



# Albany Urology v. Cleveland, 528 S.E.2d 777(Ga. 2000)

Topics Covered: Informed Consent, Professional Liability and Abusive Litigation Against Physicians

## **Outcome: Very Favorable**

### **Issue**

The issue in this case was whether a physician was required to disclose his cocaine usage to a patient in order to obtain the patient's informed consent to surgery, even though the cocaine usage did not bear on the physician's surgical skills.

### **AMA Interest**

The AMA encourages physician self-reporting of substance abuse in order to obtain proper treatment. Furthermore, it strives to avoid the expansion of liability theories against physicians, which can lead to abusive litigation.

### **Case Summary**

This case arose from allegedly unnecessary surgery performed by a physician who occasionally used cocaine. The surgeon had been using cocaine approximately once a month at the time of the diagnosis and of the surgery, although he had not been using cocaine on days he saw patients. He did not reveal his cocaine usage to his patients, including the patient in this case. The operation was unsuccessful and exacerbated a condition that might have resolved itself and could have been treated with Vitamin E.

The trial court found that the failure to disclose the cocaine use had not been a material concealment and entered judgment for the physician and his employer. The plaintiff appealed.

The Georgia Court of Appeals found that the failure to disclose the cocaine use had been a material concealment and reversed the trial court. The court also found the defendants liable for battery. The defendants appealed to the Georgia Supreme Court.

The Georgia Supreme Court reversed the judgment of the court of appeals holding that, without a specific patient inquiry, a physician had no duty to disclose to patients "unspecified life factors" that did not objectively affect the physician's performance.

### **Litigation Center Involvement**

The Medical Association of Georgia, supported by the Litigation Center, filed amicus curiae brief in the Georgia Supreme Court to support the defendants. While deploring illegal use of drugs,

the brief argued that a physician's obligation to disclose the medical risks associated with surgery should not be extended to the disclosure of personal issues that do not affect the patient's well being. The patient's right to recover for professional negligence affords him or her adequate redress for any injuries. A requirement that a physician disclose his or her occasional cocaine usage might prejudice the jury and could chill the physician's voluntary efforts to obtain appropriate medical treatment for an unlawful drug habit.