

# TAPA NEWS & NOTES

The Official Newsletter of the Texas Alliance for Patient Access

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## Recap of TAPA's Annual Meeting

On November 8, 2024, TAPA members attended the 2024 TAPA annual meeting. The meeting is an annual event that focuses on the benefits of tort reform, the efforts/challenges to preserve it, and impactful events in the courts and in the legislature that need our attention. If you have never attended a TAPA Annual Meeting, you should put it on your organization's bucket list. In-person and virtual options are both available, and many members host watching parties in their conference rooms where staff and board members can either watch the entire event or come and go as needed. This year's program included:

PBS host Evan Smith providing in-depth analysis of the 2024 election, including an overview of the Presidential election and Texas voting trends. Since an elected official's political party affiliation is an indicator as to support/opposition of tort reform, this analysis is always extremely beneficial.

Robert Howden, Senior Advisor and Director of Legislative Affairs for Texas Governor Greg Abbott, gave great insight into the Governor's plans for the upcoming legislative session and their support for medical liability reforms. Mr. Howden stressed that tort reform is important to physician growth and patient access to health care.

William Large from the Florida Justice Reform Institute gave an insightful look into what happens when states lose medical liability reforms. He explained that after Florida lost their cap on non-economic damages 9 years ago, there has been a dramatic rise in nuclear verdicts resulting in Florida physicians paying 400-500% more for medical liability insurance than Texas physicians. These costs have resulted in fewer physicians wanting to practice in Florida and a crisis in patient access to medical care.



**Evan Smith**  
PBS Host, "Overheard with Evan Smith" Founder  
Texas Tribune Former Editor/President Texas Monthly



**Robert Howden**  
Senior Advisor  
Legislative Director  
Office of Texas Governor Greg Abbott



**William Large**  
President, Florida Justice Reform Institute



## On the Courthouse Steps

*TAPA also monitors and intervenes in court cases to further protect tort reform.*



***Patricia Martin v. Methodist Health Centers d/b/a Houston Methodist Willowbrook and Diego C. Marines Copado, M.D.*** involved a medical malpractice claim based on the physician's failure to timely diagnose rectal cancer. The trial court ruled that Plaintiff's original expert report was inadequate and verbally granted Plaintiff a 30-day extension to address inadequacies in the report. However, Plaintiff did not file a new report during the 30 day extension and a second hearing for dismissal took place, wherein Plaintiff argued that the 30 day clock had not begun because the Court had not issued a written order granting the extension. The trial court took her argument under advisement and did not issue a ruling. Plaintiff subsequently did not prepare an Order granting a 30 day extension nor did she contact the Court's office about having the Judge sign one. Ten months later, she finally filed an amended expert report. The trial court dismissed the case at that point stating that the new report was not filed timely. The court of appeals upheld the dismissal and ruled that although the clock on a thirty-day extension does not begin to run until a written order is signed, Plaintiff waived her right in this instance by failing to either secure a written order or make any definitive filing requesting that one be signed. TAPA supports the Court on this ruling.

***Maurice N. Leibman, M.D. v. Cleveratta Waldroup and James Waldroup, Individually and As Next Friends of R.W., a Minor*** is unique case of first impression. It involves serious injuries to a child that resulted from a pit bull attack in a restaurant. The pit bull was wearing a "service dog" vest and belonged to another restaurant customer. The child's parents understandably sued the pit bull's owner, but they also sued the dog owner's gynecologist, who had written at least 3 letters on behalf of the pet owner asserting that she needed the animal for her generalized anxiety disorder. The pet owner used those letters to avoid eviction from her apartment, and the gynecologist even mentioned the pit bull by name in one letter where he advocated that the dog was beneficial for the owner's anxiety order. The gynecologist filed a motion to dismiss the lawsuit because Plaintiff did not file a medical



expert report. The trial court and Court of Appeals both refused to dismiss the case saying it wasn't a medical liability case, and the Texas Supreme Court is now considering the matter. If this is a medical liability case, what kind of expert report should be filed? Does it have to be from a gynecologist? Is there a medical standard for qualification of a service animal? And what duty did the physician owe the child who was bitten? At the same time, the physician did vouch for the pit bull's behavior and claimed that the dog was "certified," though no such certification exists. It is interesting and although TAPA has not intervened on this case, we are monitoring the file.

# Preparing for the 89th Regular Legislative Session

A big part of TAPA's efforts to preserve tort reform involves work at the Texas Legislature to evaluate bills and advocate for/against them depending on their impact on medical liability reform. TAPA is currently preparing for the 89th Regular Session of the Texas Legislature, which is set to kick off on January 14, 2025. For the 22nd consecutive year, TAPA will be at the Capitol daily to advocate on behalf of Texas physicians, nurses, medical clinics, hospitals, and long term care facilities.

