

# Matthew P. Keris

Chair, EMR and Audit Trail Practice

Shareholder

[MPKeris@mdwcg.com](mailto:MPKeris@mdwcg.com)

Scranton – 570.496.4602



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Matthew has defended health care providers, businesses and device manufacturers in civil litigation for more than two decades. He is a shareholder in the firm's Health Care Department and Chair of the EMR and Audit Trail Practice Group. Matt is also an Mcare-approved mediator.

Matt had the privilege of trying the first Pennsylvania civil jury trial to verdict during the COVID-19 Pandemic in July 2020.

In addition to his litigation practice, Matt is a recognized thought leader whose insights have been featured by prominent outlets including NBC News, Thomson Reuters, and Law360. He is frequently invited to provide commentary for leading industry publications such as *The Legal Intelligencer*, *Becker's Hospital Review*, *ED Legal Letter*, *Risk Review*, *Litigation Management*, and *Counterpoint*. Matt also serves as an editor of the health risk management journal, *Patient Safety*.

Matt currently serves on the advisory committee of American Legal Connections (ALC) and serves as a co-editor of its' newsletter. He has previously served as President of the DRI Foundation, Pennsylvania Defense Institute (PDI) and the Pennsylvania Association for Health Care Risk Management. He also previously served on the Board of Directors of both DRI and PDI. In 2023, Matt was the recipient of the DRI Foundation Community Service Award, which honors a DRI member who has demonstrated a commitment to the well-being of the general public by initiating or participating in programs which have a positive impact on the community.

## Education

- Roger Williams University School of Law (J.D., 1996)
- Shippensburg University of Pennsylvania (B.A., *cum laude*, 1993)

## Practices

- EMR & Audit Trail Litigation
- Medical Malpractice
- Dental Malpractice
- Long-Term Care Liability
- General Liability

## **Admissions**

- Pennsylvania, 1996
- U.S. District Court Middle District of Pennsylvania, 2000
- New York, 2011
- U.S. District Court Northern District of New York, 2020
- Connecticut, 2021
- U.S. Supreme Court, 2023

## **Honors & Awards**

- AV® Preeminent™ by Martindale-Hubbell®
- The Best Lawyers in America®, Medical Malpractice Law - Defendants (2023-2027)
- The Best Lawyers in America®, Litigation – Health Care (2024-2027)
- Defense Research Institute Foundation Community Service Award, 2023
- DRI Leadership Award 2023
- “Service Award” by the Defense Research Institute, October 2021
- "Exceptional Performance Citation" by the Defense Research Institute, July 2015

## **Associations & Memberships**

- American Legal Connections, Healthcare Advisory Committee Member
- American Society for Health Care Risk Management (ASHRM)
- Claim and Litigation Management Alliance (CLM), Co-Chair for Pennsylvania Membership Development, 2012
- Defense Research Institute (DRI), Atlantic Region Director, 2019-2021; State Membership Chairman, 2017; State Representative to DRI on behalf of Pennsylvania Defense Institute, 2017
- DRI Foundation, President, 2021-2023
- Healthcare Standards Institute (HSI), Workgroup on AI Governance Standards for Healthcare Operations
- Lackawanna County Bar Association
- Pennsylvania Association for Health Care Risk Management (PAHCRM), President, 2026, 2016, 2012
- Pennsylvania Bar Association, Health Care Law Committee, Secretary, 2010-2012; Health Care Law Subcommittee on Civil Litigation, Chairman, 2011
- Pennsylvania Coalition for Civil Justice Reform
- Pennsylvania Defense Institute (PDI), President, 2014; Executive Board, 2009-2013; Board of Directors, 2007-2009, 2015-2023; state representative to the Defense Research Institute, 2017

## **Representative Cases & Matters**

- Obtained a defense verdict in a long-term case that included a unique spoliation issue, allegations of cover-up regarding the cause of death and a “no show” plaintiff-son. A longtime nursing home resident died after suffering head trauma following a fall. The plaintiff was the resident’s son, who was not his mother’s guardian and, according to staff, had not visited her in the three years that she was in residence. The cause of death was “end stage dementia” and upon learning the same, the plaintiff contacted a lawyer who delivered the body across the state to a forensic

