

What surgeons should know about...

Medical liability reform deep in the heart of Texas

by Jon H. Sutton, State Affairs Associate, Division of Advocacy and Health Policy

Throughout this past year, a number of states have tried to tackle medical liability reform. While most legislatures were deadlocked on this issue, a handful did make progress. For example, in the state of Texas, the medical community has won a major battle. But the jury is still out on who will win the war across the country—physicians and their patients or the trial attorneys.

This article examines the evolution of medical liability reform in the Lone Star State over the last year—from the Rio Grande protests, to the summer success of Gov. Rick Perry (R) and the legislature, to the medical community's recent effort to bring this issue to the people.

Texas-size problem

With the onset of the latest medical liability insurance crisis, Texas found itself in the national headlines when a number of physicians in the Rio Grande area launched a series of protests at county courthouses in the southern part of the state. These events were the beginning of a movement that spread rapidly across the rest of Texas with specialists of virtually every stripe attempting to educate the public and their legislators about yet another round of escalating rate hikes for liability coverage.

With premium increases in excess of 100 percent over the past two years, surgeons, obstetrician-gynecologists, and other specialists started shunning complex, high-risk procedures. In fact, many physicians closed their practices and relocated to other states that already had medical liability reforms in place. As a result, access to care issues began to arise in a number of areas of the state—a situation that drew considerable media attention.

As one of the states that the American Medical Association identified early on as “a state in crisis,” members of the Texas legislature already had been receiving a great deal of heat from a

Texas medical liability reform (H.B. 4)

- \$250,000 cap on noneconomic damages applies to all physicians and health care providers on a per case/occurrence basis.
- Periodic payment for future damages.
- Proportionate liability for defendants.
- Expert witness qualifications clarified.
- Limited liability of \$100,000 for physicians considered public servants when working for state and local agencies.

broad spectrum of community leaders, both inside and outside of health care. This collection of organizations, including the North and South Texas Chapters of the College, the Texas Medical Association, the state specialty societies, and the National Federation of Independent Business, coalesced behind the leadership of Governor Perry and other Republican leaders to secure a significant medical liability reform package (H.B. 4) that was signed into law on June 11 (see box, above).

Informing the voters

While the stroke of Governor Perry's pen signified a major battle victory for physicians and their patients, one final line of defense remained open to the trial attorneys: a constitutional challenge to the legislature's authority to limit noneconomic damages. To address this problem, lawmakers passed House Joint Resolution 3, which placed “Proposition 12” on the Septem-

ber 13 ballot. Under this referendum, voters would decide whether to amend the state constitution to “authorize the legislature to determine limitations on non-economic damages” in civil lawsuits against physicians and other health care providers.

Advocacy efforts kicked into high gear with a voter education campaign dubbed “Yes on 12.” This effort involved the same coalition of medical and business organizations that supported the liability reform legislation. As part of this campaign, numerous patient-education materials—such as brochures, fact sheets, buttons, bumper stickers, and posters (see figure, this page)—found their way into patient waiting rooms across the state during July and August. These “subtle” reminders were accompanied by face-to-face chats between surgeons and their patients regarding how passage of Proposition 12 would directly affect future access to care.

Facing a trial attorney-financed war chest of nearly \$15 million, “Yes on 12” fought an uphill battle in educating the general public about why Proposition 12 was crucial to ensuring that health care is both affordable and available. The coalition was hopeful that voters would see through the opposition’s misinformation campaign and vote “yes” on Proposition 12.

Indeed, Texas voters went to the polls on September 13 and voiced their support for caps on noneconomic damages by approving Proposition 12. The Texas constitution has now been amended to authorize the legislature to cap non-economic damages in health care liability cases, ensuring implementation of medical liability reform passed by the legislature earlier this year.

Footprints for success

Surgeons and other physicians, along with their patients, should be pleased with their reform efforts and congratulated for their hard work and focused commitment to this cause. However, these positive steps did not just happen. They involved a long-term advocacy plan. A few useful grassroots lobbying strategies can be gleaned from this experience, which may be applicable to various issues:

- *Start early.* The Texas legislature meets every other year, so advocates for medical liability reform used 2002 as a year to educate legisla-



tors and the public about the crisis and the need for medical liability reform. Regardless of the issue, do as much advance work as possible before the legislative session begins. It can mean the difference between success and failure. The more legislators who support a bill before the session begins, the more likely it is to advance past procedural hurdles.

- *Build coalitions.* A diverse group of Texas organizations united to advocate for medical liability reform, and this widespread and heterogeneous support can make a huge impact on leg-

islators who are trying to maintain a following among constituents.

- *Communication and education.* Patient education materials are very useful in physicians' offices and help to generate discussion of the issue with patients. Texas surgeons were effective in contacting their legislators through the Surgery State Legislative Action Center

- **91 percent** of Texas voters feel medical liability insurance is a problem.


- **85 percent** of Texas voters feel lawyers' contingency fees are unfair.

- **69 percent** of Texas voters support a constitutional amendment to allow a cap on noneconomic damages.

- **60 percent** of Texas voters feel a \$250,000 cap on noneconomic damages is "about right" or "too high."

Source: Texas Medical Association, March 2003 statewide survey.

(SSLAC)—often using many of the materials included in the College's Medical Liability Reform Action Guide (<http://www.facs.org/ahp/proliability.html>).

Finally, it is important to make use of the staff resources available to assist with advocacy activities. The College has a knowledgeable state affairs staff, and ACS chapters are encouraged to contact these individuals for assistance in the development and implementation of state advocacy strategies. Christopher Gallagher, Manager of State Affairs in the Washington Office, may be reached at 202/672-1502 or by e-mail at cgallagher@facs.org; Jon Sutton, State Affairs Associate in the College's Chicago office, may be contacted at 312/202-5358 or by e-mail at jsutton@facs.org. 

“ Frivolous lawsuits against doctors are harming patients because some doctors are choosing not to practice medicine because of skyrocketing medical liability premiums.... The only way to truly protect Texas patients, and ensure access to affordable health care, is to vote 'yes' on Proposition 12. I look forward to working with health care professionals, business leaders and involved citizens to protect and preserve healthcare in Texas. ”

—Rick Perry
Governor of Texas