

## **A Successful Model for Medical Liability Reform**

*How Texas Fixed its Medical Liability Crisis  
and Helped Patients Get the Care they Need*

### **The Medical Liability Crisis in Texas**

In the late 1990s, Texas faced a serious medical liability crisis, much like the one that is compromising access to health care across much of the United States today.

Trial lawyers were filing lawsuits in record numbers. Jury verdicts began escalating, propelled by huge awards for non-economic damages. Medical liability insurance premiums increased rapidly, with many insurers fleeing the state. Worst of all, patients were suffering serious problems getting access to the care they needed, when they needed it.

#### ***Patients Suffer from Lack of Access to Needed Care***

When the medical liability system reaches the crisis stage, as it did in Texas, patients suffer the most because they begin to lose access to needed medical care. Practicing doctors decide to leave the state; new doctors decide to practice elsewhere.

At the height of the crisis, Texas ranked 48<sup>th</sup> out of 50 states in terms of physician manpower.<sup>1</sup> Texas averaged just 152 doctors per 100,000 people, compared to a national average of 196.<sup>2</sup>

But those numbers don't tell the full story. Physicians who provide highly-specialized care or perform high-risk procedures are often the first targets of medical liability lawsuits. Therefore, the most vulnerable patients often experience the hardest time getting the care they need when they need it.

In the midst of the Texas crisis, two out of every three Texas counties had no obstetrician. Half of all counties had no pediatrician.<sup>3</sup>

How did Texas get here? The source of the crisis can be traced back to a medical liability system that put the interests of lawyers ahead of the interests of patients and their doctors.

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<sup>1</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>2</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>3</sup> Texas Alliance for Patient Access (TAPA) [www.tapa.info](http://www.tapa.info)

### ***Lawsuits Double in Just Five Years***

During the mid-1990s, trial lawyers began flooding Texas courts with medical liability claims. Between 1996 and 2000, the number of lawsuits filed per 100 Texas physicians doubled.<sup>4</sup>

By 2000, about one out of every three doctors practicing in Texas could expect to be sued in a given year.<sup>5</sup> Between 1995 and 2002, medical liability claims against Texas doctors were being filed at twice the national average.<sup>6</sup>

Yet most of the claims had little or no merit. According to a 2001 study by the Texas Medical Association, six out of seven lawsuits filed against doctors in Texas ended with no finding of fault against the doctor.<sup>7</sup>

### ***Soaring Awards for Non-Economic Damages***

One of the major factors driving the medical liability crisis in Texas were a huge increase in awards for non-economic damages, sometimes referred to as “pain and suffering.”

In 1991, non-economic damages accounted for just 35 percent of total jury verdicts.<sup>8</sup> But by 1999, non-economic damages had soared to a whopping 65 percent of total awards.<sup>9</sup> In fact, by 1999, the average non-economic damage award for a medical liability case in Texas reached \$1.3 million – four times the amount a decade earlier.<sup>10</sup>

### ***Medical Liability Premiums Skyrocket***

The rising tide of lawsuits combined with soaring jury awards had a predictable result: medical liability premiums began to skyrocket – if a doctor was lucky enough to find insurance at all.

- Physicians experienced insurance premium increases of between 22.5 percent and 128 percent in about four years.<sup>11</sup>
- Between 2000 and 2003, the average medical liability premium for a hospital more than doubled to \$870,000 per year.<sup>12</sup>

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<sup>4</sup> Texas Department of Insurance (TDI)

<sup>5</sup> TDI

<sup>6</sup> Slide 8, “Journey to the Center of Tort Reform,” a Powerpoint presented April 5, 2006 to the annual conference of the Texas Organization of Rural and Community Hospitals.

<sup>7</sup> TAPA [www.tapa.info](http://www.tapa.info)

<sup>8</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>9</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>10</sup> TAPA [www.tapa.info](http://www.tapa.info)

<sup>11</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>12</sup> Texas Tech Law Review, Volume 10, Number 1.

Many insurance companies decided that the medical liability crisis was so out of control that Texas was no longer a safe state in which to do business. Many insurance companies either went out of business or fled the state altogether.

