

Criminal Liability of Businesses for Understaffing

In *People v Highgate LTC Management LLC*, _____ AD 3d _____ (3rd Dep't., October 22, 2009), the Court held that a Limited Liability Company ("LLC") can be criminally liable and lose its license -- for simply being aware of chronic understaffing -- after its employees were found guilty of falsifying records as to a patient's care.

This is truly a "cautionary tale" about a Nursing Home that was held criminally liable for the acts of an employees. The legal issue is whether that an LLC that owns the Nursing Home can be criminally liable for the acts of employees. The law is already established that a corporation can be held criminally liable. But there is more to this case than that...

An equally important issue not discussed by the Court is that the Nursing Home itself (or any business -- see below) can be held criminally liable if its employees falsify records. What was the Nursing Home's crime? The Court did not say that the Nursing Home knew the employees were falsifying records. According to the decision, the Nursing Home "was aware of chronic understaffing resulting in deficiencies in care." This type of knowledge does not seem at all equivalent to the criminal intent exhibited by the employees who, the Nursing Home conceded, were acting within the scope of their employment. Nevertheless, the Nursing Home was criminally convicted, fined \$15,000, and its operations suspended for a year because it knew of "chronic understaffing."

This decision should be troubling for any Nursing Home because the mere knowledge of understaffing can result in criminal charges if its employees falsify records as to the care of residents. Unless the decision is reversed by New York's highest Court, which seems unlikely since an LLC should be treated like a corporation in these circumstances, we can anticipate more criminal charges against Nursing Homes.

One more point. This decision is about whether an LLC, like a corporation, can be held criminally liable when its employees falsify records and all it was aware of was chronic understaffing. It is not limited to Nursing Homes. Any LLC, any corporation, any business for that matter, presumably, can be criminally liable in these circumstances. Hospitals are likely candidates and have already been the targets of civil complaints about understaffing (Remember the case involving Sidney Zion's daughter and New York Hospital where the interns worked 36 hours or more each shift?). But the same can be said of any business where chronic understaffing, perhaps more common in this

economic climate, allegedly results in employees falsifying records that relate to care or safety.

This is why this decision is a "cautionary tale."

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