

# Nursing & Assisted Living Facility Professional

NOW IN OUR 10TH YEAR!

“NEWS AND VIEWS YOU CAN REALLY USE”

MARCH 2020  
ISSUE 3, VOLUME 10

SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

## THE ADELMAN ADVANTAGE by Rebecca Adelman PEACE OF MIND



Adelman Law Firm has always lived by a core value to take care of our clients. This enduring value guides us as we face the difficult challenges and changes in our daily lives. Our hearts and thoughts extend out to the people who have been affected by this unprecedented event and we appreciate the healthcare workers, local communities, and governments around the world who are on the front line working

to contain this coronavirus. I hope that you, your families, and your colleagues are well, and I want you to know that we understand that this public health crisis and its related economic effects are disruptive for everyone. In this time of concern over COVID-19, I am leading my team in taking steps to safeguard our team while continuing to be proactive in protecting the interests of our clients. The firm is open. We are accustomed to working remotely and fully capable, if needed. We are taking precautions. At the end of February, I implemented our business continuity plan that includes transition to video conferencing, depositions, court appearance and mediations. *Expect a call from me in the coming days for a general check –in and to see whether you have specific questions, concerns, or needs.*

In addition to the many actions Adelman Law Firm outlined on the website at [www.adelmanfirm.com](http://www.adelmanfirm.com), the firm is partnering with the Memphis Union Mission, (<https://www.memphisunionmission.org/>) to prepare meals through one of our team members and her award-winning catering company. MUM is a non-profit that ministers to the physical, spiritual, and emotional needs of men, women and families who are homeless, addicted, and in crisis. One of our attorneys, a seamstress, is sewing protective masks for distribution to our healthcare community. I am also relying more on our local business partnerships and finding ways to help support them. I am committed to identifying opportunities for our team to support and strengthen our community.

***I am also offering complimentary education, legal, advisory, crisis planning and risk mitigation resources and services for crisis solutions related to COVID-19 in healthcare, employment, and other issues so please contact me directly.***

We are here to offer **peace of mind.**

**Stay tuned for the inaugural The Adelman Advantage Podcast being directed by our own, John Woods, associate attorney and former radio broadcaster.** John and I and team members as well as special guests will bring important (and also some fun) information about a myriad of subjects directly from our beautiful offices at Central Station in the South Main Historic District in Memphis, Tennessee. Stay Tuned!

One of the topics we will discuss on the first podcast and will continue to discuss are the types of lawsuits that are being filed and are expected to be filed related to COVID-19. We are closely evaluating the litigation climate and are preparing risk mitigation and other defense solutions and strategies. Here is a short overview of the industries and claims we are assessing and these continue to broaden daily. Future litigation will take aim at healthcare providers, insurance companies, employers, co-working spaces, medical centers, schools. As with the coronavirus itself, it will take time to see the full legal impact.

### INSURANCE COMPANIES

The first wave of anticipated insurance-coverage litigation has begun as novel coronavirus-related shutdowns spread across the U.S.

On March 19, a prominent seafood restaurant in New Orleans' French Quarter, Oceana Grill, has asked a state court to confirm that its policy with Lloyd's of London would cover lost revenue due to civil-authority actions with coronavirus restrictions.

The 500-seat restaurant is operating under two recently announced civil authority orders that limit its dine-in operations, one issued by the state's governor and the other by its mayor.

The legal action seeks to pierce through defenses that insurers say exist in many policies to exclude claims tied to COVID-19, although policies vary widely.

Last week, New Jersey's state Assembly was fast-tracking what insurance-industry executives say is an unprecedented legislative effort to override virus-related exclusions in business-insurance policies in the Garden State. They tabled the proposed bill only after industry trade groups agreed

*Continued on page 2*

to come up with an alternative, voluntary approach to help small-business policyholders cover their losses.

Much more to come with these claims.

#### CRUISE SHIPS

On March 9, 2020, a couple quarantined on the Grand Princess cruise ship, sued Princess Cruise Lines Ltd. after docking in Oakland, CA. This case marks the first negligence lawsuit filed in direct response to the rising coronavirus epidemic gripping the world.

The plaintiff couple, Ronald and Eva Weissberger, allege Princess negligently handled the onboard coronavirus outbreak. According to the couple's complaint, Princess knew two passengers on the ship's previous voyage had presented with COVID-19 symptoms. The infected passengers were allowed to disembark and a new group of passengers, including the Weissbergers, boarded later that day. The ship sailed to Hawaii as planned. Over the course of the trip, however, 21 cases of coronavirus were confirmed onboard. The Weissbergers claim Princess should have taken more stringent precautions to prevent the spread of the virus.