pathologist for a private autopsy, and the body was subsequently cremated. No notice was provided to the nursing home administration of the impending autopsy. The forensic pathologist alluded that the cause of death was not end stage dementia, but blunt force trauma. The defense did not learn about the private autopsy until years later when the report was provided in discovery. A motion for sanctions for spoliation was filed by the defense which was followed by depositions of the funeral home staff, and a hearing involving the forensic pathologist and the attending physician. The forensic pathologist admitted that autopsy specimens were lost and photos claimed to not exist by plaintiff's counsel, in fact were on her computer. Although the spoliation motion was denied, the court held that at trial, the defense could question the forensic pathologist on the cremation, destroyed specimens and failure to produce the autopsy photographs at trial. On the eve of trial, the judge proctored an agreement between the parties to arbitrate the case "on expert reports only." At arbitration, plaintiff's counsel continued to pursue a conspiracy theory about "the true cause of death" along with standard negligence criticisms about fall prevention. The plaintiff was cross-examined on a prior crimen falsi conviction and an Orphans' Court petition initiated by the local Area Agency on Aging where the deceased resident complained that she was afraid of her son which was relevant to his "loss of society and companionship" claim.

- Received a unanimous defense jury verdict within thirty minutes of deliberation in a five-day fire-loss subrogation trial. This case was one of the first Pennsylvania civil jury trials held during the COVID-19 pandemic. Taking into account safety and social distancing protocols, jury selection took place in a local school auditorium, two witnesses presented testimony via Zoom, and everyone present in the courtroom was subject to temperature screenings and required to wear a face covering. Given the current national health situation, this trial could serve as an example of how the court system and counsel can adapt to the changing health and legal landscape.
- Obtained entry of judgment of non pros based on the plaintiff's failure to timely and properly file a Certificate of Merit (COM) in accordance with Pa.R.C.P. 1042.3 on behalf of a nursing home chain and its consulting company. With the Complaint, plaintiff attached an expert report from a nursing expert but did not attach a COM. Defendants filed a Notice of Intent to Enter Judgment of Non Pros, and judgment was subsequently entered. The plaintiff then filed a Petition to Strike/Open the Entry of Judgment of Non Pros, arguing that the expert report attached to the Complaint constituted a COM. The defense successfully fought the plaintiff's attempts to open the judgment. The Court ultimately found that plaintiff's repeated failures to comply with the applicable rules placed their case "beyond the purview of equitable relief," and therefore reinstated the entry of judgment and dismissed plaintiff's Complaint with prejudice.
- Received a defense verdict in less than one hour in a dental malpractice case involving allegations of the use of excessive force and the failure to obtain the patient's informed consent after a patient's jaw was fractured during a molar extraction. It was admitted that jaw fracture was a known risk of the extraction, but that the dentist did not warn the patient of this risk. It was also conceded that the dentist caused the fracture. Lastly, the patient's damages were not contested, which included the pain and suffering associated with the fracture and permanent numbness to the lower jaw. On cross-examination of the patient's seasoned expert, he was confronted with prior inconsistent testimony regarding his experience in extracting molars and his opinion that all risks of a procedure need to be shared with the patient. Further, the expert agreed with the defense's argument that the risk of jaw fracture of an erupted right lower molar was less than .0009% and the patient had a better chance of dying from complications associated with the extraction than suffering a fracture. The jury was persuaded by the defense's arguments early in the case due to the thorough cross-examination of the patient's expert.

