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Do Florida nursing homes deserve extra immunity from COVID-19 lawsuits? *The Ledger, May 11, 2021, featuring Abbye Alexander and Christopher Brown*

Abbye Alexander, partner and co-chair of KD's Health Care/Managed Care Practice Group, and Christopher Brown, partner in the KD Orlando, Florida office, were quoted in an article in The Ledger written by Gary White published on May 11, 2021.

Nursing homes and rehabilitation centers care for a highly vulnerable population, and resident deaths are common. Facilities routinely face lawsuits alleging negligence.

Changing Guidelines

Christopher Brown is a partner in the Orlando office of Kaufman Dolowich & Voluck, a national firm, and often represents long-term care facilities. He noted that Florida statutes contain a bill of rights for nursing home residents, creating legal obligations for them to receive "adequate and appropriate health care."

Brown said nursing homes deserve increased immunity because of the unprecedented challenge their leaders have faced during the COVID-19 pandemic.

"I can tell you, in late March 2020, early April 2020, the CDC and the Agency for Health Care Administration … were constantly releasing new guidance to these facilities as to how they needed to handle these patients," Brown said. "Facilities were constantly trying to keep up to date with those ever-changing guidelines, and that was a challenge for the buildings, it really was. So now the onus is all on the plaintiffs to show that whenever their particular case or whenever their resident contracted the virus, that building was not in compliance with what the federal and state governments were mandating."

The boilerplate language in the lawsuits filed against the Polk County nursing homes mentions a lack of personal protective equipment for employees. Abbye Alexander, also a partner at Kaufman Dolowich & Voluck in Orlando, said it's important to remember that facilities had difficulty in the early stages of the pandemic obtaining enough facial masks and other supplies.

The lawsuits also allege that nursing homes didn't have enough employees during the pandemic's peak to keep residents safe. Brown said that is a standard complaint in negligence suits. He said Florida law sets minimum ratios of employees to residents, though lawyers making negligence claims often argue that a facility should have had more workers.

Most nursing homes require residents to sign contracts with arbitration clauses, meaning lawsuits are decided by a judge or a panel of judges rather than a jury. The same damages are possible in arbitration as in a jury trial.

Brown said it isn't an exaggeration to say that some nursing homes could go out of business if lawsuits over COVID-19 succeed.

"For facilities that have had a large number of cases, specifically a large number of deaths, associated with them, yes, it's a concern," Brown said.

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