

**Affirmed and Opinion filed August 28, 2025**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-23-00738-CR**

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**BETHANIEL JEFFERSON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 228th District Court  
Harris County, Texas  
Trial Court Cause No. 1824442**

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**OPINION**

Appellant Bethaniel Jefferson appeals her conviction for injury to a child by omission, a second-degree felony. *See* Tex. Penal Code Ann. § 22.04. In one issue, appellant argues there is legally insufficient evidence to support her conviction. We affirm.

**I. BACKGROUND**

Appellant operated her own dental practice as a licensed dentist in Texas. At

4:29 p.m. on January 7, 2016, appellant called 911 because the four-year-old child she was performing a dental procedure on, N.H., had suffered multiple seizures. N.H. was transported to a hospital and ultimately diagnosed with brain damage resulting from hypoxia—an absence of oxygen. As a result, N.H. is now fully dependent on caretakers and unable to eat, speak, or walk.

Appellant was indicted for knowingly causing injury to N.H. by omission. The State alleged that appellant had a statutory duty to act pursuant to Texas Administrative Code § 108.7 and that she knowingly by omission caused serious bodily injury to N.H., a child younger than fifteen years of age, by failing to timely call 911 to seek emergency medical services. Appellant pleaded not guilty and proceeded to trial before a jury.

At trial, the evidence showed that N.H. arrived at appellant's dental office around 8:30 a.m. on January 7, 2016. At approximately 10:16 a.m., appellant began administering nitrous oxide to N.H. through inhalation, increasing the flow of nitrous oxide by ten percent every ten minutes until the air N.H. was breathing was seventy percent nitrous oxide and thirty percent oxygen. At around 11:13 a.m., N.H. suffered her first seizure. At that time, N.H.'s blood-oxygen-level readings indicated she was in a hypoxic state. Afterwards, N.H. continued to remain largely in a hypoxic state and had additional seizures until appellant called 911 five hours later.

The trial court submitted a jury charge that allowed the jury to convict appellant of a lesser included offense—that she *recklessly* caused serious bodily injury to N.H. by omission by failing to call 911. *See id.* § 22.04(a). Appellant moved for a directed verdict, arguing there was no evidence she subjectively knew that N.H. was being exposed to a risk of serious bodily injury when she failed to call 911. The trial court denied appellant's motion for a directed verdict, and the

jury found appellant guilty of recklessly causing serious bodily injury to N.H., assessed punishment at ten years imprisonment, and recommended that appellant's sentence be suspended in lieu of community supervision. The trial court accepted the jury's recommendation of community supervision, placed appellant on community supervision for five years, and suspended her ten-year sentence. This appeal followed.

## II. DISCUSSION

In one issue, appellant argues there is legally insufficient evidence to support her conviction. Specifically, appellant argues (1) there is no evidence that she was consciously aware of the risk of failing to call 911 sooner and (2) injury to a child by omission is applicable to parents and guardians but not to professionals.

### A. STANDARD OF REVIEW

In reviewing the legal sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). We defer to the factfinder's role as the sole judge of the witnesses' credibility and the weight their testimony is to be afforded. *Brooks*, 323 S.W.3d at 899. This standard accounts for the factfinder's duty to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and defer to that determination. *Jackson*, 443 U.S. at 326; *Clayton*, 235 S.W.3d at 778. We are responsible for ensuring that the evidence

presented actually supports a conclusion that the defendant committed the crime that was charged. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

While juries are permitted to draw multiple reasonable inferences as long as each inference is supported by the evidence presented at trial, juries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences or presumptions. *Winfrey v. State*, 393 S.W.3d 763, 771 (Tex. Crim. App. 2013). An inference is a conclusion reached by considering other facts and deducing a logical consequence from them, while speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. *Hooper v. State*, 214 S.W.3d 9, 16 (Tex. Crim. App. 2007). A conclusion reached by speculation is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt. *Id.*

We measure the sufficiency of the evidence against the elements of the offense as defined by a hypothetically correct jury charge. *See Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *See id.*

## **B. APPLICABLE LAW**

A person commits the offense of injury to a child by omission if she intentionally, knowingly, or recklessly by omission causes serious bodily injury to a child. Tex. Penal Code Ann. § 22.04(a); *see Hicks v. State*, 372 S.W.3d 649, 651, 653 (Tex. Crim. App. 2012) (concluding that a “knowing” assault is a lesser included offense of an “intentional” assault, and a “reckless” assault is a lesser included offense of a “knowing” assault); *Torres v. State*, 979 S.W.2d 668, 670 n.2

