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After *Berk*

State Merit-Screening Laws in Federal Court

By Calvin Ziegler and Holly Lechner

> "After *Berk*, timing matters, but function controls."

State legislatures have adopted a wide variety of devices intended to screen unsupported medical malpractice claims[1] before defendants bear the full expense of litigation. Depending on the jurisdiction, a plaintiff may need an expert affidavit with the complaint, an attorney certification reflecting expert consultation, a certificate served after the defendant answers, a detailed expert report during discovery, or expert corroboration as part of a broader presuit process.

In *Berk v. Choy*, 607 U.S. 187 (2026), the Supreme Court held that Delaware's affidavit-of-merit requirement could not be enforced in federal court. In state court, Delaware requires medical-malpractice complaints to be accompanied by an expert affidavit supporting the claims. The Court concluded that Federal Rule of Civil Procedure 8 already answers what a plaintiff must provide concerning the merits of a claim at the outset of federal litigation: a short and plain statement showing entitlement to relief, not evidence supporting those allegations. Rule 12 reinforced that conclusion by supplying the federal mechanism for testing the sufficiency of the pleading. [2]

For medical malpractice defense practitioners, however, the harder questions begin where *Berk* ended. Delaware represents only one model. What happens when the affidavit is due sixty days after filing? What if counsel must possess an expert opinion but never files it? What if state law requires a detailed expert report after the answer? And what about states that incorporate expert review into presuit notice, investigation, or mediation?

Those questions should not

1 The scope of this article is limited to expert affidavit requirements for medical malpractice claims. Many states require expert affidavits for other professional negligence claims, including but not limited to claims against attorneys, accountants, architects, engineers, surveyors. The same principles described in this article could apply in those contexts, as well.

2 For a more detailed review of the what the Supreme Court held, see Michele H. Dintermen's article found in May 2026 edition of For the Defense titled *Berk v. Choy and the Federal Forum Question: A Strategic Guide for Professional Liability Defense.*





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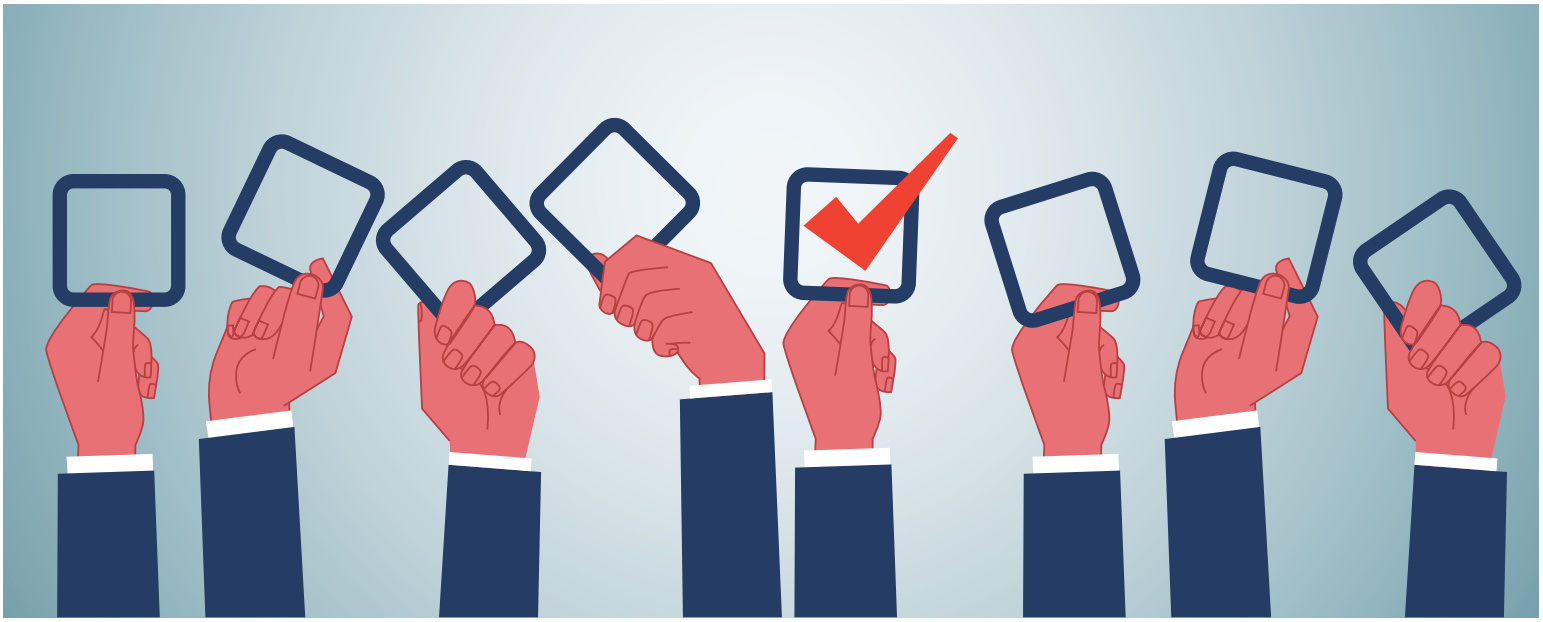

