NELSON HARDIMAN
HEALTHCARE LAWYERS

Client Alert: DA charges Beverly Place

Extraordinary Criminal Prosecution of Senior Living Facility Managers in Los Angeles

Los Angeles County District Attorney George Gascon has decided to bring criminal charges against the Silverado Senior Living Management, Inc., and its key managers, with the death of several residents and a staff member at Beverly Place, a residential dementia care facility located in the Fairfax District. One of the largest senior living organizations in the country, Silverado has an excellent reputation for care, making Gascon's decision a surprise.

The felony charges result from a decision in March 2020 to admit a patient from New York in contravention of newly promulgated County health orders and facility protocols, who turned out to be infected with Covid-19. The District Attorney claims that the resident should not have been admitted, or if admitted, placed in quarantine for 14 days. Subsequently, 105 staff and residents at the facility were infected. Fourteen people died.

This incident was tragic, and civil suits are proceeding. The District Attorney's decision to treat this as a criminal matter, however, raises serious concerns. The events giving rise to this action occurred barely two weeks after Governor Newsom issued the Covid public health emergency in California, and less than one week following the initial 'stay-at-home' and quarantine orders were issued by LA County Department of Public Health. They occurred on the same day that President Trump backed the use of anti-malarial drug hydroxychloroquine as an anti-Covid drug.

The early days of the COVID-19 pandemic reflected a nationwide state of confusion that took quite a while to resolve. They included months of vacillation from federal officials about everything from mask use to ivermectin use. It isn't clear that anyone knew for certain whether the mitigation steps were efficacious or practical, and they were repeatedly changed.

The reality of the pandemic was that breakdowns in compliance with public health-driven rules allowed COVID-19 outbreaks to occur – in schools, nursing homes, other senior care facilities, hospitals, and workplaces across America. Raising these unfortunate failures in judgment to the level of criminal liability is not a defensible or sustainable norm. The results in these errors were tragically high at senior care facilities, but to avoid *any* infections was a feat beyond reasonable human ability given what we knew at the time.

The number of deaths in this case was unusual, and likely a driving issue in the District Attorney's decision to prosecute this particular case. However, to avoid the risk that the District Attorney may seek additional prosecutions, our recommendation is that all health facilities retain records concerning COVID-19 health order compliance, despite the ending of the public health emergency (PHE) by the federal and state government. These records of daily staff temperature-taking, assessment of residents, and any other mitigations that were taken may be instrumental in defending against any criminal investigation or prosecution for facilities that experienced COVID-related deaths.

Nelson Hardiman LLP, a healthcare and life science law firm, provides criminal defense for healthcare organizations, as well as guidance to anyone concerned about being the target of governmental investigation.

Contact: Mark Hardiman or Rob Fuller (310)203-2800