- Received defense verdict in a wrongful death and survival medical malpractice arbitration involving a single mother in her twenties from toxic shock syndrome. The plaintiff was admitted to a hospital facility with a provisional diagnosis of anaphylaxis secondary to a medication allergy. The patient deteriorated under the supervision of a nurse practitioner while on a telemetry unit and was eventually transferred to the intensive care unit. The patient succumbed to her condition several days later. There was a substantial future economic damage and pain and suffering component to the case given the plaintiff's young age, rapid decline and extent of necrosis (face, upper and lower extremities).
- Obtained a defense verdict in a nursing negligence claim. The plaintiff alleged to have suffered a fall in a hospital bathroom three days post-operatively that re-injured his surgically repaired knees. The nurses denied the patient fell to the ground and testified, consistent with their charting, that the patient lost balance in the bathroom and sat on a commode. There was a significant economic damage claim in that the plaintiff was a young restaurant owner who suffered two distinct orthopedic injuries that required multiple surgeries and additional future care. The jury returned a defense verdict 50 minutes after deliberation began, finding that the nurses were not negligent.
- Obtained a defense verdict in a medical malpractice trial involving a middle-aged mother of two who was allegedly left a quadriparetic and wheelchair-bound as a result of a physician's failure to timely diagnose and treat an infectious process of the cranial nerves and cerebellum. The plaintiff argued that as a result of the alleged negligence, she needed home health care for the rest of her life and submitted expert testimony arguing for the recovery of boardable future medical expenses totaling \$4 million and past and future pain and suffering. The last settlement demand was \$2 million. No settlement offers were made prior to or during trial.
- Successfully argued for the dismissal of punitive damages and *Scampone* corporate negligence claim against a Pennsylvania nursing home involving a resident who was injured while undergoing physical therapy at the facility. At the conclusion of considerable discovery yielding thousands of pages of administrative documents and multiple corporate defendant witnesses and former employees of the facility, summary judgment was granted as to plaintiff's claims that neglect, lack of appropriate staffing and the facility owner's general desire to make a profit over patient care caused or contributed to her injuries. In light most favorable to the plaintiff, the court held that the resident did not link the allegations of neglect and understaffing to her injuries which occurred in an acute incident during physical therapy. In addition, the court rejected the possible imposition of punitive damages, citing deposition testimony from the plaintiff about her interactions with the nursing home staff that was inconsistent with conduct warranting the imposition of punitive damages and the opinions of her own experts.

## Classes & Seminars Taught

- Inaugural PDI & PAJ Trial Academy, Faculty, Penn State School of Law, State College, PA, May 27-29, 2026
- *Ambient Listening and Surgical Black Boxes: A Primer*, Panelist, ALC Virtual Education, April 19, 2026
- *Current Landscape in Nursing Home Litigation*, Defense Counsel Panelist, Pennsylvania Bar Institute Virtual Education, April 17, 2026
- *A Conversation with RaDonna Vaughn on Criminalizing Errors*, PAHCRM Annual Meeting, State College, PA, April 9, 2026
- *Latest Trends and Risks of AI's Integration into Medicine*, Hawaii Association of Healthcare Risk Management Virtual Education, March 24, 2026

- *Anticipated AI Discovery Issues in Litigation*, Association for Corporate Counsel Virtual Education, February 12, 2026
- *Anticipated Discovery Issues with Use of AI in Health Care: Views from the Plaintiff and Defense Perspective*, Philadelphia Court of Common Pleas, In-Person Continuing Judicial Education, co-presenter, Philadelphia, PA, October 30, 2025
- *Anticipated AI Discovery Issues in Malpractice Litigation*, ALC webinar, October 23, 2025
- *The Role of AI and EMRs in Discovery*, MCIC Vermont Annual Client Education Conference, National Harbor, MD, October 22, 2025
- *When AI Meets Medicine*, State Volunteer Mutual Insurance Company, Podcast Guest, October 10, 2025
- *Audit Trail 101: Views from the Plaintiff and Defense Perspective, Part I*, Philadelphia Court of Common Pleas, In-Person Continuing Judicial Education, co-presenter, September 25, 2025, Philadelphia, PA
- *Pennsylvania Medical Malpractice Legal Update*, Pennsylvania Coalition for Civil Justice Reform webinar, July 21, 2025
- *New Jury Considerations in the Age of Big Law, Verdicts, and Medicine; and AI in Healthcare: Views from a Clinical and Legal Perspective*, Hospital Insurance Forum 2025 Conference, Charleston, SC, June 2025
- *How to Prepare for AI from a Medico-Legal Perspective*, MPLA Annual Meeting, Austin, TX, May 22, 2025
- *Leave No Footprint: Tips to Reduce Scrutiny on Non-Charted Information*, University of California Health System Virtual Risk Summit 2025, May 19, 2025
- *Behind the Scenes: Understanding New Discovery Tactics and the Impact on Clinical Documentation*, Virtual Allied World Presentation, May 15, 2025
- *Tips to Minimize and Manage Your Audit Trail Footprint*, New England Regional Healthcare Risk Management Conference, Portland, ME, May 5, 2025
- *Legal Update*, co-presenter, American College of Surgeons Keystone Chapter Spring Conference, Wilkes-Barre, PA, May 2, 2025
- *Tips for Keeping a "Clean" Medical Record in an Electronic World*, 2025 PAHCRM Annual Education Conference, Lancaster, PA, April 16, 2025
- *Texting: A Tool and a Trap*, American Legal Connections webinar, February 6, 2025
- *AI in Civil Litigation Practice: An Intro and Discussion on What is Coming*, Philadelphia Association of Defense Counsel webinar, January 21, 2025
- *A-Z on AI! Artificial Intelligence Litigation Trends and Ethical Issues*, webinar panelist, Pennsylvania Coalition for Civil Justice Reform, December 9, 2024
- *Defending Artificial Intelligence Claims*, AM Best Webinar, November 13, 2024
- *Doing It Right the First Time: Recommendations to Safely Use AI in Health Care*, ASHRM 2024 Annual Conference, San Diego, CA, October 8, 2024
- *Multi-Disciplinary Evaluation of Opportunities and Risks with Artificial Intelligence (AI) in Health Care*, ASHRM 2024 Annual Conference, San Diego, CA, October 8, 2024
- *Public Perception of "Big Medicine" Requires New Jury Considerations*, ASHRM 2024 Annual Conference, San Diego, CA, October 7, 2024
- *The Future is Now: How AI is Being Used with Data Analytics Today and Maybe Tomorrow*, panelist, Candello Annual Summit, Boston, MA, September 11, 2024
- *Multi-Disciplinary Evaluation of Liability Risks of AI in Health Care: The Board Focus*, co-presenter, American Hospital Association Leadership Summit, San Diego, CA, July 22, 2024
- *Advancement of AI Into Medicine*, AEIX Event, Tysons Corner, VA, June 6, 2024
- *Charting Tips to Help the Future You*, LVHN Annual Risk Symposium, Center Valley,

