

March 19, 2021

The Honorable Charles Schwertner, MD  
P.O. Box 12068  
Capitol Station  
Austin, Texas 78711

The Honorable Greg Bonnen, MD  
P.O. Box 2910  
Austin, Texas 78768

**Re: SB 207's March 10, 2021, Draft**

Dear Chairman Schwertner and Chairman Bonnen:

I am writing on behalf of the Texas Orthopaedic Association (TOA) to offer our feedback regarding the March 10, 2021, draft of SB 207. TOA was founded in 1936 as a voluntary organization of Texas orthopaedic surgeons to ensure outstanding musculoskeletal care for Texas patients. Over 1,400 orthopaedic surgeons are members of TOA.

**SB 207's Intent: Addressing "Outlier Compensation"**

SB 207 was introduced to stakeholders as an avenue for addressing "outlier compensation" awarded to physicians and hospitals in cases involving personal injury lawsuits. Ultimately, we believe that the current system gives both the plaintiff and the defense an adequate opportunity to make their case regarding what compensation is appropriate. However, we are also pleased to work with the Legislature to provide judges and juries with more information to help them make an informed decision as to what medical fees are appropriate. As a result, the suggestions that we submitted included the introduction of the FAIR Health database as a potential data point for judges and juries to consider. The introduction of FAIR Health as a data point would serve as a significant change from current law, and we believe that it would help judges and juries to inform their decision.

**Concerns Related to SB 207's March 10, 2021, Draft**

TOA is not able to support the latest draft dated March 10, 2021, because the draft does not address unnecessary discoveries that would allow the defense to gather negotiated confidential and proprietary rates of physicians and hospitals. In addition, the latest draft would allow the defense to ask the treating physicians and hospitals to provide government rates. Ultimately, these discoveries simply represent meaningless exercises that are simply used as a tool to discourage physicians and hospitals from offering care to patients.

We also have strong concerns about the notice of intent and affidavit changes. In particular, the "watered down" requirements of an individual submitting a counter affidavit result is no counter affidavit at all. Under the language of CSSB 207, a lawyer could send an e-mail that says: "We intend to controvert your billing affidavit." Once this e-mail is sent, the treating physician's billing is dead. As a result, all treating physicians must testify to prove up the reasonable and customary charges for each bill. Furthermore, the proposed change would remove the requirement for the counter affidavit to be submitted by an individual with the same or similar experience and

qualifications. This level of expertise is critical to ensure that the judge and jury have as much information as possible.

We look forward to working with stakeholders to enhance the state's current system through SB 207, and we believe that we offered a strong solution by including the FAIR Health database as a data point for judges and juries to consider.

If an individual is injured at no fault of his or her own, it is critical that the injured individual has access to the best care possible, and our orthopaedic surgeons are pleased to provide that care. Physicians and hospitals are paid for their expertise and knowledge related to the medical care in these cases, and it is critical that they are compensated adequately to cover the risks related to delayed and potential lack of payments associated with these cases. Therefore, we do not want to put legislative concepts into statute that may discourage physicians and hospitals from providing care to patients who have been injured in accidents that are of no fault of their own.

Sincerely,



Kenneth J. Kaminski, MD  
President  
Texas Orthopaedic Association