The Weissbergers also cited the Diamond Princess incident in their suit against the cruise company. Passengers aboard the Diamond Princess ship were quarantined off the coast of Japan for two weeks in February. During this time, coronavirus cases on the ship soared from 10 to over 700. The Weissbergers contend Princess should have learned from this outbreak, especially since it occurred less than a month before the Hawaii-bound cruise.

There's also the case of the Silver Shadow. This ship was docked in Brazil because of a sick Canadian passenger. While the ship was placed under quarantine, none of the crew members were wearing PPE, thereby putting more people at risk.

Norwegian Cruise Line has also been accused of fraudulent conduct by selling cruises and misrepresenting the seriousness of the coronavirus pandemic. NCL offered false information to the public in hopes of luring more passengers to ships.

#### HOSPITALS

Those at the front lines of the coronavirus fight are hospital personnel. Reports have highlighted where these medical professionals are ill-equipped for the virus.

Nurses have also spoken out about exposed colleagues who have been asked to leave quarantine prematurely because hospitals are short-staffed. In addition to their close contact with coronavirus patients, health care workers are also far more likely to unknowingly pass the virus to people outside a hospital setting. These lapses in protection are undoubtedly creating liability issues for hospitals across the country, as medical personnel struggle to contain the outbreak.

#### EMERGENCY RESPONSE SERVICES

First responders also face a precarious position between the virus and at-risk people. In New York City, a fire department emergency medical services (EMS) employee had tested positive for COVID-19. This was after the employee "worked

three tours in the last week, partnered with five fellow EMS members, and treated 11 patients."

The role of first responders places them in direct contact with patients in the field. This also makes them a potential agent for coronavirus spread which may place emergency services at risk of related litigation.

#### NURSING HOMES

Nursing homes have been seriously impacted by COVID-19. The CDC reports older adults are one of the highest-risk groups for coronavirus complications.

Nursing homes and other senior facilities will face intense scrutiny for their handling of coronavirus including pandemic and infectious disease protocols and regulatory compliance, training, and other negligence related claims.

In California Federal Court, we are already seeing a multitude of lawsuits ranging from a class action for unfair competition filed by students whose tour was canceled due to COVID-19 and no cash refund was offered to immigration lawsuits. Plaintiffs in one immigration case are civil detainees at US Customs facility in Tacoma and seek release due to potentially becoming infected by COVID-19. Germ-X is a defendant in a class action lawsuit for consumer warranty and unfair competition. The class alleges that Germ-X promoted its hand-sanitizer could prevent or reduce infection including COVID-19 without reliable studies. Two class actions were also filed against the maker of Purell hand sanitizer on similar grounds.

We will continue to evaluate the state of legal affairs related to COVID-19.

**RESCHEDULED: The National Long-Term Defense Summit** - Adelman Law Firm has rescheduled the annual National Long-Term Care Defense Summit. PLEASE SAVE THE DATES OF **November 11-12 2020** for the 8<sup>th</sup> annual Summit! Please plan to join us. For more information, please contact me at [rebecca@adelmanfirm.com](mailto:rebecca@adelmanfirm.com) and visit the event website at <https://www.ltcdefensesummit.com/>

STAY SAFE.

Rebecca Adelman is an entrepreneur, influencer, thought leader and founder of Adelman Law Firm, a Women's Business Enterprise National Council (WBENC) certified Women Business Enterprise (WBE) established in 2001. For nearly 30 years, Rebecca has concentrated her practice in insurance defense and business litigation. The firm's practice extends through the Tri-States of Arkansas, Mississippi and Tennessee. Rebecca's insurance defense practice includes representation of insurance companies and long-term care providers and their insurers, both regionally and nationally. She also provides consulting services and educational programming to healthcare professionals and business associates. She has active practices in the areas of general liability, professional liability, premises, and employment law. She is a listed mediator serving all areas of business and healthcare litigation.

Contact Rebecca at [rebecca@adelmanfirm.com](mailto:rebecca@adelmanfirm.com) and visit [www.adelmanfirm.com](http://www.adelmanfirm.com) and [www.rebeccaadelman.com](http://www.rebeccaadelman.com).

# Empowering Staff in the Midst of a Pandemic



The coronavirus epidemic in the United States has been declared national emergency. Amid this unprecedented situation, all post-acute and long-term care professionals are working to take care of residents and patients as well as support each other to the very best of their ability. It is easy to get overwhelmed by staff shortages, visitor restrictions, and often conflicting needs of staff, residents/patients, and family members. We

would like to offer some suggestions to help PALTC colleagues find a way through.

