

The price of a life: Congresswoman's death is drawing attention to Texas malpractice cap

With a \$250,000 limit in Texas, lawyers are skeptical of taking medical malpractice cases.



Fredie Joe Williams poses while holding the senior prom photo with his wife, Josie Gwen Williams, on Friday, Jan. 12, 2024 at his house in Henderson, TX. His wife died in September after a routine colonoscopy caused septic shock. He's shopped around for a medical malpractice attorney to take on the case, alleging negligence by the doctor who performed the procedure, but none will because the cost to litigate is higher than the \$250,000 state-imposed max he can receive based on 2003 tort reform. (Shafkat Anowar / Staff Photographer)

By [Maggie Prosser](#) and [Marin Wolf](#)

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HENDERSON — Josie “Gwen” Williams knew the routine. No solid foods for 24 hours. Eight ounces of bowel prep solution every 10 minutes until half the container was gone. Nothing by mouth except the nauseating, oozy liquid on the morning she arrived for her colonoscopy.

A self-published author, substitute teacher and mother who cooked a mouthwatering chicken fried steak, Gwen was no stranger to the dreaded procedure after years of mild stomach problems. This one, on Sept. 20, 2023, would be just like the others, except with a new doctor, at UT Health East Texas in Tyler.

She and her husband, Freddie Joe Williams, made the 30-minute trek from their county road ranch home in Henderson. Everything went as planned, the doctor said, before sending a groggy Gwen home.

Three days later, Gwen was dead. She was 67.

“He tore the bottom of her stomach and let the acid get into her system. That’s an accident, I can live with that,” Freddie Joe said. “They sent her home without checking to make sure she’s okay — they said she’s okay. That, I think, was malpractice.”

He’s called five law firms after her death, and each returned the same verdict: The cost of a lawsuit isn’t worth the payout.

Freddie Joe, 74, is among the slew of Texans turned away by trial lawyers because his accusations of medical malpractice are too costly to litigate compared to how much he could possibly win in court.

In most malpractice cases, like Gwen’s, someone can win no more than \$250,000 against Texas physicians for their pain and suffering, per a 20-year-old state law and constitutional amendment backed by insurers and medical groups. In 2022, [a Minnesota jury rewarded \\$111 million](#) to a 17-year-old who was disabled following a botched surgery for a broken leg; that same year, [Georgia health care providers were ordered to pay a man \\$75 million](#) total — including \$46 million in non-economic damages — after doctors missed a stroke, causing brain damage.

The Texas cap has been touted as a way to shield doctors from baseless lawsuits, shocking verdicts and keep them from fleeing the state, but malpractice attorneys say the ceiling short-changes victims, defers accountability and puts an unjust price tag on people’s lives.

The [death of former Congresswoman Eddie Bernice Johnson](#) — and [news that her family intends to sue a rehabilitation center](#) alleging negligent care resulted in a deadly infection — has fueled debate about Texas’ limits on medical malpractice lawsuits. Lawyers not associated with the pending legal action told *The Dallas Morning News* that Johnson’s case could be tricky and expensive — and they wouldn’t pursue it if it weren’t for her notability.



Freddie Joe Williams remains beside archived photos of himself, his wife, Josie Gwen Williams, and other memorabilia, on Friday, Jan. 12, 2024, at his house in Henderson, TX. (Shafkat Anowar / Staff Photographer)

Life pre-tort reform

Texas in the 1990s represented the Wild West of medical malpractice suits. With no limit on how much a patient could seek in noneconomic damages, doctors said even the threat of lawsuits consumed their practices, according to Dallas cardiologist Rick Snyder, president of the Texas Medical Association.

Calls for reform peaked in the early 2000s, with then-Gov. Rick Perry leading the charge. Proponents of capping the damages in a suit — known as tort reform — argued it would deter frivolous claims of malpractice and prevent excessive jury awards that drove up insurance costs and allegedly bankrupted physicians or drove them out of the state, according to Snyder.

Perry and GOP lawmakers pushed House Bill 4 — backed by groups like the Texas Medical Association — and voters cemented a cap into the state's constitution, [narrowly passing Proposition 12 with about 51% approval in September 2003](#).

The [legislation maxed damages](#) against physicians or health care workers — regardless if someone sued one doctor or many — at \$250,000; \$250,000 for suits against a hospital; and \$500,000 for claims made against multiple health care institutions.

The governor [praised this as a victory for the state's physicians](#). Trial lawyers lamented.

In a written statement, a spokeswoman for Texans for Lawsuit Reform said the 2003 legislation was “a necessary step to preserve patient safety, stop doctors from fleeing the state and improve access to health care,” and in the last two decades it “vastly improved the landscape for access to health care in Texas.”

Bill Chamblee, a Dallas lawyer who represents hospitals and doctors, said the number of lawsuits filed has decreased since tort reform, but he hasn’t seen a significant change in the amount of cases he tries.

