

Supreme Court Holds State Affidavit of Merit Requirements Inapplicable in Federal Medical Malpractice Cases

Healthcare Law Update

Supreme Court Holds State Affidavit of Merit Requirements Inapplicable in Federal Medical Malpractice Cases

Keith J. Roberts
Member & Chair, Healthcare

Shannon Carroll
Member, Healthcare

Paul J. DeMartino, Jr.
Counsel, Healthcare

BRACH | EICHLER^{LLC}
Counsellors at Law

3/1/2026

On January 20, 2026, the United States Supreme Court [issued](#) a unanimous decision in *Berk v. Choy*, holding that state “affidavit of merit” requirements do not apply to medical malpractice actions filed in federal court. The case involved a Florida resident who sued Delaware healthcare providers, including a physician and a hospital, alleging negligent treatment of an ankle injury. Delaware law, similar to that of many states, including New Jersey, requires malpractice plaintiffs to submit an affidavit from a qualified medical professional attesting that the claim has merit. After lower courts dismissed the case for failure to meet this requirement, the Supreme Court reversed, finding that Federal Rules of Civil Procedure 8 and 12 govern the initiation of lawsuits in federal court and require only a “short and plain statement of the claim,” not an expert certification.

For healthcare providers and clinicians, the decision means that plaintiffs able to access federal court, most commonly through diversity jurisdiction where the parties reside in different states, may proceed without satisfying state affidavit of merit requirements that often serve as an early screening tool against frivolous claims. Although the ruling does not alter the substantive standards governing malpractice liability, it removes a procedural barrier that previously led to early dismissal of some cases. Commentators have noted that the decision may encourage forum shopping by plaintiffs seeking to avoid state-imposed requirements, potentially increasing the number of malpractice cases that proceed in federal court.

The broader impact on malpractice litigation, however, may be limited. Most medical malpractice actions involve in-state parties in state court, where affidavit of merit statutes would remain fully enforceable. Federal jurisdiction for malpractice claims will continue to be limited to cases involving diversity of citizenship and the applicable jurisdictional threshold. Nonetheless,

healthcare providers should be aware that, in matters eligible for federal court, plaintiffs may face fewer procedural hurdles at the outset, an important distinction that could influence litigation strategy and forum selection.

[Click Here to read the entire March 2026 Healthcare Law Update now!](#)

For more information, contact:

Keith J. Roberts | 973.364.5201 | kroberts@bracheichler.com

Shannon Carroll | 973.403.3126 | scarroll@bracheichler.com

Paul J. DeMartino, Jr. | 973.364.5228 | pdemartino@bracheichler.com

Authors

The following attorneys contributed to this insight.



Keith J. Roberts

Member

Litigation, Healthcare Law

973.364.5201 • 973.618.5585 Fax

kroberts@bracheichler.com



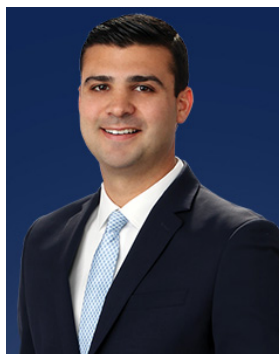
Shannon Carroll

Member

Healthcare Law, Litigation

973.403.3126 • 973.618.5988 Fax

scarroll@bracheichler.com



Paul J. DeMartino, Jr.

Counsel

Healthcare Law, Litigation

973.364.5228 • 973.860.4221 Fax

pdemartino@bracheichler.com