GEORGIA CHAMBER OF COMMERCE
CIVIL JUSTICE FORUM

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Building a Better State of Health Since 1849
Status of Tort Reform – Still in Effect

- ER gross negligence statute
  - Plaintiff must prove gross negligence by clear and convincing evidence involving emergency medical care in a hospital emergency department or obstetrical unit

- Expert qualifications
  - The Court of Appeals also held that it is the expert’s qualifications, not the defendant doctor’s area of practice, that controls the admissibility of expert testimony in a medical malpractice case

- Offer of settlement
Status of Tort Reform – Still in Effect

- **Apportionment of damages**
  - This provision requires the apportionment of damages according to the percentage of fault, including the fault of the plaintiff. In addition, it allows for the jury to consider the fault of a non-party if the non-party settled with the plaintiff or if the defendant gives notice 120 days before trial that the non-party was wholly or partially at fault.

- **Venue and forum non-conveniens**
  - This provision allows the court to decline a case and transfer it to another county if the court determines that “the interest of justice” and the “convenience of the parties” warrant transfer.

- **Statement of apology or sympathy**
Status of Tort Reform – What Has Been Overturned

- Caps on non-economic damages
  - *Nestlehutt v. Atlanta Oculoplastic Surgery, 286 Ga. 731 (2010)*
  - Supreme Court ruled the “statute limiting awards of noneconomic damages in medical malpractice cases to a predetermined amount violated the state constitutional right to a jury trial”

- Venue in medical malpractice cases
  - Required a judge to transfer a case to a defendant’s home county, if so requested by the defendant, and if the event prompting the suit occurred in the defendant’s home county

- Medical authorization
  - *Allen v. Wright, 282 Ga. 9 (2007)*
  - The Georgia Supreme Court held that this statute is preempted by HIPAA

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Number of Claims Opened in GA

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Courtesy of MAG Mutual
Total state-wide premium has decreased approximately 24%.

MAG Mutual premium has decreased 40% due to rate level reductions and increased competition. MAG Mutual also returned $36.8 million in policyholder dividends to Georgia physicians since tort reform.

The estimated average premium per physician has decreased 34% from approximately $23,000 in 2004 to $15,000 in 2011.

Participation by other competitors has increased from 34% of the market to 50% of the market – a 47% increase.
Georgia Medical Professional Liability Environment

- Increase in a patient’s access to care to a physician
- Increase in the number of OBGYN and general surgeons
- Insurance market is more competitive
- Stabilization of rates
Future Possibilities for Georgia

- Constitutional amendment for a cap on non-economic damages
- Separate trials for negligence and damages (Bifurcated Trial)
- Calculation of future damages
- Provider Shield Act
- True payment of damages
For more information ...

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Look for the “Medical Association of Georgia” on Facebook

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