

Medical Liability Claim Limits

Presented to the North Texas Association of
Emergency Room Physicians

by

Steve Samples
and
Chuck Noteboom

September 17, 2004

Limitations on Non-Economic Damages

- “Non-Economic Damages” means pain and suffering.
- The cap on Non-Economic Damages applies in all cases, but does not apply to punitive damages.

Limitations on Non-Economic Damages

- \$250,000 is the maximum liability for all physicians or other providers
- \$250,000 is the maximum liability for each institutions
- \$500,000 liability is the maximum liability for all institutions

Limitations on Non-Economic Damages

- \$750,000 is the theoretical cumulative cap for all damages
- But think how many things would have to be wrong to reach this cap:
 - Physician malpractice, plus
 - Malpractice by Hospital #1, plus
 - Malpractice from Hospital #2

Special Rules in Wrongful Death Cases

- Punitive Damages ARE INCLUDED within the cap
- Cap is PER DEFENDANT not PER CLAIMANT
- Cap is now \$500,000 in 1997 dollars, which adjusts for inflation to about \$1.5 million.

Special Rules in Wrongful Death Cases

- A new risk for doctors:
 - Previously, a malpractice insurer who negotiated in bad faith was liable for excess damages.
 - This is no longer the law, so insurers have no incentive to settle valid claims promptly, thus exposing you to a trial.

Special governmental rules

- Employees of governmental units have their liability capped at \$100,000.
- This applies to ALL DAMAGES, economic, non-economic, and punitive.

Special governmental rules

- A suit against a government-employee doctor forever bars other lawsuits against related parties.
- This means you cannot sue multiple governmental defendants under the new law.

Special Emergency Rules

- New Rules protect First Responders
 - Liability is limited to \$100,000 per person or \$300,000 per occurrence for bodily injury or death.
 - Liability is limited to \$100,000 for property damage

Persons Protected Under the New Law

- Not just doctors any more.
- Protection now covers Registered Nurses, Dentists, Podiatrists, Chiropractors, Optometrists, and Healthcare Institutions
- “Healthcare Institutions” includes any **Emergency Medical Services Provider**

Special Emergency Care Protection

- **The Legal Definition:**
- “Emergency Medical Care” means bonafide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms or sufficient severity, including sever pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. There term does not include medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient that is unrelated to the original emergency

Special Emergency Care Protection

- As a reward for reading the prior mumbo-jumbo, here is the protection you get:
- Any person who provides treatment in good faith without expectation of remuneration is **NOT LIABLE** in civil damages unless that person is willfully and wantonly negligent.

Special Emergency Care Protection

- The REMUNERATION issue.
- So long as the jury can be convinced that you were not expecting to be paid, the statutory protections apply.

Special Emergency Care Protection

- An Exception: You can't create the emergency.
- If a stable patient enters the ER and is improperly intubated, thus creating the emergency, the protections do not apply.

Special Emergency Care Protection

- New Work for “Expert Witnesses”
- When is a patient stabilized? Remember, care after stabilization is not protected?
- What is remuneration? Here, experts will educate the jury on the meaning of remuneration.
 - For example, how are salaried employees treated?
 - This question has yet to be answered.

Special Emergency Care Protection

- Not just Emergency Rooms
 - The protections apply to emergency care regardless of location.
 - So long as the doctor did not create the emergency, the protections will also apply in surgical and obstetrical cases.