

The Healthy Benefits of Texas Medical Liability Reform

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NOTE: This article is written in response to D Healthcare Daily's article: Studies: Texas Tort Reform Has Had No Effect on Physician Supply, Lowering Costs

It's clockwork. Nine years ago this week, Texas voters approved our desperately needed medical liability reforms. Just like every other year at this time, the trial lawyers' propaganda machine is once again trying to convince Texans to ignore the improvements they're seeing all around them.

I'm pleased to report on some new research that soundly contradicts the naysayers' rhetoric.

In 2003, the Texas Legislature passed sweeping liability reforms to combat healthcare lawsuit abuse, reverse physicians' skyrocketing professional liability insurance premiums, and help ensure sick and injured Texans can see a doctor when they need one. The centerpiece of those reforms was a \$750,000 stacked cap on noneconomic damages assessed against physicians and healthcare facilities (hospital systems, nursing homes, and such) in a liability judgment. There is no cap on economic damages.

On Sept. 12, 2003, Texas voters approved Proposition 12, a constitutional amendment that ratified the legislature's authority to establish these important reforms.

The reforms have worked. They've lived up to their promise. Texans today have more physicians to deliver the care they need, particularly in high-risk specialties like emergency medicine, obstetrics, neurosurgery, and pediatric intensive care.

Just ask George Rodriguez of Corpus Christi, who walks today thanks to tort reform. Newly established Corpus Christi neurosurgeon Matthew Alexander, MD, urgently operated on Mr. Rodriguez' spinal abscess, relieving the pressure on his spinal cord and sparing him life in a wheelchair. Without the state's lawsuit reforms, Dr. Alexander wouldn't have relocated to Texas, and Mr. Rodriguez would not have found a doctor to perform the emergency neurosurgery in Corpus Christi.

The plaintiffs bar's assault tactics tend to rely on two faulty arguments:

1. There was no crisis to begin with, and/or
2. The reforms really haven't worked.

A just-released study by noted economics professor Stephen Magee of The University of Texas at Austin refutes both those allegations.

The trial lawyers, for example, fudge the timelines and scrounge up certain sets of statistics that support their point of view. They brush aside the well-documented evidence of how the threat of unfounded lawsuits was forcing emergency departments to reduce their trauma services, forcing obstetricians to stop delivering babies, and forcing Texas physicians to look elsewhere to practice.

Professor Magee's data show that the impact of our lawsuit epidemic stretched from 2000 to 2005 — about two years after passage of the reform law. During that period, he found, the number of doctors who left active practice more than doubled.

What does that mean for us?

Just ask the former patients of Jackeline Villalobos, DO, who was one of the few bilingual physicians working at a New York City clinic for pregnant women. New York has no medical liability reforms. Although Dr. Villalobos had never lost a case, her liability insurance company hiked her premiums up to \$168,000 a year. By 2010, she could no longer keep her practice alive and, as she says, "the legal climate forced me to pack my bags and move to Texas." That's exactly what was happening here a decade ago.

Sometimes, the trial bar's spin-masters try to wash away the significance of the huge influx of physicians Texas has enjoyed since the end of the lawsuit crisis. They casually dismiss the record year after record year of new physician licenses issued by the Texas Medical Board. Just last month, the medical board closed its books on fiscal year 2012, in which it licensed a record 3,630 new physicians.

Professor Magee found all those new licenses indeed translated directly into more physicians caring for Texans after the crisis ended in 2005.

"Essentially, the number of doctors that treat patients flattened during the crisis but then took an upward trajectory four years after the passage of reforms," he said. "The delayed physician growth response is consistent with what we see in other tort reform states."

The plaintiffs lawyers frequently allege that Texas' rapid population growth is responsible for all of the increase we've seen in physicians practicing here. They obviously can't count fast enough to keep up.

Had we merely stayed on the 2003 trend line and adjusted for population growth, Texas would have added 7,054 physicians. Instead we added 13,773. Put another way, population growth may well account for 51 percent of the state's new physicians. The other 49 percent above the trend was produced by some other factor. We believe that factor is a more hospitable legal climate, which has been a magnet for attracting physicians from other states.

Professor Magee's research looked much deeper than just the raw totals of new physicians. For example, he found:

- The number of high-risk specialists practicing in Texas has grown nearly 18 percent faster than the state's population.
- The ranks of pediatric subspecialists, emergency care physicians, cardiologists, vascular surgeons, and anesthesiologists have outpaced the state's population growth.
- As a whole, the state's most medically underserved counties have shown greater physician growth than they saw during the crisis period.

All of those numbers, however, aren't what matter to C.O. Farmer of Austin. He's just glad that cardiologist Stan Wang, MD, came home to practice here because of the liability reforms. Here's how Mr. Farmer tells what happened right after his seriously blocked coronary arteries caused a severe heart attack ... and how we all should remember it:

"Had it not been for the fact that I could see Dr. Wang immediately," he said, "logic would show us that the event would have been catastrophic."

Every new physician drawn to practice in Texas since the reforms passed represents hundreds, if not thousands, of catastrophes averted. The reforms have worked.

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