turn simply on what a state calls its requirement or where the legislature places the deadline. *Berk* directs courts first to identify the procedural question answered by the state requirement and then determine whether a valid Federal Rule answers that same question.

Several federal appellate decisions predating *Berk* illustrate the breadth of that inquiry. In *Gallivan v. United States*, 943 F.3d 291, 293–95 (6th Cir. 2019), the Sixth Circuit rejected Ohio's complaint-stage affidavit requirement because Rules 8, 9, and 12 already governed what was necessary to state a medical negligence claim. In *Passmore v. Baylor Health Care System*, 823 F.3d 292, 296–99 (5th Cir. 2016), the Fifth Circuit reached the opposite end of the litigation calendar and held that Texas could not impose its special post-answer expert report deadline and mandatory sanctions because Rules 26 and 37 governed expert disclosure. And in *Pledger v. Lynch*, 5 F.4th 511, 518–24 (4th Cir. 2021), the Fourth Circuit held that West Virginia's requirement that a claimant serve an expert screening certificate *before* filing suit did not control the federal action.

Together, those cases provide three useful poles: *Berk* at the pleading stage, *Passmore* at the expert-discovery stage, and *Pledger* before suit.

The state-law landscape between those poles is best understood by function. After *Berk*, **timing matters, but function controls.**

FOUR MODELS OF MERIT SCREENING

State merit screening regimes generally fall into four functional groups.

The first group requires expert support at commencement of a lawsuit: an affidavit, opinion, or certification must accompany the complaint, appear in the pleading, or be served when the action commences. Delaware,[3] Ohio,[4] Georgia,[5] Connecticut,[6] North Carolina,[7] and Minnesota's[8] first affidavit are representative examples.

The second group allows filing but requires early expert substantiation as a condition of keeping the claim alive, often within sixty or ninety days after filing or the defendant's answer. Pennsylvania,[9] Colorado,[10] Iowa,[11] Missouri,[12] New Jersey,[13] and North Dakota[14] illustrate that model.[15]

The third moves farther into litigation and begins to regulate actual expert disclosure—who will testify, what opinions they hold, and when those opinions must be served. Texas[16] and Minnesota's[17] second affidavit illustrate this category.

The fourth places expert review before suit, sometimes

3 Del. Code Ann. tit. 18, § 6853.

4 Ohio Civ. R. 10(D)(2).

5 Ga. Code Ann. § 9-11-9.1.

6 Conn. Gen. Stat. § 52-190a.

7 N.C. Gen. Stat. § 1A-1, 9.

8 Minn. Stat. § 145.682, subd. 3.

9 Pa.R.C.P. No. 1042.3.

10 Colo. Rev. Stat. § 13-20-602.

11 Iowa Code § 147.140

12 Mo. Stat. § 538.225.

13 N.J. Stat. Ann. § 2A:53A-27.

14 N.D. Cent. Code § 28-01-46

15 Under Minn. Stat. § 145.682, subd. 3(2), if the affidavit of initial expert review "could not reasonably be obtained before the action was commenced because of the applicable statute of limitations" then the plaintiff can "execute" an affidavit stating as much. The plaintiff must serve on defendant or defendant's counsel the affidavit of initial expert review within 90 days after service of the summons and complaint, or face mandatory dismissal.

