

BACKGROUND ON THE CAP IN TEXAS

Texas voters were given a false choice in 2003: lose their doctors or lose access to their courts. After a decade of heated debate and campaigning, the Texas legislature passed House Bill 4 that would cap non-economic damages on medical negligence at \$250,000. Because this required a constitutional amendment, Texans were sent to the polls. The amendment, known as Proposition 12, placed severe and arbitrary restrictions that make it nearly impossible for those devastated by medical negligence to seek justice through our courts, in part because it can cost more to bring a case to trial than could be possibly recovered, in particular for cases involving children or retirees.

As Texans prepared to vote on Proposition 12, they were inundated by an insurance industry funded onslaught of slick advertising designed to scare them into thinking that their health care system would collapse if they didn't give up their constitutional right to seek justice in our courts. As is often the case in political campaigns, the facts about the issue gave way to overblown assertions about a so-called medical liability "crisis" that simply did not exist. In fact, a landmark study by legal scholars from three major universities found that the number of large medical liability payments (over \$25,000) in Texas were actually stable between 1991 and 2002 while the number of small claims dropped significantly. The study showed that the number of claims per 100 Texas doctors also fell 28.12% (from 6.4 to 4.6) between 1990 and 2002.

Moreover, proponents of Proposition 12 claimed that doctors were fleeing our state because of this liability "crisis" and that with the passage of tort reform measures we would see a marked increase in the number of doctors serving every

corner of Texas. The reality however, was that doctors were never really leaving. Statistics from the Texas Medical Board (TMB), the state agency responsible for licensing doctors, show that since 1997, Texas has seen a steady increase in the number of doctors licensed to practice medicine. Between 1997 and 2003, Texas had an average annual rate of increase in medical licensees of 3.5%. In 2002, the year before Proposition 12 was debated and passed, the rate of increase jumped to 5.11%--a figure well above the average rate of growth.

Texas voters issued a split decision on Proposition 12 in 2003 (51.13% to 48.86%), narrowly stripping away the right to legal accountability through our courts. Patients were told to expect significant improvements in health care across the state, as well as dramatically lower medical liability insurance premiums for their family doctors.

Well, where are we today? The sad reality is that little has changed to improve health care for those who most need it. Underserved areas remain underserved, and medical specialists are still lacking in many Texas counties. Every underserved region in our state has seen lower average growth in the rate of new doctors in the three years after Proposition 12 passed (from 2004 to 2006), than in the three years before (2001 to 2003). In particular, during the debate on Proposition 12, proponents of the measure bemoaned the lack of specialists—especially obstetricians—in counties all across Texas. According to TMB statistics, 152 of Texas' 254 counties (59.8%) did not have an obstetrician in May 2003. What is not mentioned, however, is that three years later, fewer Texas counties had an obstetrician than before Proposition 12. In May 2006, 156 counties (or 61.4%) reported no obstetrician licensed to practice in their county.

Lastly, medical errors continue unabated. There is no evidence to suggest that the rate of medical errors has dropped at all since the passage of Proposition 12, but there is cause to believe that patients may be at greater risk.

In sum, what has changed since 2003 is that patients are less safe and the leveling foundation of our courts has crumbled. The reality is that we did not have to settle for this false choice. **We can – and should – have both strong legal protections, as well as access to quality, affordable health care. Citizens should not be forced to choose between the courts—our most important and effective forum for ensuring accountability—and a quality health care system.**