## Support Your Staff

- Recognize how stressful this situation is for staff. Provide a safe environment for them to talk about their fears and worries. They may be dealing with complicated logistical challenges with their own families, especially in circumstances if a child's school has shut down or if they are a caregiver for an older adult. Staff may also be struggling with their own family's fears for their safety at work. Staff may feel fearful to come to work.
- Incorporate daily reminders for staff to remain calm, compassionate and kind. Ask staff to share moments of kindness and compassion. Keep a log of these and share regularly. Recognize how difficult this is on staff, especially when they have to impose restrictions. They're suffering and grieving too.

## Build Partnerships with Families

- Develop and implement a plan to communicate regularly with families. Be proactive to offer information, do not make them seek it out. Sample letters from administrators to families can be found on the AMDA website <https://paltc.org/COVID-19> Providing timely and factual information helps to garner their respect and trust.
- Find ways to get family involved, even at facilities with the visiting restrictions. How can staff use technology creatively to connect families to their loved ones? Is there a tech guru on staff? Is there a family member willing to take the lead on collaborating with the facility to make these connections? Look for untapped resources! Get staff involved and ask them to identify ways to help "normalize" life in the facility under the current circumstances. Consider an improvement project!

## Harness the Power of Words

- Even though we do not have all the answers, family members look to us as the healthcare providers and professionals and expect us to lead the way. Coach staff to focus on the facts of the situation. Provide the staff with simple, consistent "talking points" that they can comfortably share. Prepare responses to questions like "How long will the facility restrict visitors?" Discourage speculation and opinions, which includes being selective about what is playing on television in common areas. If staff is asked a question and they are unsure of the answer, they should direct the individual to a member of the leadership team.

- Realize there could be fear or even paranoid reactions from staff, residents and families when a resident has to go on isolation for any reason (e.g., Clostridioides difficile infection). Misinformation and fear spread very quickly, so have a plan in place to handle these situations, without betraying resident confidentiality and while remaining HIPPA compliant.
- Remember that what staff tell family members will likely be repeated to other family members and friends. Our job is to convey accurate information and help them "tell the story".
- Empower staff with knowledge and the words to say, as well as words to avoid. Consider developing scripts so all staff convey the same message. For example, "We understand that families are concerned. Here are the things we are doing to manage the situation...". Emphasize what the facility/staff ARE DOING and avoid statements that cast doubt or insecurity. Be intentional with word choice and recognize the impact words can have. Terms like "quarantine" or "lockdown" have the power to conjure vivid images that may not be correct or applicable to the current situation. At one facility, a patient was very upset and told the medical provider they were being "quarantined." While there is no one in this facility with the virus, the facility has initiated visiting restrictions. Very quickly this got translated by residents into "quarantined", which for this resident, struck fear in her and resulted in her feeling abandoned.
- Be cautious about using the term "prevent" as this implies a level of protection that may not be realistic. Instead, consider using the term "minimize" such as, "We are working hard to implement precautions and minimize exposure..."
- Clearly define the situations in which the administrator – or a lead person/team – must be notified, i.e., when a family member or residents is particularly angry or fearful; if staff cannot provide an answer to resident/family question. Make sure staff are aware of these and know how to promptly reach the lead person/team.
- Emphasize to staff that it is okay to respond with, "I don't know the answer" and then the expectation to refer the individual to someone that does. Staff should help facilitate that connection, whether in person or on the phone.

## Anticipate Challenging Conversations

- Find ways to agree with a person who is upset. Rather than automatically saying "No" to a request, find a way to say "Yes" to at least some part of the request. Even if the "yes" is to validate a concern, that is a very powerful word. For example, "Yes, I see how this would concern you." Or, "Yes, this is really difficult on all of us." Or, "Yes, we are doing the best we can to...". "Yes does not mean the request will be honored; Yes, means you find a way to build a partnership with the family," writes Carol Marshall, MA, in Satisfied Customers Seldom Sue: A Guide to Exceptional Customer Service in Long-Term Care (Marblehead, MA: HCP, Inc; 2009.)
- Talk with staff about the perfectly normal, human reaction of anger. Anticipate that some family members (and other visitors) may be angry with visiting restrictions or other measures. In the presence of an angry person, it can help if we understand this emotion a little better. Anger is typically the visible emotion,

as depicted in this image of an iceberg. Beneath the anger are any number of other hidden emotions including fear, grief, frustration, trauma, insecurity and regret. Use this image in staff training and coaching to help them garner deeper empathy for what an angry person might be experiencing “beneath the surface”. This is not to say that staff should dismiss anger that is abusive.