16 Tex. Civ. Prac. & Rem. § 74.351(a).

17 Minn. Stat. § 145.682, subd. 4.

within a broader notice, investigation, mediation, or screening process. West Virginia,[18] Virginia,[19] Florida,[20] and South Carolina[21] demonstrate the range of those systems.

In some instances, the categories overlap, which is important to keep in mind. Minnesota contains two requirements serving different functions. Iowa lies near the border between early merit screening and expert disclosure. Florida and South Carolina combine expert corroboration with procedures serving independent notice, settlement, and claim-evaluation purposes.

Those overlaps suggest a central post-*Berk* principle: courts should analyze these laws provision by provision rather than statute by statute.

AT THE COURTHOUSE DOOR

The easiest post-*Berk* cases are state requirements conditioning filing, pleading, service, or commencement on expert support.

Delaware was the prototype. The Supreme Court concluded in *Berk* that Rule 8 did not merely establish a federal minimum that Delaware could supplement. It answered what information concerning the merits was required at the pleading stage—a short plain statement of the case. Because federal pleading requires allegations rather than supporting evidence, Delaware's additional expert affidavit requirement could not govern. *Berk*, 607 U.S. at 189–195. Furthermore, the Court addressed the fact that dismissal based on the lack of additional materials supporting merits is improper. *Id.* at 197. Rule 12 outlines the applicable reasons for dismissal and only one—Rule 12(b)(6)—addresses merit and is *only* limited to "failure to state a claim upon which relief can be granted."[22]

The Sixth Circuit reached essentially that conclusion in *Gallivan*. Ohio Rule 10(D)(2) required an affidavit of merit with a medical negligence complaint. The court asked whether an affidavit was necessary to state the federal claim and held that Rules 8, 9, and 12 already answered no. *Gallivan*, 943 F.3d at 293–95.

Michigan provides another useful analogue. In *Albright v. Christensen*, 24 F.4th 1039, 1047–49 (6th Cir. 2022), the Sixth Circuit held that Michigan's requirement for an affidavit to accompany the complaint conflicted with Rules 8, 9, 11, and 12. Rule 11 was particularly relevant because it expressly provides that a pleading need not be verified or accompanied by an affidavit.

After *Berk*, similar complaint-stage requirements face an obvious problem in federal court. That remains a predictive conclusion where no controlling post-*Berk* court has addressed the particular state's law, but the closer the mechanism comes to requiring expert evidence as part of pleading or commencement, the harder it is to distinguish from Delaware.

North Carolina may present an especially direct conflict.

After *Berk*, similar complaint-stage requirements face an obvious problem in federal court.

North Carolina Rule of Civil Procedure 9(j) ordinarily requires the complaint itself to assert that the medical care and records were reviewed before filing by an expert reasonably expected to qualify and willing to support the malpractice claim. If Rule 8 answers what merits information belongs in a federal pleading, a state rule requiring an additional malpractice-specific allegation fits squarely within *Berk*'s logic.

Minnesota demonstrates why physical attachment to the complaint cannot be the limiting principle.

Minnesota Statutes § 145.682 requires a plaintiff, when expert testimony is necessary, to serve an attorney affidavit with the summons and complaint stating that counsel reviewed the facts with an appropriately qualified expert who believes the defendant departed from the applicable standard of care and caused the plaintiff's injury. Minn. Stat. § 145.682, subds. 2(1), 3.

Minnesota, therefore, differs mechanically from Delaware. The expert affidavit itself is not necessarily filed with the complaint. But the requirement performs essentially the same screening function: at the inception of the case, the plaintiff must establish that qualified expert support exists for breach and causation.

The better reading of *Berk*

18 W. Va. Code § 55-7B-6.

19 Va. Code Ann. § 8.01-20.1.

20 Fla. Stat. § 766.203.

21 S.C. Code Ann. § 15-79-125.

22 Many state courts who have mostly adopted the Federal Rules to influence their own rules of civil procedure would likely argue that the lack of an affidavit of merit shows that that the plaintiff has failed to state a claim upon which relief can be granted. Justice Jackson's concurrence disagreed with that argument because at the Rule 12 stage, matters outside the pleadings should not be considered and "the affidavit of merit qualifies as a 'matter outside of the pleadings' for several reasons." *Berk*, 607 U.S. at 210 (citations omitted).

does not ask whether an extra sheet of paper was physically attached to the federal complaint; it asks whether state law demands special expert substantiation at a stage where federal procedure does not.