(Tex. App.—San Antonio 1998, no pet.) (“Reckless injury to a child is a lesser included offense of intentional or knowing injury to a child . . .”). An omission that causes serious bodily injury is conduct constituting the offense of injury to a child by omission if the actor has a legal or statutory duty to act. Tex. Penal Code Ann. § 22.04(b); *see also* *Cyr v. State*, 665 S.W.3d 551, 556 (Tex. Crim. App. 2022) (“In contrast to the majority of crimes which proscribe an action, an omission is punished only when there is ‘a corresponding duty to act.’” (quoting *Billingslea v. State*, 780 S.W.2d 271, 274 (Tex. Crim. App. 1989))). A defendant can assert a defense to prosecution for the offense of injury to a child by omission if the omission consisted of reasonable medical care occurring under the direction of or by a licensed physician. Tex. Penal Code Ann. § 22.04(k)(1); *see Shaw v. State*, 243 S.W.3d 647, 649 (Tex. Crim. App. 2007).

Injury to a child is a result-oriented offense requiring a mental state that relates not to the charged conduct but to the result of the conduct. *Williams*, 235 S.W.3d at 750; *Estrella v. State*, 546 S.W.3d 789, 795 (Tex. App.—Houston [1st Dist.] 2018, pet. ref’d); *Baldwin v. State*, 264 S.W.3d 237, 242 (Tex. App.—Houston [1st Dist.] 2008, pet. ref’d). It is not enough for the State to prove that the defendant engaged in the alleged conduct with the requisite criminal intent; instead, the State must also prove that the defendant caused the result with the requisite criminal intent. *Estrella*, 546 S.W.3d at 795; *Baldwin*, 264 S.W.3d at 242; *see Williams*, 235 S.W.3d at 750; *Cleburn v. State*, 138 S.W.3d 542, 545 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d).

A person acts “recklessly” when she is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. Tex. Penal Code Ann. § 6.03(c). The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person

would exercise under all the circumstances as viewed from the actor's standpoint. *Id.* Mere lack of foresight or thoughtlessness, however serious the consequences, does not suffice to constitute culpable recklessness. *Williams*, 235 S.W.3d at 751. Instead, recklessness requires the defendant to actually foresee the risk involved and to consciously decide to ignore it. *Id.* "Such a 'devil may care' or 'not giving a damn' attitude toward the risk distinguishes the culpable mental state of criminal recklessness from that of criminal negligence, which assesses blame for the failure to foresee the risk that an objectively reasonable person would have foreseen." *Id.* at 751–52. Those who are subjectively aware of a significant danger to life and choose, without justification, to engage in actions (or in some cases inactions) that threaten to bring about that danger have made a calculated decision to gamble with other people's lives. *Id.* at 752.

In Texas, the Administrative Code provides the minimum standard of care applicable to dentists. *See* Tex. Admin. Code Ann. § 108.7. In relevant part, § 108.7 requires a dentist to adhere to generally accepted protocols and/or standards of care for management of complications and emergencies, *id.* § 108.7(5)(D); not be negligent in the provision of dental services, *id.* § 108.7(9); and use proper diligence in the dentist's practice. *Id.* § 108.7(10).

### C. ANALYSIS

Appellant's indictment alleged that she committed the offense knowingly, and the trial court's jury charge included a separate instruction on a lesser-included offense for committing it recklessly. *See Gonzalez v. State*, 610 S.W.3d 22, 26 (Tex. Crim. App. 2020); *Hicks*, 372 S.W.3d at 654, 658; *see also, e.g., Gay v. State*, 235 S.W.3d 829, 832 (Tex. App.—Fort Worth 2007, pet. ref'd) ("[W]e hold as a matter of law that reckless bodily injury to a child by pinching or mashing his face is a lesser included offense of intentional or knowing bodily injury to a child

by pinching or mashing his face.”). The jury found appellant guilty of the lesser included offense. On appeal, appellant challenges the sufficiency of the evidence supporting the jury’s finding that she committed the offense with the requisite mental estate—i.e., recklessly.

