



Georgia Board for Physician Workforce Medical Liability & Tort Reform in Georgia January 2011

On March 22, 2010, the Georgia Supreme Court ruled that the \$350,000 per defendant cap on non-economic damages in medical malpractice suits was unconstitutional based on an individual's guaranteed right to a jury trial. However, there are other important elements of Senate Bill 3 that remain intact.

This fact sheet examines the following:

1. What are the key components of Georgia's tort reform legislation (SB 3), which went into effect July 1, 2005?
2. What was the practice environment like prior to passage of SB 3?
3. How has the environment changed since passage of SB 3?
4. What are the potential implications of the Georgia Supreme Court's ruling on the physician workforce, health care industry, and consumer access to health care?
5. What are possible next steps for Georgia?

1. What are the key components of Georgia's tort reform legislation (SB 3)?

Georgia Tort Reform

Senate Bill 3, which went into effect July 1, 2005, sought to do the following:

- To limit non-economic damages in certain actions relating to health care (\$350,000 cap).
- Change provisions related to apportionment of award according to degree of fault (including plaintiff's proportion of fault) and provide for severability.
- To provide for periodic payment of damages over time.
- To provide that certain statements of apology or similar statements by health care providers shall not be admitted as evidence in civil actions.
- To change provisions to require an expert affidavit be submitted when filing cases related to medical malpractice.
- To change provisions relating to establishment of liability and standard of care in certain actions relating to emergency health care.
- To provide for defendants' access to plaintiffs' health information in medical malpractice cases.
- To provide for provisions to govern vicarious liability of hospitals for healthcare professionals based on employment status (e.g., hospital employee versus independent contractor).

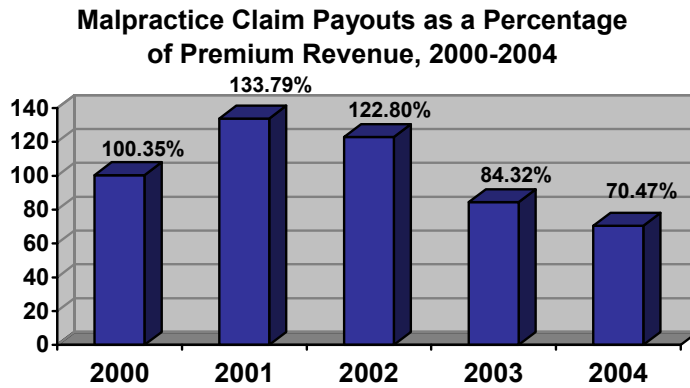
2. What was the practice environment like prior to passage of SB 3?

The Georgia Board for Physician Workforce (GBPWF) published a primary study entitled: "The Effect of the Medical Liability Insurance Crisis on Physician Supply and Access to Medical Care in Georgia" in January 2003. Then in January 2004, the GBPWF published a follow-up fact sheet. The original study and follow-up were done to gather information on the availability, cost, and coverage levels of medical liability insurance. The original study and follow-up also sought to provide information on the effect of the medical liability crisis on physicians' practice behaviors and clinical responsibilities, including providing medical services in emergency rooms and acceptance of high risk patients.

The 2003 study and 2004 follow-up survey are the sources for information on the practice environment in Georgia prior to tort reform.

- **Cost of medical liability insurance was rising – Yes.** Physicians in the specialties of obstetrics/gynecology, orthopedic surgery, neurological surgery, neurology, general surgery, and anesthesiology, who participated in the GBPWF's study, reported increases in cost of 30% or more during the time period 2001-2002. Physician respondents in other specialties reported increases ranging from 11% to 30% during the same period.

- **Payout amounts for medical malpractice claims were increasing** – Yes. The Georgia Department of Insurance provided information on malpractice claim payouts expressed as a percentage of revenue collected from premiums.



Source: Georgia Insurance Department

The graph reflects that payout amounts as a percentage of premium revenue topped 100% in 2000, 2001, and 2002. Payout rates decreased, but remained high in 2003 and 2004. Overall, the amount of payments as a percentage of premium revenue was notably high prior to the passage of tort reform.

- **Number of insurers writing new policies was decreasing** – Yes. As reported by the GBPW in its primary study, 15 of the 20 active insurers stopped writing new medical liability insurance policies in Georgia between 2000 and 2002.

Availability of medical liability insurance was deemed a problem for many physicians in Georgia prior to passage of SB 3. Thirteen (13%) percent of respondents to the GBPW's study indicated that they had difficulty finding medical liability insurance and 20% reported changing insurance carriers during the previous year. Orthopedic surgeons had the most difficulty, with 29.6% reporting difficulty finding insurance and 38.6% reporting that they changed insurance carriers during the last year. Obstetrician/Gynecologists and anesthesiologists also had high percentages of physicians reporting problems with availability of medical liability insurance.

- **Physicians were reporting plans to discontinue high risk procedures, stop providing emergency room coverage, retire early, and/or leave the state** – Yes.

Limiting the scope of practice was by far the largest effect of the medical liability insurance crisis on access to medical care reported in the GBPW's study. An estimated 17.8% of physicians, more than 2,800 practicing physicians in Georgia, were expected to stop providing high risk procedures in their practices during the next year in order to limit their liability risk. High risk procedures varied by specialty, but included procedures such as delivering babies, reading mammography tests, performing complicated surgical procedures, and handling trauma cases.

