



Katherine L. McCrink

Partner

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Katherine McCrink, cochair of Wilson Elser's Long-Term Care Practice, focuses on the defense of medical malpractice, nursing home liability and general liability claims. In the medical malpractice area, Katherine represents hospitals, physicians and other health care professionals in cases involving a variety of medical specialties. Katherine also has experience defending nursing home clients amid the increasing number of lawsuits seeking punitive damages under New York Public Health Law Section 2801-d. In addition, she has assisted with presentations to nursing home staff on risk management and proper documentation.

Katherine is involved with cases from inception, including handling various discovery issues, taking depositions, preparing reports on meetings with staff and searching medical records as well as assisting with trial preparation and preparing motions in limine. Katherine was one of 20 nominated finalists who successfully completed Wilson Elser's rigorous Mock Trial Invitational through which our most successful trial lawyers impart their knowledge to those destined to join their ranks.

Education

- University at Buffalo School of Law (J.D., 2009)
 - Buffalo Environmental Law Journal, editor in chief
- Binghamton University (B.A., 2006)
 - magna cum laude

Bar Admissions

- New York

Services

- Long-Term Care
- Medical Malpractice & Health Care

- Connecticut

Professional Affiliations

- American Bar Association

Awards & Honors

- Selected for inclusion in *Rising Stars for New York Super Lawyers*, 2017-2020

Client Wins

Borea, DeBraccio, McCrink & Semlies Successfully Defend Three Cases on Behalf of Two Nursing Homes and a Home Care Agency

Anna Borea (Associate-White Plains, NY), Steven DeBraccio (Of Counsel-Albany, NY), Katherine McCrink (Partner-White Plains, NY), and Lori Semlies (Partner-White Plains/New York, NY) defeated allegations against two nursing homes and a home care agency charged with malpractice in the care of three decedents – a tour de force on behalf of Wilson Elser’s Medical Malpractice & Health Care Practice.

The first dismissal was out of Kings County. We represented the nursing home. There, the plaintiff claimed the development and deterioration of pressure ulcers. The pressure ulcers first developed at co-defendant hospital, where the decedent was admitted from June 3, 2020, through July 31, 2020. Plaintiff was then discharged to our client nursing home from July 31 through August 7, 2020. The decedent was then discharged to a non-party hospital and subsequently passed away. By the time the decedent was admitted to our nursing home, he had a necrotic stage IV sacral ulcer, was ventilator dependent, and in kidney failure. Although the hospital admission fell squarely within the immunity provided under EDTPA, the nursing home admission, in part, fell outside of the EDTPA immunity. Our summary judgment motion focused on the clinical unavailability argument as well as Executive Order 210.10 (which alleviated facilities from the requirement to regularly document and extends beyond the EDTPA immunity period). In opposition, plaintiff focused on claims stemming from the facilities lack of documentation.

Next, in a case also out of Kings County, we represented another nursing home. The plaintiff claimed the decedent suffered from a bowel perforation on May 20, 2018, which led to death a few days later. In our motion, we argued that there was no prior indication that (1) the decedent was suffering from a bowel perforation and (2) the decedent should have been sent to the hospital any sooner than he was. In opposition, the plaintiff focused their argument on two instances of isolated rectal bleeding in 2015 and 2017 and an alleged failure to order gastrointestinal consultations following those bleeding episodes. The plaintiff also argued that constipation caused the bowel perforation. This directly contradicted our gastrointestinal expert, who opined the perforation was caused by diverticulitis. In reply and at oral argument, we focused on the fact that this was a case that came down to the days leading up to the perforation at issue, not the years. We further argued that any reference to gastrointestinal consultations was irrelevant to the claims being asserted here as it is still unclear how those consultations would have been able to predict a bowel perforation years later. We also argued that, in those days leading

up to the perforation, there was no indication that the decedent was suffering from any signs or symptoms of a bowel perforation. Essentially, we argued that the cause of the perforation was immaterial to the claims asserted here given the facts then and there existing to the nursing home staff. The court agreed.

Finally, in a case out of Bronx County, we represented an agency providing nursing home care. The plaintiff claimed a failure to diagnose and treat a bump on the decedent's groin. The bump was first identified by the assessing nurse on July 22, 2014, who documented the decedent denied any pain or discomfort to the area and that her vital signs were normal. Nevertheless, the assessing nurse immediately notified the decedent's doctor and requested an evaluation, which was performed the next day. The on-call doctors' office sent a PA to assess the "bump," diagnosing the decedent with cellulitis to the area. The decedent passed away on July 27, 2014, due to the "bump" [an aneurysm] rupturing, resulting in her bleeding out.

