.

Dr. David also opines that the VRMC surgical staff was not "fully trained"; that VRMC had not "properly checked and maintained its equipment" prior to surgery; and that "there was a disruption in the room secondary to equipment failure or staff failure, which added to the difficulty of performing the hysterectomy." Dr. David states that Glumack developed ARDS postoperatively as "a result of the failure to meet the standard of care" and concludes that "[t]he proper operation properly performed was unlikely to have resulted in ARDS."

Dr. Bond is a board-certified internist and gastroenterologist who has both teaching and clinical experience. The district court found that Dr. Bond is qualified as an expert in these areas, and none of the parties contest this finding on appeal. Dr. Bond's affidavit states that a hysterectomy is not a proper treatment for Crohn's disease, which is a gastro-intestinal disorder. He opines that if Glumack was informed that the hysterectomy was needed to treat Crohn's disease, her physician violated the applicable standard of care. Dr. Bond does not offer opinions regarding how the surgery was performed, the postoperative care, or the impact of any alleged equipment failure.

VRMC and Dr. Tietz moved to dismiss the action under Minn. Stat. § 145.682, based on the inadequacy of the expert affidavits. Glumack argued that the medical affidavits, combined with her testimony, were sufficient to meet the statutory

requirements. The district court granted summary judgment to Dr. Tietz and VRMC, determining that the affidavits did not sufficiently define the standard of care or establish a causal connection between any alleged breach and Glumack's injuries. The remaining defendants subsequently moved for and obtained dismissal of Glumack's claims.[1] This appeal follows.

D E C I S I O N

We will reverse the dismissal of a medical malpractice claim for noncompliance with the expert-disclosure requirements of Minn. Stat. § 145.682 only for abuse of discretion. *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990).

Minn. Stat. § 145.682 requires medical-malpractice plaintiffs to file two affidavits: one with the summons and complaint, stating that the attorney has reviewed the case with an expert; and one within 180 days of filing suit, explaining the standard of care and chain of causation. Minn. Stat. § 145.682, subds. 2-4; *Anderson v. Rengachary*, 608 N.W.2d 843, 846 (Minn. 2000).

The only issue on appeal is the sufficiency of the second set of affidavits. The statute requires the second affidavit to explain "the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion." Minn. Stat. § 145.682, subd. 4. The affidavit should set out the facts in detail and explain "how the expert will use those facts to arrive at opinions of malpractice and causation."

[1] By order of May 5, 2009, a special term panel of this court dismissed the remaining defendants from this appeal.

Stroud v. Hennepin County Med. Ctr., 556 N.W.2d 552, 555 (Minn. 1996). A plaintiff must make clear

> specific details concerning [her] experts' expected testimony, including the applicable standard of care, the acts or omissions which the plaintiff alleges resulted in a violation of the standard of care, and an outline of the chain of causation between the violation of the standard of care and the plaintiff's damages.

Id. at 555-56. The expert-disclosure statute requires strict compliance with its provisions, and noncompliance results in "mandatory dismissal with prejudice." *Mercer v. Andersen*, 715 N.W.2d 114, 122 (Minn. App. 2006).

I. Glumack's claims against Dr. Tietz fail because the expert affidavits do not strictly comply with Minn. Stat. § 145.682.

Glumack's claims against Dr. Tietz are two-fold: (1) he did not properly evaluate and treat her condition leading to an unnecessary hysterectomy and (2) he performed the surgery in a negligent manner. We address the compliance of the expert affidavits with respect to each malpractice theory in turn.

A. The expert affidavits supporting Glumack's claim that the hysterectomy was unnecessary do not strictly comply with the expert-review statute.

The district court found that Glumack's affidavits do not sufficiently define the standard of care applicable to Dr. Tietz's decision to perform a hysterectomy. We agree. We also conclude that the affidavits do not describe a chain of causation between Dr. Tietz's alleged breaches of the standard of care and Glumack's alleged injuries.

Glumack focuses much of her argument on her allegation that she was told the hysterectomy was necessary to treat Crohn's disease, a non-indicated medical condition.

She contends that this violated the applicable standard of care. Dr. Tietz contends that he did not make any statements to Glumack implicating Crohn's disease as a basis for the surgery. But assuming Glumack's statement is true, Dr. Bond's affidavit supports her assertion: "Neither the symptoms that led to the diagnosis of Crohn's disease, nor that diagnosis itself, would be a basis for a hysterectomy."