Here, a hypothetically correct jury charge would instruct the jury that appellant is guilty of the offense if appellant recklessly by omission caused serious bodily injury to N.H. by failing to call 911 when appellant had a statutory duty to do so pursuant to Administrative Code § 108.7. *See* Tex. Penal Code Ann. § 6.03(c), 22.04; *Malik*, 953 S.W.2d at 240; *Hicks*, 372 S.W.3d at 654–57. The charge would further instruct the jury that appellant acted recklessly if she was aware of but consciously disregarded a substantial and unjustifiable risk that N.H. would suffer serious bodily injury if she did not call 911 and the risk was of such a nature and degree that its disregard constituted a gross deviation from the standard of care that an ordinary person would have exercised under all the circumstances as viewed from the appellant’s standpoint. *See* Tex. Penal Code Ann. § 6.03(c). Serious bodily injury means bodily injury that creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. *Id.* § 1.07(a)(46); *cf. id.* § 1.07(a)(8) (defining “bodily injury” as “physical pain, illness, or any impairment of physical condition”). While there is no direct evidence that appellant was subjectively aware of the risk of failing to call 911 and consciously ignored it, there is substantial circumstantial evidence, as discussed below, supporting the jury’s finding that appellant possessed the requisite mental state. *See Young v. State*, 358 S.W.3d 790, 802 (Tex. App.—Houston [14th Dist.] 2012, pet. ref’d) (“Direct evidence of the required mental state is not required. . . . Instead, the required culpable mental state may be inferred from the surrounding circumstances.”).

The State presented testimony from Roger Byrne, M.D. (“Dr. Byrne”), an oral surgeon, and Amy Arrington, M.D. (“Dr. Arrington”), an intensive-care-unit physician at Texas Children’s Hospital. Dr. Byrne testified appellant obtained a permit from the State Board of Dental Examiners for level two moderate enteral sedation and that a level two permit allows a dentist to use two medications by mouth, as well as nitrous oxide. According to Dr. Byrne, dentists who receive this certification have been taught about how medications work, what medications to use for certain situations, and what to do in the case of an emergency. In her application for the level two enteral sedation permit, which was admitted into evidence, appellant swore to the truth of the following statement: “I am responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies and providing the equipment and protocols for patient rescue. I understand that I must be able to rescue patients who enter a deeper state of sedation than intended and must be prepared to treat emergencies that may arise.” Appellant also swore in her application that “I hereby agree to abide by the laws and rules pertaining to the practice of dentistry and anesthesia and sedation in the State of Texas.”

The jury also received evidence that appellant was certified in Pediatric Advanced Life Support (“PALS”), which teaches medical professionals how to deal with complications and how to treat children should they experience a medical emergency in a healthcare environment. PALS “covers advanced assessment and stabilization techniques and approaches as well as resuscitation” and oxygen saturation. Dr. Byrne and Dr. Arrington explained that PALS requires the medical professional, when they recognize a problem, to seek medical attention and provide stabilization until the patient is transferred to a higher level of care, which consists of caring for the patient until the patient can be transferred to the hospital by

emergency medical services.

Lashontra Fields (“Fields”), an intern at appellant’s dental practice present on the day of the incident, testified that N.H.’s vitals were measured and recorded by a machine in the treatment room, which printed the results on a small sheet of paper. Fields also testified appellant monitored the readings of N.H.’s vitals and never left the treatment room while N.H. was in the room. Charles Jolley, the paramedic who responded on the day of the incident, testified that a pulse oximetry reads the amount of oxygen in a person’s blood and that a reading “below 94 is abnormal, but not necessarily problematic”; “[b]elow 90 is beginning to become problematic, and you would see differences in people”; and “below 80 . . . would require aggressive treatment” because “all organs require oxygenated blood, and without a continuous supply of rich oxygenated blood they’re less efficient and eventually the muscles will deteriorate around the organs.”

Dr. Byrne explained that N.H.’s seizures were caused due to her being in a hypoxic state and that long-term hypoxia causes brain damage. Dr. Arrington testified that: N.H. suffered hypoxic ischemic encephalopathy, a permanent brain injury from a lack of oxygen; a medical professional is obligated to call 911 if they do not have what is needed to take care of a seizing child; and the generally accepted protocol for the onset of a seizure outside a hospital setting is to call 911. According to Dr. Byrne and Dr. Arrington, based on appellant’s PALS certification, appellant was required to call for help and get N.H. to a facility capable of salvaging her life and brain. However, the jury received evidence that appellant instead waited five hours to call 911 after N.H. suffered her first seizure.

