GDLA NEWSLETTER

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THE PRESIDENT'S MESSAGE

BY: JOE CHAMBLESS

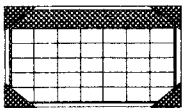
I have come to learn that being President of the organization is much easier than I had anticipated. It turns out that when you have an active Executive Vice President, and active Secretary-Treasurer, an active Board of Directors, and active Committee Chairmen and Members, this job is not so bad.

Some of our goals have already been met for the year and the remainder of the goals are apparently going to be met. We are slowly increasing our membership. We have had an excellent trial academy. We have what looks to be a very good winter seminar scheduled at the Colony Square Hotel in Atlanta on February 27, 1998. The program for the annual meeting at the Cloister on Sea Island on April 24-25, 1998 has been planned and is in place with some very interesting speakers. The 1998 Journal is on or ahead of schedule and will once again be a publication of which the GDLA can be proud. Our long range planning committee has met twice and has made some important recommendations to the Board of Directors for future direction of GDLA. The Amicus Curiae Committee has worked diligently and two Amicus Curiae briefs have been filed in the name of GDLA. GDLA sponsored a seminar on professionalism in Atlanta which was well attended and which generated a lot of food for thought and for action, as a result of which a GDLA committee on professionalism has been established. I could go on and on, but I can assure you that your organization has been busy

Read this Newsletter carefully for more detailed information on which your organizatin is doing and what it hopes to accomplish in the immediate future.

Also, please make your plans to support the winter seminar this month by attending and encouraging other members to attend. It is still free for you to attend and you will receive CLE credits, including professionalism and ethics. Schedule your time to be at the annual meeting in April and let's see if this meeting can meet your expectations for a time not only to learn something new, but to renew friendships, to meet new lawyers, and to even swap war stories that just might help the next lawyer at his or her next trial.

CALENDAR OF EVENTS



1998 Events

February 12-15 Board of Directors Winter Meeting
April 23-26 Annual meeting Cloister

1999 Events

June 17 - 20 Annual Meeting at Ponte Vedra

MINUTES OF THE FALL 1997 BOARD MEETING

Georgia Defense Lawyers Association

The 1997 Fall Board Meeting of the Georgia Defense Lawyers Association was held on Saturday, November 1, 1997, at the Grove Park Inn in Asheville, North Carolina. Those in attended were:

President Joe Chambless
Executive Vice-President Steve Kyle
Jerry Buchanan
George Duncan
John Edwards
Drew Hill
Walter McClelland
Greg Melton
Bill Pinson
Willis Richardson
Richard Rominger
Grant Smith
Bob Travis
Bruce Welch
David Whitworth

New Members

Dick Richardson presented the report of the Membership Committee and moved that the following be accepted into membership of the Association:

Campbell Bowman
Robert Ingram
Kirby Mason
Edward Stabell
Gordon Smith

The motion was seconded and those members were unanimously voted into the Association.

Treasurer's Report

George Duncan gave the Treasurer's Report. Dues notices were mailed in August. Currently, 317 members have paid their 1997-98 dues. 125 members have not responded to the first dues notice. Follow-up notices will be sent during mid-November.

The Trial Academy

Jerry Buchanan gave the report of the trial Academy. The Academy is set this year for December 4th through the 6th in Callaway Gardens. The format of the Academy is being modified and upgraded in response to extensive feedback solicited and received from students over the past two years. Additional emphasis will be placed upon jury selection issues and upon allowing students to practice and refine direct and cross-examination skills.

Twenty-two students have registered thus far. This may be a record for early registration. The group noted that the brochure prepared by Kay Deming and the committee was superlative. It was agreed that the Trial Academy is one of the most outstanding projects of our group, and the overall work of Kay and her committee was commended.

The Expert Witness Project

Chairman Kyle reported that the expert witness bank is not working, principally because it is very difficult to get people to contribute the names of experts to the database. Therefore, it is getting to be uncommon that we are able to help members with their inquiries.

