

# TMLT, Texas, and “Ten-gallon Tort Reform”

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**Howard Marcus, MD**

*Howard Marcus, MD talks about his experience in the fight to achieve tort reform in 2003.*

## **How did you become involved in medical liability reform?**

It began with my experience as a defendant in a medical liability case in the 1980s. After that miserable experience (the plaintiff dropped the case), I began reviewing medical malpractice cases for other Texas carriers and eventually TMLT. A few years later, I was invited by Bob Fields — who was head of TMLT’s claim department at the time — to join their Claims Review Committee.

In 1996, I was elected to the TMLT Board. I was then elected a vice chairman in 1998 and board chair in 2000. During that time, both claim frequency and severity climbed dramatically leading to premium increases, a dramatic increase in non-renewals, and large losses in surplus resulting in a surcharge for all TMLT insured doctors in 2001. This situation was unsustainable. Many carriers were leaving Texas, making the situation worse for providers.

TMLT had the moral imperative to act both because it was the largest carrier in Texas and because of its relationship with the Texas Medical Association and Texas physician leadership. As chair of TMLT, I felt it was time to act. My prior personal experience with the injustice and imbalance of the medical liability tort system, when I had fought off a frivolous lawsuit, also played a major role in my decision to step up to the plate.

## **What happened next?**

Based on a similar group in California (Californians Allied for Patient Protection), we formed the Texas Alliance for Patient Access (TAPA) and recruited stakeholders including medical groups like my own (Austin Regional Clinic); hospital systems; health care associations (TMA, THA, TOMA, etc.); nursing homes; and the other professional liability carriers still writing insurance in Texas (only four remained).

I have been TAPA’s board chairman since inception in 2001. TAPA’s most important role prior to the 2003 legislative session was to prepare proposals on tort reform that were fair, reasonable and which would be effective in reducing the barrage of frivolous claims we had been facing for so long. The Legal and Claims Committee included experts from the insurance carriers, defense counsel, and appellate counsel. The committee spent a year debating and developing the legislative proposals which we would then present to the Governor and members of the legislature.

Rick Perry, who was committed to tort reform, was elected governor in 2002. The 2003 session of the Texas legislature was one of the most exhausting and exhilarating periods of my life. I had had no prior involvement with Texas government or legislators and I had to learn the ropes quickly. This included the art of discretion (which does not come natural to me) in dealing with the various factions and personalities.

There were five major stages of the tort reform process between January and September 2003. Governor Perry and the legislature introduced House Bill 4 (HB 4) as a legislative emergency. The House Judiciary Committee passed HB 4 after TMLT promised a rate reduction if the legislation became law. The House passed HB 4 and the legislation allowing for the constitutional cap amendment. The Senate passed HB 4 with some revisions. A last-minute conference committee came to a compromise on the stacked cap issue. We worked hard for the rest of the summer to raise more than \$7 million to support tort reform on the ballot. It was a very close election, but the cap amendment passed in September 2003.

## **After the cap amendment passed?**

TMLT announced the 12% rate reduction as promised. The post-election period was exhilarating, including a TMA celebratory fall conference in Austin where I presented a premium rollback check on behalf of TMLT to the physicians of Texas. Over the years many liability carriers have moved into Texas. Liability rates have dropped to affordable levels and, most importantly, Texas has seen a dramatic and continuous growth of physicians well beyond the rate of population increase.

## **Did you continue with TAPA?**

Although there was some initial discussion about disbanding TAPA, most of us understood that the tort reform legislation would need to be sustained and protected over the coming years. Passing legislation was only the beginning of the process of a rational and measured professional liability system.

Since 2003, TAPA has been the repository of data on the success of tort reform in expanding access to care in Texas. TAPA has largely underwritten the expense of a great deal of appellate case work that ensures that HB 4 remains intact and effective and TAPA works hard during legislative sessions to maintain every word of HB4. I like to believe that my many longstanding relationships with the supporters of tort reform all across Texas in association with TAPA has helped maintain our continued success.