



## **Negligent consumer advocacy**

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By The Honorable Joseph M. Nixon

I wonder if "consumer groups" who strongly favor the opportunity to sue almost anyone about almost anything would advocate that consumers be allowed to sue them for negligent consumer advocacy.

It would be entertaining to watch consumer groups try to explain under oath their recent attacks on the lawsuit reform – including caps on non-economic medical malpractice damages – passed by the Texas Legislature in 2003. These reforms have greatly benefited consumers through an unprecedented influx of physicians and businesses to Texas, fairer courts, and increased access to health care. The claims of consumer advocates do not square with the facts. The response of one "consumer advocate" to the recent influx of almost 25,000 newly licensed physicians in Texas was to argue that there are not really 25,000 new physicians licensed in Texas.

A quick check with the Texas Medical Board will prove that they have issued licenses to 24,584 new doctor applicants since the tort reform passed, a sizable number considering that Texas had only about 33,000 physicians prior to the reforms. Among these new physicians are 218 obstetricians, 212 orthopedic surgeons, 48 neurosurgeons, which, together with all newly licensed physicians, have resulted in an additional 6.3 million patient visits a year.

Another consumer advocate, Public Citizen, claims that tort reform has only helped insurance companies. Not true. Since the enactment of tort reform, the premiums of the largest physician insurer in Texas – the physician-owned, non-profit Texas Medical Liability Trust – have decreased 54 percent.

What is more, Texas now has more than 30 insurance providers competing to offer medical malpractice insurance, compared to the 4 which existed in the state in 2003. All of them have dramatically reduced the cost to physicians for malpractice insurance.

Compare this to the 60 percent increase in cost paid by the physicians in New York, whose 2003 rates were similar to those of physicians in Texas. The result is more physicians want to move to Texas than any other state.

The simple reality is that competition has driven the cost of insurance to physicians to new lows in Texas, thereby making Texas a very attractive state for physicians. Lawsuit reform has benefitted the people paying the insurance premiums, and those who have received better access to health care.

It's not only consumer groups, however, that question the benefits of medical malpractice caps. A paper issued by the libertarian CATO Institute states, "Supporters of capping court awards for medical malpractice argue that caps will make health care more affordable."

While there may be some who make that claim, it was not the primary motivation behind the reforms in Texas. As author of Texas' lawsuit reform legislation, I made this statement in the bill analysis filed contemporaneously with the bill:

"Texas faces a general environment of excessive litigation. This has resulted in a crisis in access to healthcare as medical providers leave the state or leave the profession altogether... "CSHB 4 is a comprehensive civil justice reform bill intended to address and correct problems that currently impair the fairness and efficiency of our court system. ...In summary, [The bill] provides for various corrective measures that will help bring more balance to the Texas Civil Justice system, reduce the cost of litigation, and help restore litigation to its proper role in our society."

We have achieved what we sought. With the addition of 24,584 newly licensed physicians, a dramatic reduction in malpractice premiums, an increase in charity care of over \$500 million per year, and new medical infrastructure of over \$7 billion, our goals have been achieved beyond anyone's expectations.

Despite claims to the contrary, the Texas tort reform's stated goal of increased access to health care is a documented winner. Texas citizens, as patients, have greatly increased access to needed health care since 2003.

*Joseph M. Nixon, the author of Texas' Prop 12, is of counsel with Beirne, Maynard & Parsons, LLP, and a senior fellow with the Texas Public Policy Foundation.*