Mr. Kyle suggested that we go to a system of data faxing that has been successful in other states. The system would be that a member wishing to have information on an expert witness would contact the Association. The member's inquiry would be faxed to eight to ten members of the Association in various parts of the statue, and those members in turn would fax the inquiry to other members within their area. Mr. Kyle noted that the Alabama Defense Lawyers Association charges $125 for this service, but that we probably could do it more cost-effectively, particularly because many members have automatic faxes that could transmit the fax at midnight when long distance rates would be much lower.

Mr. Kyle moved as follows:

RESOLVED that the Association sponsor the system of data faxing and that a trial fee of $35 to $50 per inquiry be set.

The motion was seconded, and after some discussion, the motion was amended to allow Mr. Kyle to establish the initial fee.

A. E-Mail and Internet

It was discussed that many bar associations and defense lawyers associations of other states have a home page on the Internet. There was some discussion as to the extent to which members of our Association have an Internet E-Mail. It was generally agreed that we should give consideration to an Internet home page and a system of information exchange via the Internet. President Chambless appointed a study committee of Jerry Buchanan, Chairman, Bruce Welch and Steve Kyle to study the subject, make recommendations and report at the Winter Board Meeting.

The Journal

Walter McClelland reported that although no one has yet volunteered to write an article, he perceives that the committee's work is on target. Throughout the day, various proposed topics for articles were discussed.

Legislative

At this point, there was on report of significant pending legislation of which the Association should be aware. Bob Monyak is in charge of our legislative sub-committee, and given his active work with the legislature, it is likely that he will become aware of legislation which would significantly affect the group and will communicate such to the Executive Committee.

The Amicus Curiae

Tom Alexander heads the group. There have been two requests for amicus briefs, one dealing with the application of the statute of limitations to legal malpractice claims when the client continues to be represented by the law firm, and the other one dealing with whether an assault and battery exclusion will bar a claim against an employer for negligent hiring if the underlying tort is assault and battery. At this point, we have had no volunteers to write amicus briefs.

Mr. Kyle noted that in Florida there is a group known as the "Fabulous Fifty", which is essentially 50 law firms which agree to write no more than one amicus curiae brief per year on behalf of the Florida Defense Lawyers Association. The situation seems to be working very well.

There was some discussion as to the group's policy on when amicus briefs should be written. President Chambless indicated that Mr. Alexander's committee should be charged with the task of formulating a policy for presentation to the Board on determining whether it is appropriate for amicus briefs to be written on specific topics. In the interim, a motion was made that the Executive Committee pass on the propriety of writing amicus curiae briefs before any are submitted on behalf of the Association. The motion was seconded and passed unanimously.

Mr. Melton suggested that the writing of amicus briefs can pose a significant drain upon resources of certain law firms and we should consider a stipend or partial hourly rate for those firms writing amicus briefs. President Chambless suggested that the Amicus Curiae Committee should also formulate and present to the Board a policy for compensation or reimbursement of firms who use their resources in writing amicus curiae briefs.

The subject of the use of doctors' reports pursuant to newly-enacted O.C.G.A. §24-3-18 was raised by John Edwards. It was agreed that this was a controversial topic that probably would result in appellate cases. Mr. Edwards agreed to write an article for the newsletter on the subject.

Newsletter Report

The newsletter was mailed this week. The next one will go out following the first of the year. It was suggested that the newly-formed substantive law committees each be charged with writing an article for each newsletter. President Chambless agreed to present this recommendation to the head of each substantive law committee.

Long Range Planning Committee and By-Law Revisions

Bob Travis gave the report of the Long Range Planning Committee meeting which was held in Macon on October 16, 1997.

A. Membership Requirements

The Long Range Planning Committee concluded that the most pressing problem facing the Association was an increase in participation of the membership, particularly of younger lawyers. It was noted that the requirement that individuals could not apply for membership unless they had been in practice for three years may be a disincentive to younger lawyers wanting to participate in the group, and by the time they have achieved the three-year practice requirement, they may be participating in other bar or civic associations. It was generally felt that if the individual receives recommendations and is primarily engaged in a defense practice, there should not be an insistence that they have been in practice for three years.

