

SCOTUS Affirms That Affidavits-of-Merit Not Required to Support Professional Malpractice Lawsuits in Federal Court

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More than half of the US states require the filing of an affidavit or a certificate of merit as a prerequisite to advancing a professional malpractice or liability claim. Failure to submit the required documentation may result in dismissal of the action, though states differ on whether such dismissal must be with or without prejudice. Affidavits and certificates of merit are threshold mechanisms designed to ensure that professional malpractice and liability claims have expert support before proceeding to litigation. Typically, an affidavit of merit is a sworn statement executed by an expert witness who meets specific statutory requirements. The expert must attest under oath that the defendant's conduct fell below the applicable standard of care and proximately caused the plaintiff's injuries. Similarly, a certificate of merit is executed by a plaintiff's attorney rather than the expert directly. This early screening function aims to prevent cases lacking expert support from proceeding to expensive discovery and litigation.

However, Federal Courts do not require such an affidavit or certificate. Rule 8(a) of the Federal Rules of Civil Procedure, entitled *General Rules of Pleadings* (rule 8), requires a plaintiff bringing a cause of action against another to file only a pleading that states a claim for relief which contains a statement of the grounds for the court's jurisdiction, a statement of the claim showing the plaintiff is entitled to relief, and a demand for relief. There is no requirement that a plaintiff provide evidence to support the claim, including a claim for malpractice.

The conflict between some states requiring evidence to support the filing of a malpractice lawsuit and the federal court not requiring it was recently addressed in *Berk vs. Choy*, 607 US (2026), where the plaintiff sued the defendants for medical malpractice in federal court under Delaware law and failed to provide an "affidavit of merit." Delaware law (Del. Code, Tit. 18 §6853(a)(1)) (§6853) provides that a medical malpractice claim must be supported by an affidavit of merit which states that "there are 'reasonable grounds to believe that there has been health-care medical negligence committed by each defendant.'" Plaintiff argued, in response to Defendants' Motion for In Camera Review, that §6853 is not enforceable in federal court because it is displaced by Rule 8.

On January 20, 2026, the Supreme Court of the United States (the court) held that the Federal Rules of Civil Procedure take precedence over the State of Delaware's statutory affidavit of merit requirement. The court found that §6853—which requires a plaintiff to provide evidence of their claim beyond factual allegations—directly conflicts with rule 8—which does not require evidence to support the claim. Because rule 8 and §6853 address the same inquiry, rule 8 is the controlling authority of law as "long as it is valid under the Rules Enabling Act, which requires that federal rules be procedural rather than substantive."² To determine whether a federal rule is procedural, the court turns to whether it regulates "the manner and the means by which the litigants' rights are enforced."³ The court classifies rule 8 as procedural because it governs the process by which plaintiffs must present their claims at the outset of litigation. As a result, the court found rule 8 takes precedence over Delaware's conflicting requirements in §6853 and is, therefore, the controlling authority of law. Therefore, an affidavit of merit was not necessary to pursue a medical malpractice claim in federal court in Delaware.⁴

While the court's decision was limited to the State of Delaware, practitioners in states with similar statutes may wish to consider the decision for professional malpractice cases filed in Federal Court.

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¹ *Berk v. Choy*, 607 U.S., 6 (2026, WAL 135974). (Only the Westlaw citation is currently available).

² *Id.* at 9.

³ *Id.* at 10.

⁴ *Id.* at 9.