

Key Court
Decisions
since the
Passage
of Reforms



TEXAS ALLIANCE
FOR PATIENT ACCESS

Decisions
rendered by
the courts.



The law is what the courts say it is. Twelve years after its passage most elements of Texas' landmark reforms have been upheld.

Some of the medical liability provisions in the 2003 reforms have been adjudicated at an intermediate court only. As an example, the high court has yet to hear a case involving the non-economic cap. However, the cap has been upheld by the Dallas Court of Appeals and a federal court.

Within 30 days of the federal cap challenge, TAPA formed a legal team and filed a timely response to 22 issues raised in the suit. Four years in court and \$1 million in legal fees later, a federal judge ruled Texas' non-economic damage cap does not violate the U.S. Constitution.

During the past several years TAPA has filed 29 "friend of the court" briefs in an attempt to preserve what we believe the 2003 legislature intended. Those reforms have been upheld by the courts with one exception: the statute of limitations affecting minors.

The following are some of the more significant decisions rendered by the courts:

2005 ● ● ●

Two-year statute of limitations does not apply to minors

San Antonio Court of Appeals rules that the two-year statute of limitations is unconstitutional as applied to minors. (*Adams v. Gottwald*)

2009 ● ● ●

Reporting requirement

- A plaintiff is entitled to a single, 30-day extension to cure a deficient expert report. (*Lewis v. Funderburk*)
- Sanctions are available when no expert report is served, even after a 30-day extension has been granted. (*Badiga v. Lopez*)

2010 ●●●

Cap within a cap

Amarillo Court of Appeals rules that the non-economic damage cap is contained within the wrongful death cap. (*THI of Texas v. Perea*). Two months later the Corpus Christi Court of Appeals arrives at the same conclusion. (*Rio Grande Regional Hospital v. Villarreal*)

The plaintiff is required to produce an expert report within 120 days of filing suit. (*Spectrum Healthcare v. McDaniel*)

Ten-year statute of repose

Ten-year statute of repose affirmed. A plaintiff must file a health care suit within 10 years of the act or omission otherwise the case is time barred. This so-called “statute of repose” is different than a statute of limitations in that it addresses deferred claims for potential injuries that may be inherently undiscoverable. (*Methodist v. Rankin*).

A medical liability lawsuit cannot be artfully pled as a simple negligence case. (*Marks v. St. Luke’s*)

Applying the emergency medical care standard

The emergency medical standard applies in ER cases even where the diagnosis made is a non-emergent condition. The “willful and wanton” standard in the law means “gross negligence”. (*Turner v. Franklin*)

Ordinary negligence and medical malpractice can’t be pursued in the same claim. (*Yamada v. Friend*)



Applying the
emergency
medical care
standard.



Federal judge
finds Texas cap
constitutional.

2011 ●●●

Court limits damages and evidence regarding “phantom” medical expenses.

Texas Supreme Court limits damages and evidence regarding phantom medical expenses. Recovery of medical expenses incurred is limited to the amount actually paid or owed by the claimant. Only recoverable medical expenses are admissible at trial.

(Haygood v. de Escabedo)

No extension if a report is deemed incurable.

A document utterly devoid of substantive content is not curable and therefore is not eligible for a 30-day extension to cure its deficiencies.

(Scoresby v. Santillan)

The expert report requirement is neither unconstitutional nor vague.

(Hightower v. Baylor University Medical Center)

Beaumont Court of Appeals enforces “willful and wanton” standard for emergency room care

- Beaumont Court of Appeals enforces “willful and wanton” standard for emergency room care. *(CHRISTUS Health Southeast Texas v. Licatino)*. In so doing, the Beaumont Court cited prior opinions by the Dallas and Fort Worth Courts of Appeals which equated the “willful and wanton” standard with gross negligence. The court also endorsed pattern jury charge language, providing a template for future cases.

2012 ●●●

Court rules a health care liability claim need not be directly related to the provision of health care.

A health care liability claim can include claims of an employee against an employer for a workplace injury. The claimant in *Texas West Oaks Hospital v. Williams* had his case dismissed for failure to provide an expert report. The Texas Supreme Court concluded that the plaintiff's claims could constitute "claimed departures from accepted standards of health care" and from "claimed departures from accepted standards of safety".

HB 1403 generally excludes a work-related injury from the definition of a health care liability claim. TAPA supports this clarification.

Cap upheld by Dallas Court of Appeals (*Prabhakar v. Fitzgerald*)

In *Prabhakar v. Fitzgerald*, the Dallas Court of Appeals considered and concluded that the non-economic damages cap that reduced Fitzgerald's damages by about \$11 million did not violate the Texas Constitution. The court also agreed with the *Watson* federal district court, that Texas' non-economic damage cap does not violate the right to a trial by jury, equal protection, right of access to the courts, or constitute a taking under the Fifth, Seventh, and Eleventh Amendments of the United States Constitution.

Periodic payment provision upheld

Periodic payment provision upheld by Dallas Court of Appeals. (*Prabhakar v. Fitzgerald*). Health care providers may pay jury-awarded future medical bills in periodic payments rather than in a lump sum.



Texas' non-economic damage cap is upheld by both state and federal courts.



Informed consent and disclosure requirements

2014 ●●●

Retroactivity of statute of repose law affecting minors upheld

The statute of repose affecting minors is upheld given the specific fact pattern of the case. Under Texas' statute of repose a plaintiff must file a health care suit within 10 years of the act or omission otherwise the case is time barred. The court ruled that the retroactivity of the law was not unconstitutional and that plaintiff had ample time to bring forth a claim. (*Tenet v. Rivera*)

Medical Authorization HIPAA Compliant

The authorization requirement allowing defendants to interview treating physicians without the plaintiff's lawyer present is not a violation of HIPAA privacy rules. (*Murphy v. Dulay*). Florida federal court sides with previous Texas Supreme Court ruling (*in re Collins*).

Informed consent and disclosure requirements are based on the risk or hazard of a procedure and not the surgical experience of the physician.

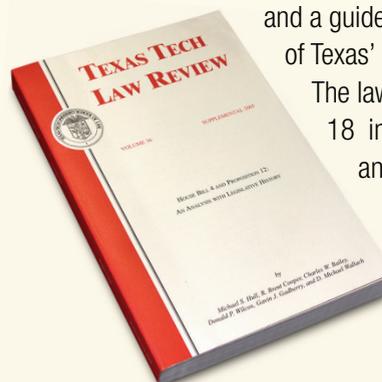
(*Benge and Kelsey-Seybold Medical Group v. Williams*)

Law Review Cited in 5 Texas Supreme Court decisions

In 2005, the TAPA legal team produced a 357-page article on HB 4 in the Texas Tech Law Review. The scholarly article is widely regarded as a legislative intent roadmap

and a guide for the proper application of Texas' landmark lawsuit reforms.

The law review has been cited in 18 intermediate court opinions and 43 appellate briefs.





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