

What is the Impact of “Tort Reform” on Physician Behavior? None.

New data from the Cato Institute book, *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, written by six top medical malpractice researchers, reveals that “tort reform” neither attracts physicians to a particular location nor reduces “defensive medicine” (unnecessary tests or procedures to avoid liability risk) or health care costs. Instead, it likely increases costs.¹

PHYSICIAN LOCATION

- Whether “examining total physicians, high-risk specialties, primary care physicians, or rural physicians,” the authors found no evidence that physicians choose to practice in a state because that state caps damages, noting, “Physicians’ location decisions simply do not seem to respond very much to damage caps.”²
- They discovered, “In Texas, the assertion by medical malpractice reform proponents that Texas experienced a pre-reform exodus of physicians followed by a sharp post-reform turnaround is doubly false. There was neither an exodus before reform nor a dramatic increase after reform.”³
- As to ob-gyns, orthopedic surgeons, or neurosurgeons, “three specialties that are generally seen as facing high risk and that figured prominently in the political campaign for tort reform...there is no evidence that tort reform meaningfully affected [their numbers in Texas], relative to what one would expect based on national trends.”⁴
- Regarding why physicians locate in particular areas, the researchers found this decision “appears to be primarily driven by factors other than liability risk, including population trends, location of the physician’s residency, job opportunities within the physician’s specialty, lifestyle choices, and demand for medical services, including the extent to which the population is insured.”⁵
- The authors’ “bottom line is simple: it is time to bury the myth that damage caps have a meaningful effect on physician supply. Despite political rhetoric from cap proponents, other factors are more important in determining where physicians choose to practice.”⁶

DEFENSIVE MEDICINE AND HEALTH CARE COSTS

- The authors “provide strong evidence that tort reform does not reduce Medicare spending” and in fact leads to modestly *higher* health care spending, at least for the Medicare population” (emphasis added).⁷
- The researchers estimate that “tort reform” results in “a 4 to 5 percent rise in Medicare Part B spending” and a “2 to 3 percent and...sometimes statistically significant” increase in “combined Part A and B spending.”⁸
- The authors wrote, “The conventional wisdom is that damage caps reduce health care spending by reducing defensive medicine.” However, after Texas capped non-economic damages for injured patients in 2003, which was considered “a major shock to Texas medical malpractice risk,” tests and procedures (“health care utilization”) did not drop and rather increased in some areas.⁹
- In our view, the accumulation of evidence finding zero or small declines in spending, or even – as we find – a rise in Part B spending, suggests that it is time for policymakers to abandon the hope that tort reform can be a major element in health care cost control.”¹⁰ But they call the arguments that “tort reform” reduces health care spending a “politically convenient myth” that, while false, is “hard to kill.”¹¹

NOTES

¹ Bernard S. Black et al., *Medical Malpractice Litigation: How It Works, Why Tort Reform Hasn't Helped*, Cato Institute (2021). (Page numbers refer to the Kindle edition.)

² Id. at 226 263, 276.

³ Id. at 218.

⁴ Id at 223.

⁵ Id. at 226.

⁶ Id. at 278.

⁷ Id. at 208, 258-259.

⁸ Id. at 258-259.

⁹ Id. at 208.

¹⁰ Id. at 208.

¹¹ Id. at 261.