

“DOES TORT REFORM AFFECT PHYSICIAN SUPPLY? EVIDENCE FROM TEXAS” – AND THE ANSWER IS NO

In April 2012, a new study about physician supply in Texas was published by David A. Hyman, University of Illinois College of Law; Charles Silver, University of Texas at Austin - School of Law; and Bernard S. Black, Northwestern University - School of Law; Northwestern University - Kellogg School of Management; European Corporate Governance Institute (ECGI).¹

The methodology of this study, which controls for every conceivable factor, is so accurate that a national “tort reform” proponent admitted changing his mind about the issue after examining this work.² The following summarizes this study.³

Key Findings:

- **In 2003, after a legislative and initiative battle requiring an amendment to the state constitution, Texas enacted severe “tort reform” in medical malpractice cases, including “caps” on compensation for injured patients.**
 - A “core argument” behind the campaign was that “Texas was hemorrhaging physicians and that restrictions on lawsuits would stop the bleeding. Consistent with this theme, the core pro-tort-reform lobbying organization was named ‘Texas Association for Patient Access’ (‘TAPA’).”
- **Since then, “proponents have boasted in multiple venues that Texas’ 2003 tort reforms produced miraculous results, reversing dismal pre-reform trends.”**
- **According to this definitive new study, “The assertion that Texas experienced an ‘amazing turnaround’ after suffering an ‘exodus of doctors from 2001 through 2003’ is doubly false.”**

¹ Hyman, David A., Silver, Charles M. and Black, Bernard S., Does Tort Reform Affect Physician Supply? Evidence from Texas (April 28, 2012). Northwestern Law & Econ Research Paper; Illinois Program in Law, Behavior and Social Science Paper; U of Texas Law, Law and Econ Research Paper. Available at SSRN: <http://ssrn.com/abstract=2047433> or <http://dx.doi.org/10.2139/ssrn.2047433>.

² See, Ted Frank, Manhattan Institute, writing on the blog Point of Law: “I, for one, am going to stop claiming that Texas tort reform increased doctor supply without better data demonstrating that.” <http://www.pointoflaw.com/archives/2012/05/post-tort-reform-texas-doctor-supply.php>

³ All quotations are from the actual study.

- “There was neither an exodus before reform, nor a dramatic increase after reform. When making the case for lawsuit restrictions and when claiming enormous post-reform success, the identified speakers made statements that were false. And, not just garden variety false, but ‘liar, liar, pants on fire’ false.”

The Situation in Texas Before Caps Passed in 2003

- “Texas was not hemorrhaging physicians before tort reform was enacted in 2003,” and in fact, “The absolute number of “direct patient care” (DPC) physicians increased steadily from 1990 to 2003, even while insurance rates were increasing during the nation’s last “hard” insurance market.

The Situation in Texas After Caps Passed in 2003

- “The rate of increase in Texas DPC physicians per capita was lower after reform.”
- “Tort reform did not solve the physician supply issues Texas already had.”
 - **Overall:** In 2010, “Gary Floyd, chief medical officer of JPS Health Network, told the Texas House of Representatives that Texas faced ‘a shortage of physicians of all types’ and that the state was losing its medical school graduates because residencies were underfunded.[footnote omitted]. On the basis of his views, 24/7 Wall St. gave Texas the sixth spot on a list of ten states said to be short of physicians.”
 - **Seniors:** In 2011, the AMA “declared that “Texas seniors [] face[d] a Medicare physician access crisis.”
 - **Specialists:** Two specialties (ob-gyn and orthopedic surgery) grew more quickly before tort reform than after. Only a third specialty (neurosurgery) grew more quickly after caps passed, keeping up with population. In other words, “Although all three specialties might have had fewer members without tort reform, claims of dramatic post-reform inflows of ob-gyns, orthopedic surgeons, or neurosurgeons are wide of the mark.”
 - **Primary care physicians:** Primary care physicians per capita “grew during the pre-reform period, and fell during the post-reform period.”
 - **Rural areas:** “[T]here is no evidence that tort reform materially affected the supply of DPC physicians, specialists, or physicians practicing in rural areas in Texas.[footnote omitted]. These findings should not be surprising – they are consistent with prior multi-state studies of the relationship between tort reform and physician supply.”

Data Cited by the Texas Medical Board to Suggest Otherwise Are Misleading and Wrong

The Texas Medical Board (TMB) often cites statistics showing a post-2003 increase in “the number of applications to practice medicine that TMB receives, the number of licenses it issues, and the number of doctors practicing in identified specialties by county.” These data are extremely problematic.

- “Simply adding up post-reform licenses” means little because of others factors influencing physician licenses in Texas during this time.
 - The authors note, “In a report published in 2010, the Texas Department of State Health Services suggested that an increase in ‘direct patient care’ physicians in 2005 was ‘partially due to Hurricane Katrina’ because so many Louisiana citizen had relocated to Texas.”
- “TMB only reports licenses applied for and issued [but does] not report physicians leaving Texas or retiring.” In other words, these numbers do not indicate “whether the number of doctors in Texas rose, fell, or was unchanged.”
- The TMB numbers includes “researchers, administrators, and physicians engaged in non-clinical tasks,” i.e., doctors who do not treat patients.
 - The appropriate statistics are the ones used by the Texas Department of State Health Services, which are publicly available, reflecting “active, direct patient care (DPC) physicians.” It is these data on which the authors’ of this study base their findings.

What Determines Physician Supply in Texas and Elsewhere

- “Physician supply appears to be primarily driven by factors other than liability risk, including population trends, where the physician has done her residency, job opportunities within the physicians’ specialty, life-style choices, and the extent to which the population is insured or uninsured.”

Texas’ Data Collection Laws, Which Most States Do Not Have, are Critical for This Kind of Analysis

- The authors write, “We also note that it would not have been possible to perform this study (or the other studies we have done using Texas’ closed claims data) without high quality publicly available longitudinal data. Texas should be commended for creating a closed claims database in 1988, and maintaining it over the intervening decades.”