



An Early Look at 89th Regular Legislative Session

The Texas Legislature is going to look very different in 2025, especially the House of Representatives. November elections are yet to come and we already have at least thirty-two new members in the House, with most of the turnover coming from the Republican side of the aisle. Twenty-four Republican House members from last session will not be back, due to retirement or primary/runoff election losses.

Last session, Governor Abbot made it clear that the issue of private school vouchers, also referred to as “school choice”, was one of his top priorities. In fact, he called a 4th special session on that issue, but never tallied enough votes to get a bill out of the House. That may change this upcoming session.

There were twenty-one Republican holdouts on the school choice issue in the last called special session. Of the twenty-one, five retired and nine lost their primaries, meaning that fourteen of the twenty-one Republicans that opposed the Governor’s school choice bill will not be back. This could result in a 14-vote swing, which would be enough for Governor Abbot to finally prevail on that issue.

What does this mean for TAPA? TAPA takes no position on school choice or any other issue that isn’t related to medical liability. But the number of new faces in the House means there are lots of new members to educate on the importance of medical liability reform. Our task seems even more daunting when you realize that of the 150 members that will make up the House of Representatives in 2025, only EIGHT of them were in office when tort reform passed in 2003. That’s right...only EIGHT were there in 2003 and hopefully remember the healthcare liability crisis that necessitated the passage of our current tort reform laws.

We know the Plaintiffs’ lawyers are working harder than ever to eliminate or at least dramatically raise the cap on non-economic damages (see pg 4 of this newsletter). And they will attack other areas of our previously passed reforms as well, including protections for medical schools and hospital districts contained in the Texas Tort Claims Act, causes of action related to new Federal staffing requirements for Long Term Care Facilities, and LTC liability insurance requirements. Every session our opponents propose legislation to allow the filing of more lawsuits. In 2023, there were sixty-one bills filed that would have created new ways to sue healthcare providers. Only two passed, with TAPA eliminating the other 59 and making sure that the two that passed were reasonable and not burdensome. We anticipate more of the same.



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On the Courthouse Steps

Texas Supreme Court rules that Plaintiffs cannot recover non-economic damages in a negligent sterilization case.

In *Michael R. Noe, M.D., Individually and d/b/a Sun City Women's Health Care v. Grissel A. Velasco* (May 2024), Plaintiff sued because she became pregnant and delivered her fourth child even though she had allegedly undergone a tubal ligation procedure during the delivery of her 3d child, which she paid for and was reflected as done in her medical records. However, the physician did not actually perform the procedure, resulting in an unexpected pregnancy and delivery of a fourth child. The Texas Supreme Court ruled that parents “cannot recover the economic costs after birth of raising a healthy child who resulted from an unplanned pregnancy,” even if the pregnancy resulted from a physician's negligence in failing to perform a sterilization procedure that would have avoided the pregnancy. Parents may, however, recover “the medical expenses associated with the failed procedure that produced the healthy but unwanted child.” In summary, the parents are entitled to be reimbursed for what they paid for the sterilization procedure but are not entitled to any other damages.

Austin Court of Appeals once again rules that a suspect expert report is adequate.

TAPA and long-time member Texas College of Emergency Physicians recently pushed back on the Austin Court of Appeals in the Marsillo case, which we reported last newsletter. In Marsillo, the Austin Court issued a ruling that jeopardized vital emergency medicine protections for hospital emergency departments and the physicians/nurses that staff them. TAPA urged the Texas Supreme Court to overturn the Austin Court's ruling in Marsillo, which they fortunately did earlier this year. But the Austin Court of Appeals was back at it on April 30, 2024, in a tragic case involving a teenager's suicide. In *Shree Shrestha, M.D. and HMIH Cedar Crest, LLC d/b/a Cedar Crest Hospital & RTC v. Claudia Johnson, Individually and as Representative of the Estate of Tony Johnson, Jr.*, a 16-year-old boy, was admitted to Cedar Crest Hospital as a suicide risk. He had three prior suicide attempts, a history of depression, and several bruises on his body which he attributed to his father's abuse. He stayed in the hospital for five days and then within 24 hours of discharge, he tragically committed suicide. Decedent's mother brought a wrongful death claim against the treating physician

and the hospital, alleging negligence and gross negligence. The Defendants in the case objected to Plaintiff's expert report and argued that it failed to establish causation, specifically how they could have prevented the young man from committing suicide once he went home. Unfortunately, the Austin Court of Appeals overruled Defendants and found that Plaintiff's expert report was adequate (just as they did in the Marsillo case), holding that the report indicated six specific “breaches” of the standard of care and that each of the 6 proximately caused the suicide. One the breaches was a failure to establish a safe home environment. How were the Defendants supposed to establish a “safe home environment,” especially given the allegations of physical, emotional, and substance abuse in the home? This is a tragic and heartbreaking situation, but there is an old saying: “bad facts make bad law”. It still holds true. TAPA will closely monitor this case and assess potential involvement if it is appealed to the Supreme Court.