The jury also heard evidence that N.H.’s parents were allowed to access the treatment room shortly after N.H.’s first seizure, where they witnessed N.H. having what appeared to them to be a seizure. Allison Barfield (“Barfield”), appellant’s

office manager, testified she entered the treatment room around this time and that it also appeared to her that N.H. was having a seizure. Barfield asked appellant whether she should call 911, but appellant did not agree, instead responding “I’m the boss, and whatever happens is going to be all on me.” Barfield then informed N.H.’s parents of the situation and of their option to call 911, but represented to the parents, at appellant’s direction, that appellant had the situation under control. N.H.’s father asked appellant whether they should call 911, and appellant answered “no.” N.H.’s parents chose to trust appellant and did not call 911. Appellant instructed N.H.’s parents to wait in the waiting room, representing to them that N.H. would be “fine” and simply needed to rest.

Dr. Byrne and Barfield testified appellant administered Halcion around 11:35 a.m., an anti-seizure medication, to N.H. after appellant consulted with a pharmacist over the phone. Appellant also instructed Barfield to cancel all her other scheduled appointments for that day. We conclude the evidence supports a finding that appellant knew N.H. was having a seizure by 11:35 a.m. and consciously chose not to call 911. *See Winfrey*, 393 S.W.3d at 771; *Hooper*, 214 S.W.3d at 16.

Additionally, Dr. Byrne testified the machine monitoring N.H.’s vitals beeped around 11:51 a.m. and alerted appellant to N.H.’s oxygen level, which was measuring at zero. According to Dr. Byrne, the machine’s records indicated that N.H. remained in a hypoxic status for approximately three hours from 12:12 p.m. until 2:20 p.m., even though N.H.’s oxygen-level readings rose for a time and reached nonemergent levels. Fields testified the machine measuring N.H.’s vitals beeped during N.H.’s complications, indicating to appellant that something was wrong and that N.H.’s vitals were abnormal. Fields further testified that she witnessed N.H. have so many seizures that she lost count.

During this period, although appellant took actions to stabilize N.H. and provide her with some treatment and care, appellant also called her boyfriend and pastor to pray for N.H. to be okay and that “she comes through,” again supporting a rational inference that appellant was consciously aware of the danger and risk to N.H.’s health based on the circumstances. *See Winfrey*, 393 S.W.3d at 771; *Hooper*, 214 S.W.3d at 16. We conclude the evidence also supports a finding that appellant knew N.H. had dangerously low blood-oxygen levels and was having seizures *and* that these circumstances presented a substantial and unjustifiable risk that N.H. would suffer serious bodily injury if appellant did not call 911. *See Winfrey*, 393 S.W.3d at 771; *Hooper*, 214 S.W.3d at 16. Dr. Byrne testified that waiting five hours to call 911 and attempting to stabilize N.H. under these circumstances was a violation of appellant’s duty as a dentist in Texas, and Dr. Arrington testified appellant fell below the standard of care by erroneously failing to transfer N.H. to a facility with a higher level of care, in contravention of the standard of care a dentist is supposed to provide to a patient. *See Williams*, 235 S.W.3d at 753–55.

The jury also received evidence that appellant was an experienced dentist, having been licensed for thirteen years, and that she was reprimanded in 2012 by the Board of Dental Examiners for overly sedating a child patient. The settlement agreement from that reprimand required appellant to complete continuing education courses on the pharmacology of oral sedatives and pediatric sedation. Based on all of the evidence, the jury could infer that appellant knew the standard of care—if a patient suffered from seizures, then she should immediately seek emergency medical attention—but appellant chose to disregard that standard. Her trainings and certifications provided instructions to reduce the very risk to N.H. that appellant created by her actions and inactions that day, but appellant instead

engaged in actions and inactions that threatened to bring and did bring about that danger. *See Williams*, 235 S.W.3d at 751. There is evidence that appellant perceived the risk of serious bodily injury to be substantial because she was aware of N.H.'s seizures and blood-oxygen levels, sought help from a pharmacist, attempted to provide medication for a seizure, prayed that N.H. would be okay, instructed Barfield to cancel all of her appointments for that day, took actions in contravention to what she had been taught and trained to do in such a situation, minimized the situation to N.H.'s parents, and attempted to hide information from the investigation into the events. Appellant, however, chose to consciously ignore the risk of serious bodily injury to N.H. and instead chose to keep N.H. in her office and hope that no harm resulted from her actions, exposing N.H. to an unjustifiable and substantial risk of harm. *See Tex. Penal Code Ann. § 6.03(c)*. The evidence supports a finding that appellant's actions were more than a mere lack of foresight or thoughtfulness and were consistent with a "devil may care" or "not giving a damn" attitude that distinguishes the culpable mental state of recklessness. *See Williams*, 235 S.W.3d at 751–52.

