

Extensive Implications Possible as Collective Knowledge Theory of Corporate Liability is Considered by Massachusetts Supreme Judicial Court

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Commonwealth v. Life Care Centers of America, Inc. (Life Care) is a case of first impression in Massachusetts that has the potential to profoundly affect the business of health care and related areas. Life Care, which provides sub-acute, rehabilitation, long- and short-term care services, largely to elderly and infirm patients, and operates skilled nursing homes throughout the United States, has been indicted for involuntary manslaughter and elder neglect or abuse, and is being prosecuted in Massachusetts, partially on the novel theory of collective knowledge. Proskauer has submitted an amicus curiae brief on behalf of the Massachusetts Senior Care Association (MSCA) and the American Healthcare Association (AHCA), in support of Life Care's position.

The Superior Court reported the case, pre-trial, to the Appeals Court, and the Supreme Judicial Court (SJC) granted the parties' motion for direct appellate review. The SJC will consider whether a corporation may be held criminally liable based on aggregating the knowledge of multiple employees, none of whom had the requisite statutory intent and none of whose conduct exceeded mere negligence – that is, whether a corporation can be guilty of a crime where no individual employee committed a crime. This theory is separate from the traditional theory of corporate criminal liability, analogous to the legal theory of respondeat superior, which is predicated on the claimed criminally responsible conduct of a single individual employed by the corporation. The collective knowledge theory raises a novel question of law, which Life Care claims has the potential to radically alter the landscape of Massachusetts jurisprudence.

On behalf of MSCA and AHCA, [Proskauer argued in its amicus brief](#), that adopting the collective knowledge theory would result in a dramatic shift in existing Massachusetts law with far-reaching implications; that the existing federal and state regulatory framework is extensive, and health care providers recognize and integrate this framework as a core component of their operations; that while criminal prosecutions are warranted in some circumstances, the collective knowledge theory would create an environment that would not benefit patients; and that collective knowledge prosecution is a major legal and policy change that, if valid, warrants legislative review.

In addition to MSCA and AHCA, a number of entities have filed amicus briefs in support of Life Care, including the Joint Commission, Professional Liability Foundation and New England Legal Foundation. AARP, joined by the National Consumer Voice for Quality Long-Term Care, Disability Law Center and the Center for Public Representation, has filed an amicus brief in support of the Commonwealth. Argument is set for March 1, 2010 at 9 a.m. at the John Adams Courthouse, which is located at One Pemberton Square in Boston, and will be available at <http://www.suffolk.edu/sjc/> at the end of that business day.