As the crisis deepened, the number of companies providing medical liability insurance to Texas doctors fell from 17 to 4, while the number offering to insure nursing homes fell to just one.<sup>13</sup> Insurance industry profit slumped to negative 56.6 percent.<sup>14</sup> In the five years from 1996 to 2000, the cumulative losses to Texas medical liability insurers amounted to over \$432 million.<sup>15</sup>

Soaring premiums put increased financial pressure on physicians. Two-thirds of Texas doctors reported they had to obtain bank loans, tap their retirement accounts or take a cut in salary to keep their practices going.<sup>16</sup> Many were simply unable to afford the new rates; an astounding 6,500 doctors were forced to practice without any liability coverage at all.<sup>17</sup>

In an independent study, the Texas Department of Insurance Analysis placed the blame for rising rates squarely on rising lawsuits and jury awards: “Underwriting losses are the major factor affecting rates, not insurance company investment losses.”<sup>18</sup>

## **The Solution**

In 2003, Texas Governor Rick Perry and the Texas State Legislature took action to stem the medical liability crisis. On June 11, 2003, Governor Perry signed House Bill 4. When the legislation was challenged in court by the trial bar, Texas voters responded by passing Proposition 12, a constitutional amendment that implemented the bill’s major reforms.

The most important reforms included:

- A cap on non-economic damages
  - \$250,000 for all physicians per claimant
  - \$250,000 for hospital system
  - \$250,000 for a second hospital system
  - \$750,000 maximum non-economic award from all parties
- Periodic payments for awards greater than \$100,000
- Protections for emergency room care providers
- Expert witness reforms to curb frivolous lawsuits

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<sup>13</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>14</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>15</sup> TDI

<sup>16</sup> TAPA [www.tapa.info](http://www.tapa.info)

<sup>17</sup> Texas Tech Law Review, Volume 10, Number 1.

<sup>18</sup> Texas Tech Law Review, Volume 10, Number 1.

## **The Results Are In: Medical Liability Reform Works**

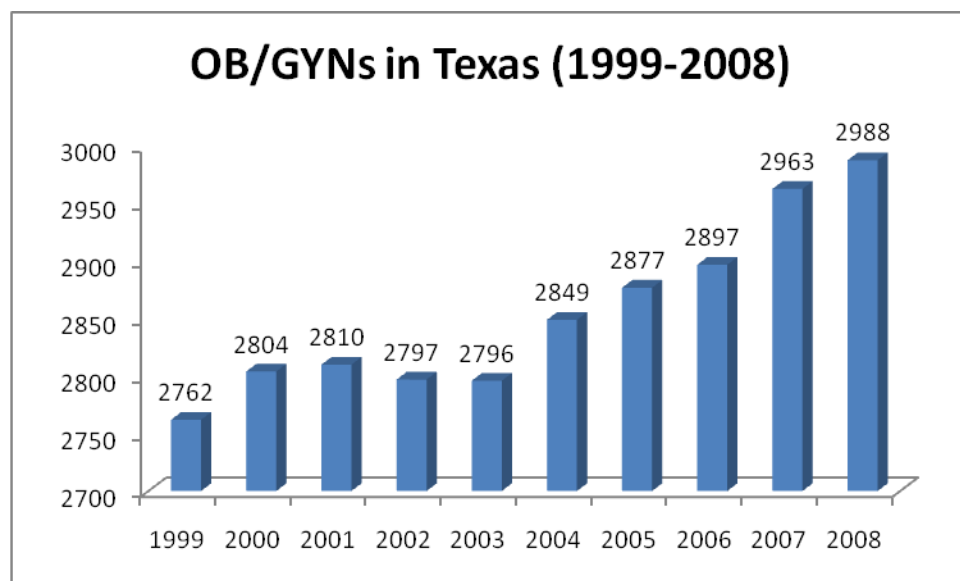
The benefits of medical liability reform were immediate and dramatic. “Passage of a \$250,000 cap on non-economic damages has [been] shown to reduce medical liability insurance premiums and to keep good doctors from leaving our state, many of whom provide on-call backup to our emergency departments,” said Dr. Angela Gardner of Plano, TX.<sup>19</sup>

The facts demonstrate clearly and convincingly that medical liability reform – including a \$250,000 cap on non-economic damages – can help improve access to health care for patients, reduce runaway insurance premiums, and create a stable, predictable liability system.