Mr. Kyle made the following motion:

RESOLVED that the by-laws be amended so as to eliminate the requirement that a member be in practice for a minimum of three years before becoming a member of the Association. The motion was seconded. The motion passed unanimously and it was agreed that the subject be presented to the membership at the annual meeting in the form of a motion to amend the by- laws.

There was further discussion as to the dues structure and there was a general consensus that reduced dues should be paid by members in practice for under five years. It was noted that the Board of Directors has the authority to set the dues and it was agreed that the dues structure would be evaluated and discussed by the Board at the annual meeting following the amended to the by- laws, if the amended passed.

Mr. Buchanan suggested that we pre-emptively distribute membership applications at the Trial Academy. The Board approved.

B. Annual Meeting

The Long Range Planning Committee noted the continuing decline of attendance at the annual meeting. The assessment was that this attendance decline was due in part to the timing of the meeting, and in particular, the conflicts that families with children would have with spring breaks and the general inability to use the annual meeting as a family vacation. It was also noted that the cost of the annual meeting at resorts, particularly those out of the country, was prohibitive to some

members, and the image of the group was becoming one that the group only catered to older lawyers. The recommendation of the Committee was to move the annual meeting to a date during the summer. It was noted that the 1998 meeting was firm for the Cloister. Mr. Richardson noted that the 1999 meeting had not been totally confirmed, but had generally been set for the Hamilton Princess in Bermuda. He also noted that if we convert the meeting to a summer date, we may get into higher rates, and for 1999, cancellation could be a problem with Bermuda.

The Long Range Planning Committee presented the following motion:

RESOLVED that the Association adopt a by-law change, moving the annual meeting from April to a date during the summer, and that this change be implemented as soon as practicable. The motion was seconded and, following a brief discussion, passed unanimously. A proposed amendment to the by-laws will be presented at the annual meeting.

Mr. Kyle made the following motion:

RESOLVED that the Association do everything possible to change the 1999 meeting from April until a June date. The motion was seconded. Mr. Richardson noted that it may be difficult to obtain commitments from resorts at this stage. The motion passed unanimously, and a proposed amendment to the by-laws to that effect will be presented at the annual meeting.

Professionalism Committee

A. GTLA/GDLA Liaison Committee

Mr. Duncan reported on the joint seminar on professionalism that was attended by approximately 100 persons. There were constructive recommendations on implementing changes that would improve intra-professional relations. The Academicians involved with the seminar will be preparing full reports and they will be distributed within the next several weeks. It was recommended that the name of the committee be changed to the "Professionalism Committee" and that the mission of the committee be broadened. President Chambless agreed and the committee was so renamed.

Substantive Law Committees

The substantive law committees have been recently established and none of the committees have yet had meetings. It was recommended that the committees each write articles for the newsletter. Mr. Chambless will give that recommendation to the committee chairpersons.

Memorial to Henley Napier

Mr. Edwards read to the group a tribute to Henley Napier that was authored by George Grant. Motion was made, seconded, and passed unanimously that the tribute be included in the Law Journal, that the tribute be delivered to Del, and that Del be invited to the annual meeting next year at the expense of the Association.

Annual Meeting

Mr. Kyle indicated that the program for the annual meeting was taking shape, that the theme would be "Door to the Millennium: The Changing Role and Practice of Defense Lawyers". The program would feature presentations on technology for the courtroom, economics of the practice of law, and a keynote speaker would be selected.

Recognition of Dick Richardon

Mr. Richardson thanked the Association for the tribute and cup that had been given to him at the annual meeting. The directorate unanimously recognized the long standing and continuing contribution that Dick Richardson has given to our group.

New Business

The Board voted to return to New Orleans for the winter board meeting, with Charleston as a backup if arrangements could not be made in New Orleans.

Mr. Chambless presented a copy of the proposed new letterhead. Because of space limitations, the names of all past presidents will not be included. Though the directorate recognized the contributions the past presidents have made, it was agreed that the new letterhead should be used.

Mr. Kyle noted that the Supreme Court Formal Advisory Opinion Board may need a new defense lawyer representative. He is to check into whether one has been appointed.

Mr. Kyle noted the upcoming DRI meeting in Baltimore and noted that our Association will be represented by several attendees.

