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## Doctors, lawyers debate effect of malpractice law

By David Burch

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Marietta Daily Journal Staff Writer

MARIETTA - For Dr. Don Campbell, a surgeon who last year retired from his Austell medical practice in part because of the escalating cost of medical malpractice insurance, Monday's passage of new tort reform legislation was a long time coming.

"I think this is good," Campbell said. "It protects patients, and at the same time it protects hospitals and doctors from exorbitant settlements that drive up insurance premiums."

The news was less encouraging, however, for local plaintiff's attorneys, who said the bill would limit the ability of patients to sue for damages and discourage many from taking their grievances to court altogether.

"I think it's going to be devastating to the individual plaintiffs over all," said Marietta attorney Greg Griffin, who has represented clients in personal injury and wrongful death cases for 31 years.

"I expected some sort of tort reform to pass," he said. "I never expected that all provisions included in this bill would pass the General Assembly - This is a very, very significant change in the law regarding litigation that has existed ever since I've practice law."

Doctors like Campbell have long argued in favor of tort reform, saying Georgia's laws regarding medical liability lawsuits are to blame for high insurance costs paid by doctors and hospitals in the state, and those high costs have prompted new doctors to move to neighboring states to practice medicine.

But attorneys, especially those who make a living representing clients in medical malpractice cases, argue that placing a cap on pain-and-suffering settlements would prevent victims of malpractice from being fully compensated.

"It's very upsetting," Marietta attorney Matt Flournoy said. "The purpose of tort reform was because of the high insurance premiums doctors have to pay. The legislation that was passed goes far beyond medical malpractice."

Flournoy, like other attorneys, argued that the bill passed Monday would affect not only medical malpractice cases, but also those involving auto accidents and other wrongful injury suits. Someone could lose a limb in an industrial accident, he said, and their settlement would also be affected by the cap.

Some attorneys said the \$350,000 cap set by the legislature on pain-and-suffering settlements doesn't go far enough and argued in favor of a cap in the \$750,000 range.

Griffin said the amount does not provide ample compensation for situation where plaintiffs have lost their eyesight, limbs or suffered other permanent disabilities.

"I don't have a problem with caps, per se," Griffin said. "I think the amount they have set for medical malpractice is way too low."

However, a bigger issue for plaintiff's lawyers than the cap on damages was an article of the bill regarding "offer of judgment."

Under the new tort reform bill, if the defendant in a lawsuit makes an offer to settle the matter out of court and the plaintiff rejects the offer, a judge or jury in a court trial must rule in favor of the plaintiff and award damages at least as high as the previous offer plus 25 percent.

In other words, if a defendant offers a settlement of \$50,000 and is rejected, the court ruling would have to be a minimum of \$62,500.

If the ruling is lower, the plaintiff in the case would be required to pay for all legal costs paid by the defendant after the settlement offer is made, even if those costs are higher than the court award. The "offer of judgment" is intended to prevent frivolous lawsuits.

Flournoy said the section of the law would drive poorer plaintiffs into bankruptcy and deter others from taking the risk of a court trial.

"Middle-class Americans will be afraid to take their bonafide disputes to a jury trial for fear of having to pay the larger but unknown attorneys' fees and costs of the defendant's side," he said. "It will have a chilling effect on middle-class citizens to take their disputes to a jury trial."

Marietta attorney Bill Gentry, who has practiced personal injury and workers compensation law for 19 years, agreed.

"It could have very troubling results," he said. "It's going to deprive a lot of people in the middle class access to the court system."

But for doctors like Campbell, who closed his surgical practice at WellStar Cobb Hospital last July after paying \$68,000 a year for malpractice insurance, the reforms are seen as necessary to prevent the further exodus of doctors out of Georgia.

Campbell, who now serves as medical director at WellStar Cobb and oversees the recruitment of new doctors to the hospital, said the reforms passed Monday would help create a more desirable climate in Georgia for those practicing medicine.

"The ultimate good that this law does is it will bring more insurance companies into Georgia, which in turn will bring insurance premiums down even further," he said.

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