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SUPREME JUDICIAL COURT BROADENS THE SCOPE OF THE MASSACHUSETTS PUBLIC ACCOMMODATION ACT

Boston, MA - On April 13, 2012, the Supreme Judicial Court issued Currier v. National Board of Medical Examiners, which broadly interprets the scope of the Massachusetts Public Accommodations Act ("PAA"), Chapter 272, §98, and acknowledges the MCAD's key role in the PAA's interpretation. The Court adopted several points made in the MCAD's Amicus Brief, including that the PAA is integrated into Chapter 151B, the Commission has "authority in the first instance to interpret the statute and determine its scope" and that the PAA should be afforded a "broad, inclusive interpretation" to eliminate and prevent discrimination.

Sophie Currier, a medical student, filed a civil action against the National Board of Medical Examiners ("NBME"), a private, nonprofit corporation responsible for administering the medical licensing examination in Massachusetts, for declaratory relief seeking a determination that, by refusing to give her additional break time and a suitable environment during the exam in which to express breast milk for her infant, the NBME violated several laws including the PAA. The SJC held for the first time that lactation (nursing or pumping) "is inextricably linked to pregnancy and thus sex linked" and that protections under the PAA extend to lactating mothers.

The Court rejected NBME's argument that because it did not maintain any physical presence in Massachusetts, it was not a "place of public accommodation." The Court upheld for the first time the MCAD's previous construction that the PAA's declaration that "[a]ll persons shall have the right to the full and equal accommodations, advantages, facilities and privileges" applied not just to a person's entrance into a physical structure but also to situations where services are provided that do not require a person to enter a physical structure. The Court held that "the active provision of testing services in Massachusetts, which services by their nature are mobile, is sufficient to bring the NBME within the reach of the statute." Additionally, the Court rejected NBME's no physical presence argument on the ground that it could not be absolved of liability

because it contracted with another company to provide the testing site where NBME “controls the conditions under which the exam is administered and whether accommodations may be granted to examinees.” Finally, the SJC accepted the MCAD’s argument that a case can be made under the PAA using a theory of discriminatory intent or discriminatory impact.

General Counsel Catherine C. Ziehl and Commission Counsel Simone R. Liebman filed the Amicus Brief on behalf of the Commission.

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