By May of 2005, the progress in Texas was so significant that it was removed from the American Medical Association’s list of “crisis states.”<sup>20</sup>

### ***Improved Access to Health Care for Patients***

In 2008, over 4,000 physician licensure applications were received, compared with 2,500 in 2002, before liability reforms were enacted.<sup>21</sup> The most vulnerable patients have benefited the most from medical liability reform. Since the reforms were adopted, Texas has added 192 new obstetricians, compared to a net loss of 14 in the three years prior to reform.<sup>22</sup>



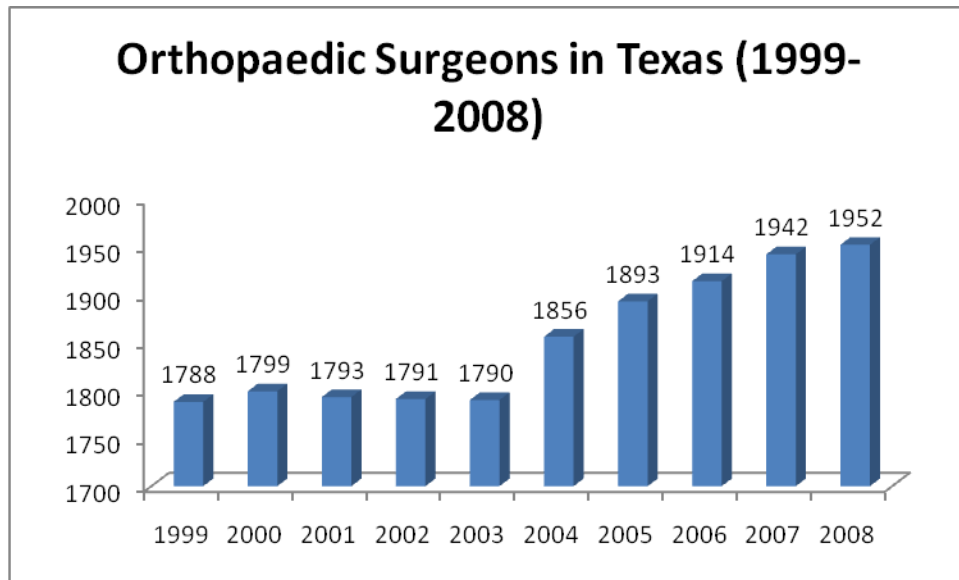
<sup>19</sup> TAPA [www.tapa.info](http://www.tapa.info)

<sup>20</sup> Texas Medical Association, 2005.

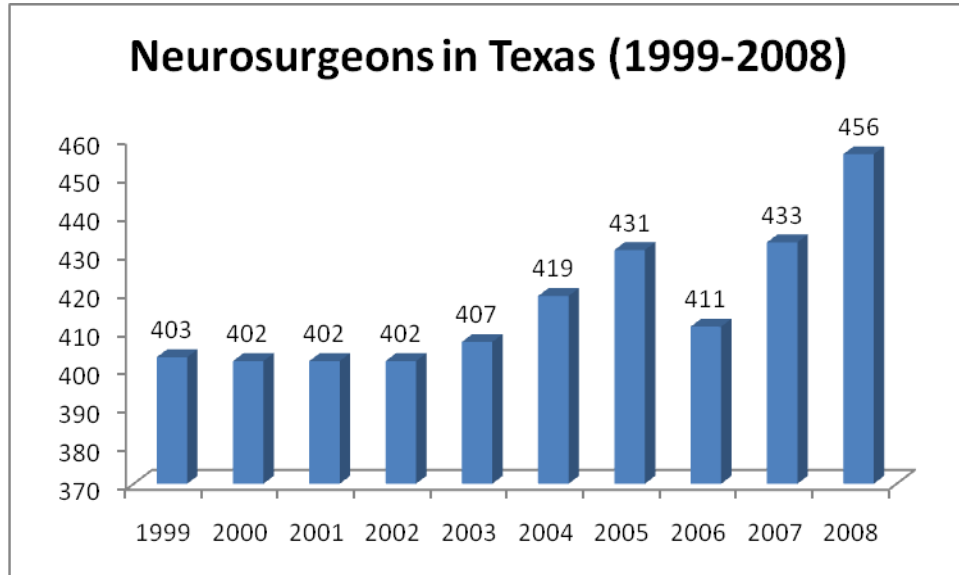
<sup>21</sup> Texas Medical Board <http://www.tmb.state.tx.us/TMBstats-FY01-08.pdf>

<sup>22</sup> Texas Medical Board, May Reports, 1999-2008.

An additional 162 orthopaedic surgeons began practicing in Texas since medical liability reform passed.<sup>23</sup>



Texas also added an additional 551 new emergency room doctors since 2003 and 49 new neurosurgeons.<sup>24</sup>



Medical liability reform has also proven to be beneficial to children's health care. Access to pediatric care, especially for children requiring high-risk specialty care, has improved dramatically.

