

ALBANYLAW MAGAZINE



Kelton Estimates Defending More than 300 Physicians

Michael S. Kelton '77 is one of the most experienced lawyers in the state when it comes to defending physicians before the New York State Department of Health Office of Professional Medical Conduct (OPMC) and the New York State Department Office of Professional Discipline (OPD). He has spent 35 years focused on this highly specialized area of defense. Kelton estimates he has represented over 300 physicians at OPMC, and at any given time has a case load of between 25 and 40

pending OPMC/OPD cases.

"They are very difficult cases to win outright," said Kelton, a partner of Abrams Fensterman in Manhattan and director of the firm's medical malpractice defense practice and OPMC/OPD defense practice. Most cases get resolved through a Consent Agreement. "You don't have the right to a trial by jury in court. The hearings are held at the OPMC office before members of the State Board for Medicine and they can be very tough on doctors. There is typically a significant

amount of evidence of misconduct that has been gathered against the doctor by the time the case goes to hearing. It is a tough venue and it's much harder to get a successful outcome in an OPMC hearing than a medical malpractice case where we try the case before an independent jury."

Kelton planned to study economics in graduate school before he changed course. "I felt more comfortable in law and a course on legal medicine taught by Barry Gold helped me decide that's where I wanted to focus my career,"

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he said. After gaining several years of legal experience, he established his own law practice before merging with the Manhattan firm of Lippman Krasnow & Kelton LLP, where he was a partner in charge of the firm's litigation and health care work. He spent 27 years with that firm, which disbanded in 2006, and he then formed Michael S. Kelton & Associates, LLC. Two years later, he merged his practice into Abrams Fensterman. "What keeps me interested in this area is the melding of medicine and the law," he said. "I've studied the principles of medicine and I've learned

how medicine is practiced."

He's currently involved in a medical malpractice case that includes 10 defendant doctors and hospitals and seven defense attorneys. Kelton represents four separate defendants in the multi-million dollar lawsuit. One of the other defense attorneys is fellow Albany Law alumnus Peter C. Kopff '75, who is also a trustee.

Kelton is nearly always hired by a medical malpractice insurance company with whom the physician has coverage. "Physicians today are working in an environment where they know they're

likely to be sued if there's an unfortunate outcome with a patient," he said. "It's not a happy or healthy environment for doctors, knowing they're working day in and day out with targets on their backs."

Kelton never tires of his specialty area. "I get great satisfaction in doing a good job for my client. I'd rather win than lose, but I'm a realist. When you've done this as long as I have, you're going to win some and lose some. If the client feels he was well-represented and is satisfied with the work we did, that's the most important thing for me."