



TEXAS ALLIANCE FOR PATIENT ACCESS

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CHAIRMAN

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March 20, 2009

The Honorable Robert Duncan
Texas Senate
P. O. Box 12068-Capitol Station
Austin, Texas 78711

Dear Senator Duncan:

The Texas Alliance for Patient Access and the Texas Hospital Association oppose Senate Bill 152, which would negate the positive impact of the tort reform measure related to emergency room liability passed in 2003.

The 2003 liability reforms have increased access to care, and should be preserved. As a result of those reforms which include a specific provision related to the negligence standard in emergency room care, 82 counties have seen a net gain in emergency medicine physicians, including 26 counties that previously had none. Today, Texas has more ER physicians per capita practicing in rural and metropolitan areas than ever before.

S.B. 152 radically changes current law. It removes the "gross negligence" standard for hospitals, their employees and emergency room physicians for care delivered in the emergency room. The gross negligence standard would apply only to health care professionals who do not routinely provide emergency care and are assisting, perhaps in a disaster situation. This proposed change ignores the reality of everyday emergency health care. If approved, emergency room access will be compromised.

This bill fails to recognize the unique challenges in diagnosing and treating emergency care patients. Whether treating an unconscious victim of an auto accident or a diabetic woman in active labor, emergency care doctors and nurses must respond quickly with limited information. The doctor and hospital team often have had no prior contact with or health history from the patient. These professionals use their best judgment as they try to save lives. Only those who "willfully and/or wantonly" injure a patient should be liable for outcomes that should have been prevented.

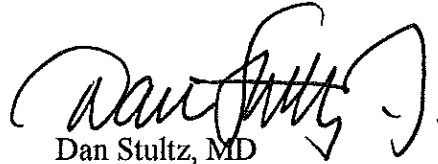
Contrary to claims of virtually no lawsuits under the current ER standard of negligence, the facts show that injured patients are filing lawsuits and collecting damages. A survey of just four hospital systems and five ER physician-contracting companies reveals that at least 799 claims and lawsuits have been filed against emergency care providers under the new law. This has resulted in 162 payouts, totaling more than \$31 million. The average payout is \$192,718 with 34 of those payouts exceeding \$250,000 and three exceeding \$1 million.

S.B. 152 will diminish hospitals' ability to staff trauma and emergency departments and further discourage physicians from taking emergency room call. Please vote "no" on S.B. 152 and preserve patients' access to emergency care services throughout the state.

Sincerely,



Howard Marcus, MD
Chairman
Texas Alliance For Patient Access



Dan Stultz, MD
President & CEO
Texas Hospital Association