In sum, the record contains evidence that: appellant failed to call 911 after N.H.'s first seizure, despite suggestions to the contrary from Barfield and N.H.'s parents; appellant instead called a pharmacist and administered an anti-seizure medication to N.H., despite having received training and certifications instructing her to call 911; after this medication proved unhelpful and with N.H.'s blood-oxygen levels indicating she was hypoxic, appellant called a pastor to pray and continued to monitor N.H. and attempt to stabilize her, waiting hours before calling 911; when N.H.'s body temperature climbed due to the low oxygen in her body, appellant chose to lower the air conditioning and wash N.H. with cold water and towels, again failing to call 911; and after N.H. suffered additional seizures,

despite knowledge that N.H.’s oxygen levels were regularly reading at dangerously low levels, appellant did not call 911 but instead took other actions. Each of these was the result of a conscious decision by appellant with knowledge that N.H. was exposed to a substantial and unjustifiable risk of suffering serious bodily injury if she did not call 911. *See* Tex. Penal Code Ann. § 6.03(c). The jury could have used its common sense to determine that N.H.’s condition—her persistent low oxygen readings during a five-hour period while suffering from seizures—presented a substantial risk of serious bodily injury to N.H. without emergency care, that appellant was subjectively aware of this risk, and that appellant consciously disregarded it. *See id.* §§ 6.03(c), 22.04(a)(1); *Baltimore v. State*, 689 S.W.3d 331, 342 (Tex. Crim. App. 2024) (“Juries may use common sense, common knowledge, personal experience, and observations from life when drawing those inferences.”); *Taylor v. State*, 550 S.W.2d 695, 697 (Tex. Crim. App. 1977) (“The evidence is sufficient to show that when the two young men were bound and gagged and left on the freezing floor inside the locker there was a substantial risk of serious bodily injury . . . .”); *Johnston v. State*, 150 S.W.3d 630, 636 (Tex. App.—Austin 2004, no pet.) (“C.T.’s sickly appearance, distended abdomen, and inability to hold himself up or hold down food and water for several days all provide ample evidence to support a jury’s determination that Mr. Johnston was aware that the failure to provide medical care was reasonably certain to cause serious bodily injury to C.T.”).

The jury’s finding is further supported by evidence showing: (1) appellant’s attempts at minimizing N.H.’s condition to her parents, while at the same time calling a pharmacist for assistance, cancelling all of her appointments for that day, administering anti-seizure medication, and praying; and (2) appellant’s subsequent efforts at attempting to hide evidence from the investigation of the incident. *See*

*Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) (noting that attempts to conceal incriminating evidence are probative of wrongful conduct and is a circumstance of guilt). According to Fields, appellant instructed Fields after the incident that she did not know anything and did not see anything, telling Fields that Fields “flip[ped] rooms, that’s pretty much all you did, that’s all you know.” Fields further testified State investigators visited appellant’s practice the day after N.H. suffered her injuries, but Fields never gave a statement to them because she was instructed “to go to the breakroom.” In her application for a level two enteral sedation permit, appellant swore she is aware that she must “report any adverse occurrences related to the use of sedation.”

From the combined and cumulative force of all the evidence presented in this case, *see Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016) (stating that in an evidentiary sufficiency review, the appellate court must consider “all of the evidence” and “the cumulative force of all the incriminating circumstances”), and the reasonable inferences from it, *Acosta v. State*, 429 S.W.3d 621, 625 (Tex. Crim. App. 2014) (recognizing that “the trier of fact may use common sense and apply common knowledge, observation, and experience gained in ordinary affairs when drawing inferences from the evidence”), the jury could have found beyond a reasonable doubt that appellant was actually aware of, but consciously disregarded, a substantial and unjustifiable risk that N.H. would suffer serious bodily injury if she did not call 911. *See Garcia v. State*, 667 S.W.3d 756, 764 (Tex. Crim. App. 2023) (“Viewing this evidence in its totality, the jury was free to apply its own common sense and knowledge of this type of injury to conclude that, absent timely medical treatment to control bleeding and clean and repair the wounds, Melendez would have faced a substantial risk of death. There is nothing speculative about permitting the jury to draw these reasonable inferences

