

## MICHAEL P. KELLY

SPECIAL COUNSEL

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### AREAS OF PRACTICE

Health Care Liability  
Long-Term Care Liability  
New York Construction & Labor Law  
Commercial Litigation

### CONTACT INFO

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### ADMISSIONS

New York  
1995

U.S. District Court Eastern District  
of New York  
1996

U.S. District Court Southern  
District of New York  
1998

U.S. Court of Appeals 2nd Circuit  
2000

Connecticut  
2021

### OVERVIEW

Michael concentrates his practice on the defense of physicians and hospitals in a broad range of medical malpractice actions. He has also defended clients in dental malpractice actions. In addition to his health care liability experience, Michael has defended legal malpractice, civil rights and general liability actions, as well as pharmaceutical product liability matters. He is also experienced in handling claims involving negligence, New York Labor Law, subrogation and commercial litigation.

Michael began his career at the Nassau County (New York) District Attorney's Office as an Assistant District Attorney. Subsequently, he joined a prominent medical malpractice defense firm, litigating throughout the metropolitan New York City area. In 2007, Michael joined Jones Hirsch Connors Miller & Bull, where he continued to defend medical malpractice actions and also broadened his experience by assisting in the defense of various general liability matters.

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### EDUCATION

New York Law School (J.D., 1994)

Loyola College (B.A., 1990)

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### ASSOCIATIONS & MEMBERSHIPS

Nassau County Bar Association

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### YEAR JOINED

2014

## RESULTS

### Summary Judgment Granted in Highly-Publicized Medical Malpractice Case

#### **Long-Term Care Liability**

#### **Health Care Liability**

**September 26, 2023**

We obtained summary judgment in a medical malpractice action, which was covered in The New York Law Journal. The plaintiff, a man severely debilitated by a stroke, alleged that our nursing home client had admitted him with 14 pre-existing pressure sores. Through our expert, the records and our client's deposition testimony, we established that all of the plaintiff's pressure sores either stabilized or resolved during his two-month admission. The court found no deviations from the accepted standards of care and dismissed the case.

### Dismissal of claims against EMTs.

#### **Emergency Medical Services**

**May 7, 2021**

We obtained dismissal of claims in a negligence action in which our client's EMTs "dropped" the plaintiff while transporting him to a rehab facility from a hospital after bilateral knee replacement surgery. The plaintiff was placed on a stretcher in his hospital room, but when the EMTs began lifting it to height, the plaintiff leaned over, causing it to tip over.

### Dismissal of medical malpractice/wrongful death claims against hospital.

#### **Health Care Liability**

**May 7, 2021**

We obtained dismissal of a medical malpractice/wrongful death action involving claims that the defendant hospital failed to properly treat vascular compromise to the lower extremities, resulting in prolonged hospitalization during which pressure ulcers developed, progressed, and became septic, causing death. Motions for summary judgment brought by five other defendants were granted.

### Claims dismissed in complex New York Labor Law case.

#### **New York Construction & Labor Law**

**March 1, 2020**

We obtained summary judgment in a complex New York Labor Law case. Our client was the construction manager on the site of a library construction. The plaintiff, a painter, fell when the ladder upon which she was working allegedly twisted. Our client argued it was not a "contractor" under the Labor Law and its contract specifically stated he was not responsible for the method and means of work performed by prime contractors.

### Summary Judgment in Mixed Medical Malpractice/Product Liability Case.

#### **Health Care Liability**

**April 11, 2019**

We obtained summary judgment in favor of a thoracic surgeon in a mixed medical malpractice/product liability case in New York State Supreme Court, Kings County. The claims involved an experimental weight loss device that was inserted and removed by the co-defendants. The device had perforated the plaintiff's esophagus, and our client was called in to repair the esophagus.

## **SIGNIFICANT REPRESENTATIVE MATTERS**

Had award of summary judgment against a prominent New York City hospital affirmed on appeal by United States Court of Appeals for the Second Circuit in action premised on negligence, assault, the Americans with Disabilities Act and civil rights violations because the governing statutes did not provide the plaintiff with any basis for his lawsuit.

Achieved affirmance of jury verdict in favor of defendant-physician by Appellate Division, Second Department, because the verdict was consistent with the weight of the evidence.

Achieved affirmance of summary judgment award in favor of defendant-physician by Appellate Division, First Department, in medical malpractice where the plaintiff attempted to commit suicide by throwing himself out of hospital window because such was not foreseeable.

Had an order denying a defendant-physician's motion for summary judgment reversed by Appellate Division, Second Department, because plaintiff's expert failed to raise a triable issue of fact as to whether the defendant deviated from accepted standards of care in not diagnosing the plaintiff's colon cancer.

Had a motion denying defendant-physician's motion for summary judgment based on the statute of limitations reversed by Appellate Division, First Department, because the lower court improperly applied the doctrine of equitable estoppel.

Convinced Appellate Division, Second Department, to affirm lower court's order denying summary judgment to pharmaceutical manufacturer in action against physician and pharmaceutical manufacturer where the plaintiff had participated in an investigational study of an experimental vaccine.

Obtained order from Supreme Court, Bronx County, permitting defendant-physician's experts to perform genetic testing of infant-plaintiff's previously extracted tissue biopsies in medical malpractice action where plaintiff alleged brain injury secondary to labor and delivery; order permitting the genetic testing allowed the defendant to argue the plaintiff's injuries were not due to the defendant's acts and omissions and thus settle case at a reasonable amount.