MARTIN & JONES PLLC
Attorneys at Law

In 2011, the North Carolina legislature passed so-called medical malpractice "reform," which gives near legal immunity to emergency room medical providers and takes away a North Carolinian's constitutional right to a jury trial, and substitutes damages caps determined by politicians in Raleigh instead of by 12 citizens in a community. The financial influence of the insurance industry and the medical lobby was responsible for the passage of these laws.

The new North Carolina laws are modeled after similar laws passed in Texas in 2003. After a decade long experiment, it has been proven that the laws have not reduced or even slowed the ever increasing healthcare costs and health insurance premiums. Reducing and slowing the growth of health care and insurance costs was the argument made by the insurance industry and medical lobby in Texas a decade ago, and in North Carolina earlier this year. Ten years after the malpractice laws were passed, Texas citizens' health care costs and insurance premiums have grown at a rate faster than the national average. The consumer advocacy organization Public Citizen recently published an investigative report that found since Texas instituted a cap on noneconomic damages, the number of malpractice lawsuits has declined precipitously, but health care costs and insurance premiums have not.

"Those who blame medical malpractice litigation for rising health care costs and diminished access to care tend to focus on theory that the fear of litigation motivates doctors to prescribe unnecessary tests and procedures to insulate themselves against potential lawsuits," the report's authors said. The Texas health care industry's own data shows that Medicare spending for prescribed tests and procedures in Texas increased nearly 40 percent faster than the national average in the four years *after* the cap was implemented. Medicare spending for diagnostic testing increased approximately 25 percent faster than the national average over the same time period.

The damages cap also hasn't had any effect on the cost of health insurance in Texas. The report's authors found that family health insurance premiums have increased approximately 13 percent faster in Texas than the national average. Additionally, the number of uninsured Texans increased as well, from 23.6 percent in 2003 to 24.6 percent in 2010.

The report also dispels the myth that Texas would see an influx of doctors, especially in underserved areas, if it implemented the malpractice damages cap. The number of doctors practicing in rural areas has decreased about 1 percent since the damages cap passed. In the seven year period before the cap passed, the number of Texas doctors increased 23.9 percent the report said.

Medical liability insurance providers seem to be profiting greatly, according to the report's findings. Even though doctors are paying slightly lower malpractice premiums, insurers are paying greatly reduced malpractice damages claims.

The malpractice caps were sold to the people of Texas and North Carolina with promises that they would dramatically decrease their health insurance rates. In related news, the Cato Institute, a Washington, D.C., libertarian think tank explained in a recent analysis that caps on medical malpractice damages harm consumers. The analysis concluded that legislators who see mandatory liability caps as a cost-containment tool for health insurance premiums should look elsewhere to reduce healthcare costs.