Glumack's effort to characterize this aspect of her malpractice claim as one for negligent nondisclosure (lack of informed consent) does not relieve her of the expert-disclosure requirements. We first observe that the complaint does not state such a claim, and Glumack never sought leave to amend this pleading. But she raised the issue in the district court, and it was argued extensively during oral argument before this court. Because the experts opine as to the factual basis for the claim and "the issue was implicit in or closely akin to" the issue the district court decided, we consider it here. *Blume Law Firm PC v. Pierce*, 741 N.W.2d 921, 926 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Feb. 19, 2008).

To establish negligent nondisclosure, a plaintiff must establish that (1) the physician knew or should have known of the risk of treatment or of an alternative treatment plan; (2) the standard of care would require him to disclose that risk or alternative treatment; (3) the undisclosed risk did cause harm as a result of the treatment; and (4) had she been informed of the risk, plaintiff would not have consented to the procedure. *Kohoutek v. Hafner*, 383 N.W.2d 295, 301-02 (Minn. 1986). A prima facie case of negligent nondisclosure requires expert testimony to establish the first three

elements. *Reinhardt v. Colton*, 337 N.W.2d 88, 96 (Minn. 1983); *accord Williams v. Wadsworth*, 503 N.W.2d 120, 123 (Minn. 1993).

Glumack does not allege that respondents failed to inform her of the risks and nature of the surgical procedure or that she did not understand the risks. In that regard, we question whether her claim that she was told the surgery would treat her Crohn's disease meets the elements of a negligent nondisclosure claim. But we need not decide this issue, as the expert affidavits do not provide the information required by the expert-disclosure statute.

Although Glumack's experts clearly state that a hysterectomy is not an appropriate treatment for Crohn's disease, neither expert opines that Glumack did not know she was undergoing a hysterectomy or was not advised as to the risks attendant with that procedure. In theory, a patient's decision to undergo a particular procedure could be influenced by the stated medical condition for which the procedure is required, but the expert affidavits do not present such a scenario here. Glumack's informed-consent allegation does not change our analysis of whether the affidavits strictly comply with the statutory requirements.

Dr. David generally avers that additional diagnostic and treatment procedures should have been implemented prior to performing a hysterectomy:

> 22. I see no indication in the medical records that there was any diagnostic workup of the cause of her menorrhagia, if she suffered from it, nor of the cause of her anemia. The standard of care would require such steps to be taken prior to the decision to operate.

> 23. Likewise, I saw no documentation of any significant attempt at hormonal correction of any menorrhagia she may have had. The standard of care would require such steps to be taken prior to undertaking a hysterectomy for menorrhagia.

Absent from Dr. David's affidavit is any indication as to what "such steps" consist of with respect to Dr. Tietz's diagnosis and treatment of Glumack. To comply with the expert-disclosure statute, Dr. David's affidavit must identify precisely what diagnostic workups should have been performed, when they should have been conducted, and what follow-up steps were warranted. The affidavit does not comply with these requirements.

Likewise, the affidavit must do more than generally identify hormone therapy as the standard of care; it must specifically state the type of hormone therapy that should have been provided, when and how often it was required, and how such therapy would have resulted in a different outcome. *Compare Anderson*, 608 N.W.2d at 848 (affidavit stating that "esophageal trauma should be avoided during surgery of this type" without describing what steps should be taken by the attending physician was insufficient to identify the applicable standard of care), *with Demgen v. Fairview Hospital*, 621 N.W.2d 259, 263 (Minn. App. 2001) (affidavit describing which tests should have been performed, what the results of those tests would have been, and what action would have been taken in response to the tests that would have resulted in a different outcome for the patient was sufficient), *review denied* (Minn. Apr. 17, 2001). Dr. David's reference to "such steps" does not meet the strict-compliance standard.

Similarly, Dr. David's affidavit does not explain how the failure to perform additional pre-surgery interventions resulted in an unnecessary hysterectomy:

> 25. Likewise, even in a 37 year old patient with abnormal vaginal bleeding, the first surgical line of intervention for both diagnosis and therapeutic would have been a dilation and curettage, which is a much safer, easier, and less risky procedure, but which was not performed on Ms. Glumack.
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> . . . .
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> 29. Dr. Tietz failed to meet the standard of care when recommending, approving, and informing Ms. Glumack about the surgery and in performing the surgery.

Nothing in the affidavit explains how or why dilation and curettage would have made the hysterectomy unnecessary. Nor does Dr. David's affidavit identify the risks attendant with this alternative procedure and how they compare to risks associated with a hysterectomy. Merely stating that the treating physician failed to meet the standard of care does not fulfill the statutory requirements. *See Maudsley v. Pederson*, 676 N.W.2d 8, 14 (Minn. App. 2004) (emphasizing the importance of "how and why" in affidavits).