- Talk with staff about action to take if a family becomes irate or increasingly argumentative. Provide an “out” for staff if they find themselves in an uncomfortable or frustrating situation. How should they get the attention of the administrator or other senior leaders whether in person or on the phone?

- Under no circumstances should staff become defensive with a family member. Coach staff to “listen to the problem, not the delivery” (Tra Beicher). Coach staff to not get caught up in the emotion of the situation but, instead, remain calm, well-grounded, and kind.

- Avoid statements like, “It’s against our policy”, which may alienate a person and exacerbate their feeling out-of-control of the situation. If a person becomes argumentative, staff can say, “We recognize how difficult this is and how worried you must be...we have implemented these measures to minimize exposure to all residents.”

- Avoid telling an angry person to “calm down” as this may only succeed in elevating their agitation.

- Do not say, “I understand” or, “I know how you feel.” Instead, say, “I can see how this would concern you.”

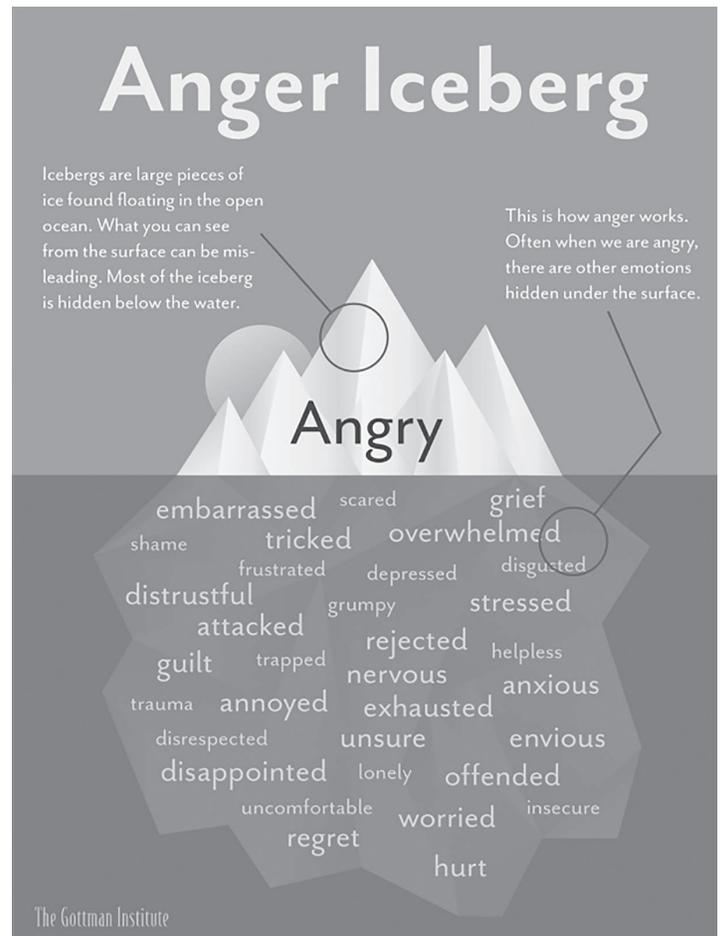
- Fear of the unknown ramps up emotions and emotional responses. Any of us may exhibit maladaptive behavior under these types of circumstances, but for someone whose coping abilities are already compromised, stressful situations can elicit significant maladaptive behaviors. For example, in one facility that had just instituted visiting restrictions, a mother demanded that staff send her son to the Emergency Department so she could see him.

- Be prepared to answer questions from residents like, “If I get it, am I going to die?” The medical director should be taking a lead role in helping address issues like these. Consider issuing a statement that helps address common questions and concerns, and most importantly what actions the facility is taking to care for people. Staff and medical providers will likely need to repeat this information frequently. When people are scared, their ability to remember and retain information is limited. Or, they might misconstrue information, which lends to more fear and conjecture.

### Meeting Mental Health Needs

- For residents with cognitive impairment who may have difficulty processing verbal communication, we need to consider what our tone of voice, behavior, and body language is communicating to these residents. If we are consistently fearful or upset, these emotions will be communicated non-verbally to residents. It is not uncommon for residents with cognitive impairment to reflect the emotions of staff back to them with behavioral symptoms. A calm approach, caregiver consistency when possible, and trying to keep up with usual routines can go a long way when caring for residents with cognitive impairment.

- From an infection control perspective, staff are accustomed to employing universal precautions. This exact concept also applies to mental health. A trauma-informed facility has trained staff to use universal precautions to help protect trauma survivors from



(Image used with permission from The Gottman Institute)

re-traumatization. Being isolated from the community, from family members, feeling out of control, changes to schedules and routines, and fear for their health and maybe even life may trigger previous traumas.

