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Texas: Tort Reform Success Story

### THE IMPACT OF TORT REFORM LEGISLATION ENACTED BY THE STATE OF TEXAS IN 2003

Texas is experiencing an unparalleled growth in medical life insure applications from physicians seeking to practice in its state. Many believe that it's just one of the many positive consequences resulting from the Tort Reform enacted in 2003. Did the legislature fix the medical liability crisis in Texas and will other states begin to model their reform after the legislation in Texas.

Welcome to the Clinicians Roundtable. I am Dr. Larry Kaskel, your host. Joining me today, Dr. Donald Patrick, a Physician and Attorney and Former Executive Director of the Texas Medical Board here to discuss the medical liability crisis that existed in Texas during his tenure and the principles underlying the Tort Reform legislation that was enacted by Texas in 2003.

#### DR. LARRY KASKEL:

Dr. Patrick, welcome to the show.

#### DR. DONALD PATRICK:

Thanks for having me.

#### DR. LARRY KASKEL:

Well, before we get into the reform, I was wondering if you could kind of highlight some of the things that were going on in the late 90s or even mid 90s.

#### DR. DONALD PATRICK:

The malpractice climate had become oppressive. There were increasing numbers of cases filed over the space of years and it had become oppressive to physicians who practiced and created a climate of defensive medicine that I think ended up with doctors paying too much attention to protecting their backside rather than practicing as good a medicine as they might.

**DR. LARRY KASKEL:**

I had read that by the year 2000, one out of three docs could be expected to be sued in a given year and that was way higher than the national average.

**DR. DONALD PATRICK:**

It was a growth industry for the defense and finance attorneys in Texas.

**DR. LARRY KASKEL:**

And what kind of awards were given for pain and suffering in the 90s?

**DR. DONALD PATRICK:**

Millions.

**DR. LARRY KASKEL:**

So what happened, I mean I would expect that doctors left. They fled.

**DR. DONALD PATRICK:**

Definitely, doctors moved to other states. Our applications to be a physician in Texas stabilized in the 2000 to 2300 rate every year for years?

**DR. LARRY KASKEL:**

And during that time, what kind of premiums were the doctors paying in Texas?

**DR. DONALD PATRICK:**

I paid 50,000. I am a neurosurgeon.

**DR. LARRY KASKEL:**

Wow. I mean was OB/GYN specially targeted?

**DR. DONALD PATRICK:**

Yes, they were because their clock didn't start running for the statute limitations until a child who was born at X date had 18 years until they could file a malpractice action against that physician.

**DR. LARRY KASKEL:**

Did some of the doctors start practicing naked and just go without insurance?

**DR. DONALD PATRICK:**

I heard of that, but I personally didn't know anybody in particular who did.

**DR. LARRY KASKEL:**

It sounds like nobody would have wanted to practice medicine in Texas, so what happened in 2003? What were the key principles that underlined the Tort Reform?

**DR. DONALD PATRICK:**

The key principles did have to do with trying to figure out a way in which doctors were not subjected to such an aggressive attack by the legal profession by limiting the award.

**DR. LARRY KASKEL:**

Can you give me an example of what happened with caps on non-economic damages?

**DR. DONALD PATRICK:**

The caps on non-economic damages were first dropped by statute to 250,000, and then enacted and by proposition to that the legislature was given the freedom to set that particular cap and the legislature had set 250,000, so that's what stays to that level today.

**DR. LARRY KASKEL:**

Can you tell me what happened to the emergency room care providers?

**DR. DONALD PATRICK:**

The emergency room care providers were all running scared and it was hard to find guys who would do that kind of work, so the high dollar liability profession such as neurosurgery, orthopedic spine surgery, OB and ER amongst others were seeing a high rate of claims filed against them.

**DR. LARRY KASKEL:**

If you have just joined us, you are listening to the Clinicians Roundtable on ReachMD, The Channel for Medical Professionals. I am Dr. Larry Kaskel and I am talking with Dr. Donald Patrick about Tort Reform Law enacted in Texas, which has successfully repaired the medical liability crisis that was affecting that state.

**DR. LARRY KASKEL:**

Dr. Patrick, given that you were the former executive director of the Texas Medical Board, can you tell us of the efforts that were really implemented to get this piece of legislation passed?

**DR. DONALD PATRICK:**

First of all, I do sound former by about a month. Secondly, when I first took the job, I was visited by a member of the medical community whom I knew in Austin and he said that the medical community did not have respect for the Texas Medical Board for doing their job as they were supposed to do. Even amongst the medical profession, it was thought that they were very doctor friendly and that had permeated throughout the state, so that any effort by Tort Reform at the 2003 session would be met by huge onslaught of pushback by the legal profession saying that were medical malpractice to go away there would be no regulation.

**DR. LARRY KASKEL:**

I imagine that Texas Bar Association was not very happy with you.

**DR. DONALD PATRICK:**

They would not have thought that we would be a viable alternative, but they liked it that way because it gave them a heck of leg up when they went in front of the legislature to explain why medical malpractice was necessary to protect the public.

**DR. LARRY KASKEL:**

So what has happened as a result of the Tort Reform that actually does help protect the public in terms of consumer protection?

