

May 29, 2019

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Mr. Walter Fisher
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Office of the Governor
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Mr. John Colyandro
Policy Director
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P.O. Box 12428
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Re: HB 2362 (Moody/Price/Hughes)

Dear Messers Saenz, Fisher and Colyandro:

We respectfully urge Governor Abbott to sign HB 2362 into law. HB 2362 is an agreed bill between Texas Alliance for Patient Access—a statewide organization that represents doctors, hospitals, nursing homes and physician liability carriers-- as well Texans for Lawsuit Reform, the Texas Civil Justice League and the Texas Trial Lawyers Association.

This bill addresses the burden of proof a plaintiff must meet when suing a doctor or nurse in a medical malpractice case involving emergency medical care. Currently, doctors and nurses receive heightened protection for their acts or omissions when sued for malpractice in emergency medicine cases. Instead of an ordinary negligence standard, plaintiffs must prove that the doctor or nurse acted with willful and wanton negligence, which is like gross negligence. The heightened willful and wanton standard is appropriate in these cases because doctors and nurses that work in the emergency department face high risk cases and are forced to make immediate and difficult decisions, often with limited information and under severe time constraints. HB 2362 reinforces this vital protection.

However, the current statutory language setting forth the willful and wanton standard, when coupled with recent Texas Court rulings, could create a burden that is unfair to plaintiffs and unintended by the 2003 Texas Legislature. All stakeholders are concerned that without HB 2362, a physician or nurse that negligently caused a stable patient to suffer an emergency could then benefit from their negligence and receive the willful and wanton protection. This result was never intended by the 2003 Texas Legislature.

HB 2362 addresses this legitimate concern by allowing for two notable exceptions to the willful and wanton standard:

- When the patient's treatment is unrelated to a medical emergency; and
- for any physician or healthcare provider whose negligent act or negligent omission causes a stable patient to require emergency medical care.

These exceptions to the willful and wanton protection are consistent with legislative intent back in 2003. More importantly, they are fair.

In addition to creating these exceptions, HB 2362 reinforces willful and wanton protection for doctors and nurses that did not cause the emergency, as well as those that run to a patient at the onset of an emergency to try and save them. It also affords the willful and wanton protection for doctors and nurses treating a pregnant woman who presents directly to the obstetrical suite in an emergent condition.

In conclusion, HB 2362 is a reasonable response to a valid concern. It engenders public trust and strengthens tort reform for the long-term. For these reasons, we ask that the Governor sign HB 2362 into law.

Sincerely,



David C. Fleeger, MD
President
Texas Medical Association



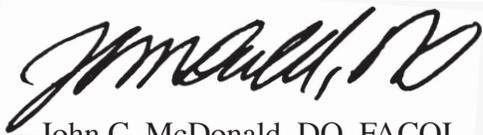
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