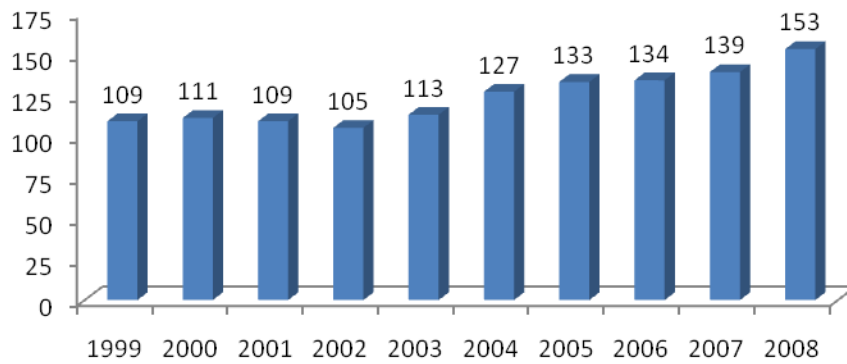
From a low of 105 in 2002, the number of pediatric cardiologists has increased to 153 as of 2008.<sup>25</sup>

<sup>23</sup> Texas Medical Board, May Reports, 1999-2008

<sup>24</sup> Texas Medical Board, May Reports, 1999-2008

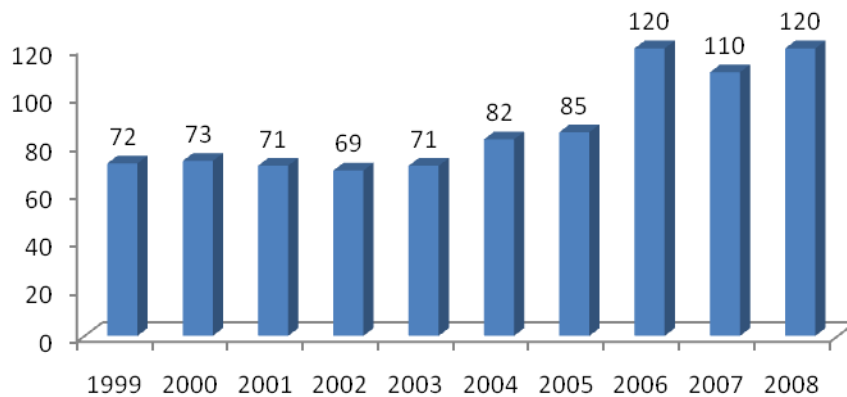
<sup>25</sup> Texas Medical Board, May Reports, 1999-2008

### Pediatric Cardiologists in Texas (1999-2008)



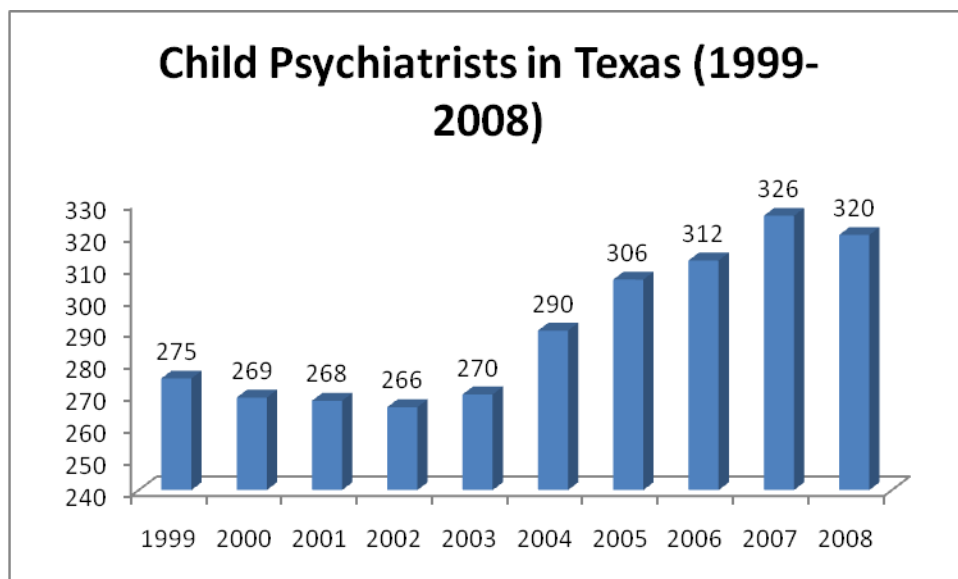
Forty-nine new pediatric oncologists began treating Texas children between 2003 and 2008.<sup>26</sup>