PA, May 18, 2024

- *Coming to a Case Near You: AI in Medicine*, Marshall Dennehey Trends in Health Care and Health Law Seminar, May 9, 2024
- *EHRs Under Examination: The Role of Clinical Informatics Experts in Legal Proceedings*, AMIA 2024 Clinical Informatics Conference, Minneapolis, MN, May 2024
- *Artificial Intelligence in Healthcare: An Introduction*, 2024 AALNC Annual Forum, Pittsburgh, PA, April 19, 2024
- *Guidance On Navigating Your Institution During Multiple Legal Investigations*, PAHCRM Spring 2024 Educational Meeting, Lancaster, PA, April 12, 2024
- *Advice for the Efficient Integration of AI Into Medicine*, Co-Presenter, Hospital Insurance Forum Annual Meeting, Scottsdale, AZ, March 18, 2024
- *Voir Dire of an EMR/Audit Trail Expert*, American Legal Connections webinar, March 15, 2024
- *Roundtable on Social Inflation*, Co-Moderator, DRI IRT Meeting, Chicago, March 13, 2024
- *The New Liability Target: Forensic Patient Record Interactions*, MPL Dental Workshop, Savannah, GA, February 16, 2024
- *Liability Risks of AI in Healthcare*, co-presenter, 1st Annual Upstate Educational Meeting, Association for Healthcare Risk Management of New York, Saratoga, NY, October 30, 2023
- *Latest Developments on Healthcare AI Liability and EMR Site Inspections*, co-presenter, American Legal Connections, webinar, October 26, 2023
- *Evaluating the Use of AI in Obstetric Diagnostics: Understanding Enhanced Capability and Inherent Risks*, Forum on Obstetric Malpractice Claims, Philadelphia, PA, October 12, 2023
- *The Good, Bad, and Ugly in Defending a Hospital Security Assault Case*, Moderator, ASHRM Annual Meeting, Minneapolis, MN, October 2, 2023
- *Medical Record Audit Trail Data and Inspections: What to Do When Data and Inspections are Requested in Litigation*, panelist, Florida Society for Healthcare Risk Management and Patient Safety annual meeting; Orlando, FL, August 24, 2023
- *Criminal Prosecutions: Dobbs and the Future of Care*, American Legal Connections Healthcare Symposium, Atlanta, GA, July 27, 2023
- *Mistake or Crime?: The Criminalization of Healthcare Errors*, panelist, Medical Professional Liability Association Conference, New Orleans, LA, May 18, 2023
- *AI Liability: What is Brewing and What We Will See*, University of Rochester webinar, April 21, 2023
- *Best Practices for an Audit Trail Expert Deposition*, co-presenter, American Legal Connections, webinar, April 6, 2023
- *Defending Rule 30(b)(6) Corporate Designee Depositions*, co-presenter, ALC Regional Meeting, Atlanta, GA, March 23, 2023
- *Criminalization of Medical Errors - Will it Make Us Safer?*, co-presenter, Hospital Insurance Federation, Annual Meeting, Scottsdale, AZ, March 20, 2023
- *Legal and Ethical Pitfalls in Managing Dual Civil and Criminal Investigations*, DRI Medical Liability and Health Care Law Seminar, Chicago, IL, March 10, 2023
- *Relationships Matter: A Frank Discussion of Hot Button Issues Facing Claims Professionals and Counsel*, panelist, DRI Insurance Roundtable, Chicago, IL, March 8, 2023
- *Artificial Intelligence in Healthcare: The Good, Bad, and Ugly*, SCAHRM webinar, March 28, 2023
- *Fostering a Culture of Success: How to Get Your Lawyers' and Staff's Mindset from*