Many bills have already been filed, and although it is too early to determine which bills TAPA will support or oppose, the following is a list of a few of the bills that we are monitoring. Always feel free to email TAPA's Executive Director with thoughts on pending legislation ([bjackson@tapa.info](mailto:bjackson@tapa.info)).

**HB 216 by Harris Davila (R-Round Rock):** Subjects a health care provider to disciplinary action by the appropriate licensing board for failure to send a hard copy of an itemized bill to a patient who has not created a patient profile in a portal used to issue electronic bills.

**HB 607 by Flores (D-Austin):** Prohibits a health care provider from refusing to provide a health care service to a patient on the basis of the patient's age, race, disability, immigration status, sex, sexual orientation, or gender identity or expression. Bars a violator from receiving state funds.

**HB 923 by Hernandez (D-Addison):** Increases the size of the Texas Medical Disclosure Panel from 9 to 11 members, at least one of which must be a person board certified in personal injury trial law. Bars the appointment of a registered lobbyist, a health care provider or a provider's spouse, or a person who works in a health-care related field, including insurance.

**HB 997 by Shaheen (R-Plano)/SB 471 by Sparks (R-Midland):** Requires a telemedicine or telehealth provider licensed or certified in another state to register with the appropriate Texas licensing agency. Requires the provider to comply with the laws of Texas, maintain liability insurance as required by Texas law, consent to the jurisdiction of state courts, and be subject to disciplinary action by the appropriate Texas licensing agency.

**HB 1199 by Manuel (D-Port Arthur):** Requires nursing facilities and assisted living facilities to install an operational emergency generator or comparable emergency power source and a sufficient amount of fuel to operate the generator or power source for 72 hours.

**HB 1467 by Lalani (D-Sugar Land):** Authorizes TDEM to impose an administrative penalty on an assisted living facility that fails to file a health and safety plan. Requires facilities to prepare, maintain, and annually update a health and safety policy and plan and annually file the plan with TDEM and



*The Texas Alliance for Patient Access (TAPA) 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, 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.*



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each local government agency responsible for emergency response services.

**SB 120 by Hall (R-Edgewood):** Requires a hospital to allow a physician who is not a member of the hospital's medical staff to provide care or treatment to a patient at the hospital at the patient's request. Provides that a hospital is not liable for damages resulting from treatment provided by a non-staff physician. Does not provide immunity for other hospital providers acting under the direction of a non-staff physician.

**SB 82 by Hall (R-Edgewood):** Adds § 95.0002, CPRC, to impose strict liability on a person with control over the premises of a business for third party criminal acts on the premises if the person posts a sign prohibiting a person from carrying a concealed handgun on the premises.

There have also been several bills filed to create a non-economic damages cap for all personal injury cases, which TAPA certainly doesn't oppose unless those caps will supersede the present caps in medical liability cases.



## In the “News”

TAPA always battles public opinion on the issue of tort reform because Plaintiffs’ attorneys spend millions to try and convince the public and elected officials that there should be more ways to sue healthcare providers. And since those attorneys keep an average of 40% of all money recovered in medical cases as their fee, they also campaign for ways to increase medical malpractice payouts. The press is often either a gullible mark or willing participant in these campaigns, so it was no surprise when Texas Monthly published “A Mother’s Death Highlights Texas Broken Medical System” in December. The magazine erroneously reported that all Texas medical cases have a cap of \$250,000 on non-economic damages, which is untrue since the total cap is \$750,000. A responsible reporter would have contacted someone from the other side, who would have quickly explained

*Texas Monthly magazine erroneously reported that all Texas medical cases have a cap of \$250,000 on non-economic damages, which is untrue since the total cap is \$750,000.*

that the cap is made up of 3 separate \$250,000 buckets, and that most cases access more than one bucket. But accuracy, fairness and unbiased reporting seem to be rare these days. This is the type of in-accurate and emotional plea TAPA battles on its members’ behalf.

To the contrary, the Roswell Daily Record in New Mexico published a fact-based article on the crisis patients and health care providers face in that State because Plaintiff’s attorneys regularly obtain nuclear verdicts. If you have a chance, google “New Mexico’s Malpractice Goldrush” and read about what happens when sensible liability reform isn’t the law. New Mexico’s failure to pass medical liability reform has resulted in the crisis described by the Roswell newspaper, and Texas must reject the policies and laws that cause Florida and New Mexico so much suffering.

## TAPA Upcoming Events

- January 14:** The start of Texas 89th Legislature.
- March 12-13:** TAPA will speak at THIE’s Hot Topics Conference in Georgetown.
- June 2:** The 89th Legislature ends.
- August 1:** TAPA will speak at the TMDA conference in Austin.

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*If you are a current or potential TAPA member and believe your staff, board, or meeting attendees would benefit from an in person or virtual presentation on the importance of medical liability reforms, the status of those reforms in the courts, and/or the outlook at the Texas Legislature, please contact us at [bjackson@tapa.info](mailto:bjackson@tapa.info). We greatly appreciate those opportunities.*