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Ten Ways to Avoid and Fight a Lawsuit Against Your Assisted Living Facility

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For administrators of assisted living facilities (ALFs), helping residents stay active and healthy while maintaining a high quality of life can be daunting. Many residents are at high risk for injury, irrespective of supervision and assistance levels, and the risk of lawsuits against ALFs is, unfortunately, a constant concern. The best way to fight lawsuits is to avoid them in the first place. Steps can be taken in this regard. However, if the facility does encounter legal issues, there are also strategies for successfully fighting them. Below are ten ways to avoid and fight lawsuits.

Avoiding a lawsuit

Focus on the basics

The best way to avoid a lawsuit is to have a passion for excellence in operating the facility, fostered in a heart of love. Love is critical for success in this industry – love for the wellbeing of the residents and their families, toward the staff, toward the greater community, and a personal passion for the healthcare field. Focusing this passion on the fundamentals of running an ALF will help the facility exceed the standards of Chapter 429, Chapter 58A-5, and Florida law concerning negligence, helping to keep the ALF out of legal trouble.

Keep 1823s current

The cornerstone of the physician-ALF relationship is of course the Resident Health Assessment, AHCA Form 1823. Be sure that each 1823 is properly and fully completed, signed and dated. Remember, too, that an administrator of an ALF must determine that each resident is appropriate for admission and for continued residency. The 1823 must be updated every three

years or after a significant change as defined by Rule 58A-5.0131, Florida Administrative Code, whichever comes first.

Assist with obtaining third party services (and document)

An administrator or his or her designee should coordinate and facilitate third party services to residents. Because physicians and third party providers often have delays unrelated to the ALF's efforts, it is important, and required by Rule 58A-5.016(8), to document attempts to coordinate third party services.

Aggressively monitor staffing numbers and transparency

Be sure to comply with hours requirements weekly.

Calculations should exclude those persons who cannot count toward the total figures. Make sure daily work schedules for direct care staff are available on request. Further, time sheets and work schedules should be maintained as required by Rules 58A-5.019 and 58A-5.024.

Maintain records specifically listed in Rules

Rule 58A-5.024 clearly lists records which must be kept regarding 1) the facility, 2) staff, 3) and residents. Precise record keeping helps administrators focus on the basics. For example, we occasionally see charting of medication observation on a day when a resident was at the hospital or deceased. Proactively advise staff that plaintiffs' lawyers will aggressively point out such errors.

Create internal incident reports

In addition to AHCA incident reports, internal incident reports should be created as a standard practice. Each facility should

have a blank form incident report that any employee can fill out if there is an incident with injury, or alleged injury. Internal incident reports should be kept separately from AHCA incident reports in a central and confidential location.

Fighting a Lawsuit

Notify your insurance company immediately

If the ALF is served with a lawsuit, or receives a statutory presuit notice of intent letter, administrators should immediately put the facility's insurance company on notice. Every presuit notice and lawsuit has the potential to be an existential threat to an ALF, to the economic security of staff members, and the tranquility of residents. The best way to fight it is to immediately involve a lawyer, as appointed by the ALF's insurer. As a general rule, after the facility has notified the carrier, administrators should do nothing unless instructed to, or "green-lighted," by the lawyer.

Question your lawyer, and ensure he or she practices in long-term care

A litigator is someone who spends much of his or her time resolving bitter disputes, being persuasive, and answering difficult and complicated questions. If the lawyer repeatedly cannot answer questions in a manner that instills confidence, administrators need to advise the carrier of their concerns. Communications with the carrier should be in writing, and preferably via fax and mail. It is also imperative, of course, that the lawyer practice in long-term care – as it is a very specialized area of practice.

Help your lawyer

Assuming the lawyer can answer questions consistently, it is critical for administrators to provide assistance. The defense of a lawsuit is a team effort, and it will fail if the client does not play the proper role on the team. This means respecting and

generally going along with well-reasoned recommendations. It also means diligently searching for documents and information, and asking questions of the staff. Additionally, administrators should be accessible via fax, phone and email, sometimes on short notice.

Maintain sufficient insurance

Inadvertently letting your policy lapse or not carrying enough insurance can destroy an ALF. Even in cases where administrators had thought they were doing everything right, jury verdicts have been rendered in the \$1 million to \$5 million range, and even higher. In addition to carrying the proper amount of insurance, administrators should make sure that applicable officers, directors, partners, members and owners are named as additional insureds on the insurance coverage as appropriate.

Diligence and organized record-keeping with adherence to State-mandated obligations are the best risk management techniques an ALF can employ. The areas discussed above are where ALF operators may sometimes fall short. Turning attention to these on a recurring basis can fight lawsuits the best way – by avoiding them altogether. When claims do arise, ensure that your insurance company is immediately "put in the loop," and that you have a sufficient rapport with your long-term care defense lawyer to fight relentlessly. Such a fight may be needed to protect the good name and viability of your facility.

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