How to measure the success of tort reform is up for debate. In 2002, the last full year before tort reform was implemented, Texas reported 1,256 medical malpractice payment reports. In 2022, the number of medical malpractice reports shrank to 592, according to the [National Practitioner Data Base](#).

More doctors now call Texas home — 33,407 more, or an increase of nearly 90%, between [January 2003](#) and [January 2023](#), according to Texas Medical Board data. The state’s population has ballooned by nearly 9 million people in that time, or an increase of about 38%. The Texas Medical Association reported that the state’s physician-to-people ratio is still well below the national average.

Charla Aldous, a Dallas-based attorney, has defended doctors and advocated for patients. She estimates her firm turns away nine out of 10 medical malpractice cases. Highly scientific and defensible cases are costly to litigate and “you’re going to spend more working up the case than you could actually recover at the end of the day in the best day scenario,” she said.

“I have the task of explaining to them that their case is only worth \$250,000, and it’s incomprehensible, and they’re in shock — ‘How could that be? How could that be?’” Aldous said. “Unfortunately, these laws have taken away our ability to effectuate change through the civil justice system.”

‘Any other state, I could have won it easy’

According to medical records from the emergency room, Gwen had a narrowing in the space where the stomach connects to the small intestine seen during her earlier endoscopy — a procedure commonly done at the same time as a colonoscopy. Her gastroenterologist widened the stricture while Gwen was under anesthesia, the records say.

The notes from ER doctors don’t capture the fear Freddie Joe felt in the hours after Gwen’s procedure. She had stomach cramps, but those were to be expected. She told her husband not to worry. By morning, her pain was so intense Freddie Joe insisted on taking her to the emergency room. Doctors there noted a tear in her bowel that swelled and was leaking acid out of her stomach, records show.

Gwen was airlifted to a hospital in Tyler, where surgeons took her to the operating room to repair the damage. It was too late — Gwen left the operating table intubated and was placed in the intensive care unit, where she later died of septic shock, according to her death certificate provided to *The News* by Freddie Joe.

“I didn’t really get to say goodbye,” Freddie Joe said, remembering how her body looked swollen in the coffin.

A spokeswoman for UT Health East Texas declined to comment, saying in an email, “patient privacy laws do not allow us to discuss any patient’s care.”

The Williams’ house shines with Gwen’s influence: Family photos of their three sons in mismatched frames. A shadow box Gwen made from Freddie Joe’s time in the Marines. A trophy Gwen won at a poetry competition. In their bedroom, the couple’s mattress is sunken on the left side, fitting the contorts of Freddie Joe’s frame. The right side is seemingly untouched, albeit a wadded-up blanket at the foot of the bed where Chip, their small dog sleeps. In the closet, Freddie Joe keeps her copies of her paperback books. Her unfinished writings are in the office. There’s a cedar chest of her clothes he can’t bear to throw out.



Freddie Joe Williams gets pets his dog, Chip, while sharing stories about his wife, Josie Gwen Williams, on Friday, Jan. 12, 2024, at his house in Henderson, TX. His wife died in September after a routine colonoscopy caused sepsis. (Shafkat Anowar / Staff Photographer)

He sits in the recliner in the corner of his living room, arm’s length from the couch where Gwen would nestle for their morning Bible study. Chip used to wait by the door for Gwen to come home. Now he perches himself on the arm of the well-worn chair.

“It’s just Chip and I now,” Freddie Joe repeats, again and again, his rough hand running haphazardly over Chip’s scraggly fur. This year would have marked the Williams’ 50th wedding anniversary.

Jack Walker’s firm in Tyler is among those to reject Gwen’s case.

“The main reason that you have a medical malpractice is for accountability,” said Walker, a long-time medical malpractice attorney and president-elect of the [Texas Trial Lawyers Association](#). “The damage cap itself creates a situation where there are many cases that can’t be brought, which means there are many cases where you can’t hold somebody accountable for medical negligence.”

He added: “I’m an advocate for good medical care and we’ve got lots of good doctors and lots of good medical care in Texas. We just need a system that can hold those accountable for when they do commit negligence and when they are hurting folks.”

Medical malpractice suits aren’t the only source of restitution if a loved one dies of negligence. Families can also sue for economic damages, including medical bills and loss of future earnings, although some of those damages may not apply if the patient wasn’t making money because they were homemakers, too young to work or retired. Gwen was a self-published author, mother and recently retired substitute teacher.

“She’s my wife; she’s gone forever,” Freddie Joe said. A pastor and Vietnam War veteran who worked at a tire factory, he doesn’t have access to legal mechanisms to hold the doctor who allegedly perforated her bowel to account. “Any other state I could have won it easy ... but this cap that Texas got.”



