

GEORGIA'S NEWLY ENACTED 
2005 TORT REFORM LAW
Senate Bill 3, Analysis and Practical Tips

Program Materials 2005

SPONSOR:
Institute of Continuing Legal Education in Georgia

Copyright © 2005 by the Institute of Continuing Legal Education in Georgia. All rights reserved. Printed in the United States of America. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means, electronic, mechanical photocopying, recording, or otherwise, without the prior written permission of ICLE.

The Institute of Continuing Legal Education in Georgia's publications are intended to provide current and accurate information on designated subject matter. They are offered as an aid to maintaining professional competence with the understanding that the publisher is not rendering legal, accounting or other professional advice. Attorneys using ICLE publications should also research original and current sources of authority.

ICLE gratefully acknowledges the efforts of the faculty in the preparation of this publication and the presentation of information on their designated subjects at the seminar. The opinions expressed by the faculty in their papers and presentations are their own and do not necessarily reflect the opinions of the Institute of Continuing Legal Education in Georgia, its officers or employees.



The Institute of Continuing Legal Education in Georgia (ICLE) is the not-for-profit educational service of the State Bar of Georgia and is a consortium of the Bar and the Law Schools of the Universities of Georgia, Emory, Mercer, and Georgia State. It is fully self-supporting and receives all of its income from tuition charges and sale of publications. ICLE exists solely to serve the educational needs of practicing lawyers with any surplus revenues being devoted entirely to the improvement of CLE products and services.

Printed by
Institute of Continuing Legal Education in Georgia • P.O. Box 1885 • Athens, Georgia 30603-1885

Publication No.
056043

FOREWORD

The Institute is especially grateful to our outstanding Seminar Chairperson, Matthew C. Flournoy, for providing the necessary leadership, organization and supervision that has brought this program into a reality. Indeed a debt of gratitude is particularly due our articulate and knowledgeable faculty without whose untiring efforts and dedication in the preparation of papers and in appearing on the program as speakers, this program would not have been possible. Their names are listed on the program at page iv of this book and their contributions to the success of this seminar are immeasurable.

I would be remiss if I did not extend a special thanks to each of you who are attending this seminar and for whom the program was planned. All of us hope your attendance will be most beneficial as well as enjoyable. Your comments and suggestions are always welcome.

June, 2005

Lawrence F. Jones
Executive Director
Institute of Continuing Legal
Education in Georgia

PROGRAM

Presiding: *Matthew C. "Matt" Flourney*, Program Chair, Flourney, Morgan & Schnatmeier, LLP, Marietta

