

TAPA NEWS & NOTES

The Official Newsletter of the Texas Alliance for Patient Access

April 2024



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TAPA is an Advocate for Texas Medical Providers

Texas Alliance for Patient Access is an association of over 250 health care interests providing medical care to Texas residents and services to Texas medical providers. Its members include physicians, hospitals, nursing homes, long-term care facilities, physician groups, physician/hospital liability carriers, and charity clinics, as well as other entities that have an interest in assuring timely and affordable access to quality medical care. TAPA seeks to improve access to health care by supporting meaningful and sustainable health care liability reforms.

TAPA's sole means of support comes from member paid dues and donations. Please pay all unpaid 2023 dues as quickly as possible as 2024 dues statements are currently being forwarded to all members.

If you are interested in joining TAPA or need TAPA to provide information on the benefits of Texas medical liability reforms, including in-person or virtual presentations, please email our executive director Brian Jackson at bjackson@tapa.info.



Two-Roads Diverged: New York & Texas

Change in Annual Premiums Since 2003



Source: Analysis of rates and premiums charged by Medical Liability Mutual Insurance Company and Texas Medical Liability Trust (The largest physician liability carriers in New York and Texas)



The Texas Supreme Court's decision in Marsillo v. Dunnick

The Texas Supreme Court ruled in favor of emergency room physician Dr. Kristy Marsillo on January 11, concluding the plaintiff failed to produce evidence that her treatment of a snakebite was willfully and wantonly negligent, the required standard of proof in an emergency care case. TAPA and its members were heavily involved in this case after the Austin Court of Appeals ruled against Dr. Marsillo and she appealed the case to the Texas Supreme Court.

Thirteen-year-old Raynee Dunnick presented to Seton Medical Center Hays in Kyle with a rattlesnake bite on her left foot. Dr. Marsillo immediately implemented the hospital's snakebite treatment plan. After Raynee's condition gradually worsened, Dr. Marsillo infused her with antivenom. Raynee's condition improved and she was released from the hospital the following day.

The Dunnick's sued Dr. Marsillo alleging that she should have started the antivenom infusion sooner, and that her failure to do so caused further complications, including permanent injury. The family sought one million dollars in damages.

The trial judge initially dismissed Plaintiff's case and ruled the Dunnick's failed to introduce credible evidence of willful and wanton negligence, the required threshold in an emergency care case. The Austin Court of Appeals overruled the trial judge and reinstated Plaintiff's lawsuit, holding that there was a "possibility" that Dr. Marsillo knowingly proceeded with a treatment plan that put the patient in danger. Dr. Marsillo then appealed to the Texas Supreme Court.

The Texas Supreme Court agreed with TAPA, its members, and Dr. Marsillo, overturning the Court of Appeals' ruling and dismissing Dunnick's lawsuit.

TAPA filed an amicus brief with the Texas Supreme Court and asked that the trial court's dismissal of Plaintiff's case be re-instated. TAPA members Texas Hospital Association, Texas Medical Association, and the Texas Osteopathic Medical Association all joined in TAPA's amicus brief. The Texas College of Emergency Physicians, another TAPA member, submitted an independent amicus brief on Dr. Marsillo's behalf.

The Texas Supreme Court agreed with TAPA, its members, and Dr. Marsillo, overturning the Court of Appeals' ruling and dismissing Dunnick's lawsuit. This ruling is important for all physicians and nurses that work in emergency departments because it confirms that Plaintiffs must prove they were victims of willful and wanton treatment in order to prevail in a medical malpractice lawsuit involving emergency care.

The Willful and Wanton standard is a crucial aspect of the medical liability reforms TAPA lobbied to pass in 2003 because it recognizes that physicians, nurses and hospitals that treat patients with emergency conditions are often forced to make life-saving decisions in an instant. There isn't time to obtain a patient's complete medical history, conduct a physical, or order lab studies. The clock is ticking and life-saving treatment is needed immediately. As such, heightened protections from lawsuits are appropriate and necessary. TAPA is proud to have played a role in confirming those protections in the *Marsillo* case.

TAPA tells Florida about the benefits of Medical Liability Tort Reform

At the invitation of the Florida Justice League and other Florida healthcare interests, TAPA travelled to Florida on several occasions earlier this year to talk about the benefits of medical liability tort reform, focusing on Texas cap on non-economic damages. Florida previously had caps on non-economic damages but the Florida Supreme Court declared those unconstitutional in 2015, resulting in Florida having one of the worst climates for medical liability in the Nation. Their crisis is impacting access to care and TAPA was asked to help educate Florida lawmakers about the benefits of reasonable medical liability reform.

In addition to presentations at the Florida Chamber of Commerce and meetings with more than 10 Florida legislators, TAPA Executive Director Brian Jackson also testified before the Florida Senate to explain how enacting reasonable



medical liability reforms resulted in an influx of physicians to Texas and an increase in access to healthcare. Tampa news stations and other publications ran news reports on TAPA's

testimony and for a time, a bill to enact a cap on non-economic damages seemed to be making its way through Florida's legislative process. Florida trial lawyers managed to kill the bill late in the session but hopefully TAPA raised awareness of the important relationship

between medical liability reform and patient access to care.

TAPA's time in Florida was a great reminder of the importance of preserving medical liability reform in Texas. Returning to the days of no caps, no reforms and no access to care isn't an option and TAPA needs help in making sure that doesn't happen.

TAPA's fight for truth in reporting

This Dallas Morning News headline illustrates how Plaintiffs are once again working to eliminate the non-economic damages cap.

The price of a life: Congresswoman's death is drawing attention to Texas malpractice cap

With a \$250,000 limit in Texas, lawyers are skeptical of taking medical malpractice cases.



TAPA constantly battles inaccuracy in the news and the headline above prefaced an inaccurate story about the Texas non-economic damages cap in medical liability cases. Although we are always available to give accurate information and constantly reach out to reporters when these stories are published, the best way to combat these efforts is to educate Texas lawmakers. Membership dues result in TAPA having the resources to educate those that make decisions about Texas medical liability laws. **Join! Donate! And help spread the word!**



TAPA Upcoming Events

1. **April 20:** TAPA will speak on tort reform at the Texas College of Emergency Physicians annual meeting, also known as CONNECT 2024, at Lake Conroe.
2. **April 26:** TAPA will speak at the Texas Medical Liability Trust Board meeting in Austin on the benefits of preserving medical liability reform.
3. **May 2:** TAPA will speak on medical liability reform benefits at the annual meeting of the Florida Hospital Association Board of Directors in Orlando, FL.
4. **May 16:** TAPA will speak in Odessa, TX on the benefits of medical liability reform to CEO's and Board members from more than ten hospitals in that area.
5. **May 24:** TAPA will present to all area school nurses in Parker County, TX (Weatherford) regarding nursing liability and medical liability reform.
6. **July 10:** TAPA is headed back to Lake Conroe for the annual meeting of the Texas Hospital Insurance Exchange Board of Directors to speak on the benefits of preserving medical liability reform.
7. **July 25:** TAPA will attend the Texas Hospital Trustees Meeting in San Antonio and meet with hospital board members from across Texas re: the benefits of medical liability reform.
8. **August 9:** TAPA will speak at the TMDA conference in Grapevine to educate physicians serving as nursing home medical directors on the benefits of tort reform.

THERE ARE STILL OPEN DATES... IF YOU HAVE A MEETING OR CONFERENCE AND NEED AN INFORMATIVE/ENTERTAINING PRESENTATION... Email Brian Jackson at bjackson@tapa.info

*Until next time... **Join!** Pay your dues! Spread the word!*