



## Client Alert



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### **Georgia Court of Appeals Issues Favorable Opinion on Issues Addressed in Amicus Brief Filed by AGG Attorneys**

In May 2011, Jason E. Bring and Tyler L. Arnold filed an amicus curiae brief with the Georgia Court of Appeals on behalf of the Georgia Hospital Association (GHA) in a case involving the removal of mechanical ventilation from a patient whose doctors had pronounced her brain dead.

The medical facts of the case were novel, in that the patient, who presented to the hospital in a coma, was 12 weeks pregnant. Although physicians determined that brain death for the mother was present or imminent at the time, the family desired that she be maintained on life support for the remainder of the gestational period to allow delivery of the fetus. To honor the family's wishes, the hospital's Ethics Committee approved the continued use of mechanical ventilation for the mother during the pregnancy. After the baby's delivery some four months later, physicians performed additional brain death and apnea testing on the mother as supplemental confirmation of her brain death, and then discontinued her mechanical ventilation.

The family later sued the hospital and physicians for an assortment of claims, alleging that they did not consent to the brain death testing or the removal of ventilation. While the trial court dismissed some of the family's claims, it allowed others to proceed.

On appeal to the Court of Appeals, GHA's amicus brief addressed Georgia's Determination of Death Statute (O.C.G.A. § 31-10-16) and encouraged the appellate court to conclude that consent was not necessary to conduct brain-death testing on a patient on mechanical ventilation; lay person testimony alone could not create a question of fact regarding a medical expert's determination of death; and consent was not required to remove mechanical ventilation from a deceased patient.

On November 18, 2011, the Georgia Court of Appeals issued a favorable opinion regarding the issues addressed in the amicus brief filed on behalf of GHA. Specifically, the appellate court held that lay witness testimony alone could not be used to controvert medical expert evidence, and because the plaintiff lacked necessary expert testimony regarding cause of death, the consent issues were rendered moot. To review the decision, please click [here](#).<sup>1</sup>

<sup>1</sup> <http://www.agg.com/media/interior/publications/Bring-Arnold-Hawkins-opinion.pdf>

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