



GEORGIA'S SOURCE FOR IMPORTANT PHYSICIAN INFORMATION

Causation Based on Medical Possibility Is Not Enough

A recent Georgia Supreme Court decision upheld the principle that, in a medical malpractice case, proximate cause must be established by expert testimony and be based on more than mere chance or speculation. In other words, in presenting an opinion on whether an injury was caused by alleged negligence, the expert is required to speak in terms stronger than that of medical possibility, i.e., reasonable medical probability or reasonable medical certainty.

In *Thompson v. Zwiren* the patient underwent surgery and later filed a medical malpractice action that resulted in a trial and defense verdict. On appeal, the plaintiff contended that the trial court committed harmful error by using a jury charge requiring the plaintiff to introduce expert medical testimony showing that, within a reasonable degree of medical certainty, as proven by the preponderance of the evidence, the injury complained of was proximately caused by her physician's negligence. The plaintiff alleged that this charge was misleading and confusing because it required her to meet a higher burden of proof.

However, the Georgia Supreme Court held that under Georgia law, an expert's opinion on causation must express some basis for both the confidence with which his conclusion is formed and the probability that his conclusion is accurate. A

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Risk Management Tips

Injuries related to laparoscopic surgery continue to be a rising cause of malpractice claims

In 2000, the Physicians Insurers Association of America (PIAA) published a laparoscopic injury study. The majority of the claims in the survey occurred between 1990 and 1999. Sixty percent of the laparoscopic claims involved allegations pertaining to improperly performed cholecystectomies.

The study found that cholecystectomy injuries were not recognized prior to the conclusion of the surgery in 83 percent of all cholecystectomy claims reported in the study. The most common injury associated with cholecystectomy claims is injury to the common bile duct.

Risk Management Recommendations

The following recommendations were developed in response to the most prevalent problems reported in the narrative summaries from each case study.

- When evaluating patients for surgery, document the indications in support of the performance of the laparoscopic procedure. If contraindications are present, document specific reasons why the benefits of surgery outweigh the risks
- Obtain and document the patient's informed consent for the procedure

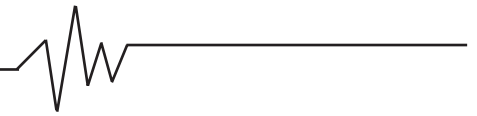
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MAG Mutual Annual Report Emphasizes Importance of Fight for Tort Reform



The 2002 MAG Mutual Insurance Company Annual Report has been sent to all MAG Mutual policyholders. The report discusses what we are doing to help drive change on behalf of those who practice medicine throughout the Southeast. From aggressively defending our policyholders in litigation to partnering with organizations to champion tort reform, MAG Mutual is working for you as your ally and lending a voice to public policy discussion.

The fight for tort reform is a long way from being over. We will continue to fight, by your side, until access to affordable quality healthcare is assured.



(Causation...Not Enough, continued from page 1)

plaintiff needs to provide evidence of causation, which shows that there was a reasonable medical probability or reasonable medical certainty that the alleged negligence caused the injury. Thus, while the charge at issue in this case was not a model of clarity, it was nevertheless a correct statement of the law.

This case is good news for physicians because it confirms the law in Georgia that doctors cannot be held liable for negligent acts that are proven to only have possibly caused an injury. ●

Mark Your Calendar for the Fall Seminars Office Failures Lead to Claims Epidemic

Wednesday, September 17
Century Center Marriott

Thursday, October 9
Marietta Conference Center

Afternoon Agenda

11:30-noon Registration and Box Lunch
Noon-1:30 p.m. Program
Participants: Office Managers

Evening Agenda

6:00-6:30 p.m. Registration and Dinner
6:30-8:00 p.m. Program
Participants: Physicians

Risk management responds:

- Diagnostic follow-up systems are essential to patient care
- Customizing a tracking system for your practice
- Poor patient outcomes from failure to follow up on test results
- Huge claims losses from clinical data "falling through the cracks"

The seminars are free, courtesy of MAG Mutual Insurance Company, in order to promote education for the Georgia medical community. Physicians will receive 1.5 hours of category 1 credits. To register or for more information, please call Cheryl Winsett at 404-842-5681. ●

(Risk Management Tips, continued from page 1)

- Verbally discuss informed consent with the patient to ensure all questions are addressed
- Evaluate the patient for injuries or complications prior to the conclusion of the procedure. Promptly treat and document any complications as soon as they arise
- Preoperative, operative and postoperative notes should be timely, detailed, clear and factual with no abbreviations that could be misinterpreted
- If the surgery is being done on an outpatient basis, be sure that the patient and/or caregiver is educated to recognize complications and report them to the surgeon. Document this patient education

The preceding suggestions are by no means an all-inclusive listing and do not establish a standard of care. They have been provided with the intention of improving patient care and minimizing malpractice losses. If you need more information, please contact a MAG Mutual risk management consultant at 404-842-5600, 800-282-4882 or online at www.magmutual.com. ●

Did you know?

MAG Mutual is planning a Jewelry and Fine Arts Road Show—and you're invited!

Join us on Thursday, October 9 from 6:00-9:00 p.m. at the award-winning, four-star Buckhead eatery 103 West, located at 103 West Paces Ferry Road NW.

You're invited to bring one jewelry or art item for a free appraisal by independent appraisers. And complimentary hors d'oeuvres and drinks will be provided.

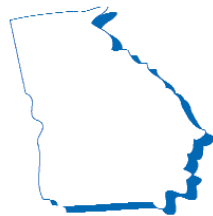
Sign up today; space is limited. RSVP to Holley Cary at 404-842-5571 by September 30.

MAG Mutual Insurance Company rated A- Excellent by A.M. Best

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