- Nearly 1 in 3 obstetrician/gynecologists and 1 in 5 family practitioners reported plans to stop providing high-risk procedures during the next year as a result of the medical liability insurance crisis.
- Close to 40% of the responding radiologists reported plans to stop providing high-risk procedures. In the practice of diagnostic radiology, interpreting mammography scans carries the highest liability risk.

Reduced coverage of Emergency Room Services was the second largest effect reported in the GBPW study, with 11.3% of physicians, more than 1,750 physicians, reporting that they had stopped or were planning to stop providing coverage of emergency room services in order to reduce their liability risk.

- Nearly 1 in 3 plastic surgeons and 1 in 4 orthopedic surgeons indicated that they had stopped or planned to stop providing ER coverage as a result of the medical liability insurance crisis.

Retire from clinical practice or relocate their practice to another state – 4% of practicing physicians in the survey, equating to an estimated 630 physicians in Georgia, planned to retire from clinical practice or leave the state in response to the medical liability insurance crisis.

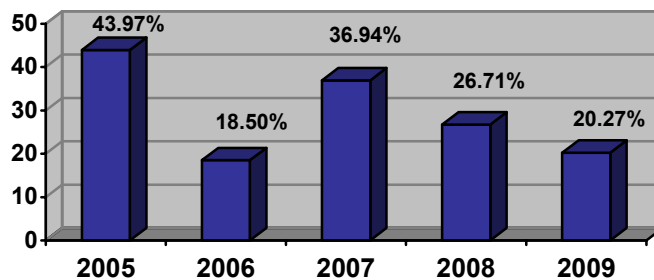
3. How has the environment changed since passage of SB 3?

- **Cost of premiums decreased after passage of SB 3 – Yes**

- Georgia adheres to the “File and Use” approach to regulating medical malpractice insurance. This approach requires that insurers notify the state of rates at least 45 days prior to their use, but does not require specific approval. (O.C.G.A. 33-9-21) This type of regulation is utilized by a total of 23 states. (Source: Research Synthesis Report No. 8, The Robert Wood Johnson Foundation, Understanding Medical Malpractice Insurance: A Primer. January 2006, page 2)
- The Georgia Department of Insurance reports most companies have not instituted a rate increase since 2005 and some companies have even reduced their rates.
- MAG Mutual’s insured Georgia physicians have seen an average 18% reduction in the cost of their insurance and premiums have not increased since 2005 when SB 3 went into effect.

- **Payout amounts for medical malpractice claims decreased after SB 3 went into effect - Yes**

Malpractice Claim Payouts as a Percentage of Premium Revenue, 2005-2009



Source: Georgia Insurance Department

The graph reflects malpractice claims activity (i.e., award payouts) as a percentage of total premium revenue. There was a significant decrease in 2006 before rising again. Overall, the amount of payments as a percentage of premium revenue has remained lower since tort reform was passed in 2005.

- MAG Mutual reports a 30% reduction in new medical liability lawsuits and claims since SB 3 passed.
- However, MAG Mutual has experienced a slight (4%) increase in severity (money paid out), primarily due to the constant rise in the cost of future medical care (“medical inflation”), which is factored into payments made to plaintiffs

- **Number of insurers writing new policies increased - Yes.** According to the Georgia Department of Insurance, there were 8 admitted companies writing new medical liability policies for physicians in Georgia in 2009.

- **Impact on physician workforce** – Without conducting a follow-up study of the physicians who reported plans to retire, leave clinical practice, or move to another state, the actual impact is unknown.

- Additionally, data from the Georgia Composite Medical Board on the number of new physician applicants during CY 2001-2009 was inconclusive because the number of applications appears to have been trending up since 2001. The two peak years with the largest increases in new applicants were 2003 and 2009.

4. What are the potential implications of the Georgia Supreme Court’s ruling on the physician workforce, health care industry, and consumer access to health care?

The potential impact is unknown at this time. The appeals process may take years. Therefore, this topic would require further study in the future.

5. What are possible next steps or alternative approaches for Georgia?

- Pursue a Constitutional Amendment through the legislative process to allow for caps on non-economic damages. Also, pursue a Constitutional Amendment to allow tort defendants to reduce damages by permitting the introduction of evidence of payments to claimant from collateral sources (e.g., insurance). Both have been deemed unconstitutional by the Georgia courts.

- Consider utilizing screening panels. Screening panels are pre-trial panels staffed by medical experts to review potential liability cases before they proceed to court (utilized by 20 states).
- Explore the use of health courts whereby compensation decisions are based on an “avoidability” standard rather than a negligence standard. Compensation is determined by specially trained judges (rare – only done in Florida and Virginia).
- Promote use of arbitration and/or mediation to settle disputes outside the courts. Both approaches utilize a third party. Arbitration decisions are legally binding, but mediation results are not.
- The Georgia Supreme Court has upheld the tort reform provision that lawsuits against emergency physicians have to demonstrate that gross negligence was committed. This is a positive development that warrants continued support.