

GIBSON DUNN



Appellate and Constitutional Law Update

January 20, 2026

Supreme Court Holds That State Expert-Affidavit Requirements For Medical Malpractice Claims Do Not Apply In Federal Court

Berk v. Choy, No. 24-440 – Decided January 20, 2026

Today, the Supreme Court held that a Delaware statute—requiring that a medical malpractice complaint be accompanied by an expert affidavit—conflicts with the Federal Rules of Civil Procedure and therefore does not apply to suits in federal court.

“Rule 8 sets a ceiling on the information that plaintiffs can be required to provide about the merits of their claims. Delaware’s affidavit requirement is at odds with Rule 8 because it demands more.”

JUSTICE BARRETT, WRITING FOR THE COURT

Background:

The Supreme Court has long held that federal courts sitting in diversity must “apply state substantive law and federal procedural law.” *Hanna v. Plumer*, 380 U.S. 460, 465 (1965). Accordingly, when a state law conflicts with the Federal Rules of Civil Procedure, the

federal rule generally controls.

Delaware—like several other States—generally requires that a complaint alleging medical malpractice be accompanied by an expert affidavit “stating that there are reasonable grounds” for the claim. 18 Del. C. § 6853. If the plaintiff fails to attach the required affidavit, the court clerk must “refuse to file the complaint.” *Id.* According to the States that have these expert-affidavit requirements, their main purpose is to deter meritless malpractice suits.

In this case, a Florida resident sued Delaware medical providers in Delaware federal court for alleged malpractice. But the plaintiff failed to submit the expert affidavit required by Delaware law. Accordingly, the district court dismissed the suit. The Third Circuit affirmed based on circuit precedent holding that expert-affidavit requirements like Delaware’s apply in federal court.

Issue:

Whether a state law requiring that a medical malpractice complaint be accompanied by an expert affidavit applies in federal court.

Court's Holding:

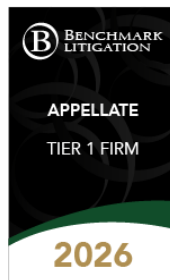
No. Delaware’s expert-affidavit requirement conflicts with Rule 8 of the Federal Rules of Civil Procedure, which requires only a “short and plain statement of the claim” to proceed past the pleading stage. Because Delaware’s requirement demands more, it does not apply to medical malpractice actions filed in federal court.

What It Means:

- Today’s decision—in which all nine Justices agreed to reverse the judgment below (and with eight Justices joining the majority opinion)—means that a different procedural framework governs certain medical malpractice actions brought in federal court versus those filed in state court. Plaintiffs in federal court need not comply with state laws requiring malpractice complaints to be accompanied by an expert affidavit. This difference could be relevant to certain strategic decisions in these types of suits—for example, what forum the plaintiff chooses and whether a defendant elects to remove a case to federal court.
- The Court’s ruling does not affect what requirements govern medical malpractice actions filed in state court. Those suits will still be governed by state law, which may include expert-affidavit requirements like the Delaware requirement at issue in this case.
- More broadly, today’s decision clarifies the Court’s general doctrine for determining when a state-law requirement applies in federal court. The proper inquiry is whether a state law purports to answer the same question as a federal procedural rule. And the Court clarified that a federal rule is valid under the Rules Enabling Act as long as it “really regulates procedure”—regardless of whether the state law it displaces is substantive.

- The Court's ruling thus has implications for actions outside of the medical malpractice context as well. Litigation may arise regarding whether state rules requiring any sort of third-party verification—by affidavit or otherwise—apply in federal court.

Gibson Dunn Appellate Honors



The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

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