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**T**exas 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, 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. TAPA uses funds from dues and donations to fight plaintiffs' attorneys efforts to eliminate our medical liability reforms, and that fight takes place in the Texas Courts, at the Texas Legislature, and in the court of public opinion. These reforms have resulted in more physicians choosing to practice in Texas and additional resources that charity clinics, hospitals, and long term care facilities use to increase access to patient care. Preserving these reforms is vital to maintaining access to medical care, especially for the poor, the elderly, and rural Texans.

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 at [bjackson@tapa.info](mailto:bjackson@tapa.info).





## ON THE COURTHOUSE STEPS

### The Texas Supreme Court ruling in *RENAISSANCE MEDICAL FOUNDATION v. LUGO*

**R**enaissance Medical Foundation (“RMF”) is a nonprofit health organization that employed Dr. Michael Burke, a neurosurgeon, to provide medical services to RMF patients. Rebecca Lugo filed a lawsuit against both RMF and Dr. Burke alleging that Dr. Burke committed malpractice and that RMF was vicariously liable for his negligence under the doctrine of respondeat superior.

RMF asserted in a motion for summary judgment that it was not vicariously liable for Dr. Burke’s negligence because RMF could not, by law and by contract, control the specific medical acts performed by Dr. Burke when he treated patients, thereby eliminating one of the essential elements Plaintiff must prove to prevail in a respondeat superior case. The trial court concluded that Dr. Burke’s employment agreement granted RMF sufficient control over him to satisfy all required elements and trigger vicarious liability. RMF appealed that ruling to the Court of Appeals.

The 13th Court of Appeals affirmed the trial court’s decision, holding that Dr. Burke was acting within the scope of his employment when he treated Lugo and that RMF was vicariously liable if he was proven negligent. RMF then appealed to the Texas Supreme Court, contending that Dr. Burke had complete autonomy when providing medical treatments and since RMF couldn’t control those medical

treatments, they were not vicariously liable for any negligence he may have committed.

The Texas Supreme Court decided in favor of Lugo and against RMF, but held that although this specific case failed to have evidence regarding whether the employer controlled the physician’s medical treatments, it wasn’t automatic that organizations like RMF were vicariously liable for the medical acts of their employed physicians. A case by case review was necessary to determine if the employer had control over the physician’s medical treatments and if that control interfered with the physician’s exercise of independent medical judgment.

Going forward, when a physician’s employer is sued because of an employed physician’s alleged negligence, vicarious liability will depend on whether the plaintiff can prove that an exercise of control over the alleged negligence would not interfere with the physician’s exercise of independent medical judgment. The Supreme Court specifically stated that “To aid courts in this inquiry, the parties can address, for example, (1) whether the employer has a right of control regarding the allegedly negligent acts or omissions of its physician employee that led to the alleged injury, and, if so, (2) whether an exercise of such control would interfere with the physician’s exercise of independent medical judgment.”



# TAPA'S RECAP OF THE 89TH TEXAS LEGISLATURE

The 89th Texas Legislature has ended. It was a long 140 days in which over 9000 bills were filed by Texas lawmakers. Thanks to support from our members, TAPA preserved every aspect of the healthcare liability reforms that were passed in 2003. Legislative highlights:

1. [We preserved the cap on no-economic damages](#) in lawsuits against physicians, nurses, and other healthcare providers in spite of a bill being pushed by two Republican House Members that would have increased the liability exposure of our members by 70%. Florida demonstrates the importance of caps, and after they lost their cap, Florida physicians now pay 400% more for malpractice premiums than Texas physicians. Preserving the cap was our priority.

2. [We prevented proposed laws from being passed that would have created new ways to sue our members.](#) We defeated bills that would have:

- a. Created significant civil & criminal liability for any person or entity that made a mistake on a DNR (do not resuscitate);
- b. Increased the number of Plaintiffs in lawsuits by adding siblings as beneficiaries under the wrongful death act;
- c. Awarded significant damages to parents who claimed their child received an unwanted vaccine, regardless of whether there was any injury;
- d. Created automatic liability for hospitals if any act of violence occurred and they prohibited guns on their premises; and
- e. Eliminated an important defense for medical schools, hospital districts and the physicians/employees that worked for them.

Summaries of some of the more critical pieces of legislation that TAPA opposed:

[House Bill 4036 - DEFEATED.](#) This Bill would have raised the non-economic damages cap in med-mal cases by almost 70% and then indexed it to the CPI.

[House Bill 2072 - DEFEATED.](#) This bill would have altered current law as to advanced directives, including elimination

of the statute of limitations AND providing that any person who “causes a patient’s death by withholding or withdrawing life sustaining treatment” in violation of the Texas Advanced Directives Act, was guilty of a 1st degree felony.

[Senate Bill 2516 - DEFEATED.](#) This bill would have eliminated interlocutory appeals based on sovereign immunity currently afforded physicians and their governmental entity employers.

[House Bill 2446 - DEFEATED.](#) This Bill provided that if a plaintiff’s medical bills totaled less than 50k, there was no requirement to prove those charges were reasonable or necessary, meaning every case would have least \$49,999 in medical bills.

[Senate Bill 953 - DEFEATED.](#) This Bill provided that any person could force the deposition of any other person prior to filing a lawsuit as long as they had suffered damages, meaning that physicians and

nurses might not know any specific complaints about the medical care rendered before having to give sworn testimony as to their actions.

[House Bill 4327 - DEFEATED.](#) This Bill sought to expand the list of statutory beneficiaries in wrongful death claims to include siblings, meaning there would be more Plaintiffs in those types of cases.

[Senate Bill 82 - DEFEATED.](#) This Bill would have created automatic liability for any hospital that declared itself a gun free zone if someone was hurt by an act of violence on their premises.

[Senate Bill 95 - DEFEATED.](#) This Bill would have allowed parents to recover additional damages and also created civil fines if a child received a vaccine without the parents signing a mandated consent AND receiving a State authored brochure regarding risks/benefits of vaccines.

[Senate Bill 120 – DEFEATED.](#) This Bill provided that a physician that was not a member of a hospital’s medical staff could still perform surgeries and other treatments at that facility without being vetted by other physicians on the medical staff.





## TAPA Upcoming Events

Have you booked TAPA for your upcoming conference, board meeting or member event? Many members have taken advantage of this free service and ALL of them have been extremely pleased with TAPA's presentation. The upcoming calendar is below.

- 1. July 8:** TAPA will speak at the Texas Hospital Insurance Exchange Board Retreat on the results of the 89th Legislative Session and the benefits of preserving medical liability reform.
- 2. July 30:** TAPA will speak at the Parker County, TX (Weatherford) Nurses Summit re: results of the 89th Legislative Session and medical liability reform.
- 3. August 1:** TAPA will speak to physicians serving as nursing home medical directors at the PALTmed conference in Austin re: the results of the 89th Legislative Session and the benefits of tort reform.
- 4. November 6:** SAVE THE DATE - TAPA Annual Meeting in Austin
- 5. THERE ARE STILL OPEN DATES...IF YOU HAVE A MEETING OR CONFERENCE AND NEED AN INFORMATIVE/ENTERTAINING PRESENTATION...EMAIL [bjackson@tapa.info](mailto:bjackson@tapa.info)**

*Until next time...*

***JOIN! PAY YOUR DUES! SPREAD THE WORD!***