



## Client Alert

Contact Attorneys Regarding  
This Matter:

Jason E. Bring  
404.873.8162 - direct  
404.873.8163 - fax  
[jason.bring@agg.com](mailto:jason.bring@agg.com)

W. Jerad Rissler  
404.873.8780 - direct  
404.873.8781 - fax  
[jerad.rissler@agg.com](mailto:jerad.rissler@agg.com)

Arnall Golden Gregory LLP  
Attorneys at Law  
171 17th Street NW  
Suite 2100  
Atlanta, GA 30363-1031  
404.873.8500  
[www.agg.com](http://www.agg.com)

### Georgia Supreme Court Agrees to Hear Appeal on HIPAA Decision

The Georgia Supreme Court has agreed to weigh-in on a case involving a decedent's privacy rights under the federal HIPAA privacy regulations. The central issue is whether HIPAA preempts a Georgia statute that authorizes family members to obtain the medical records of their deceased relatives.

The case began when a nursing home received a request for medical records from a decedent's spouse, without the spouse having been appointed to act on behalf of her husband's estate. In compliance with HIPAA's Privacy Rule allowing only a "personal representative" to authorize disclosure of medical records, the nursing home declined the request.

In response, rather than taking steps to be named the personal representative of her husband's estate, the spouse sued, seeking an order directing the nursing home to produce the records. The trial court found in favor of the spouse, ordering that the records be produced. In doing so, the trial court concluded that a wrongful death claim is pursued on behalf of the decedent and, therefore, that a wrongful death claimant is a personal representative under the HIPAA privacy regulations.

In a subsequent appeal, the Georgia Court of Appeals agreed with the trial court. See [Alvista Healthcare Center, Inc. v. Miller](#), 673 S.E.2d 637 (Ga. Ct. App. Feb. 17, 2009). In its decision, the Court of Appeals reasoned that the spouse, in requesting the records for a potential wrongful death action, was essentially acting on behalf of the husband's estate and not in her own interest. Counsel for the nursing home have argued that this conclusion conflicts with established law recognizing a distinction between causes of action brought by an estate and those asserted by survivors.

Following the Court of Appeals' decision, counsel for the nursing home [petitioned](#) the Georgia Supreme Court to decide the HIPAA issue and to clarify the distinction between causes of action brought by an estate and those brought by a survivor. After assessing the petition, the Supreme Court agreed to review the case. In its [order](#), the Supreme Court asked the parties to address the following issues:



## Client Alert

(1) Did the Court of Appeals err in holding that Georgia law authorizes a surviving spouse to act on behalf of the decedent in pursuing a wrongful death action, such that the surviving spouse would be entitled to access the decedent's protected health information in accordance with 45 C.F.R. § 164.502(g) of the HIPAA Privacy Rule.

(2) Did the Court of Appeals otherwise err in affirming the trial court's award of injunctive and declaratory relief.

The case has been assigned to the Supreme Court's September 2009 oral argument calendar.

*Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, [www.agg.com](http://www.agg.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.*