- | | |
|---|---|
| <p>8:15 REGISTRATION</p> <p>8:50 WELCOME AND PROGRAM OVERVIEW
<i>Matthew C. "Matt" Flourney</i></p> <p>9:00 PROPORTIONAL LIABILITY, END TO JOINT AND SEVERAL LIABILITY IN GEORGIA (SECTION 12 OF SB 3) AND EFFECTIVE DATES OF SECTIONS OF LAW OF SB 3 (SECTION 15 OF SB3)
<i>Charles M. Cork, III, Gambrell & Stolz, LLP, Macon</i></p> <p>10:00 BREAK</p> <p>10:15 OFFER OF JUDGMENT OR SETTLEMENT (OJS) (SECTION 5 OF SB 3)
<i>Matthew C. Flourney</i></p> <p>11:15 OPINIONS OF EXPERT WITNESSES IN CIVIL CASES AND MEDICAL MALPRACTICE CASES, APPLICATION OF DAUBERT TO GEORGIA (SECTION 7 OF SB 3)
<i>Leslie J. Bryan, Doffermyre, Shields, Canfield, Knowles & Devine, LLP, Atlanta</i></p> <p>12:15 LUNCH</p> <p>1:15 VENUE, REINSTATEMENT OF VANISHING VENUE, FORUM NON CONVENIENS (SECTION 2 OF SB 3) AND EXPERT WITNESS AFFIDAVIT IN PROFESSIONAL MALPRACTICE CASES (SECTION 3 OF SB 3)
<i>Earl W. Gunn, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, Atlanta</i></p> <p>1:45 EMERGENCY MEDICAL CARE (SECTION 10 OF SB 3), HEALTH CARE PROFESSIONAL AS INDEPENDENT CONTRACTOR AT HOSPITALS, AND APPARENT AGENCY (SECTION 11 OF SB 3) AND CAPS ON NON-ECONOM-</p> | <p>IC DAMAGES IN MEDICAL MALPRACTICE CASES (SECTION 13 OF SB 3)
<i>Prof. Thomas A. Eaton, J. Alton Hosch Professor of Law, University of Georgia School of Law School, Athens</i></p> <p>2:15 BREAK</p> <p>2:30 MEDICAL AUTHORIZATION FORMS IN MEDICAL MALPRACTICE CASES (SECTION 4 OF SB 3), STATEMENT OF REGRET BY HEALTH CARE PROVIDERS (SECTION 6 OF SB 3), MEDICAL MALPRACTICE NOTICE TO BOARD OF MEDICAL EXAMINERS (SECTION 8 OF SB3), AND INVESTIGATION INTO FITNESS TO PRACTICE MEDICINE (SECTION 9 OF SB 3)
<i>Daniel J. Huff, Huff, Powell & Bailey, LLC, Atlanta</i> <i>Scott Bailey speaks on his place</i></p> <p>3:00 VIEW FROM THE TRIAL COURT BENCH ON SB 3
<i>Hon. Melodie H. Clayton, Chief Judge, State Court of Cobb County, Marietta</i></p> <p>3:30 PANEL DISCUSSION ON THE LEGISLATIVE HISTORY AND ANALYSIS OF SB 3 BY IMPORTANT GEORGIA LAWMAKERS (WITH QUESTIONS AND ANSWERS)
<i>Rep. J. Glenn Richardson, Speaker of the House, Attorney at Law, Dallas</i>
<i>Sen. Preston W. Smith, Chairman of the Senate Judiciary Committee, Attorney at Law, Rome (Primary Sponsor and Spokesman for SB 3)</i>
<i>Rep. Wendell K. Willard, Chairman of the House Judiciary Committee, Attorney at Law, Atlanta</i>
Additional Lawmakers may attend depending on their schedules</p> <p>4:30 ADJOURN</p> |
|---|---|

Table of Contents

	Page	Code
Foreword	iii	
Program Schedule	iv	
SB3: Effective Date and Retroactivity <i>Charles M. Cork, III</i>	1-9	01
SB3: Abolition of Joint Liability <i>Charles M. Cork, III</i>	1-16	1-A
Georgia's Newly Enacted 2005 Law on Offer of Judgment or Settlement (OJS) O.C.G.A. 9-11-68 (a) to (d) (Section 5 of S.B. 3) <i>Matthew C. Flourney</i>	1-74	02
Georgia's New Expert Witness Rule: <i>Daubert & More</i> <i>Robert E. Shields and Leslie J. Bryan</i>	1-20	03
Venue – The Reinstatement of Vanishing Venue and Forum Non-Conveniens <i>Trummie Lee Patrick, III</i>	1-30	04
Expert Witness Affidavit in Professional Malpractice Cases <i>Laura L. Voght</i>	1-19	4-A
Limiting Substantive Claims: New Rules of Liability for Emergency Medical Care, the Demise of the Doctrine of Apparent Agency in the Hospital Setting, and Capping Noneconomic Damages <i>Thomas A. Eaton</i>	1-14	05
"The Kitchen Sink" <i>Daniel J. Huff</i>	1-15	06
View from the Trial Court Bench on SB3 (Tort Reform) <i>Melodie H. Clayton</i>	1-42	07
Civil Justice Reform in Georgia <i>Benjamin J. Vinson and Glenn Richardson</i>	1-14	08
Appendix:		
The Institute of Continuing Legal Education in Georgia	1	
ICLE Tentative Program Schedule	3	
Georgia Mandatory Fact Sheet	5	
ICLE Video Rentals	6	
On-Line CLE Courses	10	
Errata Sheet	13	

Richard Hill 9B