- Even for people that are not currently experiencing triggers related to the COVID-19 situation, we all need to be prepared for the post-traumatic stress reactions in residents and staff that may surface in the future. If you have not already implemented a trauma screening tool, please consider doing so now using the PC-PTSD-5 screening tool. Even if residents and patients are not currently exhibiting signs of trauma, we must be prepared for those symptoms to present at any time during and after the isolation. Routine, regular screening is imperative.

- With constant media coverage, it may be beneficial to limit TV viewing whenever possible.

- All community life/activities staff should look for new, creative ways to engage residents, especially those isolated in their rooms. Other staff should get involved as well, whenever possible. To succeed, we must join forces. This extraordinary circumstance requires that.

Thank you, everyone, for taking wonderful care of the residents and patients in your facilities. And, please, show the same compassion and care to yourselves and fellow co-workers. We will get through this.

The official version of this article will publish in the May 2020 issue of Caring for the Ages.

Contact Paige at 520-955-3387 or at [paige@paigeahead.com](mailto:paige@paigeahead.com)  
Discover more about her at [www.paigeahead.com](http://www.paigeahead.com)



# Kessler's Corner

By Chip Kessler

## *A Message of Thanks & Appreciation*

# What Can I Do For You?

For many years, this newsletter has offered you the opportunity to invest in one of our programs, products or services from Extended Care Products, and your response has been overwhelmingly positive.

For this you have my sincere thanks

**Today, however, in these challenging times, I write this not with the goal of making a sale. Rather I want to offer my services to your nursing facility and assisted living community at absolutely no charge ...**

Nursing and Assisted Living facilities are struggling. Staff members, like every one of us, are trying to make sense of what is going on in our community, region, country, and world ... plus you have the added task and responsibility of taking care of others who are depending on you.

This is why I again pose the question I wrote at the top of this page ...

### **What Can I Do for You? What Can I Do to be of Assistance to Help Your Building?**

Do you need a letter written you can send to families assuring them of your devotion and unwavering care to their loved one, since in-person visits have been limited?

Would you like something drafted to families or responsible parties who may have decided to take a resident home, rather than them stay in your building for rehab ... or perhaps to the patient him or herself, letting them know you are still available to help?

Perhaps you need something developed to send out to your region or community reminding them that you are taking all available health and safety precautions to maintain a clean environment, and that you are open and looking for new rehab clients and long-term care residents?

Maybe you're needing something else?

I've worked with and developed all of these items for my present nursing and assisted living consulting clients.

I'd like to assist your building as well, and here at no-charge.

This is a time to stick together for the greater good.

Not for selling.

Please feel free to e-mail me personally at [Chip@ExtendedCareProducts.com](mailto:Chip@ExtendedCareProducts.com) ... if you wish call me at 800-807-4553 to talk and together we can map out what will best help your building.

I'll end this column again where I began: what can I do for you?

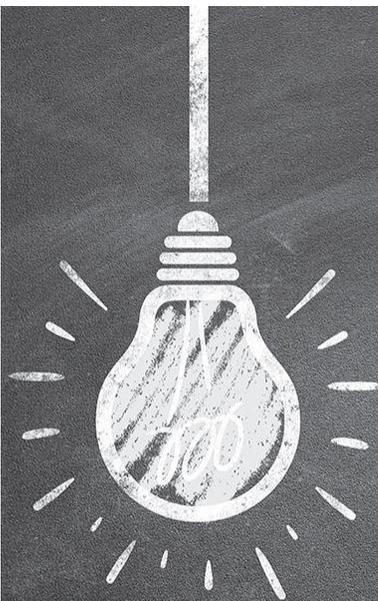
Wishing you all the best,  
Chip Kessler  
General Manager  
Extended Care Products, Inc.

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**You Personally?**

We want to make sure you are personally getting this newsletter each month, not just have it forwarded to you because you're now holding down the position of a predecessor! Let us know you now are on the job. E-mail your name, facility/company name and address to [chip@ecpnews.net](mailto:chip@ecpnews.net) & we'll update our records. Just put NAL Professional on the e-mail subject line and we'll take care of the rest.

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Johnson City, TN 37604

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**RESCHEDULED: The National Long-Term Defense Summit - Adelman Law Firm has rescheduled the annual National Long-Term Care Defense Summit.**

**PLEASE SAVE THE DATES OF November 11-12 2020 for the 8<sup>th</sup> annual Summit!**

Please plan to join us.

For more information, please contact me at [rebecca@adelmanfirm.com](mailto:rebecca@adelmanfirm.com) and visit the event website at <https://www.ltcdefensesummit.com/>