There being no further business to come before the Association, the group, with the exception of Messrs. Kyle and Melton, adjourned to watch the Georgia/Florida football game.

RESOLUTION BY GEORGIA LAWYERS ASSOCIATION ON DEATH OF HENDLEY V. NAPIER

WHEREAS, Hendley V. Napier, distinguished past President of Georgia Defense Lawyers Association died May 9, 1997, at the age of 78, and his death constitutes a sad loss to this Association, but affords an opportunity for expression of appreciation for his distinguished service to this Association and to the many other organizations and endeavors touched by his long and useful life, and it is fitting that this Association take notice of his passing and adopt a memorial to his life and service.

NOW, THEREFORE, the Board of Directors of the Georgia Defense Lawyers Association in its regular meeting held on this 1st day of November, 1997, in Asheville, North Carolina, does hereby adopt and declare the following as a

memorial resolution upon the passing of its distinguished former President, Hendley V. Napier:

Hendley Varner Napier, III was born in Macon, Georgia, February 1, 1919, the son of Hendley Varner Napier, Jr. and Viola Ross Napier. Since both his grandfather, Hendley Varner Napier, and his father, Hendley Varner Napier, Jr., died within two months after Hendley's birth, he was generally known by his many friends as Hendley V. Napier, without the numerical designation. He attended Georgia Tech and Mercer University from which he received its AB Degree in 1941 and its Juris Doctor degree from Walter F. George School of Law in 1943. He was president of Kappa Alpha Order at Mercer. He practiced law in Macon for 51 years with the firm which upon his becoming a partner was thereafter known as Martin, Snow, Grant & Napier. He was an able trial lawyer, was active in Bar Association work serving on the State Bar Disciplinary Board 1975-1977, the State Bar Code of Professional Responsibility Committee 1976-1980, was president of the Macon Bar Association 1962-63 and was named that organization's Lawyer of the Year in 1976. He was a Fellow of the American Bar Foundation. He was on the Board of Directors of Georgia Defense Lawyers Association from 1985 until his death, holding the offices of Secretary-Treasurer 1991-92, Executive Vice President 1992-93 and President 1993-94.

In addition to his outstanding career as a lawyer, he was loyal and devoted to his church and his family. He was proud of his family heritage and history. He was proud of his charter membership in the Sons of Confederate Veterans, his membership in the Military Order of the Stars and Bars, the Georgia Society of Colonial Wars and his membership in the Clan Napier of the United States of America, one of the original Scottish clan organizations.

He was an active member of St. Paul's Episcopal Church, and was the first president of St. Paul's Apartments, Inc. and St. Paul's Village.

He is survived by his wife Del Ward Napier, a prominent television personality in Macon; his daughter, Hannah Napier Warren, and her two children, Hendley Ross Holleman and May Delores Holleman; one brother, John Blackmen Napier of Macon; two sisters, Marion Napier Smith of Macon and Viola Napier Neel of Thomasville, and several nieces and nephews.

His life continued a long record of service of his ancestors, including that of his mother who was the first woman admitted to the Supreme Court of Georgia and to the Court of Appeals of Georgia and was the first woman seated as a member of the Georgia Legislature. To his daughter and grandchildren he leaves an unblemished record of service to his fellow man and of dedication to the improvement of his community and all areas of life which he touched.

One of the greatest tributes to the value of Hendley's life is the huge number of loyal friends he left to mourn his passing.

With the passing of Hendley V. Napier, this Association and the Bar in general, have suffered a great loss, but the Association can and does take pride in his accomplishments and his record of service.

LEGAL REFORM BILLS WHICH MAY BE OF INTEREST:

Here is a review of the legal reform bills pending in Congress that are of interest to defense lawyers, along with a status report.

S. 648: Product Liability Reform Act: Eliminates strict liability for product sellers; imposes uniform 18 year statute of repose; drug and alcohol defense and product misuse or alteration defense. Caps on punitive damages at 2 times compensatory damages or $250,000, whichever is greater, with departure allowed for egregious conduct; uniform standards for punitive awards; and only several liability for non-economic damages. Defense for biomaterials suppliers. Status: Approved by Commerce Committee May 1.

