

September 15, 2017



Elder-law attorneys were quick to weigh in Thursday on the legal implications of eight deaths at a Hollywood nursing home following a loss of air conditioning during Hurricane Irma.

Any need for regulatory reform will be determined by the facts as they emerge, said Fort Lauderdale attorney Jonathan Gdanski of Schlesinger Law Offices. Key questions, he said, would include the following: What steps, if any, were taken to transport nursing home residents? Was the facility monitoring the deterioration of patients over time? And what plans were in place to help those who needed assistance the most?

"Some of the most basic facts still need to be determined, yet what is already known seems to present a clear picture of absolute, complete, reprehensible conduct, which resulted in death," said Gdanski, a plaintiffs lawyer focused on catastrophic personal injury and medical malpractice.

Meanwhile, he said, "the large majority" of caregivers across the state appear to have been adequately cautious in the face of the storm.

More than 150 residents of the Rehabilitation Center at Hollywood Hills were evacuated to hospitals Wednesday. Three people were already dead when first responders arrived, and five more died that afternoon. Gov. Rick Scott called the deaths "unfathomable," and state and local authorities have started a criminal investigation.

The nursing home's administrator, Jorge Carballo, said in a statement that the facility was "cooperating fully with relevant authorities to investigate the circumstances that led to this unfortunate and tragic outcome."

Broward County reported the nursing home told officials Tuesday the air conditioning was out but did not request help, according to the Associated Press. The facility complied with a state law requiring an evacuation plan and hurricane drills.

"I have been litigating nursing abuse cases throughout Florida for years and this is the worst case I have seen," said Fort Lauderdale attorney Marcus Susen of Koch Parafinczuk Wolf Susen.

The Hollywood nursing home seems to be an outlier rather than an example of a systemic problem, said Miami attorney Bruce Katzen of Kluger, Kaplan, Silverman, Katzen & Levine.

"I believe our existing regulatory scheme is sufficient to administer nursing home and rehabilitation facilities," said Katzen, whose practice includes elder abuse cases. "However, the existing regulatory system needs to be enforced. This facility apparently had a long list of violations."

Susen, who has litigated against the facility, said it has been investigated by Hollywood police for elder abuse and neglect and has been cited during life safety inspections.

The owner of the nursing home, Dr. Jack Michel, and four others settled Department of Justice health care fraud claims for \$15 million in 2006. Michel's attorney at the time, Craig Brand of the Brand Law Firm in Orlando, did not respond to an email asking whether he had been retained as a defense attorney for the Hollywood nursing home.

"While it's not yet known what relationship there was between the DOJ settlement and the circumstances surrounding this fatal occurrence, it is, of course, something to explore," Gdanski said. "The fact of the matter is that if this facility and its owner were not able to reasonably and properly take care of patients and the elderly, then they should not be doing so at any facility."

Civil litigation is likely to follow, and the nursing home may not have many defenses, plaintiffs attorneys said.

"They will likely argue that the hurricane was an act of God, and thus could not anticipate the situation nor the problems that ensued," Katzen said. "While this is their likely defense, it is unlikely to be successful."

Boca Raton attorney Michael Brevda of the Senior Justice Law Firm, who is investigating a wrongful death claim against the Rehabilitation Center at Hollywood Hills on behalf of a family, said he believes reform is "absolutely" needed.

A bill to require generators at nursing homes to cool them during power outages died in the Legislature in 2006, but a federal regulation set to take effect in November mandates a backup energy source to maintain safe temperatures.

"Florida nursing homes require more administrative oversight. Period," he said. "Right now, [the Florida Agency for Health Care Administration] is well-intentioned but grossly underfunded. We need more oversight in these facilities, and more importantly, we need to make sure that the corporate owners are fit to run a nursing home."

Gdanski said he hopes other health care facilities will take the tragedy as a cautionary tale and put procedures in place to prevent anything like it from happening again.

"This should be a clarion call to hospitals and health care entities that in times of crisis, there must be implementable and efficient plans of action to ensure the safety of patients," he said.