under the circumstances of this case.”); *Nowlin v. State*, 473 S.W.3d 312, 317 (Tex. Crim. App. 2015) (“[W]here the inferences made by the factfinder are reasonable in light of the cumulative force of all the evidence when considered in the light most favorable to the verdict, the conviction will be upheld.” (quoting *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012))); *Young*, 358 S.W.3d at 802 (“If the actor was aware of the risk she was creating, and consciously disregarded that risk, however much she may have hoped that no harm would result, she was acting recklessly.”); *see also Payton v. State*, 106 S.W.3d 326, 330 (Tex. App.—Fort Worth 2003, pet. ref’d) (holding evidence was legally sufficient that defendant, who had emergency medical training, recklessly caused child’s injury when he failed to obtain reasonable medical care for his grandson who was experiencing visible signs of medical distress). The jury could have formed reasonable inferences and used its common sense to determine that a dentist’s failure to call 911 for hours when a child patient is suffering from seizures and in a hypoxic state, given the dentist’s training and experience indicating that the dentist understood the seriousness of the patient’s conditions and vitals, was reckless as needed to support the mental state for a conviction for recklessly causing injury to a child by omission. *See Baltimore*, 689 S.W.3d at 342; *Hooper*, 214 S.W.3d at 16. Viewing the evidence in the light most favorable to the jury’s verdict, we conclude there is legally sufficient evidence supporting its finding that appellant acted recklessly. *See Jackson*, 443 U.S. at 319; *Isassi*, 330 S.W.3d at 638.

Appellant argues there is no evidence that she acted recklessly because: (1) N.H.’s parents did not disclose N.H.’s underlying health conditions, and thus she was treating N.H. under the mistaken belief that she was a healthy child; and (2) she consulted with a pharmacist, who incorrectly advised her to administer a medication, and thus she “administered what she thought was an appropriate

remedy and then waited for it to take effect.” Contrary to appellant’s argument, N.H.’s mother and her pediatrician, Robert Henry, M.D., testified that N.H. did not have any underlying conditions or seizure disorder at the time of the incident, despite having a heart murmur and hypoglycemia at birth. Furthermore, Dr. Byrne testified that appellant was responsible for N.H.’s care, not the pharmacist, due to appellant being the dentist in charge of N.H. in the treatment room, and there is evidence supporting a reasonable inference that appellant knew that calling a pharmacist for advice was not an appropriate course of action given the circumstances. As the sole the judge of the witnesses’ credibility and the weight afforded to the evidence, the jury was free to disbelieve appellant’s claims and instead believe that N.H. did not have any underlying medical conditions at the time of her injuries, that appellant knew she was responsible for the decisions concerning N.H.’s care in the dental office’s treatment room, and that appellant knew consulting with a pharmacist for treatment and advice was an inappropriate response to the circumstances. *See Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 899; *Clayton*, 235 S.W.3d at 778.

Finally, appellant argues the evidence is legally insufficient because the injury-to-a-child-by-omission statute applies only to a child’s parents and guardians but not to professionals like herself. Contrary to appellant’s arguments, the statute’s plain language contains no such limitation and instead explicitly provides that it applies to anyone under a legal or statutory duty to act, not just parents or guardians. *See Tex. Penal Code Ann. § 22.04(b)*; *see also Hawkins v. State*, 891 S.W.2d 257, 259 (Tex. Crim. App. 1994) (holding that no “familial relationship” “is necessary to show a legal duty to act” under Penal Code § 22.04(d) and upholding conviction for injury to a child by omission). Further, the statute’s plain language provides defenses for medical professionals, implicitly

acknowledging it applies to medical professionals like appellant. *See* Tex. Penal Code Ann. § 22.04(a)–(d), (k).

We overrule appellant’s issue on appeal.

### **III. CONCLUSION**

We affirm the trial court’s judgment.

/s/ Chad Bridges  
Justice

Panel consists of Justices Wilson, Bridges, and Boatman.  
Publish — Tex. R. App. P. 47.2(b).