IN THE SUPREME COURT OF TEXAS

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NO. 07-0783
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IRVING W. MARKS, PETITIONER,

v.

ST. LUKE'S EPISCOPAL HOSPITAL, RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS
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Argued September 11, 2008

JUSTICE WAINWRIGHT, concurring.

I agree with the plurality's opinion to the extent it concludes that a claim for injury arising from the alleged improper operation of a hospital bed provided for the care and recuperation of a back-surgery patient is a health care liability claim. Marks acknowledged this in his filings at the trial court, and the trial judge properly held that his claim was governed by the Medical Liability and Insurance Improve Act (MLIIA).[1] *See* TEX. REV. CIV. STAT. art. 4590i.[2] I therefore join parts I and

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[1] Marks's retained physician concluded in his expert report that St. Luke's Episcopal Hospital violated "accepted standards of good nursing care" specifically by failing "to ensure that the footboard was properly secured to the bed."

[2] Medical Liability and Insurance Improvement Act of Texas, Act of May 30, 1977, 65th Leg., R.S., ch. 817, 1977 Tex. Gen. Laws 2039, *repealed by* Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 10.09, 2003 Tex. Gen. Laws 847, 884. The successor statute is applicable to actions filed on or after September 1, 2003. TEX. CIV. PRAC. & REM. CODE ch. 74.

IV of the plurality's opinion and the Court's judgment. I agree with JUSTICE JOHNSON's concurring opinion addressing the "health care" prong of health care liability claims and our precedents, holding that "splicing health care liability claims into a multitude of other causes of action with standards of care, damages, and procedures contrary to the Legislature's explicit requirements" is not permitted. *See Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 854 (Tex. 2005); *see also, e.g., Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 543, 545 (Tex. 2004). I therefore join parts I, II, and III.A of JUSTICE JOHNSON's concurring opinion. I do not join part III of the plurality's opinion, part III.B of JUSTICE JOHNSON's concurring opinion or address the dissenters' arguments concerning the "safety" prong of health care liability claims[3] because it is not necessary in this case, as it was not in *Diversicare*, to define the precise scope of "safety" under the MLIIA. *See Diversicare*, 185 S.W.3d at 854–55 (explaining in part III.B.2 of the opinion that an injury to a patient from a rickety staircase or an unlocked window does not implicate the "health care" prong of health care liability claims).

Dale Wainwright
Justice

OPINION DELIVERED: August 27, 2010

[3] *See United States v. Travers*, 514 F.2d 1171, 1174 (2d Cir. 1974) (Friendly, J.) ("Cassandra-like predictions in dissent are not a sure guide to the breadth of the majority's ruling . . . .").