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and join a group of clients who learn about the latest Georgia legal news.

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We strongly believe that education is the first step in the prevention of any type of legal crisis. We've proudly worked to resolve our clients' dilemmas since 1990. We are in your community, have the experience and resources required to work toward your goals, and we're here to help. We also accept a limited number of injury cases each year resulting from serious auto, truck or motor-cycle accidents.

Do you need a referral?

Chances are we can refer you to an excellent local attorney outside our area of practice: Call us at 770.338.2338 or email jtowne@clarktowne.com.

VOLUNTEER SPOTLIGHT: LAWRENCEVILLE COMMUNITY BASED OUTPATIENT CLINIC

The Mission of the Atlanta VA is to provide timely and compassionate healthcare, which contributes to the well-being and quality of life of our veterans.

Volunteers provide many important functions throughout the Medical Center and help make our patients' stay more enjoyable. To volunteer, call the Atlanta VAMC Voluntary Service Office: (404) 321-6111, ext. 7728.

Lawrenceville Clinic
1970 Riverside Pkwy, Lawrenceville

<http://www.atlanta.va.gov/Clinics.asp>

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"The ability to pause, mentally as well as in your actions, is important. Taking breaks is a prerequisite for experiencing happiness."
— Christophe André

David Clark Fights for Doctor-Patient Confidentiality

Doctor-Patient confidentiality is something we all rely on. The problem is, it's not the law in Georgia.

If you go to the hospital after an allergic reaction to an illegal drug, or even someone else's prescribed Vicodin, you have a choice: tell the doctor what drug you took, and maybe go to jail, or keep that information to yourself and maybe die.



You see, police are allowed to get a search warrant for your private hospital records if they simply tell a part-time judge that they think you were DUI, or guilty of possessing a controlled substance.

The Georgia Supreme Court on July 12 affirmed that Georgia law permits police to do so. In a unanimous decision, the highest court in Georgia ruled that a law

protecting "private papers" against search warrants covers only those papers in your possession and those that belong to you. Since medical records at the hospital are usually not in your possession and don't technically belong to you, they're fair game.

The decision, named *Brogdon v State*, resulted from the seizure of private hospital notes and test results by Gwinnett County authorities

To clarify privacy laws, Mr. Brogdon's lawyer, William Healan, and I took the matter up on appeal. *Continued on page 2*

DUI Cases Dismissed for Faulty Paperwork?

Recently you may have heard that "DUI cases are being dismissed for faulty paperwork." It's not so easy. The media has made a sound bite out of complicated news.

Any driver arrested for DUI in Georgia is subject to an immediate license suspension if they refuse to take the implied consent test (i.e. a chemical test such as a breath or blood test done at a police station, jail or hospital — not the "field sobriety tests" done at the site of arrest). The Form 1205 Notice of Administrative Suspension is supposed to be filled out, signed and sworn before a notary, and a copy given to the arrested driver. Every jail, police precinct and hospital has a notary on duty 24/7.

In some counties, the police have become complacent, and they fill out the form and file it with their regular paperwork. It basically goes into an "in" basket, and a filing clerk notices that a notary signature hasn't been made, so he

or she fills it out and then files the papers. This is not "swearing" to the contents of a document.

Two of my colleagues, Bob Chestney and Charlie McGarahan filed a civil suit on behalf of 15 of their clients arrested in Douglas County, where this happened. A Rockdale County judge (the county where DDS has its office) issued a Temporary Restraining Order prohibiting the Department of Driver Services from suspending licenses of those 15 people based upon the Form 1205 filed by the arresting officer.

What the media is not reporting is this: the officers have re-filed new, notarized Forms 1205 on each of the 15, and the DDS is proceeding with notifying those drivers and suspending the licenses of those who don't request a hearing within 10 business days. Why isn't the media following up? It's not as "sexy" as running with the story that DUI drivers are "getting away with it!" And remember, this is just the administrative license suspension; it has nothing to do with the criminal prosecution of the DUI.

How "Caleb's Law" Affects You

As of July 1, texting while driving in Georgia is illegal, as is using a cell phone while driving if you are under 18 and have a provisional license. As soon as "Caleb's Law" was signed, Georgia State Patrol immediately announced a grace period of one month during which they would train officers how to use this new law. Now that August is here, I hope you have gotten used to not texting while you drive.

