

LANDMARK MEDICAL LIABILITY REFORMS REMAIN INTACT

For the eighth successive legislative session, Texas's 2003 medical liability reforms emerged unscathed. Most importantly, we defeated a bill that would have indexed the non-economic damage cap and preserved willful and wanton protection for doctors and nurses treating patients with emergency conditions.

This session was the most challenging and gratifying since 2003. Challenging because we were confronted with several troublesome bills, including some filed by Republicans. Gratifying, because we were equal to the challenge by working together with trust, integrity, forward-thinking, and fair-mindedness.

A NEW POLITICAL REALITY

With the passage of each legislative session, the number of members who served at the original passage of the Texas medical liability reforms dwindles. This year, the Legislature counted 33 new members and included a House of Representatives with a composition of 83 Republicans and 67 Democrats. The balance of power between political parties is more evenly split now than any other time since 2009. Our charge going forward is to recognize this change and meet it with our message of the benefits that have accrued to Texas patients as a result of the reforms.

VERY BUSY AND SUCCESSFUL SESSION

The most troublesome bill we faced sought to change the long-standing willful and wanton standard, which protects doctors and nurses that treat patients in emergency conditions. Companion bills (HB 2362/SB 2378) were filed in the House and Senate that would have drastically altered these critical protections. The House bill had the support of a former Republican senator and conferee on the original 2003 reforms-- who testified on its behalf.

The House bill was voted out of committee in a form that was not acceptable to the TAPA membership. Work on the bill by the TAPA membership and lobby team led to the preservation of the willful and wanton protection for all physicians and healthcare providers who did not negligently cause a stable patient to suffer an emergency condition. The final agreement TAPA crafted with legislators and the Texas Trial Lawyers Association removes the existing emergency care willful and wanton standard in only very limited circumstances: (1) when the patient's treatment is unrelated to a medical emergency and (2) when a physician or healthcare provider's negligent act or negligent omission proximately causes a stable patient to require emergency medical care.

The agreed language protects those that did not cause the emergency, including those that run to a patient at the onset of an emergency to try and save them. Additionally, HB 2362 protects the willful and wanton standard for health care providers treating a pregnant woman that presents directly to the obstetrical suite in an emergent condition. What we lose is a small part of the expanded protection for obstetricians granted in the Wilson ruling, which was never intended by the 2003 Legislature.

TEAM EFFORT

We thank the TAPA board for their diligence in finding agreeable language as well as the chair and members of the Emergency Care ad hoc Committee for building consensus around a complicated

and emotionally charged issue. Our thanks go to the Texas Medical Association and Texas Hospital Association advocacy and legal teams for your input and expertise.

Our TAPA General Counsel skillfully negotiated the agreed language, and our lobby team ushered the acceptable language through the legislative process.

The agreed language in the emergency care bill relinquishes none of the protections granted by the 2003 Legislature, and in fact, stipulates two new protections.

In all, we tracked 79 priority bills during the session, seven of which we viewed as harmful. Two of the measures that we initially opposed were amended to our satisfaction. The other five were defeated. **No bill was passed over our objection.**

Additionally, we achieved several legislative victories that will provide significant liability protections to our members. These wins include a HIPAA compliant medical authorization, a change in the timeline for contesting the appropriateness of medical bills, and a bill that reigns in deceptive advertising of legal services regarding prescription drugs.

TAPA SESSION HIGHLIGHTS

SB 1565 - Relating to the medical authorization required to release protected health information in a health care liability claim. Provides a state and federally blessed, HIPAA-compliant form for everyone - plaintiff and defense, physician, health care provider, and insurer - that is universally recognized as the official form. **Passed.**

HB 1693 - Relating to affidavits concerning cost and necessity of services. Amends Texas statutes relating to medical expense affidavits. These affidavits have a timeline under current law that is advantageous to plaintiffs and unfair to defendants. HB 1693 moves the defendant's deadline closer to trial, so they can evaluate the damages in the case before they have to controvert the plaintiff's medical records affidavit. **Passed.**

SB 1755 - Relating to the status of certain medical residents and fellows as governmental employees for purposes of the Texas Tort Claims Act. The bill gives medical residents and fellows at state medical schools the same liability protection as other state employees under the Texas Tort Claims Act. **Passed.**

SB 752 - Relating to liability of volunteer health care providers and health care institutions for care, assistance, or advice provided in relation to a disaster. New law extends liability protection for volunteer health care professionals and the facilities that sponsor the care or assistance in the wake of a manmade or natural disaster. **Passed.**

SB 1189 - Relating to certain deceptive advertising of legal services. Imposes requirements on televised advertisements for legal services regarding prescription drugs designed to curb advertising by attorneys that is sometimes misleading and often inflammatory. **Passed.**

HB 770 - Relating to the establishment of an electronic database for settlement agreements for certain suits involving minors or incapacitated persons. Requires the Office of Court Administration to

create a database for settlement agreements if the beneficiary is a minor or a person who is incapacitated in order to promote privacy and safekeeping of such agreements in the interest of justice. **Passed.**

HB 765 - Relating to liability limits in a health care liability claim. Would have immediately raised the non-economic damages cap level to \$342,265 with steadily rising costs to follow. **Failed to Pass.**

SB 2089 and SB 2129 - Relating to advance directives or health care or treatment decisions made by or on behalf of patients and Relating to advance directives and health care and treatment decisions. Both bills sought to weaken the Advance Directives Act by negatively altering the dispute resolution process. **Failed to Pass.**

HB 649 - Relating to disclosures by liability insurers and policyholders to third-party claimants. Would have required disclosure by liability insurers and policyholders to third-party claimants on the nature and extent of insurance coverage. **Failed to Pass.**