

MAG protecting tort reform

By Brian Looby, MAG Associate General Counsel

In 2005, with the support of the health care and business communities, the Georgia General Assembly enacted comprehensive reforms to Georgia's civil practice, evidence and tort statutes – commonly referred to as tort reform. The goal of Georgia's tort reform legislation was to ensure the citizens of Georgia had access to quality health care by reigning in the sky-rocketing costs of medical liability insurance premiums that were forcing physicians to leave the state, retire early, or stop providing certain services.

Undoubtedly, Georgia's tort reform legislation was a monumental victory for patients and physicians; it has served its purpose well. Since the enactment of tort reform, medical liability premiums have stabilized, the number of medical liability insurers re-entering the Georgia market has increased, and the exodus of physicians to other states or retirement has been stemmed. As a result, access to critical health care services has been preserved.

Despite its benefits, Georgia's tort reform legislation has been repeatedly threatened since its enactment and the 2009 session of the Georgia General Assembly will present ample opportunities for those interested in repealing some of its provisions. Georgia's evidence code is currently undergoing a comprehensive revision by the Evidence Code Study Committee and legislation is expected to be introduced during the 2009 legislative session. This committee has taken the position that it will not change any policy positions recently taken by the General Assembly. That has not prevented tort reform's adversaries from attempting to amend some of its most important provisions. An initial draft of the legislation weakened the provision making statements of apology by physicians for unanticipated outcomes inadmissible as evidence and substantially altered the standard for determining the reliability of expert witness opinion testimony. Both of these changes would have increased the risk of liability for physicians.

The Study Committee, upon the recommendations of the Medical Association of Georgia and its tort reform allies, maintained its commitment to not alter any policy positions recently taken by the General Assembly and did not adopt the language presented in the initial draft of the legislation. However, when the legislation is introduced during the session it will be subject to amendment. MAG's legal and legislative staff will monitor the legislation to ensure the successes of 2005 are preserved.

Another threat to tort reform is likely to come from an effort to reduce the standard of care in medical malpractice actions arising out of the provision of emergency medical care. If this effort is successful, the risk of liability for physicians providing emergency medical care will be significantly increased. Legislation of this nature was introduced in 2007 and 2008, but with the help of physician and patient-friendly legislators MAG was successful in preventing its passage. It is likely similar legislation will be introduced in 2009. MAG staff is committed to preserving the current standard of care for actions arising out of the provision of emergency medical care and will be working diligently to protect this important provision of tort reform.

Please watch for e-mail alerts from MAG during to the 2009 session to learn how you can help protect and preserve tort reform.