Drivers are more likely to be charged with texting while driving if they are involved in an accident and have their phone obviously in use at the time. Teens will probably not be caught unless they too are involved in an accident; training or no training, it's hard to determine the age of a passing driver who is talking on the phone. The penalties for texting



while driving for both teens and adults is a \$150 fee and a point added to your license. A teenager who is charged twice with texting while driving will be restricted to driving on a class D license for a year.

In order to prove this, other than witnessing the behavior, police will contact your cell phone provider and get records detailing when calls are going out, coming in and when text messages are

sent and delivered.

Recently, the Gwinnett DA decided not to pursue felony vehicular homicide case on a driver who was texting while driving and who struck and killed a

pedestrian. Many factors led to his decision, and I'm sure the Gwinnett Solicitor, who prosecutes misdemeanor vehicular homicide, will pursue the case.

"IF WE DON'T WANT THE POLICE TO SEE OUR PRIVATE MEDICAL RECORDS, DO WE NOW HAVE TO CARRY THEM AROUND WITH US EVERYWHERE?"

David Clark Fights *Continued*

"Since the medical records that were the subject of the search warrant in the case at bar were neither the personal property of the appellant nor were they seized from his possession," the Supreme Court ruled, "they did not constitute 'private papers' that are exempt from coverage of a search warrant in Georgia."

While most people will be satisfied that "justice was done" in this case, the ruling leaves a lot of questions open: If we do something that might be illegal and get hurt or sick, is there any way to talk about it with a doctor in private? If we don't want the police to see our private medical

records, do we now have to carry them around with us everywhere? What about computer records? Are they "papers" even though they are not printed out? What if we start using medical ID cards that allow access to records?

Mr. Healan and I will be busy arguing these Constitutional issues for years to come unless the legislature shows some leadership and enacts a strong doctor-patient privilege. We already have an attorney-client privilege, a psychiatrist-patient privilege and even a veterinarian's privilege; why shouldn't we have an absolute right to private medical discussions?

Ask Jessica How do I stop texting & driving?

Question: How can I make sure my teenager isn't using her phone while driving?

Answer: We all know that texting while driving is incredibly dangerous, and now it's also illegal in the state of Georgia, as is talking on a cell phone while driving if you are under 18 and have a restricted license. If only you could monitor your teen's cell phone use all the time! Well, I've got great news for you: you can! Here are a few products on the market that will help you.

1. The easiest and cheapest solution is to call your cell phone service provider and ask if they block texting access on a certain number. Most plans allow you to do this to as many or as few numbers as are on your plan. You can have texting blocked for just certain hours in the day, such as during the school hours, after a certain time of day, or from certain numbers or callers. Some providers can also block calling. Contact your service provider for more information.
2. Textecution is a program you install on a phone that disables texting when it detects the phone is travelling at more than 10mph. The product is specifically designed for parents to put on their teen's phones to

prevent them from texting while driving. It is also advertised as a great application for employers to put on their employees' phones to reduce liability involving automobile accidents. Find out more at www.textecution.com.

3. DriveSafe.ly is an application that reads texts and emails out loud that is best suited to people who feel they must get their texts and emails when on the road. Users can even respond to the texts by voice. Find out more at www.drivesafe.ly.
4. TXTBlocker allows users to set time and location restrictions for texting or talking on a phone. Users have an account where they remotely manage when a phone can receive texts and calls. Ideal for parents to use on their teenagers' phones, this service can also track a phone's location and monitor driving speed. Phones can always make calls to 911 and to user's own "safe list" numbers. Find out more at www.txtblocker.com.

These options come at varying costs and work only on particular phones. Still, as a parent or as someone who can't stop texting while driving, these services and programs are definitely worth looking into.



"IF ONLY YOU COULD MONITOR YOUR TEEN'S CELL PHONE USE ALL THE TIME! WELL, I'VE GOT GREAT NEWS FOR YOU: YOU CAN!"

Thank You, Jessica

"Ms. Towne is an excellent attorney, very knowledgeable and kept me informed of things as they unfolded. I would definitely recommend her to anyone needing expert legal representation."

— Chris, in a recommendation posted on Avvo.com

Thank You!

My Staff and I welcome the new clients who've joined the Clark & Towne family this past month, and we send our personal thanks to all those who referred friends and family and went out of their way to send notes of appreciation. Thanks also to all of you who took the time to request topics they would like to see addressed in this newsletter and on the clarktownte.com blog. Thank you and please, feel free to call the Office if we can be of help.