

ALICIA BRAY WINS DISMISSAL OF WRONGFUL DEATH ACTION AGAINST CHARLOTTE, NORTH CAROLINA NURSING HOME

By August 25, 2017

In another victory by the firm's medical malpractice team, **Alicia Bray** of our Greensboro, North Carolina office has prevailed on a motion to dismiss a wrongful death action against a Charlotte-based nursing home. The plaintiff alleged that her mother suffered a stroke and entered the nursing home for rehabilitative services. While there, the resident left her bed at night, attempted to walk, and fell. In the fall, the resident allegedly struck her head on a piece of hard furniture. The fall resulted in a hematoma and further hospitalization. Although the resident lived for several weeks thereafter, the complaint alleged that her death was proximately caused by the fall-related injuries.

The plaintiff's complaint contained a Rule 9(j) expert witness certification. However, in the course of discovery, BKBM learned that the plaintiff had not in fact obtained an expert review and certification. The firm therefore moved to dismiss the complaint for failure to comply with Rule 9(j).

In response to the motion to dismiss, the plaintiff retained an expert witness who offered opinions that the nursing home breached applicable standards of care. Ms. Bray successfully argued that the belated retention of an expert witness was ineffectual because Rule 9(j) expert review and certification must occur before the filing of a medical malpractice complaint.