**DR. DONALD PATRICK:**

Well, the medical board immediately got to work; not for that reason, but because of series of articles by the Dallas Morning News

saying we weren't doing our job right. Within two years, we had tripled the number of public orders against physicians in the state of Texas to the mid 300s whereas when I first took over it was less than 100 cases and they didn't do standard of care cases. We completely rewrote our statute along with the actions that took place in 2000 through legislature, so that standard of care cases could be prosecuted against doctors of Texas who were not doing their job right. Up to that point, if you were a physician who was larcenous, if you were incompetent, you could have dozens of malpractice cases and still practice unimpeded because malpractice does nothing to keep an incompetent physician who is practicing inappropriately out of work. He continues to work and we saw case after case after case of those sorts of individuals.

**DR. LARRY KASKEL:**

So how did you correct that?

**DR. DONALD PATRICK:**

By taking them out of, which is what the Texas Medical Board is supposed to do.

**DR. LARRY KASKEL:**

Did they go to another state or they are just not practicing at all?

**DR. DONALD PATRICK:**

If you are taken out of practice, if your license is suspended or revoked in Texas, you can't practice in another state.

**DR. LARRY KASKEL:**

How many cases of those were there?

**DR. DONALD PATRICK:**

Dozens.

**DR. LARRY KASKEL:**

Wow. So as a result of the Tort Reform, what's happened in your field neurosurgery?

**DR. DONALD PATRICK:**

The malpractice premium has dropped dramatically and frankly I don't know what it is since I am not practicing right now, but it dropped dramatically.

**DR. LARRY KASKEL:**

So was there a reverse exodus back into Texas now?

**DR. DONALD PATRICK:**

In 2004, we had 2900 applicants; whereas before, the most we'd ever have was 2300. The next year we had 2900. The next year we had 4000. The next year we had 4000 and this last year we had over 4000.

**DR. LARRY KASKEL:**

How you are keeping up with all those applications?

**DR. DONALD PATRICK:**

Well we didn't at first. At our legislative session in 2007, we had to have assist more employees hired to do that sort of work and infusion of money into the licenser side of the agency and this last year licensed about 3600 of the 4000 plus applicants whereas the previous years we haven't been able to get into 3000. Some of them just had to give up and go to other states.

**DR. LARRY KASKEL:**

Can you see any down side to the Tort Reform legislation that was passed in Texas?

**DR. DONALD PATRICK:**

Other than a lots of defense and finance firms are going out of business, that could be considered the downside from the public citizen lobbyist group.

**DR. LARRY KASKEL:**

I don't think our audience will feel too bad.

**DR. DONALD PATRICK:**

But I think medicine is being practiced even better because we are not seeing all of this defensive sort of work being done. I think they can do it more cheaply, not having to run MRI after CT scan after expensive tests on somebody just to protect their hind end and so what I am hearing and understanding is that doctors are feeling as if they can practice regular medicine instead of defensive medicine and I feel good about that.

**DR. LARRY KASKEL:**

Dr. Patrick, you spoke about the medical boards getting more active in getting rid of some of the frequent fliers of the worst defenders in committing malpractice in your state, do you think that that is more important than Tort Reform and that other states should adopt what your medical board did?

**DR. DONALD PATRICK:**

Absolutely and at the Federation State Medical Board that meets yearly, this subject has come up over and over, and we have been approached by many medical boards about how did we do it and how do we go about doing it and it is a very simple process. What we did is we had instituted a panel of doctors in the same specialty who were boarded in the same specialty as the physician who can question, reviewed the case, and if two doctors say that he has violated the standard of care, then we take it to the board and the board gives him an order. If there are whole bunch of cases that appear egregious, then the board may and frequently did decide to suspend the individual, to give him remediation training or just take him to the sideline period.

**DR. LARRY KASKEL:**

One of the last few questions is really are you aware of any other states that are trying to pass similar legislation that Texas did showing that it actually worked.

**DR. DONALD PATRICK:**

I know North Carolina is interested. There are other states who have approached me, but now have forgotten exactly which ones they were because there were so many of them about the medical board putting their house in order, but unless the medical board, the doctors who serve on the medical board, unless they are willing to give orders to their fellow doctors, take fellow doctors out of practice, then it won't happen. Doctors have to be willing to give serious actions to other doctors who are not practicing properly. In Texas, we have defeated that issue by the medical board getting a wake-up call from the Dallas Morning News as what happened and they stepped up and they have stepped up ever since. That was 2002 and you know it is 2008, six years later and the board is still doing the same sort of thing.

**DR. LARRY KASKEL:**

So to me, it really sounds like an activist medical board is more important than Tort Reform.

**DR. DONALD PATRICK:**

An activist medical board has to be in place before Tort Reform can take effect.

**DR. LARRY KASKEL:**

And in order for that to happen, the medical board has to actually be willing to stand up to fellow physicians.

**DR. DONALD PATRICK:**

Absolutely.

**DR. LARRY KASKEL:**

And that is not easy to do it sounds like.

**DR. DONALD PATRICK:**

It is not.

**DR. LARRY KASKEL:**

Well, Dr. Donald Patrick. Thank you very much for talking with me today.

**DR. DONALD PATRICK:**

You are sure welcome and I enjoyed it.

Our guest was Dr. Donald Patrick, Former Executive Director of the Texas Medical Board and we were discussing the impact of Tort Reform Legislation enacted by the State of Texas in 2003. If you would like to comment on any of our shows, please visit our website at [reachmd.com](http://reachmd.com), which features our entire library through on-demand podcasts and thank you for listening.