*Surviving to Thriving*, co-presenter, Association of Legal Administrators, Philadelphia Chapter webinar, January 26, 2023

- *The New Liability Issues of Artificial Intelligence in Health Care*, Ethicon, a division of Johnson and Johnson, webinar, December 12, 2022
- *Recent Cases Warn Defendants Not to Become Lost on the Audit Trail*, American Legal Connections webinar, December 1, 2022
- *It's Not All About the Virus: Defending "Other" COVID-19 Pandemic Claims*, ASHRM Annual Conference, Boston, MA, September 13, 2022
- *Legal and Technical Arguments to Manage, Explain and Defend Audit Trail Information*, DRI Senior Living and Long-Term Care Litigation Seminar, Nashville, TN, September 9, 2022
- "Managing Parallel Criminal and Civil Investigations," American Legal Connections Healthcare Risk and Litigation Symposium, Atlanta, GA, July 28, 2022
- "Litigation Risks Associated with AI in Healthcare," Thomson Reuters webinar, June 27, 2022
- "Artificial Intelligence and Dentistry: Protecting Yourself From Liability," client webinar, June 16, 2022
- "Risks and Legal Aspects of Artificial Intelligence in Health Care," Ohio Hospital Association Annual Meeting, Columbus, OH, June 14, 2022
- *A New Frontier: Maintaining Transparency and Defenses Following the RaDonda Vaught Criminal Verdict*, CHART Institute virtual conference, June 7, 2022
- *New Risks With the Application of Artificial Intelligence to Medicine*, Washington Healthcare Risk Management Society Annual Meeting, Seattle, WA, June 3, 2022
- *RaDonda Vaught: What Happened and What Can We Learn From Her Trial*, virtual lesson, Duke University School of Nursing, June 2, 2022
- *A Hard Task: Balancing Transparency While Avoiding Liability Following the RaDonda Vaught Criminal Verdict*, webinar, West Virginia ASHRM Chapter, May 20, 2022
- *Artificial Intelligence in Healthcare: Revolutionary or Risky?*, panelist, Medical Professional Liability Association Annual Meeting, Salt Lake City, UT, May 13, 2022
- *The New Reality - Managing the EMR and Audit Trail*, panelist, New England Regional Healthcare Risk Management Conference, Groton, CT, May 2, 2022
- *A Discussion on the RaDonda Vaught Criminal Trial*, panelist, New England Regional Healthcare Risk Management Conference, Groton, CT, May 2, 2022
- *Best Practices for Balancing Transparency While Avoiding Liability Following the RaDonda Vaught Criminal Verdict*, American Society for Healthcare Risk Management, national webinar, April 15, 2022
- *Liability Issues with Artificial Intelligence in Healthcare Litigation*, American Legal Connections, national webinar, January 27, 2022
- *Anticipated Liability Risks of Artificial Intelligence in Healthcare*, ASHRM Annual Conference, October 4 (live session) and October 26, 2021 (virtual session)
- *Healthcare Acquired Infections in Nursing Homes and Hospitals: Standards of Practice, Claims, Defenses, Damages*, Strafford Legal Publications National Webinar, October 19, 2021
- *Coming Soon: AI Issues in Healthcare Liability Claims*, Pennsylvania Association for Healthcare Risk Management, September 17, 2021
- *The Risks and Legal Aspects of Artificial Intelligence in Healthcare*, Hospital Insurance Federation webinar, May 19, 2021
- *The Future is Here: AI and Healthcare Claims*, South Carolina Chapter of the American Society of Healthcare Risk Management webinar, April 23, 2021
- *Integrating Health Care and Technology: Apps, Medical Devices and AI*, client