Minnesota's first affidavit accordingly presents a strong displacement argument after *Berk*, although, as of the date of writing this article, no controlling post-*Berk* Eighth Circuit decision has yet resolved that particular question.

FILING FIRST DOES NOT NECESSARILY SAVE THE SCREEN

A harder group of statutes permits commencement and moves the expert requirement weeks or months later.

The intuitive distinction is that *Berk* addressed what Rule 8 requires "at the outset." If the certificate is not due until sixty or ninety days later, perhaps Rule 8 has finished its work.

The first post-*Berk* decisions have not treated timing as dispositive.

Pennsylvania Rule of Civil Procedure 1042.3 generally requires a certificate of merit with the complaint or within 60 days afterward. Within days of *Berk*, the Middle District of Pennsylvania concluded in *Allen v. Voorstad*, No. 3:25-cv-106, 2026 WL 184276 (M.D. Pa. Jan. 23, 2026), the state certificate no longer supplied an independent requirement in federal court. Also notable, the court explicitly stated *Berk* abrogated previous Third Circuit decisions which held of certificate of merit requirement was a substantive rule "that must be applied by federal courts when applying Pennsylvania law." *Allen*, 2026 WL 184276, at *3.

Maryland then supplied a clearer timing test. In *District of Columbia Water & Sewer Authority v. Samaha Associates, P.C.*, 822 F. Supp. 3d 599 (D. Md. 2026), the court addressed Maryland's certificate requirement for licensed professional negligence. The statute allowed 90 days for compliance. The defendants argued that this delayed deadline distinguished Delaware. The district court disagreed and applied *Berk*.

Colorado provides another useful example in *In re McGann*, No. AP 25-1199 TBM, 2026 WL 770559 (Bankr. D. Colo. Mar. 18, 2026). Colorado Revised Statutes § 13-20-602 generally requires a certificate of review within 60 days after service of a professional negligence complaint. Older Tenth Circuit authority treated the requirement as substantive and applicable in federal court. In March 2026, however, a federal bankruptcy court applying *Berk* concluded that the certificate could not be enforced in a Colorado professional negligence action despite that older authority. *McGann*, 2026 WL 770559, at *4–6.

The emerging principle is important: **Changing the deadline does not necessarily change the function.**

Iowa illustrates the next question. Iowa Code § 147.140 generally requires a plaintiff, before discovery and within 60 days after the defendant's answer, to serve an expert-signed certificate addressing familiarity with the applicable standard of care and breach. The statute separately contemplates later expert discovery.

That separation makes the certificate look principally like a threshold merits screen rather than a complete expert disclosure. Its function is to establish that qualified expert support exists before ordinary discovery proceeds.

The federal question, therefore, becomes whether state law may require special expert substantiation as a condition of continuing an otherwise adequately pleaded federal action.

Berk does not mean plaintiffs never need evidence. It means federal procedure determines when evidence must be supplied. Rule 12 governs pleading sufficiency; Rule 56 provides the principal federal mechanism for determining whether evidence exists to support essential elements when the case reaches the appropriate stage.

A state-created evidentiary checkpoint between those federal procedures may present the same type of conflict even though it operates after the answer.

Missouri and North Dakota pose similar questions. No controlling post-*Berk* appellate authority yet resolves those particular regimes. But Pennsylvania, Maryland, and Colorado make one argument increasingly difficult: **a later deadline alone is unlikely to distinguish *Berk*.**

These statutes also create a precedent problem. Before *Berk*, some circuits treated state merit-screening requirements as substantive tort-reform measures under *Erie*. Counsel should distinguish between saying that those decisions have been formally overruled and arguing that their reasoning has been undermined by intervening Supreme Court authority.

Berk changes the order of operations. The court first asks whether a valid Federal Rule answers the disputed procedural question. Only if no Federal Rule does so does the traditional *Erie* analysis take center stage.