Dr. Bond's affidavit similarly misses the mark. Dr. Bond concludes that Glumack was either given inaccurate reasons for the surgery or that "the treating doctors did not meet the standard of care when deciding a hysterectomy was the proper response to the above-stated symptoms." But Dr. Bond's affidavit does not identify the circumstances under which a hysterectomy is appropriate or outline how Dr. Tietz breached the standard of care and the causal connection between such breach and Glumack's claimed injuries.

B. The expert affidavits supporting Glumack's claim that the surgery was negligently performed do not strictly comply with the expert-review statute.

The district court determined that Glumack's expert affidavits fail to sufficiently establish a causal link between the surgery and the harm suffered. We agree.

In his affidavit, Dr. David opines that even if a hysterectomy was warranted, a simpler procedure should have been used because the laparoscopic supracervical procedure required experience that Dr. Tietz did not have. Dr. David identifies a vaginal hysterectomy and a laparoscopically-assisted vaginal hysterectomy as alternatives that would have been faster, easier, and less traumatic than the procedure Dr. Tietz performed. Dr. David also states that Dr. Tietz deviated from the standard of care by not ensuring that the equipment was in working order and the surgical staff was properly trained.

Dr. David's affidavit, however, fails to link Dr. Tietz's choice of a more complicated procedure and the manner in which he performed the surgery with Glumack's injuries:

> 42. It was found postoperatively that she developed ARDS and required intubation. This was life threatening and a result of the failure to meet the standard of care.
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> 43. Subsequently, the patient had a rocky and complicated postoperative course and, thereafter, suffered from a variety of linked ailments.
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> 44. During the surgery, it was apparent that the patient had abnormal blood loss and experienced subsequent complications.

> 45. All opinions expressed in this affidavit are to a reasonable degree of medical certainty. The deviations from the standard of care by Dr. Tietz were a direct and proximate cause of the unnecessary surgery performed on Ms. Glumack, the blood loss and trauma which resulted from the unnecessary surgery, as well as the development of ARDS and its complications.

The affidavit fails to describe the cause or nature of a "rocky and complicated postoperative course" and "abnormal blood loss," and it does not explain how such conditions caused Glumack to develop ARDS, a respiratory ailment. Dr. David's statements resemble those found insufficient in *Stroud*, where the affidavit described a failure to diagnose a subarachnoid hemorrhage that resulted in a "complicated hospital stay" but did not link either to the pulmonary embolism that caused the patient's death. 556 N.W.2d at 556; s*ee also Maudsley*, 676 N.W.2d at 14 (stating that the generic statement, "generally earlier treatment results in better outcomes" was insufficient); *Lindberg v. Health Partners, Inc.*, 599 N.W.2d 572, 578 (Minn. 1999) (finding no chain of causation where affidavit did not connect the failure to instruct plaintiff to seek medical attention with the stillbirth of her child). Dr. David's conclusory statements do not establish a chain of causation between alleged breaches of the standard of care and Glumack's post-operative injuries.

Based on our review of the record, we conclude that the district court did not abuse its discretion in dismissing Glumack's negligent treatment claims against Dr. Tietz.

II. Glumack's claims against VRMC fail because the expert affidavits do not establish a standard of care, breach of the standard, or a causation chain.

Glumack alleges that because VRMC is responsible for maintaining its equipment and training its staff, it is liable for the unspecified equipment failure that occurred during her surgery. The district court dismissed the claims against VRMC because the expert affidavits did not sufficiently lay out a chain of causation linking the actions of VRMC staff and Glumack's injuries.

Glumack argues that an expert opinion is not required to establish a prima facie case of medical malpractice against VRMC because it is axiomatic that equipment should not fail during surgery. She relies on the exception recognized by our supreme court in *Tousignant* that applies when "the acts or omissions complained of are within the general knowledge or experience of lay persons." *Tousignant v. St. Louis County*, 615 N.W.2d 53, 58 (Minn. 2000).

Review of Glumack's complaint demonstrates that her reliance on *Tousignant* is misplaced. The complaint alleges that VRMC failed to meet the applicable standard of care with respect to maintaining its equipment and assuring that its staff provided appropriate care during and after the surgery. Resolution of these allegations requires a far more complex set of factual determinations than those presented in *Tousignant*, where nursing staff allegedly failed to follow an express doctor's order to restrain an elderly patient in her wheelchair. *Id.* at 59-60. While the claimed negligence in disregarding the doctor's instructions in *Tousignant* may have been within the common knowledge of lay persons, we conclude that this is not such a rare case and involves more than

"nonmedical, administrative, custodial or routine nursing home care." *Broehm v. Mayo Clinic*, 690 N.W.2d 721, 728 (Minn. 2005). Neither of the expert affidavits articulates the applicable standard of care or how VRMC staff departed from this standard with respect to the care delivered to Glumack or the maintenance of the surgical equipment.