Comment: The business community remains divided over whether to proceed with a watered-down version of the bill. The Rockefeller companies would have protected manufacturers of industrial machinery but offered little to other manufacturers. The Gorton response would have offered somewhat more, but may have gone too far for the White House. The bill is again in limbo.

S. 364/H.R. 872: Biomaterials Liability Reform: Immunizes the makers of raw materials used in medical devices, e.g. silicon, from liability. Status: Approved by House Judiciary Subcommittee on Commercial Law September 11.

S. 625/H.R. 2021: Auto Insurance Choice: Allows every driver in America to choose between no-fault auto insurance or "tort maintenance coverage." Status: Hearing held by Senate Commerce Committee July 17.

S. 1414: Universal Tobacco Settlement Act: This bill would codify most of the settlement reached by attorneys general and tobacco companies. Prohibits punitive damages for past conduct; prohibits class actions; enacts type of "state of the art" defense; caps annual payments (but not awards) of damages; establishes "National Tobacco Document Depository" to maintain discovery documents from various specified lawsuits. Status: Pending in Senate Commerce Committee.

S. 225: Sunshine in Litigation Act: Curbs protective orders. Status: Referred to Judiciary Committee.

H.R. 2294: Federal Courts Improvement Act: This bill, introduced every year at the request of the federal judiciary, makes sundry changes to fees and administrative

matters but also would prohibit in-state plaintiffs from invoking diversity jurisdiction. Status: Hearing held by Judiciary Committee October 9.

E.R. 2603 (formerly H.R. 903): Alternative Dispute Resolution and Settlement Encouragement Act: Requires arbitration in federal cases and attorney fee shifting in diversity cases on the "offer of settlement' model. Status: Hearing held by Judiciary Committee October 9.

H.R. 2005/S. 943: Amendment to Death on the High Seas Act: Allows victims of mass airline disasters to recover non-economic damages for loss of children. Status: Passed by House; hearing held in Senate Commerce Committee October 29..

H.R. 1252 Judicial Reform Act: Prohibits federal courts from imposing taxes as part of remedies; provides three-judge panels for constitutional challenges of state referenda; judicial misconduct complaints referred to other circuits; substitution of judge as of right; interlocutory appeals of class action certification; diversity jurisdiction for mass disasters. Status: Approved by Courts Subcommittee; awaits action by full Judiciary Committee. Interlocutory appeal provision is also being considered as a rule change by the Judicial Conference.

S. 738: Amtrak Reform and Accountability Act: Enacts uniform standards for awarding punitive damages in connection with provision of rail passenger transportation; limits aggregate allowable award of all damages in such cases to $200,000,000. Status: Passed by both houses of Congress.

MID-WINTER WORKERS' COMPENSATION UPDATE

N. Staten Bitting, Jr., Fulcher, Hagler, Reed, Hanks & Harper, LLP Augusta, Georgia

Here is a brief rundown of some recent appellate decisions in the Workers' Compensation area, some information on the legislation which may be considered during this session, a procedural update on some cases of interest, and the status of proposed Social Security Disability offset changes.

Recent Decisions

- Truckstops of America v. Engram, A97A2532 (12/2/97). 1997 change in law extending hearing date for Superior Court appeals to 60 days from date of docketing does not apply retroactively.

- Sommers v. State Compensation Ins. Fund, A97A1412 (11/13/97). Four year statute of limitations on pursuit of overpayment.

- Bartow County Bd. of Education v. Ray, A97A2150 (10/27/97). General verdict in trial where workers' compensation subrogation lien enforcement is sought is insufficient to determine full and complete compensation. A special verdict form is necessary.

- Old South Custom Landscaping v. Mathis, A97A1140 (10/22/97). A case of first impression. Good Samaritan rule is inapplicable where a worker is injured while deviating from employment to help a stranded motorist.

ProbableLegislative Topics

- Legislation intended to reverse the outcome in Mountainside Medical Center which allowed a reduction of income benefits to an amount the claimant is "able to earn."

- Another increase in the maximum compensation rate.

