



Client Alert

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Georgia Court of Appeals Clarifies Requirements for Obtaining an Exception to Certificate of Need Standards

On October 8, 2008, the Georgia Court of Appeals issued an opinion denying a certificate of need ("CON") for a proposed orthopedic surgery center. In 2005, Hughston Surgical Institute, LLC applied to the Georgia Department of Community Health for a CON to develop an orthopedic ambulatory surgery center in Columbus, Georgia. Charles L. Gregory and Jason E. Bring of Arnall Golden Gregory LLP represented an existing ambulatory surgery center, The Surgery Center, LLC, in challenging the application.

At the administrative level, the Department agreed with The Surgery Center, LLC that the application should not be granted; however, the Superior Court of Muscogee County (where Hughston Surgical is based) reversed the Department's administrative decision and granted the CON. On appeal, however, the Georgia Court of Appeals held that the Superior Court erred when it substituted its judgment for that of the Department on the question of whether Hughston Surgical's application should be approved. The Court of Appeals therefore agreed with The Surgery Center, LLC, holding that a CON should not have been granted.

In a decision that resolves competing interpretations of the Department's exception regulations, the Court of Appeals held that, in order to qualify under an exception, an applicant must show that a service is not available in the area, that a particular group of patients needs the service, and that the proposed project would reach this population.

The Court of Appeals' decision is reported at: [The Surgery Center, LLC v. Hughston Surgical Institute, LLC](#), -- S.E.2d --, 2008 WL 4490776 (Ga. App. 2008). Please [click here](#) for a copy of the opinion. For more information, please contact Charles L. Gregory or Jason E. Bring.

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