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# Mass. AG To Appeal Toss Of Landmark COVID Neglect Case

By **Brian Dowling**

Law360 (December 14, 2021, 2:28 PM EST) -- Massachusetts Attorney General Maura Healey will appeal a state court's decision to dismiss what her office has called the nation's first criminal case against nursing home operators related to the COVID-19 pandemic, according to a Tuesday announcement.

Healey said her office would file a notice of appeal to challenge the late November decision of Justice Edward J. McDonough Jr. of Hampden County Superior Court to **dismiss the charges** against Bennett Walsh, the former superintendent of the Soldiers' Home in Holyoke, and Dr. David Clinton, the home's former medical director.

The **elder neglect case** against the pair posited that Walsh and Clinton were responsible for a decision to combine two dementia units at the veterans' home, which allegedly allowed the deadly virus to race through the facility.

Justice McDonough said the state failed to put evidence to the grand jury in the case that showed veterans actually contracted the coronavirus or suffered neglect due to the decision in March 2020.

"The tragic loss of life at the Holyoke Soldiers' Home broke the promise that our commonwealth would honor these men who bravely served our country," Healey said in a statement Tuesday. "We are filing this notice of appeal today to pursue accountability on behalf of their loved ones and communities."

Clinton's attorney, John Lawler of Prince Lobel Tye LLP, who had argued that the **elder abuse charges didn't apply** to his client, told Law360 he expected his client would beat the government's appeal.

Counsel for Walsh was not immediately available for comment on Tuesday.

The criminal charges — which **stunned attorneys** — stemmed from Healey's investigation, launched in April 2020, into the deadly outbreak at the Soldiers' Home. The probe found staffing shortages and detailed the decision to combine the dementia units.

Another scathing report into the deaths, conducted by McDermott Will & Emery LLP partner Mark W. Pearlstein, said decisions made by leadership were "**baffling**" and criticized Walsh as unqualified to lead a long-term care facility. The report also took aim at the Massachusetts Department of Veterans' Services, which left Walsh in charge and did not oversee his work even though the agency knew of his shortcomings, according to the report.

The outbreak sparked multiple lawsuits, including one filed by the **estate of a Korean War veteran**, claiming the state and the operators of the long-term care facility failed to ensure the safety of elderly veterans who were unable to care for themselves.

The state is represented by Kevin Lownds and Philip Schreiber of the Massachusetts Office of the Attorney General.

Walsh is represented by William Bennett of Doherty Wallace Pillsbury & Murphy PC and Michael O. Jennings.

Clinton is represented by John F. Lawler, James Lawson and Jeffrey J. Pyle of Prince Lobel Tye LLP.

The cases are Commonwealth v. Clinton, case number 2079CR00177, and Commonwealth v. Walsh, case number 2079CR00178, in Hampden County Superior Court.

--Editing by Gemma Horowitz.

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