Center for Justice & Democracy
90 Broad St., Suite 401
New York, NY 10004
Tel: 212.267.2801
Fax: 212.459.0919
centerjd@centerjd.org
http://centerjd.org

MYTHBUSTER

THE REAL STORY OF TEXAS INSURANCE RATES

Recent medical malpractice insurance rate reductions in Texas must be viewed in light of three things: political pressure, the size of prior rate hikes, and the impact of the industry's economic cycle, causing rates to drop everywhere in the country.

1. POLITICAL PRESSURE, NOT MARKET FORCES, BROUGHT DOWN RATES INITIALLY.

In 2003 in Texas, the insurance industry and regulators made loud promises that if caps on damages were passed, insurance companies would lower rates.

- In a March 2003 letter, Texas insurance commissioner Jose Montemayor promised lawmakers that capping damages would cause companies to reduce rates up to 19 percent.[1]
- One reason these promises were made was because lawmakers were threatening to enact mandatory rate rollbacks in 2003. This is because rates had shot up so high.[2]
- These rate hikes had nothing to do with increased claims in Texas, but rather the insurance industry's own economic cycle. A study of Texas Department of Insurance data found, "the rapid changes in insurance premiums that sparked the crisis appear to reflect insurance market dynamics, largely disconnected from claim outcomes."[3]

Despite promises to cut rates, after caps passed, major insurers requested rate *hikes* as high as 35 percent for doctors and 65 percent for hospitals.[4]

- A 2004 filing to the Texas Department of Insurance, GE Medical Protective revealed that the state's non-economic damage cap would be responsible for no more than a 1 percent drop in losses.[5] After the company's rate hike request was denied, it announced it was using a legal loophole to avoid state regulation and increase premiums 10 percent without approval.[6]

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[1] Jim Vertuno, "House takes insurance firms to task over malpractice rates, *Houston Chronicle,* April 23, 2004.
[2] *Ibid.* ("Lawmakers nearly approved a rate rollback last year but stopped short when insurance companies promised reductions."); David Pasztor, "Malpractice rate rollback proposed; Rose's measure calls for lower premiums for doctors if a $250,000 cap on damages is set," *Austin American-Statesman,* March 27, 2003.
[3] Black, Silver, Hyman, and Sage, "Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002," *Journal of Empirical Legal Studies* (2005).
[4] *E.g.* Darrin Schlegel, "Some Malpractice Rates to Rise Despite Prop. 12," *Houston Chronicle*, Nov. 19, 2003; Darrin Schlegel, "Malpractice Insurer Fails in Bid for Rate Hike," *Houston Chronicle*, Nov. 21, 2003; (October 2003 rate filing from Texas Medical Liability Insurance Association (JUA) to Texas Department of Insurance).
[5] The GE Medical Protective filing can be found at: http://www.consumerwatchdog.org/insurance/rp/rp004689.pdf.
[6] "Insurer Switching to Unregulated Product to Raise Premiums," *Associated Press*, April 10, 2004.

- Only one major carrier, the doctor-owned Texas Medical Liability Insurance Association (TMLT), lowered rates in 2004, but its customers were still paying 130% more than they were from 5 years earlier.[7]

This development outraged Texas lawmakers, who called a hearing, chastised the insurance commissioner, and threatened again to legislatively roll back rates.

- As reported in the *Houston Chronicle*, "House lawmakers sent a stern message to insurance companies Thursday: Medical malpractice lawsuit reforms passed last year were meant to help doctors - not boost profits. Republicans and Democrats who supported the legislation suggested that lawmakers might consider mandatory rate rollbacks if doctors don't get significant rate relief …. Texas Medical Liability Trust is the only major carrier to agree to reduce rates. Others have tried to raise rates. About 60 percent of Texas doctors have not seen a rate decrease, the commissioner said."[8] (Only later did some rates drop, but see below.)

2. SIZE OF PRIOR RATE HIKES: Texas Watch, the Texas consumer group, reviewed trends from major carriers and found wide discrepancies between eventual rate reductions and rate hikes that preceded them. For example:

- TMLT (the physician-owned carrier with currently 41% of the market) had increased their rates by 147% between 1999 and 2003. Since 2003, TMLT has lowered their rates 20%.
- MedPro, the state's second largest insurer with a 23% market share, had raised rates 92.5% between 1999-2003. They are down just 3.7% since 2003.
- The Doctor's Company saw rates up 101.5% between 1999-2003. They are now down 24.5%.

3. INSURANCE CYCLE: Because the insurance cycle has turned, doctors' insurance rates are stabilizing everywhere, whether or not a state has enacted "caps."

- The most recent data from the Council of Independent Agents and Brokers confirms that the average rate hike for doctors nationwide over the past six months has been ***0 percent.*** This is following similar results for the last quarter of 2004, which saw rates rising only 3 percent at the end of that year.[9] **Examples include:**
- **Connecticut (no cap):** "Rate increases are even slowing or stopping in some states that have not limited awards for pain and suffering, including Connecticut, where premium increases in the past have soared as much as 90 percent in a single year."[10]
- **Pennsylvania (no cap):** "Pennsylvania's largest medical-malpractice insurer has announced it will not raise premiums in 2006, breaking a string of annual double-digit rate increases that symbolized an insurance market physicians said was increasingly unaffordable."[11]
- **Washington (no cap):** "Physicians Insurance, which is owned by doctors, has proposed a 7.7 percent cut in medical malpractice rates."[12]

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[7] "Medical Malpractice Insurance: Overview and Discussion," Texas Department of Insurance, Feb. 12, 2003.
[8] Jim Vertuno, "House takes insurance firms to task over malpractice rates," *Houston Chronicle,* April 23, 2004.
[9] Council of Insurance Agents and Brokers, Commercial Property-Casualty Market Survey, cited in, Americans for Insurance Reform, *Insurance "Crisis" Officially Over; Medical Malpractice Rates Have Been Stable For A Year,* February 7, 2006, http://www.insurance-reform.org/pr/MMSOFTMARKET.pdf,
[10] Diane Levick, "Malpractice Premiums Begin to Level Off," *Hartford Courant,* September 18, 2005.
[11] "Top med-mal insurer in Pa. to keep rates flat," *Associated Press,* September 28, 2005.
[12] Rebecca Cook, "How Sick is Malpractice Mess?" *Associated Press*, Jan. 17, 2005.