webinar, February 18, 2021

- *Artificial Intelligence in Medicine: Risk Management and Litigation Issues*, online continuing education conference, Pennsylvania Patient Safety Authority, January 12, 2021
- *It's Not All About the Medicine: The New Scrutiny on Your EMR Documentation*, presented at a virtual meeting of the Luzerne/Lackawanna Medical Society, November 18, 2020
- *The Return of Jury Trials: The Current State of Jury Trials in the Age of COVID-19*, national teleconference for American Legal Connections (ALC), November 12, 2020
- *Learn From Those Who Know: Jury Trial Tactics During the COVID-19 Pandemic*, DRI National Remote CLE, September 15, 2020
- *Lessons and Observations Made From a Socially-Distanced Jury Trial During the COVID-19 Pandemic*, Inaugural PDI Remote CLE, September 10, 2020
- *Lessons Learned in with EMR Discovery*, Hospital Insurance Federation (HIF), September 9, 2020
- *Managing EMR and Audit Trail Discovery*, LAMMICO Defense Panel Meeting, August 20, 2020
- *Preparing A Claim for Trial: How Recent Issues, Decisions and Trends Are Impacting Litigation Outcomes*, client webinar, June 4, 2020
- *"Warning Fatigue" Now a Matter of Criminal Liability: The Radonda Vaught Story*, Pennsylvania Patient Safety Authority Webinar, May 24, 2020
- *Telehealth and Documentation in the Time of COVID-19: Information and Best Practices to Protect Patients and Clinicians* webinar, May 14, 2020

## Published Works

- "Say 'Goodbye' to Medical Negligence Cases as We Know Them," *The Legal Intelligencer*, September 5, 2024
- "Litigation Landscape: Your GPS for Avoiding Legal Action," *In Session with Allied World*, Winter 2023
- "Sanctions Against Health System Demonstrate That It's Time to Get Serious About Audit Trail Discovery," *Journal of Healthcare Risk Management*, August 18, 2022
- "Evolution of the EMR: The Integration of AI in Medicine," *The Legal Intelligencer*, March 28, 2022
- "Artificial Intelligence in Medicine Creates Real Risk Management and Litigation Issues," *Journal of Healthcare Risk Management*, September 2020
- "A Civil Jury Trial During the Pandemic: Observations From Those Who Know," *The Legal Intelligencer*, August 7, 2020
- "Report From the Trenches: Defending Patient Falls in Acute Care Settings," *Becker's Hospital Review*, August 28, 2018
- "Negligent Advice of a Class III Medical Device Sales Rep," *The Legal Intelligencer*, Medical Malpractice Supplement, April 11, 2017
- "A Pandora's Box: The EMR's Audit Trail," *Counterpoint*, newsletter of the Pennsylvania Defense Institute, February 2017
- "It Ain't Over 'Til It's Over: Judge Wettick Affirms Practice of Limiting Deposition Opinions of Defendant Physicians," *Defense Digest*, Vol. 22, No. 4, December 2016
- "Wake Me Up!! I've Had Enough!! Litigation Nightmares With the Electronic Medical Record," *The Risk Management Quarterly*, newsletter of the Association for Healthcare Risk Management of New York, Inc. (AHRMNY)
- "EMR's and Litigation: Issues Decided and What's Next?" *The Legal Intelligencer*, Medical Malpractice Supplement (page 5), April 12, 2016

- *Electronic Medical Records and Litigation*, published by Thomson Reuters Legal, September 2014
- "OMG?! The Impact of Social Media on the Tripartite Relationship," Co-Author, *Litigation Management Magazine*, Spring 2013
- "What's It Worth? Best Practices in Defending Economic Damages in the Catastrophic Accident," Co-Author, *Litigation Management Magazine*, Fall 2012
- "Reducing Medical Malpractice E-Discovery Issues and Costs," *The Legal Intelligencer*, February 14, 2012
- "A View From the Trenches: Discovery Issues With Electronic Medical Records," *Risk Rx*, Special Edition on the Electronic Health Record, University of Florida, Vol. 8, No. 1 January-March, 2011; and *Florida Hospital Association's Risk Review*, August 23, 2011

