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Texas tort “reform” immunizes ER docs against most malpractice claims

Patients in Texas whose health has been ruined by incompetent decisions by ER physicians are having a hard time finding malpractice attorneys to represent them, even when the lawyers admit they have a great case. The reason: The tort reform state lawmakers passed in 2003, which made it more difficult for patients to win damages in any health care setting, but especially in ERs.

The “reform” capped medical liability for noneconomic damages at \$250,000 per health care provider, with a maximum award of \$750,000. But it also safeguarded emergency physicians from civil

Patrick A. Malone
Patrick Malone & Associates, P.C.
1331 H Street N.W.
Suite 902
Washington, DC 20005

pmalone@patrickmalonelaw.com
www.patrickmalonelaw.com
202-742-1500
202-742-1515 (fax)

damages unless it could be proved that they acted with “willful and wanton” negligence (i.e. that they not only put the patient in extreme risk but knew they were doing it.).

According to Jon Powell, a malpractice and personal injury lawyer based in San Antonio, this is a near-impossible threshold to meet. “You’d have to be a Nazi death camp guard to meet this standard,” Powell says.

Tort reform advocates disagree, noting that patients in Texas continue to sue doctors and hospitals over emergency care. And, they say, the “willful and wanton” language, as well as the damage caps, have driven down malpractice insurance rates by nearly 30% and attracted more emergency room doctors to Texas.

Malpractice lawyers say these developments have come at the expense of patients. They argue that the “willful and wanton” rule means emergency room care in Texas is some of the most dangerous in the country. And a preliminary study shows that malpractice claims dropped by 60% between 2003, when the law was enacted, and 2007.

Source: [The Texas Tribune](#)

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