



Client Alert

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AGG Attorneys Successfully Defend Certificate of Need Appeal

Jason E. Bring, Erin M. Rush and Robert T. Strang III recently prevailed before the Georgia Court of Appeals, thwarting an attempt to reverse a Certificate of Need (CON) granted to AGG's client, Vidalia Regional Cancer Center.

In June 2008, Vidalia Regional filed a CON application to establish a cancer center in Vidalia, Georgia, to treat cancer with radiation. The Georgia Department of Community Health granted the requested CON. Two opponents, Satilla Regional Cancer Treatment Center and Statesboro Oncology Associates, challenged Vidalia's application, but Vidalia Regional prevailed at all three levels of the administrative appeals process.

Following their losses at the administrative level, the opponents continued their challenges by appealing to the Superior Courts of Fulton and Bullock counties. The Superior Court of Fulton County denied Satilla's petition, finding that Satilla lacked standing because it was not aggrieved by the Department's decision and concluding that the Department's interpretation of its rules was correct. Likewise, the Superior Court of Bulloch County denied Statesboro Oncology's petition, finding that, while Statesboro Oncology enjoyed standing, its arguments were without merit.

Following the Superior Court decisions, Satilla elected to surrender its challenge to the CON, but Statesboro Oncology continued its appeal by petitioning the Georgia Court of Appeals to exercise its discretion to review the case. After a full round of briefing, the Court of Appeals determined that no further review was required, thereby allowing Vidalia Regional's CON to stand. Except for pending motions to recover attorney's fees from the opponents, the Court of Appeals' decision brings to an end the protracted CON appeal, and Vidalia Regional may now proceed with developing the cancer center for the citizens of its service area.

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