## Media Commentary

- New Process Aims to be Build SAFE Nursing Homes Through Daily Reporting, *McKnights Long-Term Care News*, November 30, 2025
- "AI Offers Opportunities and Risks for Providers, Organizations and MPL Carriers," *Inside Medical Liability*, Third Quarter 2022
- "LPN Found Not Guilty in Gait Belt 'Abduction' Case," *McKnights Long-Term Care News*, September 1, 2022
- "Civil vs Criminal Indictments - What You Need to Know," ASHRM Blog, May 23, 2022.
- "Misdiagnosis Top Allegation in Aortic Dissection Malpractice Claims," *ED Legal Letter*, March 2021
- "Kentucky Mom Alleges Hospital Workers Missed Her Cancer -- Then Covered Up Their Mistake," *NBC NEWS*, March 4, 2021
- "Suspicious Changes to ED Chart Become Central Focus of Malpractice Lawsuit," *ED Legal Letter*, November 1, 2020
- Malpractice Risks During COVID-19: 'Really Enormous' for ED Providers, *ED Legal Letter*, May 2020
- "Both Sides Claim Win After Inconclusive Med Mal Venue Study," *Law360*, February 4, 2020 (subscription required)
- "Hospital Sole Defendant in Some ED Malpractice Claims," *ED Legal Letter*, December 2019
- "Philly or Not - Victims Face Long Odds in PA Med-Mal Cases," *Law360*, March 1, 2019
- "Multiple Defendants in ED Claim? Often, Conflicts Are Inevitable," *ED Legal Letter*, September 1, 2019

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## Results

### Defense Verdict Secured in a Contentious Long-Term Care Case

We received a defense verdict in a contentious long-term care case that included a unique spoliation issue, allegations of cover-up regarding the cause of death and a “no show” plaintiff. A longtime nursing home resident, who was suffering from “end-stage dementia,” died nine days after suffering head trauma following a fall. The plaintiff was the resident’s son who was not his mother’s guardian. The plaintiff contacted a lawyer

who delivered the body across Pennsylvania to a forensic pathologist for a private autopsy. No notice was provided to the nursing home administration of the impending autopsy, despite the fact that the lawyer had sued the long-term facility several times in the past. The corpse was cremated shortly after the autopsy without an opportunity for the defense to examine the body. The defense did not learn about the private autopsy until years later, when the report was provided in discovery. A motion for sanctions for spoliation was filed by the defense, which was followed by depositions of the funeral home staff and a hearing involving the forensic pathologist and the attending physician. Although the spoliation motion was denied, the court held that the defense could question the forensic pathologist on the cremation, destroyed specimens and failure to produce the autopsy photographs at trial. On the eve of trial, the judge proctored an agreement between the parties to arbitrate the case “on expert reports only.” At arbitration, plaintiff’s counsel continued to pursue a conspiracy theory about “the true cause of death” along with standard negligence criticisms about fall prevention. The plaintiff was cross-examined on a prior *crimen falsi* conviction and an Orphans’ Court petition initiated by the local Area Agency on Aging, wherein the deceased resident complained that she was afraid of her son, which was relevant to his “loss of society and companionship” claim. Not surprisingly, the plaintiff denied every allegation of the Orphans’ Court petition, which detracted his appearance and credibility.

#### **Partial Summary Judgment on Behalf of a Nursing Home and its Corporate Defendants**

In the complaint and throughout discovery, the plaintiff raised claims of overarching neglect in addition to a fall that occurred during physical therapy. The plaintiff alleged negligence, corporate negligence, and punitive damages premised upon allegations of understaffing, Department of Health violations and putting profits over patient care. The plaintiff sought to hold not only the nursing home, but also its management company and a holdings company, liable for such claims. The defense sought partial summary judgment and asked the court to limit the plaintiff’s claims to the fall only and argued that neither the record evidence nor the plaintiff’s expert reports supported the all-encompassing claims of neglect. The court agreed and narrowed the claims, thereby significantly hampering the plaintiff’s case. The court limited the claims to proceed at trial to the fall only. The court also dismissed punitive damages and dismissed the holdings company defendant outright.

#### **Unanimous Defense Jury Verdict in One of the First Pennsylvania Civil Jury Trials Held During COVID-19 Pandemic**

The verdict came within 30 minutes of deliberation in a five-day Bradford County PA fire-loss subrogation trial. Social distancing protocols were in place: all participants had their temperatures taken before entering the courthouse; jury selection took place at a local school auditorium; everyone in the courtroom was required to wear masks or face shields; and the jurors were spread out to the gallery section of the courtroom instead of the jury box. Witnesses could appear via Zoom. Two witnesses were flawlessly broadcasted to the courtroom with help from the firm’s Allentown and Mount Laurel offices.