WHEN SCREENING BECOMES EXPERT DISCOVERY

Moving the expert requirement deeper into litigation may not solve the conflict; it may simply change which Federal Rules matter.

Texas demonstrates the point.

Texas Civil Practice and Remedies Code § 74.351 requires a claimant asserting a health care liability claim to serve an expert report addressing standard of care, breach, and causation after the defendant answers. State law also imposes special consequences for noncompliance, including award of reasonable attorney's fees and costs to the affected physician or health care provider and dismissal of the claim with prejudice. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(b).

In *Passmore*, the Fifth Circuit held the Texas regime did not govern federal litigation because Rules 26 and 37 already regulate expert disclosure and disclosure sanctions. *Passmore*, 823 F.3d at 296–99.

Passmore is an important complement to *Berk*. At the front end, state law may collide with Rules 8 and 12. Once the requirement begins prescribing trial experts, opinions, disclosure deadlines, and sanctions, Rules 16, 26, and 37 become more important.

Minnesota again illustrates the transition.

Section 145.682's second affidavit is materially different from its first. Within 180 days after commencement of discovery, the plaintiff must identify each expert expected to testify concerning malpractice or causation, state the substance of the expert's facts and opinions, and summarize the grounds for those opinions. Minn. Stat. § 145.682, subds. 2(2), 4. Signed expert interrogatory answers containing the same information may satisfy the requirement. Minn. Stat. § 145.682, subd. 4(a).

The first affidavit asks whether expert support exists. The second asks who the anticipated trial experts are and what they will say. That sounds substantially like expert discovery.

While the Fifth Circuit relied on whether federal rules exist which govern expert disclosure to determine whether regulations to expert disclosure are proper, this may not be the case for all circuits. As recently demonstrated by the Eighth Circuit, a more substantive expert review statute similar to Minnesota's 180-day affidavit, may still be grounds for dismissal. In *Everest Stables, Inc. v. Porter, Wright, Morris, & Arthur LLP*, 176 F.4th 550 (8th Cir. 2026), the Eight Circuit addressed the legal malpractice equivalent to the medical malpractice 180-day affidavit. In *Everest*, the district court, treating the defendant's motion to dismiss pursuant to Minn. Stat. § 544.42 as a motion for summary judgment, dismissed the case for failure to serve an expert disclosure in accordance with the statute. 176 F.4th at 558–59. Unlike the Fifth Circuit, the Eighth Circuit did not look to whether any existing federal rules regulate the expert disclosure and related sanctions. The court simply looked to whether the claims required expert testimony—which it did—and upheld the district court's dismissal. *See id.* at 559–61. It is worth noting that the Eight Circuit advised the litigants "to label motions in accordance with the Federal Rules of Civil Procedure" and cited to *Berk*'s stating that "[a] free-floating evidentiary requirement [cannot] serve as the basis for an early dismissal." *Id.* at 558, n.3. (quoting *Berk*, 607 U.S. at 197). It is likely the court's advice to the litigants is a warning that the Eighth Circuit will not entertain early dispositive motions based on failures to serve affidavits of expert review.

The better post-*Berk* analysis therefore does not ask whether the state's affidavit-of-merit statute applies in federal court as one indivisible rule, but whether the individual provisions of the rule conflict with the federal rules. A state's affidavit-of-merit statute may face multiple conflicts like *Berk*'s conflict with Rules 8 and 12 and *Passmore*'s and Rules 16, 26, and 37. For the Fifth and Eighth Circuits, there is guidance as to how expert affidavits which mirror expert disclosure requirements may be handled in federal courts; it is less clear in other circuits.

None of this changes the plaintiff's substantive burden. State law continues to define the elements of malpractice. If state law requires qualified expert testimony to prove standard of care, breach, or causation, the plaintiff must ultimately provide it.

The dispute is purely procedural: **when must that evidence be produced, in what form, and under what sanction?**

PRE-SUIT IS NOT A SAFE HARBOR

If moving a certificate later does not necessarily save it, one might expect a requirement imposed entirely before suit to fare differently. *Pledger* demonstrates why that assumption is also unreliable.