In addition to our client, the plaintiff named the on-call doctors' agency and home health aid agency, as well as the PA/doctors individually. At summary judgment, the plaintiff limited their claims against our client, stating the assessing nurse was negligent and departed from the standard of care by (1) failing to send the decedent to the ER on July 22, 2014, when a "bump" was first identified on the decedent's groin and (2) failing to perform a proper assessment of the "bump" on July 22, 2014. In reply, among other things, we argued plaintiff's expert had no experience with home care, the assessing nurse performed a complete and thorough assessment in accordance with the standard of care, and co-defendant PA's actions/inactions superseded the nursing assessment.

Wilson Elser Team Wins Appellate Support for Dismissal of Claim for Punitive Damages in Nursing Home Public Health Law Case

White Plains, New York, partners Lori Semlies and Katherine McCrink and Steven V. DeBraccio (Associate-White Plains, NY)) received an affirmance from the First Department, granting our motion for summary judgment, seeking dismissal of claims for gross negligence and punitive damages against our client nursing home. The case involved a resident who, over a three-year time period (and a seven-year admission) sustained approximately 24 falls at our client's nursing home. The plaintiff sued our client for negligence, the Public Health Law, and, as relevant to the appeal, gross negligence and punitive damages. Lori, Katherine, and Steven moved to dismiss the plaintiff's claims for gross negligence and punitive damages, arguing that, in light of the myriad of progressively increasing fall protection protocols afforded to decedent, including close supervision and placement at the nursing station, there was no evidence of a willful disregard of the decedent's rights, any conduct that rose to the level of gross negligence, or, as the First Department put it, "willful conduct that evidences a high degree of moral culpability so as to support a claim for punitive damages." The trial court agreed, and on appeal, the First Department affirmed the dismissal.

McCrink and Cristiano Score Summary Judgment in MedMal Negligence Case

Kate McCrink (Partner-White Plains, NY) and Robert J. Cristiano (Of-Counsel-Long Island) represented a physical therapist in a negligence action in which an 82-year-old allegedly suffered Stage IV pressure ulcers to the right heel and leg because of the client's alleged misuse and mismanagement of the patient's AFO brace and failure to check the

patient's skin. Although a fact-specific case, Kate and Robert's summary judgment motion was supported by targeted deposition testimony elicited from the resident's family, and support from our geriatric and physical therapy experts who established that our client properly monitored the patient's skin and appropriately applied and managed the use of the AFO brace. Plaintiff's counsel was unable to raise a genuine issue of fact from the record they created, and the court dismissed the case with prejudice.

Lang and McCrink Obtain Dismissal in Nursing Home COVID-19 Matter

Kathryn Lang (Associate-White Plains) and Katherine McCrink (Partner-White Plains) moved to dismiss a COVID-19 nursing home case pursuant to New York's Emergency Disaster Treatment Protection Act (EDTPA). The plaintiff's decedent was admitted to the facility from July 25, 2019 through April 13, 2020, and April 21, 2020 through May 6, 2020; however, the allegations appear to pertain only to the very end of the admission, when the decedent contracted COVID-19 leading to his death. Although the plaintiff alleged gross negligence, the court found plaintiff's arguments to be unavailing in that they were conclusory, vague and not supported by an affidavit from any individuals with personal knowledge (in opposition) containing *facts* that show that our client's conduct rises to the level of "willful or wanton." The court also found that the repeal of the COVID-19 immunity statute was *not* retroactive (based on a Fourth Department case, which is binding as no other appellate departments have issued decisions on the issue), and as such, it was a valid defense given the subject time frame.

Lang and McCrink Prevail on Summary Judgment and Dismissal in Nursing Home Matter

Kathryn Lang (Associate-White Plains) and Katherine McCrink (Partner-White Plains) obtained summary judgment and dismissal for a rehabilitation and nursing center, where the resident decedent was admitted for three days and came in with preexisting pressure ulcers. No new wounds developed during the admission and the preexisting wounds did not deteriorate. The plaintiff claimed that the facility failed to provide appropriate wound assessments and wound care; document turning and positioning; adequate nutrition and hydration; and a special mattress. Our expert geriatrician opined that the facility timely assessed the decedent, but he refused a wound consult; the wounds remained stable during the short admission; and turning and positioning documentation was unnecessary, as there was a turning mattress in place. The decedent also was documented as having refused staff members' attempts to further turn and position him. Co-defendant hospital's motion for summary judgment was denied.