

TEXAS LAWYER

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Winning Women

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for rehearing in *Marks v. St. Luke's Episcopal Hospital*, a case that focused on whether a patient's fall, allegedly caused by an unsafe hospital bed, was a health care liability claim, not a premises liability claim as alleged by the plaintiff. The high court had held in 2009

that Irving Marks' claim did not fall under the now-repealed Medical Liability and Insurance Improvement Act. But the court did an about-face on Aug. 27, 2010, holding that Marks' claim did come under the MLIIA.

The hospital hired Lunceford's firm, Sprott, Rigby, Newsom, Robbins & Lunceford, after the Supreme Court issued its 2009 decision in *Marks*. Lunceford says she wrote the motion for rehearing and acted in a "cheerleader role" in the case. She says she successfully encouraged four groups representing different factions of the health care industry to submit amicus curiae briefs to the Supreme Court to explain the impact the 2009 decision would have on the industry.

"Sometimes you have to point out to them [Supreme Court justices] what a disastrous effect a decision will have," Lunceford says.

A graduate of the University of Houston Law Center, Lunceford has been licensed to practice in Texas since 1988. She is certified in personal-injury trial law by the Texas Board of Legal Specialization.

Lunceford says she loves tackling new legal issues. In 2005, she represented a physician and a nurse in *In Re Huag*, a mandamus proceeding in which Houston's 1st Court of Appeals issued an opinion that clarified what is permissible discovery under §74.351 of the Texas Medical Liability Act. She says the decision in *Huag* was one of the first to interpret the procedural prohibition in the statute that blocks a plaintiff from taking depositions of a defendant or the employee of a defendant before serving defendants with a medical expert's report that meets the TMLA's criteria.

Also in 2010, Lunceford represented a physician and a hospital in *Bush v. Parkus, et al.*, a case in which Beaumont's 9th Court of Appeals held that alleged negligence in an unsuccessful attempt to remove a bullet from a man's forehead pursuant to a search warrant constituted a health care liability claim. The plaintiff had argued the action constituted medical battery, because he had not consented to the procedure and had no physician-patient relationship with the defendants. But the 9th Court found that "whether a physician-patient exists is not the standard by which the trial court determines whether a claim is a healthcare claim." The state Supreme Court denied a petition for review in *Bush* in December 2010.



MARK GRAHAM

The two years that Houston civil trial and appellate attorney Erin Lunceford spent working in the health care and pharmaceutical sales industry give her a leg up in defending hospitals and doctors against professional liability claims.

Prior to entering law school, Lunceford worked for the American Hospital Supply Corp. for about a year and spent another year employed by Beecham Pharmaceuticals. Because of that experience, she knows how to develop a health care liability case without having to do a lot of research, Lunceford says.

"I understand how hospitals work," she says. "I understand how they deal with issues."

In 2010, Lunceford persuaded the Texas Supreme Court to grant a motion