West Virginia generally requires notice and an expert screening certificate before a



medical liability action is filed. Nevertheless, the Fourth Circuit held in *Pledger*, 5 F.4th at 518–24, that the requirement did not govern the federal action.

The lesson is straightforward: **Presuit timing is a fact, not a conclusion.**

Albright goes further. Michigan imposed both a complaint-stage expert affidavit and 182 days of presuit notice. The Sixth Circuit held both procedures displaced, although the panel was divided over the presuit-notice issue. *Albright*, 24 F.4th at 1047–53. The majority relied on Rule 3—how a lawsuit is commenced—to find a conflict with federal rule. *Id.* at 1046. It stated how Rule 3 "requires only the filing of a complaint to commence an action—nothing more." *Id.* The concurrence/partial dissent argues the majority's view "far exceeds Federal Rule 3's purpose." *Id.* at 1050.

Virginia provides a subtler variation. The expert opinion ordinarily is not filed with the complaint. Instead, requesting or accepting service constitutes a certification that the plaintiff possesses a signed expert opinion supporting breach and causation. That arrangement tests whether *Berk* is narrowly about documents placed before the federal judge or more broadly about state-created expert conditions on prosecution of a federal claim.

No controlling post-*Berk* appellate authority has yet resolved Virginia's current formulation. But *Pledger*, *Albright*, and *Berk* make it difficult to assume that keeping the opinion outside the federal docket necessarily saves the requirement.

THE HYBRID PROBLEM

The harder boundary cases are integrated presuit systems that do more than demand expert certification.

Florida's medical malpractice process combines expert corroboration with notice, investigation, informal discovery, and an opportunity to evaluate the claim before ordinary litigation proceeds. Fla. Stat. § 766.203. South Carolina similarly requires a Notice of Intent to File Suit accompanied by an expert affidavit and connects that filing to a broader prelitigation process including mediation. S.C. Code Ann. § 15-79-125.

Those regimes should not necessarily rise or fall as units.

A single statute may contain an expert merit certificate, a limitations-tolling provision, presuit notice, records exchange, mediation, substantive expert qualification requirements, and a dismissal sanction. Each performs a different function.

An expert certificate may be displaced under *Berk*. A special expert disclosure sanction may conflict with Rule 37. But a limitations

rule may present a different *Erie* question entirely. Likewise, a state rule defining who is substantively qualified to establish the applicable standard of care may remain relevant even if the state's procedural disclosure mechanism does not.

The better approach is provision-by-provision displacement.

That approach avoids two extremes: treating every presuit provision as immune from *Berk* merely because it operates before filing and treating *Berk* as invalidating an entire medical malpractice reform scheme merely because one component conflicts with federal procedure.

A PRACTICAL SEVEN-QUESTION TEST

For statutes not yet addressed after *Berk*, practitioners can reduce the analysis to seven questions.

First, when does the obligation arise? Before suit, at filing, upon service, after the answer, before discovery, or during expert discovery?

Second, what must the plaintiff obtain or provide? A counsel certification, signed expert opinion, affidavit addressing breach and causation, or actual trial-expert disclosure?

Third, who receives it? The court, defendant, counsel's file, screening body, or mediator?

Fourth, what does the provision do? Does it regulate commencement, pleading sufficiency, threshold merit, discovery sequencing, expert disclosure, or settlement?

Fifth, what happens upon noncompliance? Dismissal with or without prejudice, attorney fees, a discovery stay, or discretionary sanctions?

Sixth, which Federal Rule answers the same question? Rules 3 and 4 govern commencement and service; Rules 8, 9, 11, and 12 address pleading and threshold dismissal; Rule 16 governs scheduling; Rule 26 governs expert disclosure; Rule 37 governs discovery sanctions; and Rule 56 tests evidentiary sufficiency.

Seventh, can the challenged provision be separated from the remainder of the state scheme?

The fourth and sixth questions do most of the analytical work. The others help define the state requirement precisely enough to answer them.

DEFENSE STRATEGY AFTER *BERK*

For defense counsel, *Berk* has consequences well beyond briefing an affidavit motion.

The first may arise before removal.

State merit screening statutes were designed, in significant part, to prevent defendants from incurring the cost of litigating claims lacking threshold expert support. If a plaintiff has already failed to satisfy a potentially dispositive state requirement, removing the case may move the dispute into a forum where you lose a strong early defense.