### Pediatric Oncologists in Texas (1999-2008)

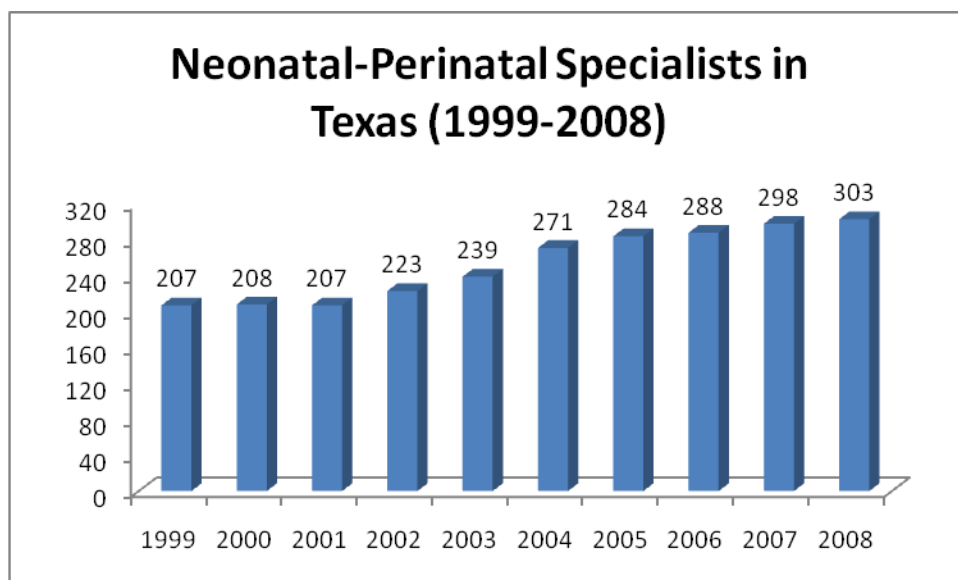


<sup>26</sup> Texas Medical Board, May Reports, 1999-2008

The number of child psychiatrists has increased from 266 in 2002 to 320 in 2008.<sup>27</sup>



And the number of neonatal-perinatal specialists has grown from 207 in 1999 to 303 in 2008.<sup>28</sup>



Patients across Texas have benefited from improved access to medical care as a result of medical liability reform. Harris County (the state's most populous) added 1,859 physicians since medical liability reform was adopted, including 103 emergency room physicians and 19 neonatologists.<sup>29</sup>

Between May 2003 and May 2008, the number of physicians in Travis County, encompassing the city of Austin and its suburbs, rose from 1,918 to 2,606.<sup>30</sup>

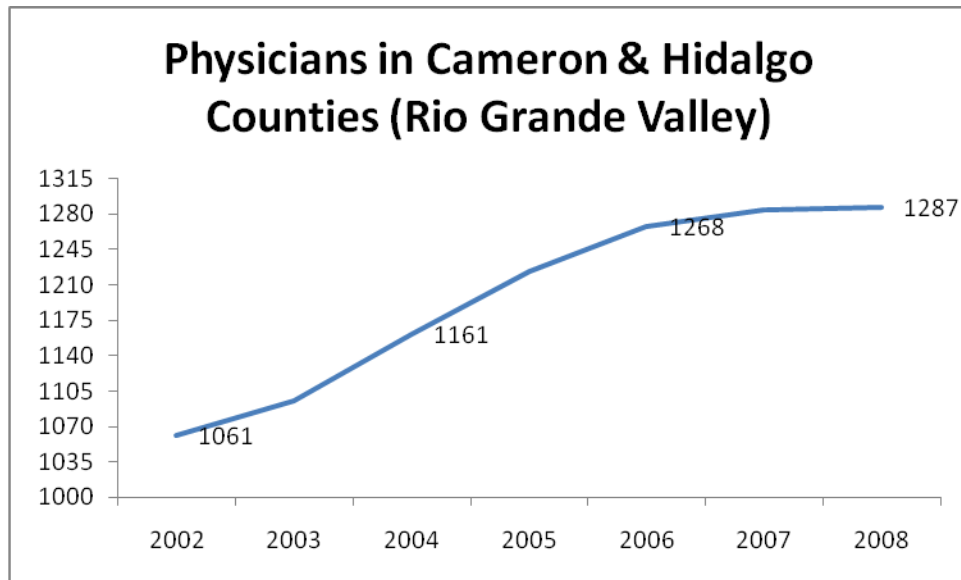
<sup>27</sup> Texas Medical Board, May Reports, 1999-2008

