

A Decade of Neurosurgery: Perspectives from the past, looking into the future

Roy W. Vandiver, MD, BSM
Georgia Neurosurgical Society
May 26, 2012

Starting my practice, 1967: 25 neurosurgeons in Georgia



Albany-2
Atlanta/Decatur-10
Augusta-5
Columbus-2
Macon-3
Marietta-1
Savannah-2

105 neurosurgeons in Georgia--2011



Albany-2
Athens-4
Atlanta/Decatur/Johns Creek-34
Augusta-14
Brunswick-3
Columbus-4
Dalton-1
Evans-1
Gainesville-3
Lawrenceville-3
Macon-8
Marietta-5
Rome-3
Riverdale/Roswell/Smyrna/Suwanee 6
Savannah 11
Thomasville-2
Valdosta-1

Changes, 1967-2011

- Neurosurgeons practiced in 8 Georgia cities in 1967.
- Neurosurgeons practiced in 22 Georgia cities in 2011.

In 2011, the combined total of neurosurgeons in Augusta and Savannah was equal to the total statewide number in 1967.

Diagnostic procedures in common use

- Burr hole & ventriculogram—Dr. Dandy, 1918
- Pneumoencephalogram—Dr. Dandy, 1919
- Arteriogram, 1927: in 1930s, a Portuguese neurologist began the direct puncture of artery with increasing use of this modality
Initial films in the 1960s and '70s obtained on a manual pull or power-driven film changer with 3-4 films obtained in each plane

Diagnostic procedures (cont'd)

- Myelogram-pantopaque
- Isotope brain scan—meningioma/subdural
- Echo—attempt to demonstrate possible shift in ventricular system
- CT—early 70s
- Today: MRI and PET scans

Tort reform:
Where we stand in Georgia

The short version:

*For the moment,
Georgia rates are stable,
and not rising.*

Georgia's Senate Bill 3 becomes law

February 2005

**Gov. Perdue Signs Law to "Cap"
Excessive Jury Verdicts**

Gov. Sonny Perdue signed meaningful tort reform into law on February 16, which will enable Georgia patients to access medical care when and where they need it.



MAG Mutual Insurance Company has pledged to roll back medical malpractice insurance premium rates 10 percent immediately upon the Georgia Supreme Court upholding the legislation. Plus, MAG Mutual will refund to our insured physicians 100 percent of the difference between the premiums we collected and the reduced actuarial cost of providing insurance from the effective date of the legislation. A rate rollback of 10 percent will amount to an annual premium savings of \$20 million for insured Georgia physicians.

The law's key provision:
\$350,000 cap on "pain and suffering"

- No limit on payments to injured patient for past and future medical expenses, past and future lost wages ("economic damages")
- But the law set a maximum cap of \$350,000 on *non-economic* damages—estimates for the injured plaintiff's "pain and suffering"

This cap provision was ruled unconstitutional by Georgia Supreme Court in March 2010

The cap is gone, but key provisions of SB 3 remain in force

*In other words,
we've still got
tort reform in Georgia*

Key provisions of SB 3 (cont'd): *venue*

- Before SB 3: plaintiffs determined venue (site for trial)
 - SB 3 stated that venue should be county most convenient and cost-effective for all parties, such as where patient/physician/hospital are located
 - Was challenged by trial lawyers. GA Supreme Court ruled in 2006 that judges have authority to determine venue
- Thus a compromise—but much better for defense than before SB 3, when plaintiffs could "shop" for venue*

Key provisions of SB 3 (cont'd):
Emergency Department cases

SB 3 states that for emergency physicians to be sued, there must be *clear and convincing* evidence of **gross** negligence, not just **ordinary** negligence.

Georgia's Supreme Court upheld this provision twice in March 2010.

This provision is currently pending before the GA Court of Appeals. The plaintiff bar argues that the term "bona fide emergency services" is unconstitutionally vague.

Key provisions of SB 3 (cont'd):
Joint and several liability

- Before SB 3, the defendant was 100% liable if other defendants were unable to pay.
- Now, the jury can apportion verdict payments according to its determination of which parties are most at fault, including fault on the part of plaintiffs and even non-parties.

This provision has now been upheld in the Georgia Supreme Court: defendants are only responsible for their share of the verdict, regardless of whether the plaintiff is at fault.

Key provisions of SB 3 (cont'd):
expert witness affidavits/testimony

- SB 3 requires that expert witness physicians must hold a medical license, and have practices* or taught in the medical specialty they are testifying about for 3 of the past 5 years.

This provision remains in force.

*Or have performed similar procedures, as in orthopaedics/neurosurgery.

Key provisions of SB 3 (cont'd):
apology

- Any statements of apology, condolence or regret made by the defendant are inadmissible at trial.

Remains in force.

Conclusion: much of the improvement in the medical malpractice climate resulting from the 2005 tort reform law *continues to hold*

MAG Mutual data:

We have not seen a return to the claim trends of 2004 and prior since the cap enacted in 2005 was overturned.

Severity

In 2004, paid losses in GA peaked at \$61.7 million.

By 2006, losses had dropped 18% to \$50.8 million. Losses in 2010 and 2011 are slightly lower.

Frequency

In 2004, we opened 1,128 claims. In 2006, we opened only 741, a 34.3% reduction. We opened 837 in 2011—still 25% lower than 2004.

Outlook on premiums:
benefits of a “soft market”

In Georgia rates have dropped, the result of increased number of insurers writing in the state since SB3 was passed in 2005.

Since 2004, the total physician medical malpractice premium in Georgia has decreased more than 23% for all companies combined.

Recent legislation:
the North Carolina “rack rate” law

- Passed as part of 2011 Tort Reform legislation
- Allows reimbursement of incurred medical expenses and medical liens only for the amount *actually paid* or expected to be paid by health insurer
- Codifies the concept that most health care expenses and procedures are actually significantly discounted (i.e., negotiated rates from Blue Cross, Cigna, Aetna, etc.)
- Analogous to hotel room charges—typical room charges vs. charge posted on back of door

Georgia House Bill 658
(later incorporated into SB 631)

- Affects testimony for “life care plans” and lifetime medical and personal care expenses
- Allows evidence of actual “present value” of life care plan
- At present, jury only hears testimony of maximum cost of plan, not actual cost to fund it

“There can be no happiness if the things we believe in are different from the things we do.”

Unless you get active, it's like a dog howling at the moon



Tort reform shows the benefit of physicians' legislative involvement



It doesn't happen on its own.

Get involved!

Thank you!

Roy Vandiver, MD
404.309.2902
rvandiver@magmutual.com