And even if the equipment failure violated the applicable standard of care, the affidavits do not link the equipment malfunction to Glumack's post-operative complications. The record is devoid of any evidence as to what piece of equipment failed and its intended function. The closest that either of the affidavits comes to meeting the statutory requirements is Dr. David's assertion that "[t]he proper operation properly performed was unlikely to have resulted in ARDS." But this statement is conclusory; it does not explain how any equipment failure directly caused injury to Glumack. *See Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 429 (Minn. 2002) (rejecting an affidavit where the only indication of causation stated, "[T]he departures from the accepted levels of care . . . were a direct cause of [the patient's] death."); *Stroud*, 556 N.W.2d at 556 (identifying no chain of causation where the affidavit "opine[d] that [a] delay in diagnosis caused a 'complicated hospital stay,'" but did not connect the complicated stay to the cause of death).

On this record, we conclude that the district court did not abuse its discretion in dismissing Glumack's claims against VRMC based on her failure to comply with the expert-review statute.

Affirmed.

KLAPHAKE, Judge (dissenting)

Viewing the facts in appellant's favor, as we must in a summary judgment proceeding, at the time of her surgery in November 2003, appellant was a 37-year-old woman who presented with the immediate problem of blood loss anemia, some history of menorrhagia, and an apparently isolated instance in 2001 of bloody stools from colitis. For the colitis, a gastroenterologist conducted a colonoscopy and concluded that appellant's problem was due to "most likely Crohn's colitis." Appellant's primary care physician, Dr. Tietz, treated her for Crohn's disease and eventually informed her in 2003 that she needed a hysterectomy to treat Crohn's disease. Mayo Clinic later determined in 2006 that appellant showed no indication of having Crohn's disease.

For the surgery, Dr. Tietz chose to perform a laparoscopic supracervical hysterectomy, rather than use the more routine surgical methods of vaginal hysterectomy or laparoscopically-assisted vaginal hysterectomy. The record includes references to irregularities in the manner in which the surgery was conducted, caused either by equipment failure or improper staff use of equipment due to unfamiliarity with the equipment or insufficient training. Appellant's serious complications from the surgery included abnormal blood loss, a fever, and the potentially life-threatening occurrence of ARDS. Complications continued post-surgery and required lengthy hospitalization and treatment.

Appellant initiated a medical malpractice action challenging Dr. Tietz's treatment decisions, his decision to perform a hysterectomy, his choice of surgical procedure, and his failure to obtain informed consent from her before the surgery. As noted by the

majority, the parties do not challenge the expert qualifications of either Dr. David, an obstetrician/gynecologist, or Dr. Bond, a gastroenterologist.

Consistent with the district court's summary judgment decision finding the expert affidavits insufficient to meet the statutory requirement to establish prima facie cases of medical malpractice for any of appellant's claims, the majority parses the experts' affidavits in a technical manner that forecloses appellant from any redress at this early stage of the proceedings. I believe the district court's decision was in error with respect to the two medical malpractice claims against Dr. Tietz for breaching the standard of care in deciding to conduct a hysterectomy and in failing to inform appellant of that procedure.

The majority concludes that the expert affidavits do not sufficiently establish that Dr. Tietz was negligent in recommending that appellant have a hysterectomy. Dr. David reviewed appellant's medical records from 1979-2006 and interviewed appellant. His affidavit states that appellant's medical records do "not indicate [a] prior unsuccessful attempt at hormone therapy," and gave "little support for the proposition that she was suffering from significant menorrhagia." Dr. David's affidavit further states that Dr. Tietz's workup should have included a "diagnostic workup of the cause of her menorrhagia," "the cause of her anemia," and a "significant attempt at hormonal correction of any menorrhagia" before undertaking a hysterectomy, and that even if she did have menorrhagia, "the first surgical line of intervention for both diagnosis and therap[y] would have been a dilation and curettage." Dr. David's affidavit also relates Dr. Tietz's treatment choices to the standard of care and states that to perform a

hysterectomy under appellant's circumstances did not meet the standard of care because it was "unindicated and unwarranted."

