

# **Bond Case Briefs**

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## **GOVERNMENTAL UNITS - TEXAS**

### **Marino v. Lenoir**

**Supreme Court of Texas - April 28, 2017 - S.W.3d - 2017 WL 1553095 - 60 Tex. Sup. Ct. J. 832**

Patient's mother and father of patient's living child brought medical malpractice suit against resident physician, among others, following the death of patient and her two unborn children.

The District Court granted physician's motion to dismiss under the Tort Claims Act's election-of-remedies provision for employees of governmental units. Mother and father appealed. The Houston Court of Appeals reversed in part and remanded. Physician petitioned for review.

The Supreme Court of Texas held that physician was not an employee of a governmental unit, and thus dismissal under the Act was not warranted.

State university's medical foundation did not have legal right to control resident physician's tasks at clinic, as required for physician to be "employee" of governmental unit, and thus dismissal of medical malpractice action against physician was not warranted under Tort Claims Act's election-of-remedies provision. Even though foundation reserved right to change terms and conditions of employment, clinic's teaching staff and program director assigned responsibility to physician, foundation did not own clinic, and foundation's bylaws stated that it did not control physicians who worked at hospitals it did not own.