Texas Supreme Court upholds Pandemic Liability Act in Retroactivity Challenge.

TAPA worked closely with the Texas Civil Justice League and others to pass the Pandemic Liability Act in 2021, which created protections from liability for the treatment and/or transmission of COVID. A vital part of that Act was that it retroactively applied to all claims occurring from March 13, 2020 forward, even though the law wasn't passed until 2021. Plaintiffs filed suit claiming that the retroactive portion of the Act violated the retroactivity clause in Article 1, Section 16, of the Texas Constitution. If they had prevailed, the Act would basically be meaningless since most claims would have arisen during the period of retroactivity. The Texas Supreme Court ruled in *Luke Hogan, on behalf of himself and other individuals similarly situated v. Southern Methodist University, and other affiliated entities and individuals* (April 2024), that when the Legislature enacted the Pandemic Liability Protection Act in 2021, it served an overwhelmingly strong and valid public interest, and that the retroactivity clause complained of had never been previously construed literally, thereby dismissing Plaintiffs' case. Many thanks to our friends at the Texas Civil Justice League for their tireless efforts on this issue to protect not only healthcare interests, but all Texas businesses and schools.

Preparing to defend the non-economic damages cap while Plaintiffs' attorney ramp up the rhetoric

The Dallas Morning News once again served as a PR Firm for Plaintiffs' attorneys with yet another misleading article on the non-economic damages cap in medical malpractice cases. Recall that in our last newsletter we pointed out how the DMN published an article stating that Plaintiffs often couldn't find attorneys to take their case because the cap made it economically unfeasible. They were back at it on June 27 with another misleading article, portions of which are below:

The Texas cap outlines that in most malpractice cases, a person can win no more than \$250,000 against Texas physicians for their pain and suffering, per a 20-year-old state law and constitutional amendment backed by insurers and medical groups. It leads to Texans looking to sue over medical malpractice being turned away by trial lawyers because the allegations are too costly to litigate compared to how much can be won in court.

The rule has been touted as a way to shield doctors from baseless lawsuits, exorbitant verdicts and to keep them from fleeing the state, but malpractice attorneys say the ceiling short-changes victims and defers accountability.

In the upcoming legislative session, Weisbrod said he and the family plan to work across party lines to raise the caps to \$500,000, so it at least keeps up with inflation. Weisbrod said, "we have got to continue working so that those caps are changed, so that every Texan could get a more favorable result for the loss of their loved one and not just those that are related to a congresswoman."

TAPA has once again reached out to the DMN and asked to be contacted about these kinds of stories so that we can at least help them be more accurate when describing the law. Two articles within 5 months and the DMN has yet to report that the cap on pain and suffering is a stacked cap with a maximum recovery of \$750,000, and that most cases have a total pain and suffering limit of 500k, because the physicians and the hospital EACH have a 250k cap. These articles reinforce our need to be ever-present at the Capitol, so we can educate Legislators and dispel misleading newspaper articles.



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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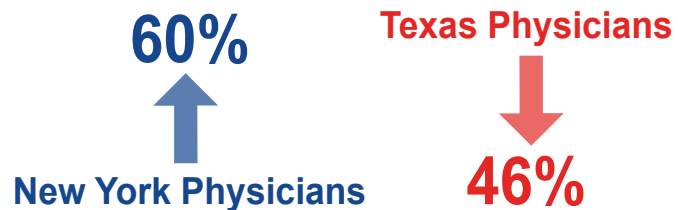
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Why is the cap on non-economic damages so important?

From 1989 until the cap was passed in 2003, jury verdicts for pain and suffering damages in Texas skyrocketed from an average of \$472,000 to over \$2,000,000 per case! As a result, Plaintiffs' Attorneys filed more medical cases looking to cash a lottery ticket. Increased verdicts and more cases to defend resulted in unbearable increases in insurance premiums. From 2000-2003, Hospital premiums increased from an average of \$430,000 to \$870,000. Long Term Care Facilities experienced a 900% increase. Physicians could no longer afford coverage. The 2003 Texas Legislature passed medical liability reform, the lynchpin of which was the non-economic damages cap, and premiums have DECREASED dramatically since.

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)



TAPA Upcoming Events

1. **July 10:** TAPA is headed back to Lake Conroe for the annual meeting of the Texas Hospital Insurance Exchange Board of Directors and will speak on the benefits of preserving medical liability reform.
2. **July 25:** TAPA will speak and attend the Texas Hospital Trustees Meeting in San Antonio, where more than 400 Hospital CEO's and their Board Members will learn about the benefits of good hospital governance and the benefits of medical liability reform.
3. **August 9:** TAPA will speak on the benefits of medical liability reform at the TMDA conference in Grapevine to collaborate and educate physicians that serve as medical directors and treat residents of Long-Term Care Facilities.
4. **September 11:** TAPA will speak to members of HCA and HCI at their Texas Regional meeting.

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.