

# Texas Supreme Court Rules in Favor of Emergency Room Doctor

The Texas Supreme Court ruled in favor of emergency room physician Dr. Kristy Marsillo on January 11, concluding the plaintiff produced no evidence that her treatment of a snakebite was willfully and wantonly negligent, the required standard of proof in an emergency care case.



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, monitored the patient's vital signs, repeatedly ordered blood work, and re-examined the severity of the injury to determine whether and when to administer antivenom. After Raynee's condition gradually

worsened over the next few hours, Dr. Marsillo infused her with antivenom. Raynee's condition improved after the infusion was instigated and she was released from the hospital on crutches the following day.

The Dunnicks sued, alleging Dr. Marsillo should have started the antivenom infusion sooner, and that her failure to do so caused further complications, including permanent injury, disfigurement, and ongoing pain and suffering. The family sought one million dollars in damages.

Medical literature states that the antivenom administered to Raynee Dunnick is effective within six hours of a snake bite. However, the court noted that "giving the antivenom is not a risk-free proposition." Many patients develop severe adverse reactions to the antivenom, which the manufacturer states should be administered when called for and not otherwise.

Dr. Marsillo marked the progression of swelling to confirm that Raynee Dunnick needed the antivenom and had not received a dry or nonvenomous bite.

The trial judge initially dismissed Plaintiff's case and ruled she failed to introduce any credible evidence of willful and wanton negligence, the required threshold in an emergency care case. The Court of Appeals overruled the trial judge and reinstated Plaintiff's lawsuit after proclaiming 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.

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. The 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 also submitted an amicus brief on Dr. Marsillo's behalf.

TAPA argued to the Supreme Court that Dr. Marsillo's treatment of the Plaintiff did not equate to conscious indifference, and was, in fact, evidence of Dr. Marsillo's conscious care. TAPA stressed that Dr. Marsillo's treatment plan was consistent with the accepted guidelines of the American Academy of Family Physicians and that she did not put the patient in danger. Instead, she used her education, training, and experience as well as the hospital's snakebite protocol to successfully treat the child's snakebite.

The Texas Supreme Court agreed with TAPA and Dr. Marsillo, overturning the Court of Appeals' ruling and reinstating the trial court's dismissal of Plaintiff'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. Willful and wanton treatment is defined as a conscious disregard for patient safety when providing medical treatment. This standard is appropriate and necessary because emergency room medical care often involves split second decisions made in life or death situations without adequate medical history in hectic and challenging environments.