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Beaumont, Texas 2006-2012

The Honorable David Dewhurst
Texas Lieutenant Governor

Dear Governor Dewhurst,

It is with a measure of concern and sense of urgency that I write on behalf of over 1,500 members of the Texas Orthopaedic Association, regarding our strong opposition to the passage of SB468. This legislation, if passed, will undo a critical element of the consensus legislative process under your leadership that led to passage of HB4 during the 78th Texas Legislature. This bill if allowed to become law will result in more medical lawsuits and less access to emergency medical and surgical care for Texans, just as we are turning the corner and realizing the full benefits of HB4.

Some have said that “willful and wanton” has not been defined by the courts and stare decisis. I say we should let the courts rule before the legislature changes its mind on what it meant in 2003. Others have said that there are “victims” who are shut out of the courthouse unfairly. I say that there are now hundreds, if not thousands of Texans who have the emergency doors opened to them with full staffing not only of emergency medical specialists, but the many critical surgical, medical, and obstetrical on call specialists they rely on to back them up.

During the rush to pass this ill conceived legislation out of the Senate State Affairs Committee last week, some testified that this would restore the language that the House had originally passed in HB4. Given that failed line of logic, one would then assume that they would have proposed amending the non-economic cap back to a single unified \$250,000 as was passed in the original House version. Others had stated that this would restore the original language requested by TMA, TAPA, and TOA. Given that convoluted thought process, one would assume that SB468 would now include the sliding scale for attorney contingency fees and the collateral source rule as was originally requested by those parties to be included in HB4.

Being mindful that the “willful and wanton” language in HB4 was inserted at the suggestion of Senate members of the Conference Committee; one must ask why there is a rush for the Senate now to dismantle its own language unilaterally, so early in the 80th Session. Rather, one would have expected a reasoned, deliberate and comprehensive review of other unintended loopholes and omissions in HB4; such as Rule 202 depositions, tolling the statute of limitations when other responsible third parties are named after the statute has run, and the provision for discipline of out of state unlicensed expert witnesses who testify in a false or



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spurious manner. Quite simply, there is no balance in SB468 as it represents a unilateral retreat from reforms that are proving their worth and effectiveness everyday.

Your work on the comprehensive tort reforms of 2003 has drawn nation-wide attention for good reason. Now is not the time to dismantle proven effective measures that will benefit Texans who find themselves in a medical or surgical emergency in the future. On behalf of Texas Orthopaedic surgeons and our patients, we humbly request your assistance in thwarting passage of SB468.

Respectfully,

David Teuscher, MD
TOA President