Poetry books written by Josie Gwen Williams, wife of Freddy Joe Williams, on Friday, Jan. 12, 2024 at his house in Henderson, TX. His wife died in September after a routine colonoscopy caused a fatal infection. He's shopped around for a medical malpractice attorney to take on the case, alleging negligence by the doctor who performed the procedure, but none will because the cost to litigate is higher than the \$250,000 state-imposed max he can receive based on 2003 tort reform. (Shafkat Anowar / Staff Photographer)

A polarizing position

State legislators and interest groups routinely broach adjusting the cap. State Rep. Gene Wu, D-Houston, has filed a bill in the past few legislative sessions that would tie the damages cap to inflation. The current figure has not been adjusted since the law was enacted in September 2003. According to the U.S. Bureau of Labor Statistics, \$250,000 then had the same buying power as more than \$414,000 in December 2023.

“Inflation rapidly increased in the last couple years. The value of that \$250,000 continuously drops,” Wu said. “All things aside, it’s a matter of fairness.”

Wu added: “Maybe they knew that this was going to happen, and that was the point, that eventually that number is going to zero.”

His bill in the last regular session, [House Bill 536](#), didn’t make it out of committee.

The Texas Medical Association opposes raising the limit to meet inflation. Snyder, the organization’s president, said physician compensation has decreased against inflation over the past 20 years. Additional premiums caused by a higher malpractice cap, he said, could push some doctors into early retirement.

Chamblee, the medical malpractice defense attorney, said specialty, risk and coverage factor into how much health care providers pay for malpractice insurance. A \$500,000 policy generally costs between \$20,000 and \$40,000 a year, he said.

Medical malpractice caps are commonplace in the U.S., but some have been challenged and deemed unconstitutional by state supreme courts, said Southern Methodist University law professor Tom Mayo.

“Texas’ constitutional amendment pretty well insulates it from that,” said Mayo, who declined to comment on the merits of tort reform or Congresswoman Johnson’s case.

Aldous, the Dallas lawyer, characterized GOP lawmakers as “pro-tort reform” and said insurance lobbyists have heavily invested in preventing revisions to the law. Change, she said, is going to have to come from the voting booth, electing politicians willing to reevaluate or overturn the cap.

There’s a glimmer of hope that the Johnson family’s lawsuit will raise public consciousness to the issue. Advocates on both sides say tort reform is too polarizing for even the death of one of North Texas’ most powerful Democrats to move the needle.

Johnson, [a trailblazing Black woman](#) and the first registered nurse elected to Congress, died Dec. 31. According to a copy of her death certificate, provided by lawyer Les Weisbrod, Johnson died from a bone infection in her lumbar spine. She was 89.

Johnson was sent to [Baylor Scott & White Institute for Rehabilitation](#) after extensive back surgery to correct degenerative conditions. While at the rehab, her son said he found Johnson unattended to, in pain and lying in her own feces and urine, which the family contends led to the fatal infection.

Baylor Scott & White previously said in a statement: “We are committed to working directly with the Congresswoman’s family members and their counsel. Out of respect for patient privacy, we must limit our comments.”

There is no cap on a settlement.

Weisbrod said at a [recent news conference](#) that the damages cap reduces the life of an “American hero” to a dollar amount. He called for a change in the “terrible” and “unfair” statute. According to a 2003 article from *The News*’ archives, Weisbrod’s law firm was a top donor to “Save Texas Courts,” a group that opposed 2003’s Proposition 12.

“The Eddie Bernice Johnson case is extremely tragic,” said Walker, the East Texas lawyer, “but it also is probably one of the only opportunities that I’ve seen in the last 20 years that really shines the light on the fundamental unfairness of this law.”

Justice and a tombstone

Fredie Joe expected to die first.

He was 6½ years older than Gwen. Doctors cracked his chest open three times because of a congenital heart condition. A pacemaker keeps his heart in rhythm. He fretted over how she’d navigate life after he was gone.

An ordained minister, Fredie Joe prayed his wife would survive. He felt deeply she would.

He never imagined outliving her. His faith faltered. He considered giving up his ministry.

Now, Fredie Joe stays in their house, which feels too big and haunted. This was the home Gwen wanted to raise 50 kids and a baby elephant in, he says, where they hosted dinner parties and Christmases. They took in stray dogs and looked after great-grandchildren.

He is alone, save for Chip and a \$12,936 funeral bill.

Fredie Joe says he isn’t interested in a huge payout — although money would be a help. He couldn’t afford a tombstone for Gwen, so his granddaughter pitched in and paid half; he’s chipping away at the rest.

Instead, Fredie Joe wants accountability, he wants justice. He’s angry and grief-stricken and needs an outlet for his loss.

The lives of Gwen Williams and Eddie Bernice Johnson, two retired, working women, are valued at \$250,000 each under state law. The difference: Johnson’s name is worth a lawsuit for a high-powered attorney. Gwen’s is not.

“If a congresswoman of her stature is treated that way,” Aldous said, “well, what in the world happens to the poor people who are not well known?”