<sup>28</sup> Texas Medical Board, May Reports, 1999-2008

<sup>29</sup> Texas Medical Board, May Reports, 1999-2008

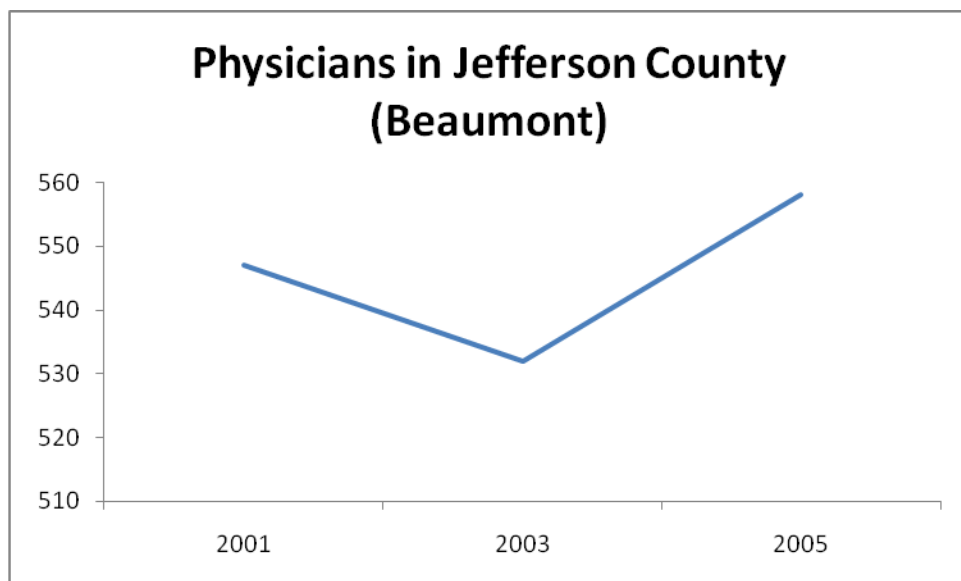
<sup>30</sup> Texas Medical Board, May Reports, 2003-2008

In the Rio Grande Valley, the number of physicians rose from 1,061 in May 2002 to 1,287 in May 2008.<sup>31</sup>



At the height of the crisis in El Paso, the number of new doctors coming to the city each year was small. However, from May 2003 to May 2005, El Paso saw an increase of 66 new physicians.<sup>32</sup>

In the two years prior to the passage of medical liability reform, Jefferson County, encompassing the city of Beaumont, lost 15 doctors. In the two years following reforms, 26 more doctors began practicing in Beaumont, including 18 ER doctors.<sup>33</sup>



<sup>31</sup> Texas Medical Board, May Reports, 2002-2008

<sup>32</sup> Texas Medical Board, May Reports, 2003-2005

<sup>33</sup> Texas Medical Board, May Reports, 2003-2005

## ***Lower Premiums***

In 2003, medical liability rates increased 54 percent.<sup>34</sup> Since medical liability reform was passed, insurance companies have adopted significant rate reductions.

“TMLT has now reduced rates for Texas physicians six consecutive years since the passage of House Bill 4 and Proposition 12 in 2003,” said Bob Fields, president and CEO of Texas Medical Liability Trust.

For the first five years following reform, Texas Medical Liability Trust – the largest carrier in the state – reduced rates across the board for all specialties: 12% in 2004; 5% in 2005; 5% in 2006; 7.5% in 2007; 6.5% in 2008. For 2009, all specialties will receive a rate decrease but the reduction will vary by specialty and territory with an average decrease of 4.7%.<sup>35</sup>

Texas received an A on its Medical Liability Environment in the latest National Report Card on the State of Emergency Medicine.<sup>36</sup> “Texas has made tremendous improvements in its medical liability environment, which is attracting many physicians to our state,” said Dr. Angela Straface, president of the Texas College of Emergency Physicians.<sup>37</sup>

***The bottom line: Texas proves that medical liability reform works.***

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<sup>34</sup> TAPA [www.tapa.info](http://www.tapa.info)

<sup>35</sup> Texas Medical Liability Trust [www.tmlt.org](http://www.tmlt.org)

<sup>36</sup> ACEP National Report Card on the State of Emergency Medicine, December 9, 2008

<sup>37</sup> ACEP National Report Card on the State of Emergency Medicine, December 9, 2008