- Elimination of the minimum compensation rate.

- Legislation intended to codify the holding in Hallisey that recreational activity (golfing) which accelerated and aggravated the work injury was not sufficient to be considered a new injury and bar compensation.

- Increase salaries for ALJs.

- Allowing for direct appeal from Superior Court decisions.

- Prohibition against terminating employees who have made workers' compensation claims.

- Protection for medical suppliers who erroneously direct bill employees.

Status of Recent Cases

- Waffle House, Inc. v. Padgett, 225 Ga. App. 144 (1997). Job search necessary regardless of reason for termination of employment. Cert. was granted by the Georgia Supreme Court on 6/11/97. No decision yet.

- Logan v. St. Joseph Hospital, A97A1109 (1997). Dicta indicating psychic conditions are covered under the Act. Cert. has not been applied for and counsel for the employer advises it will not be sought.

- Thomas v. Diamond Rug, 226 Ga. App. 403 (1997). Compliance with drug-free work place provisions necessary to utilize presumption in 34-9- 17(b)(3). Cert. was granted by Georgia Supreme Court on 1/8/98.

- Webb v. City of Atlanta, 228 Ga. App. 278 (1997). Claim for credit under employer-paid disability plan unavailable if not raised as an issue at the hearing. Application for Cert. made to Georgia Supreme Court on 9/15/97. No action on application yet.

- Abernathy v. City of Albany, 597A2019. Case addressing issue of compensability of purely psychic injury. Oral argument occurred in the Georgia Supreme Court on 9/17/97. No decision yet.

Social Security Disability Offset

The time for comment on the proposed changes to the Social Security Disability Workers' Comp offset rules has been extended into February 1998. Changes which are anticipated to cause difficulty with stipulated settlements have not yet been implemented.

Admissibility of Medical Reports in Georgia Civil Cases

John C. Daniel, III, L. Clint Crosby, Martin, Snow, Grant & Napier Macon, Georgia

I. Introduction

In 1975 the General Assembly of the State of Georgia enacted what is now known as O.C.G.A. §34-9-102(e)(2) to allow for the introduction of medical reports in workers' compensation cases. The statute was enacted for the purposes of reducing the time and costs involved in workers' compensation cases and eliminating the necessity of presenting the doctor's testimony either live at the hearing or by deposition. Commercial Union Ins. Co. v. Crews, 139 Ga. App. 521, 229 S.E.2d 14 (1976). The courts recognized this statute as an exception to the rules of evidence, but the courts noted this statutory exception was for non-jury civil trials and was limited to hearings conducted by administrative law judges. Binswanger Glass Co. v. Brooks, 160 Ga. App. 701, 288 S.E.2d 61 (1981). However, the medical report exception is no longer limited to non-jury proceedings before administrative law judges. The general assembly has now enacted O.C.G.A. §24-3-18 to allow for the admissibility of medical reports during the trial of civil cases involving injury or disease. This statute became effective July 1, 1997, and allows medical reports to be presented to the jury in the same manner as depositions. This article will review the statutory requirements for admissibility of medical reports, and, of equal importance, this article will address what the statute does not require. This article will also address the procedural burden that is placed on the responding party.

II. Statute

O.C.G.A. §24-3-18 provides the following:

(a) Upon the trial of any civil case involving injury or disease, any medical report in narrative form which has been signed and dated by an examining or treating licensed medical doctor, dentist, orthodontist, podiatrist, physical or occupational therapist, doctor of chiropractic, psychologist, advanced practice nurse, social worker, professional counselor, or marriage and family therapist shall be admissible and received in evidence insofar as it purports to represent the history, examination, diagnosis, treatment, prognosis, or interpretation of tests or examinations, including the basis therefor, by the person signing the report, the same as if that person were present at trial and testifying as a witness; provided, however, that such report and notice of intention to introduce such report must first be provided to the adverse party at least 60 days prior to trial. A statement of the qualifications of the person signing the report may be included as part of the basis for providing the information contained therein, and the opinion of the person signing the report with regard to the etiology of the injury or disease may be included as part of the diagnosis. Any adverse party may object to the admissibility of any portion of the report, other than on the ground that it is hearsay, within 15 days of being provided with the report. Further, any adverse party shall have the right to cross-examine the person signing the report and provide rebuttal testimony. The party tendering the report may also introduce testimony of the person signing the report for the purpose of supplementing the report or otherwise.