### **Defense verdict in dental malpractice action.**

We successfully obtained a defense verdict on behalf of a dentist in a dental malpractice action in Luzerne County. The plaintiff asserted causes of action for negligence and lack of informed consent. Regarding negligence, the plaintiff alleged the dentist used excessive force in extracting a lower third molar, thereby causing a fracture of the mandible and alleged permanent paresthesia. In response, the defense admitted that the mandible was fractured during the extraction, but offered expert testimony that the fracture was an extremely rare complication and was not caused by negligence. The defense argued there was no evidence of the use of excessive force, such as TMJ disorders or dislocation, lacerations or broken adjacent teeth. As for informed consent, the plaintiff argued the dentist did not obtain informed consent because he did not discuss the risk of fracture. The dentist testified that he discussed the possibility of permanent numbness as a risk, but he admitted that fracture was a risk of the extraction and that he did not discuss this risk because the chances of it occurring were astronomically low. The plaintiff's and the defendant's experts both agreed that the chances of a fracture occurring were less than 0.0009%. The jury returned a defense verdict on all causes of action in less than one hour.

### **Dismissal of Claims Against Drug Rehab Center**

We were successful in obtaining the dismissal of the plaintiff's corporate negligence claims against an adult inpatient drug rehabilitation center. The plaintiff filed a complaint under wrongful death and survival acts, alleging that the decedent died of unspecified cardiac dysrhythmia while she was a voluntary inpatient resident at the facility. The complaint included claims of negligence/vicarious liability and corporate negligence. We filed preliminary objections seeking to dismiss the corporate negligence claim against the facility. We argued that the plaintiff's cause of action for corporate negligence against it must be dismissed with prejudice because the doctrine of corporate negligence, as a matter of law, does not extend to drug and alcohol treatment facilities but, instead, applies only to hospitals, HMOs, nursing homes and professional medical corporations. In response, the plaintiff argued that the preliminary objections should be overruled because she alleged in the complaint that the defendant owed the same duties to the decedent that are owed to patients by hospitals, as set forth in *Thompson v. Nason*, the seminal corporate negligence case. The court ultimately rejected the plaintiff's arguments, sustained our preliminary objections, and dismissed the plaintiff's corporate negligence claim against the defendant, with prejudice.

### **Defense Verdict in Nursing Negligence Case.**

The plaintiff alleged to have suffered a fall in a hospital bathroom three days post-operatively that reinjured his surgically repaired knees. The nurses denied the patient fell to the ground and testified, consistent with their charting, that the patient lost his balance in the bathroom and sat on a commode. There was a significant economic damage claim in that the plaintiff was a young restaurant owner who suffered two distinct orthopedic injuries that required multiple surgeries and additional future care. The jury returned a defense verdict 50 minutes after deliberations began, finding that the nurses were not negligent.

### **Jury Sides with Defense in High Stakes Medical Malpractice Case**

Obtained a defense verdict in a medical malpractice case in the U.S. District Court for the Middle District of Pennsylvania. The plaintiff alleged to be permanently disabled and in a wheelchair, requiring home health care for the rest of her life, as a result of an Emergency Room physician's failure to timely diagnose and treat a viral infection involving the 7th and 8th cranial nerves (Ramsay Hunt Syndrome). We represented the ER physician, his employer (who staffed the ER) and the hospital. Plaintiff's counsel submitted a \$4 million life care plan to the jury for consideration, and the final settlement demand was \$2 million. The jury agreed with the defense's position that the doctor did not deviate from the standard of care. Because of this, no liability could be found against our client, nor any of the other defendants.

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## **Thought Leadership**

September 5, 2024

### **Say 'Goodbye' to Medical Negligence Cases as We Know Them**

September 1, 2024

### **On the Pulse...Marshall Dennehey's National EMR and Audit Trail Practice Group Is Ready to Assist with Health Care Technology Litigation Issues**

March 20, 2023

### **Long-Term Care Facility Faces Criminal Scrutiny for Early COVID-19 Actions**

March 28, 2022

### **The Evolution of the EMR: The Integration of AI in Medicine**