



Gliemmo v. Cousineau, 694 S.E.2d 75 (Ga. 2010)

Topics Covered: Professional Liability

Outcome: Very Favorable

Issue

This case examined the constitutionality of a Georgia statute that absolved physicians and others who provide emergency medical services of liability, absent a showing, by clear and convincing evidence, of gross negligence.

AMA Interest

Medical liability reform is the AMA's top legislative priority.

Case Summary

O.C.G.A. § 51-1-29.5 provides: "In an action arising out of the provision of emergency medical care in a hospital emergency department [or similar setting] ... no physician or health care provider shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence."

Carol and Robert Gliemmo sued Mark D. Cousineau, M.D., Emergency Medical Specialists of Columbus, P.C., and St. Francis Hospital for medical negligence involving emergency room care. The defendants raised O.C.G.A. § 51-1-29.5 as a defense. The Gliemmos contested the statute's constitutional validity, asserting: (1) the gross negligence standard was vague and in conflict with another Georgia statute that requires "a reasonable degree of care and skill" in medical malpractice actions; (2) the statute denied similarly situated plaintiffs equal protection under the law; (3) the bill under which the statute was promulgated violated the Georgia Constitution's "one subject rule"; and (4) the statute was an unconstitutional special law.

By a split decision, the Georgia Supreme Court found the immunity statute constitutional.

Litigation Center Involvement

The Litigation Center, along with the Medical Association of Georgia, filed an *amicus curiae* brief in support of the statute.

Georgia Supreme Court brief