An affidavit of expert disclosure written to satisfy Minn. Stat. § 145.682 must state "what the standard of care was and how the defendants departed from it." *Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 428 (Minn. 2002). Dr. David's affidavit specifically states that appellant's medical records did not show she was suffering from significant menorrhagia, that she received hormone therapy, or that a dilation and curettage was performed on her—all of which should have been done before Dr. Tietz recommended surgery. This list of treatment failures, culminating in a medically unsupported recommendation for surgery, in my view, amounted to sufficient allegations with regard to causation. *See Lundgren v. Eustermann*, 370 N.W.2d 877, 880 (Minn. 1985) (stating expert must have "practical knowledge of what is usually and customarily done by physicians under circumstances similar to those which confronted the defendant"); *see also Teffeteller*, 645 N.W.2d at 429 (expert's affidavit must do more than make "broad, conclusory statements regarding causation").

The majority places on Dr. David the burden to "state the type of hormone therapy that should have been provided" and "explain how the failure to perform pre-surgery interventions resulted in an unnecessary hysterectomy." However, Dr. David's affidavit meets the specificity requirements of Minn. Stat. § 145.682 as interpreted in such cases as *Demgen v. Fairview Hosp.*, 621 N.W.2d 259, 263 (Minn. App. 2001 (requiring specificity on issues of negligence and causation in medical malpractice expert's affidavit), *review denied* (Minn. Apr. 17, 2001). In *Demgen*, this court concluded that the

expert's affidavit was sufficient in a case involving the stillborn birth of a child because "it set out a precise explanation of why [the doctors'] failure to follow the applicable standard of care caused the death of the fetus[.]" *Id.* While strict compliance "requires far more information than simply identification of the expert intended to be called at trial," *Lindberg v. Health Partners, Inc.*, 599 N.W.2d 572, 578 (Minn. 1999), likewise, "[t]here is no need to over-scrutinize the expert affidavit." *Demgen*, 621 N.W.2d at 265. In *Demgen*, this court reversed the district court's dismissal of the claim for insufficiency of the expert's affidavit, and questioned whether any affidavit would be found sufficient if not for the affidavit in that case. *Id.* at 263. I believe that the majority here has over-scrutinized Dr. David's affidavit.

Further, Dr. David's affidavit states that appellant's medical records do not firmly establish that she had menorrhagia, but even if she did, appellant should have been treated with hormone therapy or dialation and curettage; Dr. David opined that Dr. Tietz's decision to recommend surgical removal of an organ of the body rather than these less invasive treatment measures made the surgery "unindicated and unwarranted." Expert testimony is necessary only when "issues are not within the common knowledge of laymen." *Reinhardt v. Colton*, 337 N.W.2d 88, 95 (Minn. 1983). An average lay person knows that an unnecessary surgery would injure a patient. *See Leubner v. Sterner*, 493 N.W.2d 119, 121 (Minn. 1992) ("Causation, by definition, is something producing a certain effect or result"); *see also Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 728 (Minn. 2005) (noting that doctrine of res ipsa loquitur could excuse patient from

certain expert-disclosure requirements, but rejecting the argument because it was not raised below).

For similar reasons, Dr. David's affidavit meets the threshold to establish a prima facie case of negligent nondisclosure. Dr. David stated that "a doctor has the obligation to fully explain to a patient what they are going to do, the reasons why, [and] any other options to such treatments and the risks involved." Dr. David noted that "[t]he patient indicated that she was told that the surgery was to address her Crohn's disease," and concluded, "Dr. Tietz failed to meet the standard of care when recommending, approving, and informing [appellant] about the surgery and in performing the surgery." Notably, the consent forms signed by appellant do not indicate the reason for her surgery, and the parties disagree about whether Dr. Tietz told appellant that the surgery was for Crohn's disease. Evaluation of the merits of these claims is a matter for trial. For purposes of Minn. Stat. § 145.682, Dr. David's expert affidavit was sufficient to establish a prima facie case of lack of informed consent. *See Tousignant v. St. Louis County*, 615 N.W.2d 53, 60 (Minn. 1990) (ruling it improper for district court to focus on defendant's rebuttal argument rather than on whether plaintiff had established prima facie medical malpractice case).

Satisfying the expert affidavit content requirements of Minn. Stat. § 145.682 should not be a more difficult task than meeting the standard for summary judgment. The purpose of the statute is to cull out unmeritorious claims by establishing a prima facie case; that purpose was served here by the detailed experts' affidavits offered by appellant. *See Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 191 (Minn. 1990) (noting

that purpose of section 145.682 is to weed out "frivolous" claims). The statute does not require a party to prove her case before trial; that, after all, is the purpose of a trial. The district court prematurely granted summary judgment in this case as to appellant's claims of Dr. Tietz's negligence in recommending surgery and in negligent nondisclosure of the purpose of the surgery.