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CROSS COUNTRY

Why Doctors Are Heading for Texas

By **JOSEPH NIXON**
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Houston

When Sam Houston was still hanging his hat in Tennessee in the 1830s, it wasn't uncommon for fellow Tennesseans who were packing up and moving south and west to hang a sign on their cabins that read "GTT" – Gone to Texas.

Today obstetricians, surgeons and other doctors might consider reviving the practice. Over the past three years, some 7,000 M.D.s have flooded into Texas, many from Tennessee.



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Sam Houston.

Why? Two words: Tort reform.

In 2003 and in 2005, Texas enacted a series of reforms to the state's civil justice system. They are stunning in their success. Texas Medical Liability Trust, one of the largest malpractice insurance companies in the state, has slashed its premiums by 35%, saving doctors some \$217 million over four years. There is also a competitive malpractice insurance industry in Texas, with over 30 companies competing for business. This is driving rates down.

The result is an influx of doctors so great that recently the State Board of Medical Examiners couldn't process all the new medical-license applications quickly enough. The board faced a backlog of 3,000 applications. To handle the extra workload, the legislature rushed through an emergency appropriation last year.

Now many of the newly arriving doctors are heading to rural or underserved parts of the state. Four new anesthesiologists have headed to Beaumont, for example. Meanwhile, San Antonio has experienced a 52% growth in the number of new doctors.

But if tort reform has been a boon – and it is likely one of the reasons the state's economy has thrived in recent years – it was not easy to enact.

In one particularly grueling fight in the legislature in 2003, an important piece of a reform bill went down to a narrow defeat in the state Senate after a single Republican switched his support to vote against it. Republican Gov. Rick Perry was so incensed that he bolted out of his office in the Capitol, sprinted into the Senate chamber, and vaulted a railing to come face to face with the defecting senator.

That confrontation fizzled, however, and before long Texas succeeded at enacting two simple but effective reforms. One capped medical malpractice awards for noneconomic damages at \$250,000, changed the burden of proof for claiming injury for emergency room care from simple negligence to "willful and wanton neglect," and required that an independent medical expert file a report in support of the claimant.


This has allowed doctors and hospitals to cut costs and even increase the resources devoted to charity care. Take Christus Health, a nonprofit Catholic health system across the state. Thanks to tort reform, over the past four years Christus saved \$100 million that it otherwise would have spent fending off bogus lawsuits or paying higher insurance premiums. Every dollar saved was reinvested in helping poor patients.

The second 2003 reform cleaned up much of the mess surrounding asbestos litigation by creating something called multidistrict litigation (MDL). This took every case in the state involving a common injury or complaint, like silicosis or asbestosis, and consolidated it for pretrial discovery in one court.

One judge now makes all pretrial discovery and evidence rulings, including the validity of expert doctor reports, for all cases. This creates legal consistency and virtually eliminates "venue shopping" – a process by which trial lawyers file briefs in districts that they know will be friendly to frivolous suits. Trials still occur in plaintiffs' home counties.

More change sailed through the legislature in 2005; tort reform had become popular with voters and lobbying against it was ineffectual. The 2005 reform created minimum medical standards to prove an injury in asbestos and silica cases. Now plaintiffs must show diminished lung capacity in addition to an X-ray indicating disease.

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In sum, these reforms have worked wonders. There are about 85,000 asbestos plaintiffs in Texas. Under the old system, each would be advancing in the courts. But in the four years since the creation of MDLs, only 300 plaintiffs' cases have been certified ready for trial. And in each case the plaintiff is almost certainly sick with mesothelioma or cancer.

No one else claiming "asbestosis" has yet filed a pulmonology report showing diminished lung capacity. This means that only one-third of 1% of all those people who have filed suit claiming they were sick with asbestosis have actually had a qualified and impartial doctor agree that they have an asbestos-caused illness.

In the silica MDL, there are somewhere between 4,000 and 6,000 plaintiff cases. In the four years since the cases were consolidated under the MDL, 47 plaintiffs have filed a motion to proceed to trial based on a medical report indicating diminished pulmonary capacity. Of those 47, the court has certified 29 people as having diminished lung capacity. This, too, is less than 1% of all the "silicosis" claims made in Texas. No one has proven the real cause of his illness to be silica, as no case yet has been certified for trial.

Before the asbestos and silica MDLs were created, nonmalignancy plaintiffs settled with defendants for anywhere between \$30,000 to \$150,000 per case. No one knows how many bogus cases were settled in the state with large cash payments. Lawyers who specialized in defending those cases say there were tens of thousands.

The full costs of large settlements and runaway malpractice suits may never be known. But it is clear that the costs were paid for by consumers through the increased price of goods, by pensioners through diminished stock prices, and by workers through lost jobs. Another group often overlooked is those who are priced out of health care, or who didn't receive charity care because doctors were squeezed by tort lawyers. Frivolous lawsuits hit the uninsured the hardest.

Texas recently became home to more Fortune 500 companies than New York and California. Things are trending well for the Lone Star State. Anecdotally, we can see that while doctors are moving in, trial lawyers are packing up and heading west. They're GTC -- Gone to California.

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