

More Doctors in Texas After Malpractice Caps

By Ralph Blumenthal

HOUSTON, Oct. 4 — In Texas, it can be a long wait for a doctor: up to six months.

That is not for an appointment. That is the time it can take the Texas Medical Board to process applications to practice.

Four years after Texas voters approved a constitutional amendment limiting awards in medical malpractice lawsuits, doctors are responding as supporters predicted, arriving from all parts of the country to swell the ranks of specialists at Texas hospitals and bring professional health care to some long-underserved rural areas.

The influx, raising the state's abysmally low ranking in physicians per capita, has flooded the medical board's offices in Austin with applications for licenses, close to 2,500 at last count.

"It was hard to believe at first; we thought it was a spike," said Dr. Donald W. Patrick, executive director of the medical board and a neurosurgeon and lawyer. But Dr. Patrick said the trend — licenses up 18 percent since 2003, when the damage caps were enacted — has held, with an even sharper jump of 30 percent in the last fiscal year, compared with the year before.

"Doctors are coming to Texas because they sense a friendlier malpractice climate," he said.

Some experts say the picture may be more complicated and less positive. They question how big a role the cap on malpractice awards has played, arguing that awards in malpractice lawsuits showed little increase in the 12 years before the law changed.

And some critics, including liability

lawyers, question whether the changes have left patients more vulnerable. With doctors facing reduced malpractice exposure, they say, many have cut back on their insurance, making it harder for plaintiffs to collect damages. Moreover, the critics say that some rural areas have fewer doctors than before.

The measure changing Texas' malpractice landscape, Proposition 12, was narrowly approved in a constitutional referendum on Sept. 12, 2003. It barred the

go further than in many states, where the limits are often twice as high as they are here.

"Other states have passed tort reform, but Texas implemented big changes all at once," said Lisa Robin, a vice president for government relations at the Federation of State Medical Boards, a national umbrella group based in Dallas.

Some experts say that the lack of a state income tax, combined with what William M. Sage, a law professor at the University of Texas in Austin, called a "relatively rapid transition in its tort reputation as a plaintiff-friendly state," has contributed to the state's appeal to doctors.

Dr. Timothy George, 47, a pediatric neurosurgeon, credits the measure in part with attracting him and his sought-after specialty last year to Austin from North Carolina. "Texas made it easier to practice and easier to take care of complex patients," he said.

The increase in doctors — double the rate of the population increase — has raised the state's ranking in physicians per capita to 42nd in 2005 from 48th in 2001, according to the American Medical Association. It is most likely considerably higher now, according to the medical association, which takes two years to compile the standings. Still, the latest figures show Texas with 194 patient-care physicians per 100,000 population, far below the District of Columbia, which led the nation with 659.

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courts from interfering in limits set by the Legislature on medical malpractice recoveries.

For pain and suffering, so-called noneconomic damage, patients can sue a doctor and, in unusual cases, up to two health care institutions for no more than \$250,000 each, under limits adopted by the Legislature. Plaintiffs can still recover economic losses, like the cost of continuing medical care or lost income, but the amount they can win was capped at \$1.6 million in death cases.

All but 15 states have adopted some limits on medical damage awards, according to the National Conference of State Legislatures. But the restrictions in Texas

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Of those awaiting processing, the largest number, after Texas, come from New York (145), followed by California (118) and Florida (100).

In some medical specialties, the gains have been especially striking, said Jon Opelt, executive director of the Texas Alliance for Patient Access, a medical advocacy group: 186 obstetricians, 156 orthopedic surgeons and 26 neurosurgeons.

Adding to the state's allure for doctors, Mr. Opelt said, was an average 21.3 percent drop in malpractice insurance premiums, not counting rebates for renewal.

To help state officials monitor the influx of doctors, the medical board recently got money to hire six more employees, said Dr. Patrick, the director since 2001. It now has 17 lawyers, compared with no more than four when he arrived, he said.

Since 2003, investigations of doctors have gone up 40 percent, patient complaints have gone up 25 percent, and disciplinary actions about 8 percent, said Jill Wiggins, a board spokeswoman. But the figures may reflect greater regulatory diligence rather than more misconduct, Ms. Wiggins said.

Of the 10,878 physicians licensed since 2003, she said, 14 have been the subject of disciplinary actions, on charges as diverse as addiction problems and record-keeping infractions, with none accused of harming patients.

But there are those who are skeptical about the caps on malpractice.

"We've lost our system of legal accountability, said N. Alex Winslow, executive director of Texas Watch, a consumer advocacy group. "Just having more doctors doesn't make patients safer. It remains to be seen who is coming to our state."

Demian McElhinny, 33, a former hospice pharmacy technician in El Paso, recently settled claims against a neurological surgeon for spinal surgery that left him disabled and his family impoverished; he said he emerged with "pennies on the dollar." His wife, Kelly, found work as a school bus driver, he said, while "I'm at home being a housewife to my two boys."

Mr. McElhinny's surgeon, Dr. Paul Henry Cho, later admitted to the medical board that he was addicted to a narcotic cough syrup and had written fraudulent prescriptions. Dr. Cho's license to prescribe drugs was suspended, although it was soon restored, and he moved from El Paso to a hospital in Fort Worth. He did not return a call to his office, and his lawyer declined to comment.

Paula Sweeney, a leading Dallas liability lawyer and a past president of the Texas Trial Lawyers Association, said, "A lot of legislators are aware they went too far in '03."

Texas Watch, in a report last February, questioned the decline in malpractice insurance rates, saying they must be seen in light of increases of as much as 147 percent before the 2003 referendum. And

Bernard S. Black, a law professor at the University of Texas, has published studies showing little increase in Texas insurance awards from 1990 to 2002, casting doubt, he said, on the "malpractice insurance crisis."

Professor Black also said that data was too scant to attribute the rise in the number of doctors to the damage caps. "I don't doubt there's an effect," he said, "but I think it's a small one."

Texas Watch also contends that many poor rural areas of Texas remain underserved, and rural West Texas has actually lost several physicians since 2003. But Dr. James Baumgartner, a pediatric neurosurgeon at Memorial Hermann Hospital in Houston, is among many doctors who believe the new malpractice caps have helped.

Dr. Baumgartner said it was now far easier to recruit doctors to a state where close to 30 percent of children lack health insurance and Medicaid reimbursements are low.

Dr. Keith Hill, a recently discharged Army doctor with a specialty in foot and ankle reconstruction, said the change in state law was the reason he moved from Georgia to open a practice in Beaumont, a poor city in East Texas long seen as plaintiff-friendly.

Had it not happened, said Dr. Hill, 40, "I can say I would not have considered Texas."