

More doctors means tort reform efforts worked

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In 2003 Texas voters heard doctors say their practices were in danger because of a wave of unmerited lawsuits and crushing malpractice insurance costs; on the other hand, trial lawyers said the medical community and insurers were creating a false crisis that protected bad doctoring. After election campaigns that cost both sides millions of dollars, the voters sided with the doctors, barely, and passed a constitutional limit on trial jury awards.

If the increasing number of new doctors practicing in Texas is a measure, then Proposition 12, passed in September 2003 by a mere 1 percent of the 1.5 million votes cast, is a success. A recent New York Times article reports that the number of doctors being licensed to practice in Texas is increasing by double-digit numbers, and has been increasing since passage of the medical tort reform bill. More to the point of the exodus of doctors that was experienced by Texas is that the number of specialists, including obstetricians, is increasing, too. And the improved climate for physicians includes lower malpractice insurance premiums.

This resurgence in the number of doctors has to be counted as good news for Texans and for their medical care. And there can be no escaping the prime cause for this increase in doctors and that is Proposition 12, which put a cap of \$250,000 on noneconomic damages, such as pain and suffering, in medical malpractice lawsuits. That cap eliminated the lure for the unethical to troll for likely medical malpractice cases where juries could be manipulated to return the jackpot jury awards.

The result is that the Texas Medical Board, the state agency that licenses and disciplines doctors, has certified 10,878 new physicians in the state since 2003, an 18 percent increase. In August alone, the board issued 980 medical licenses, a record. As the Times reported, the surge of new doctors, many of them moving to Texas from other states, has raised the state's ranking in physicians per capita to 42nd, up from 48th, as of 2005, the latest year available.

There has been another positive step for Texas health care happening over the same time. The Texas Medical Board has been disciplining more doctors. At that same August meeting, the board announced it was issuing disciplinary actions against 88 doctors. The board is initiating more investigations and taking action in more cases. In fiscal 2006, the board took 335 disciplinary actions. In comparison, the board issued 187 disciplinary actions in 2002, the year the agency was taking heat for being near somnolent in calling to account incompetent doctors.

Proposition 12 has worked, but Texas can't be complacent, either about the justice of its courts, or the effectiveness its licensing system. For one, it takes too long for the Texas Medical Board to process an application for a medical license. There are 2,500 license applications pending with a six-month waiting period. The board is able to investigate more complaints because the Legislature armed it with more staff. Now legislators need to give the board the resources to process license applications in a more timely manner.

Doctors do make mistakes and those mistakes can have devastating effects on patients' lives and their families. So the \$250,000 limit on noneconomic injury awards should not be set in stone. Legislators should consider pegging any increase to inflation as some states do. Likewise, because the elderly and the poor can claim few economic losses in the event of malpractice, legislators need to be sure that the justice system works for them, too.

Texas voters were right in 2003 in judging that it had a system too tilted toward plaintiffs and against doctors. Now Texans and their legislators need to make sure that the system hasn't gone too far in the other direction. Victims of egregious malpractice should receive justice and bad doctors should be disciplined, but without reviving the outlandish awards that were an injustice in themselves.