That does not mean defendants should avoid federal court; it simply means the affidavit issue belongs in the removal analysis.

Before removing, confirm whether the plaintiff has complied, whether the compliance period has expired, whether a cure period remains, whether dismissal is mandatory and with or without prejudice, whether limitations have expired, and how the governing federal circuit treats the state requirement.

In the right case, a matured affidavit defense may materially affect the forum calculation.

THE PLAINTIFF STILL NEEDS EXPERT PROOF

Defense counsel do not overread *Berk*. The decision does not federalize the substantive elements of malpractice. A plaintiff who needs qualified expert testimony under state law still must produce it. Only procedural mechanisms for testing that proof have changed.

Where a state expert deadline is displaced, counsel should use Rules 16 and 26 deliberately. The Rule 26(f) process and scheduling conference provide your opportunity to establish disciplined expert disclosure deadlines appropriate to an expert-dependent malpractice case. Do not try to recreate the state affidavit statute by federal scheduling order; use the expert-management tools the Federal Rules themselves provide.

RULE 56 BECOMES MORE IMPORTANT

Berk distinguishes pleading from proof. That distinction points directly to summary judgment.

If a complaint satisfies federal pleading requirements, the absence of a state certificate may no longer terminate the case. But after appropriate discovery, a plaintiff who lacks necessary admissible expert testimony still fails to prove an essential element.

The procedural vehicle simply changes.

Instead of dismissal for missing a state affidavit deadline, consider seeking judgment under Rule 56 because the plaintiff lacks evidence sufficient to establish standard of care, breach, causation, or another expert-dependent element.

In that sense, *Berk* may delay the merits screen without eliminating it, which is an unfortunate

consequence for those cases where the plaintiff truly lacks expert support.

PRESERVE THE RIGHT ARGUMENTS

Post-*Berk* transition issues will persist where older circuit authority remains.

Counsel should distinguish between claiming that an older case has been formally overruled and arguing that its reasoning cannot survive intervening Supreme Court precedent. Courts themselves are already confronting that distinction in some jurisdictions.

Hybrid statutes require similar precision. A weak argument for enforcing a state expert affidavit deadline does not require conceding that every defendant-friendly component of the state's malpractice framework is displaced. Substantive expert qualifications, limitations rules, tolling provisions, notice requirements, and settlement procedures should each be analyzed according to the function they perform.

For defense lawyers, this may be the most important practical lesson from *Berk*: **do not litigate the statute as a label; litigate the particular provision.**

FROM LABELS TO FUNCTION

Breathe easy, *Berk v. Choy* did not eliminate state medical malpractice law from federal court, and it did not provide a one sentence answer for every statute labeled as an affidavit or certificate of merit. It changed the inquiry.

At the pleading stage, *Berk*, *Gallivan*, and *Albright* demonstrate the force of the Federal Rules governing pleading and dismissal. At the expert-discovery stage, *Passmore* shows that state report requirements may collide with Rules 26 and 37, but perhaps *Everest* gives some hope that it does not. Before suit, *Pledger* demonstrates that moving the requirement outside the courthouse does not automatically avoid federal displacement.

The hardest cases lie between those poles: certificates due weeks after the answer, service-based certifications, and integrated presuit systems combining expert review with notice, investigation, tolling, or mediation.

Minnesota's § 145.682 captures the issue particularly well. Its first affidavit resembles the front-end merit screening implicated by *Berk*. Its second resembles the expert-disclosure regulation addressed by *Passmore*. The fact that both requirements appear in one statute does not mean they necessarily rise or fall together. That principle should guide the national analysis.

After *Berk*, the important question is no longer simply whether a state has an affidavit-of-merit statute.

Instead, it is: **What does this particular provision require the litigant to do, what procedural function does it perform, and has federal procedure already answered that same question?**

A weak argument for enforcing a state expert affidavit deadline does not require conceding that every defendant-friendly component of the state's malpractice framework is displaced.

For defense practitioners, answering those questions should guide not only whether a state merit-screening provision remains enforceable in federal court, but also removal strategy, expert discovery, dispositive motions, and preservation of favorable state-law defenses.

