

By Physicians. For Physicians.

(Continued from outside flap)

at Wellstar Douglas Hospital. Although the plaintiffs allege that the 2005 Tort Reform Act is unconstitutional generally, their main challenge is in regards to the immunity for providers of emergency medical care and the \$350,000 cap on noneconomic damages.●

Georgia Court of Appeals Rules On 2005 Emergency Medical Care Law

On September 4th the Georgia Court of Appeals reversed the trial court's decision in *Pottinger v. Smith*, finding that the plaintiff had not provided clear and convincing evidence that the defendant was grossly negligent when treating the plaintiff as required in O.C.G.A. §51-1-29.5. This law, which was enacted as part of the 2005 Georgia Tort Reform Act, states that "in an action involving a health care liability claim that arises out of emergency medical care in an emergency department, that no physician or health care provider shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence."

The plaintiff, Mr. Smith, was injured in a motorcycle accident on April 19, 2005 and was taken to the Floyd Medical Center emergency room where he was treated by Dr. Pottinger for various injuries, including those to his left leg. Dr. Pottinger ordered several tests, including a CT-Scan, and x-rays of the plaintiff's head, spine, tibia and fibula. The x-rays were read by a radiologist who found only a minimally displaced fracture to the fibula. Dr. Pottinger, relying on the radiologist's findings, did not request an emergency consult with an orthopedic surgeon as the fracture was not considered to be to a weight-bearing bone. She referred Mr. Smith to a neurosurgeon who treated Mr. Smith until he was discharged on April 23rd. Mr. Smith continued to experience pain and in May 2005, he saw an orthopedic surgeon who found, not only the previously noted fibular fracture, but also a more serious fracture to the tibial plateau that required surgery to correct.

Smith subsequently sued Dr. Pottinger, the radiologist, the neurosurgeon and the medical center. Dr. Pottinger filed a motion for summary judgment arguing that Mr. Smith had not shown any was no clear and convincing evidence that she was grossly negligent. The trial court denied the motion and Dr. Pottinger filed an appeal with the Court of Appeals. This Court found, based on the evidence of the emergency medical care she provided Mr. Smith, that "there was no evidence and certainly no clear and convincing evidence, by which a jury could reasonably conclude that Dr. Pottinger failed to exercise even a slight degree of care and was therefore grossly negligent."●



THE MAGNET™



VOL. 26 NO. 5 - 2008

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Risk Management Tips

Communicating with Family or Others Involved in the Patient's Care

The Health Insurance Portability and Accountability Act (HIPAA) rules state that if the patient is present and has the capacity to make health care decisions, a healthcare provider may discuss the patient's health information with a family member, friend, or other person if the patient agrees or, when given the opportunity, does not object. The health care provider may share or discuss only the information that the person involved needs to know about the patient's care or payment for care.

Some examples:

- An emergency room doctor may discuss a patient's treatment in front of the patient's friend if the patient asks that her friend be in the treatment room.
- A doctor's office may discuss a patient's bill with the patient's adult daughter who is with the patient at the patient's medical appointment and has questions about the charges.
- A doctor may discuss the drugs a patient needs to take with the patient's health aide who has accompanied the patient to a medical appointment.
- A doctor may give information about a patient's mobility limitations to the patient's sister who is driving the patient home from the hospital.
- A nurse may discuss a patient's health status with the patient's brother if she informs the patient she is going to do so and the patient does not object.

But

- A nurse may not discuss a patient's condition with the patient's brother after the patient has stated she does not want her family to know about her condition.●

A Special Message from our President



The recent turmoil in the United States financial system has resulted in bankruptcies, bailouts and stock market declines. This environment has created uncertainty and fear in the marketplace. I am proud to report that MAG Mutual's balance sheet is stronger today than it was last year. Plus, our conservative investment policy is now paying dividends.

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Sincerely,

Darrell Grimes
President and Chief Operating Officer



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1-800-300-7983.

George Shannon, MD Selected for AAFP Board of Directors

At its September Congress of Delegates, the American Academy of Family Physicians (AAFP) elected Dr. George W. Shannon of Columbus to serve on the AAFP Board of Directors. Dr. Shannon is a past of the Georgia Academy of Family Physicians (GAFFP), and currently serves as the GAFFP Foundation President. He is also the AAFP Delegate from the GAFFP Board. He has been elected to a three year term.



Dr. Shannon and Hannah

Dr. Shannon, supported by 15 GAFFP members, led a campaign to promote the value of family medicine at the San Diego delegates meeting. During his speech, Dr. Shannon said: "Over the next four years we are going to be engaged in a fierce national debate on how to reform our healthcare system. We need to be part of that debate. That debate must be led by physicians, especially family physicians. Where American medicine is headed is very personal to me. My wife Barbara and I are enjoying our first grandchild, Hannah. A two-and-a-half-year old package of boundless energy, curiosity and can-do spirit – sounds like the making of a good family doc to me. If someday Hannah chooses a career in family medicine, I want it to be there for her and, if she does not, I want a family physician there to treat her and be part of her family."

Congratulations to Dr. Shannon and thanks to the Georgia family physicians who worked so hard to get him elected. ●

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Georgia Tort Reform Update

Cap On Noneconomic Damages Ruled Unconstitutional

In April, 2008 Judge Marvin Arrington, State Court of Fulton County, issued an order in *Park v. Wellstar et al.* that Georgia's \$350,000 cap on noneconomic damages is unconstitutional. Judge Arrington also stated that the cap discriminates against plaintiffs in medical malpractice actions because it does not limit noneconomic damages in cases involving other professionals. However, he did not address the plaintiff's allegations relating to the gross negligence standard for emergency medical care, stating in a foot note that he would address such allegations in a subsequent order. Judge Arrington's order also provided for an immediate review by the Georgia Supreme Court if the defendants chose to have it reviewed by that Court. The defendants filed a motion for such review with the Georgia Supreme Court, which the Court granted on June 11, 2008. The Court is scheduled to hear oral arguments in this case in November of this year.

This case involves a 60-year-old quadriplegic male, Cheon Park, who fell from a ladder at his home in December 2006 and was treated in the emergency room at Wellstar Douglas Hospital. Cervical spinal films performed at that time did not indicate any injury to Mr. Park's spine and he was discharged the same day. Four days later Mr. Park presented to Grady Memorial Hospital and at that time was diagnosed with a fractured bone in his neck and related neurological problems. Mr. Park is now a quadriplegic. In June 2007, Mr. Park and his wife sued Wellstar Douglas Hospital and various physicians who were involved in his treatment while he was a patient at the hospital. The Plaintiffs allege that the defendants were negligent and/or grossly negligent in the care they provided Mr. Park

(Continued on inside flap)