



CASE STUDY

TORT REFORM

Issue

Comprehensive reform of Texas' civil justice system.

ACEP Position

"The American College of Emergency Physicians endorses in principle state legislation or constitutional amendments to implement tort legal reforms, including, but not limited to:

Recognition of collateral sources of compensation in granting awards; modification of statutes of limitation; structured payment systems for damage awards granted; limitation of liability for non-economic damages; controls on attorneys' contingency fees; joint and several liability; and qualifications for expert witnesses."

Background Information

In every survey of legislative priorities and chapter needs, one issue always seemed to rank near, if not at, the top: tort reform. Previous attempts to introduce and pass tort reform measures made it obvious that the coalition of medical and business organizations had to be prepared for difficult battles and had to have sympathetic leaders in elected office. Attempts to organize and pass meaningful tort reform failed repeatedly.

After moving the chapter office to Austin one year before the 1995 legislative session, the Texas College of Emergency

Physicians (TCEP) began to develop closer working relationships with other health care and business organizations, including the Texas Medical Association and the Texas Hospital Association. These improved relationships allowed TCEP to have access, although at times limited, to early tort reform discussions. Members of the business community, including representatives from the health care industry, met for a year to negotiate controversial aspects of the reform proposal. TCEP initially introduced a stand-alone emergency care tort reform measure. The Texas Medical Association subsequently incorporated TCEP's positions into the coalition's proposal.

Legislative History in Texas

When the 74th Texas Legislature enacted a large package of comprehensive reforms of the state's civil justice system, a major portion of TCEP's legislative goals was realized. While TCEP's own stand-alone emergency care initiative was subsumed by the larger tort reform package, emergency physicians should realize a major benefit in reduced liability exposure as a result of the broad-scale reforms.

The reforms include significant limitations on exemplary damages, reform of the law governing venue (the appropriate forum/location for a legal action), reform of the doctrine of joint and several liability, strengthened expert witness standards, elimination of the threat of Deceptive Trade

Practices Act claims, and reduction of frivolous or “harassment” claims. In instances where the legislature failed to act, the Texas Supreme Court came to the rescue in the form of a judicial ruling limiting so-called “junk science” expert testimony.

The 1995 Tort Reform Act may mark a political and legislative watershed. The long-powerful Texas Trial Lawyers Association was on the defensive throughout the session and found itself struggling not to win the battle, but to lose as little as possible. In essence, it was forced to fight a “rear-guard action” as the combined powers of all of the pro-reform groups rolled back its hard won successes of the past two decades. For the first time in Texas tort law, reform legislation was a clear defeat for plaintiff’s lawyers and their allies.

On a recommendation from the chapter’s lobbyist, TCEP decided to introduce the emergency care tort reform bill. This action was based on an offer by the Texas Lieutenant Governor to support emergency care tort reform. A senator was chosen to sponsor this bill because he was very well respected and a general advocate of tort reform, and was chairman of the committee that would hear the tort reform bills. The senator informed the lobbyist that he was reluctant to sponsor a bill that adopted a “clear and convincing” standard of proof for professional liability cases arising from delivery of emergency care. The bill was filed without the section on the “clear and convincing” standard.

The sponsoring senator was probably the legislator most responsible for passage of the tort reform package. As chairman of the committee hearing the bills, he developed the compromise legislation that produced the reform package. Without his advocacy of general tort reform, such a favorable package would not have been adopted. In addition, the Texas Medical Association was one of the most visible and proactive proponents of tort reform.

Future strategies for advancing the tort reform agenda call for the TCEP Legislative Committee to monitor legislation through a state legislative tracking system and to consult with the Texas Medical Association, other health care organizations, and state business organizations.

Now that significant tort reform has passed, it is important to evaluate, preserve, and enhance these measures.

Arguments in Favor of this Position

- The courts are clogged with frivolous malpractice litigation.
- Juries are awarding astronomical amounts in punitive damages.
- Testimony is being given in medical malpractice cases by individuals designated as “expert witnesses” who lack credentials and experience.
- Medical malpractice insurance premiums tripled in the past ten years in states that have not adopted tort reform.
- Fear of litigation causes physicians, hospitals, and clinics to practice “defensive medicine” by ordering tests that may not be needed.
- Only 43 cents of every dollar spent on liability litigation reaches the patient; the rest goes to lawyers’ fees and court costs.
- The added costs of the current liability system are passed on to patients in the form of higher health insurance premiums, higher medical bills, and reduced services.

Arguments Against this Position

- The current litigation system is a deterrent to physicians practicing bad medicine.
- Patients with legitimate claims will be discouraged from seeking legal redress or will be unable to find qualified legal counsel to represent them.

Potential Proponent Organizations

The Texas Medical Association and medical specialty societies, the Texas Association of Business, the Texas Chamber of Commerce, and other business-related associations.

Potential Opponent Organizations

Trial (defense) attorney organizations and consumer groups.

Summary

Tort reform is a complex issue requiring the right mix of a supportive state leadership that includes the governor and lieutenant governor; a willingness of all parties to openly discuss all components of suggested tort reform; and a

business coalition, including the health care industry, that is organized and willing to designate tort reform as a top priority. A chapter cannot accomplish meaningful tort reform alone. A chapter can certainly accomplish other issues, but tort reform must be accomplished in conjunction with a state medical society and other business-related organizations. A copy of TCEP's emergency care initiative is available from ACEP's State Legislative Office.

For more information on this issue,
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