



# THE MAGNET™



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GEORGIA'S SOURCE FOR IMPORTANT PHYSICIAN INFORMATION

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## Risk Management & Patient Safety Dept. Tips

### Employment Practices Liability, How Do I Protect My Practice?

Most commonly, employment practices liability deals with laws and protections brought under Title VII of the Civil Rights Act of 1964, the ADA (Americans with Disabilities Act) of 1990, the Civil Rights Act of 1991, and ADEA (Age Discrimination in Employment Act) of 1967. Specific areas deal with allegations of wrongful termination, sexual harassment, discrimination, invasion of privacy, false imprisonment, breach of contract, and emotional distress. Some employment laws also differ from state to state, although federal laws apply uniformly.

Taking necessary precautions is an integral part of managing your risk as an employer. Employees are wiser today about how they are being treated and will not hesitate to address it if they feel they were being mistreated.

Creating a safe, friendly and non-biased work environment are proactive measures to minimize exposure to employee complaints. These measures include:

- Creating effective hiring and screening programs to avoid discrimination
- Posting employment practices policies
- Distributing employee handbooks
- Establishing a code of conduct or non-harassment policy
- Setting up a complaint structure which gives employees both formal and informal options to let a complaint be known and handled appropriately
- Carefully documenting to help prevent and solve disputes

For more information on MAG Mutual Healthcare Solution's *Employee Handbook Creator*, which provides a

*(Continued on page 2)*

### A.M. Best Upgrades Financial Rating Outlook

MAG Mutual Insurance Company is pleased to announce that on June 4, The A.M. Best Company reaffirmed MAG Mutual's **A- (Excellent)** financial rating and **upgraded our financial outlook to Positive**.

The upgrade from a **Stable Outlook** to a **Positive Outlook** is yet another indication of the company's financial stability and overall financial health – MAG Mutual continues to be "stronger than ever."

A.M. Best indicated that "the ratings of MAG Mutual reflect its excellent capitalization, strong operating profitability over the recent period and its leadership position in providing medical professional liability coverage to healthcare providers in Georgia. Additionally, MAG Mutual has a seasoned geographic spread of business in contiguous states in the Southeast where it derives over half of its premium volume. The ratings also consider MAG Mutual's favorable underwriting results generated by sizeable loss reserve redundancies taken during the past three years, reflective of the group's favorable reserving position."

"This rating upgrade is especially significant because it reflects the consistency of our operating results even through these difficult economic times," said **Darrell O. Grimes**, President and Chief Operating Officer. "Our policyholders understand that we put their best interests at the heart of everything we do, to ensure we're here for them today and tomorrow. We're pleased A.M. Best recognizes MAG Mutual's financial stability and strategic growth strategy."

#### Have you seen the new Annual Report?

If not, someone in your office may be reading it! We recently mailed our 2009 Annual Report to policyholder/owners. It includes an in-depth review of the Company's positive results, along with the latest news important to policyholders. A link to the report can be found on our homepage, under Policyholder News. 📄



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*(Employment Practices Liability, How Do I Protect My Practice?, continued from page 1)*

turnkey solution for creating customized handbooks for your practice. Go to [www.CodersCentral.com](http://www.CodersCentral.com), click under Practice Management and select the Employee Handbook Creator or call a Representative at **1-800-253-4945**. 

## Dr. Hutchings, GSMA's New President

**Warren S. Hutchings, MD**, family physician from Macon, was inaugurated President of the Georgia State Medical Association at its meeting June 9 at Hilton Head. The GSMA is Georgia's association for minority physicians, founded in 1893. Dr Hutchings has practiced in Macon his entire career, and is presently Associate Professor of Family Medicine at Mercer. We congratulate Dr. Hutchings, a long-time MAG Mutual insured, on his presidency and wish him well. 



## Baker v. Wellstar June 1, 2010


On June 1, 2010, the Georgia Supreme Court held that HIPAA does not prohibit defense counsel from interviewing a plaintiff's treating physician during the course of discovery in a medical malpractice lawsuit. In order to conduct these interviews, defense counsel must first obtain an authorization from the plaintiff or a qualified protective order from the trial court judge. The qualified protective order must prohibit use of the protected health information for any purpose other than the current litigation and must require the return or destruction of the protected health information once the case is over.

In its opinion the Supreme Court stated that these ex parte interviews (outside of the presence of the patient or her counsel) serve the following beneficial purposes:

1. they equalize access to the fact witnesses for both plaintiffs and defendants;
2. they diminish the overall cost of litigation by reducing the need to perform formal discovery; and,
3. they equalize the cost of discovery, as both plaintiffs and defendants can access facts through informal discovery (rather than only the plaintiff having this advantage).<sup>1</sup>

The Court quoted a Michigan case and stated "The principles of fundamental fairness to investigate the health condition of a plaintiff seeking money damages for injuries mandates that it is not necessary to give notice to plaintiff of a physician interview or contact, nor is it required that plaintiff's counsel be present." (quoting Shropshire v. Laidlaw Transit, Inc., 2006 WL 63232888 (E.D. Mich. 2006)).

The orders allowing these interviews must be limited to inquiries relevant to the medical condition or injury which is at issue in the lawsuit. The Court stated that a plaintiff waives his right to privacy with regard to his medical records, but only to the extent that the records are relevant to the medical condition the plaintiff places at issue in the proceeding.

If you are contacted by an attorney requesting an interview or deposition, please call our Claims Department and let them know. 

<sup>1</sup>(quoting Shropshire v. Laidlaw Transit, Inc., 2006 WL 63232888 (E.D.Mich. 2006)).

**AM Best Upgrades MAG Mutual to a Positive Outlook in 2010 rating; Maintains A- (Excellent)**



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