(b) The medical narrative shall be presented to the jury as depositions are presented to the jury and shall not go out with the jury as documentary evidence.

III. What the Statute Requires

As stated, there are four primary requirements that must be met in order for a medical report to be admissible. First, the medical report must be in narrative form. Second, the medical report must be signed and dated by an examining or treating or licensed medical doctor, dentist, orthodontist, podiatrist, physical or occupational therapist, doctor of chiropractic, psychologist, advanced practice nurse, social worker, professional counselor, or marriage and family therapist. Third, the report is limited to representation of the history, examination, diagnosis, treatment, prognosis, or interpretation of tests or examinations, including the basis therefor, by the person signing the report. Fourth, the report and an appropriate notice of intention to introduce the report must be given to the adverse party at least 60 days prior to trial. So long as these requirements are met, the medical report will be admissible, and subsection (b) of the statute allows the tendering party to present the report to the jury in the same manner as a deposition.

IV. What the Statute Does Not Require

A close review of O.C.G.A. §24-3-18 reveals two glaring omissions. The statute allows the admissibility of substantive evidence without requiring the admission of an oath or affirmation equivalent to the person signing the report, and the statute is worded in such a manner that the person signing the report is not required to have actually prepared the report. Since the medical report is to be presented in the same manner as a deposition, as if the person signing the report were present at trial and testifying, the statute clearly allows the production of testimony in written form. As such, the statutory scheme for the admissibility of medical reports seems inconsistent with the general rule that "an oath for affirmation is required of all witnesses, and unsworn statements are not treated as amounting to evidence, 'except from necessity'". Huiet v. Schwob Manufacturing Co., 196

Ga. 855, 859 (1943); See also, O.C.G.A. §24-9-60, which provides: "The sanction of an oath or affirmative equivalent thereto shall be necessary to the reception of any oral evidence." Given the fact that the statute requires the medical report to be signed and dated, it is unknown why the statute does not require the report to be "prepared, signed and dated" by the practitioner. Certainly, the question of who prepared the report should be posed during any cross examination that may be undertaken. Under the present statutory scheme, the report could be prepared by any third party, including the attorney for the tendering party, so long as the four admissibility requirements outlined above are met.

V. The Burden on the Responding Party

O.C.G.A. §24-3-18 gives an adverse party fifteen days to file objections to the admissibility of any portion of the report (other than hearsay objections) after being provided with the report. Presumably, any objections to the report are waived if not filed in a timely manner. As such, upon receipt of the report from the tendering party, the responding party should ascertain whether the admissibility requirements are met and whether the report is otherwise objectionable.

This statute also gives the adverse party the right to cross-examine the person signing the report and to provide rebuttal testimony. However, the adverse party would have to follow the traditional method of cross-examination of the person signing the report, by either taking a deposition or requiring live appearance of the witness. This will require the adverse party to incur the traditional financial obligations associated with taking the deposition or requiring the live appearance of the witness. The statute does not indicate which party is required to pay any witness fee associated with any such cross- examination. Certainly the tendering party will argue any such fees should be paid by the adverse party whereas the adverse party will argue the fees should be the obligation of the tendering party on the basis that the adverse party is exercising his right to confront and cross-examine the tendering party's witness. In any event, if the adverse party desires to cross-examine the witness, the adverse party is placed in the awkward position of doing what the tendering party would not do, i.e., secure a deposition or require live appearance by the witness.

VI. Conclusion

Prior to the enactment of O.C.G.A. §24-3-18, medical reports were admissible only in non-jury civil trials before administrative law judges. Certainly, there is a vast difference between a non-jury proceeding before an administrative law judge and a civil trial by jury. The author anticipates there will be numerous objections and challenges which will necessitate rulings from the courts as to the validity of the statute and the general admissibility of medical reports in civil jury trials.