

# David G. Tomeo

Shareholder

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David is an accomplished defense attorney whose practice focuses on representing health care providers in medical malpractice litigation throughout New Jersey, New York and Pennsylvania. His clients range from physicians and nurses, to hospitals and behavioral health facilities.

David is often called upon to represent staffing companies and health care practices in malpractice suits, utilizing his substantial knowledge and experience to guide corporate entities in handling issues commonly faced in these cases, including “piercing the corporate veil” allegations, violation of the corporate practice of medicine doctrine, and claims for respondeat superior liability. Clients also seek David’s counsel to defend malpractice actions seeking to hold a parent or holding company liable for the alleged negligent actions of subsidiaries and the health care providers employed by such subsidiaries. In addition, urgent care center franchisors rely on David’s keen understanding of the unique intersection of medical malpractice and franchise law when facing medical malpractice suits.

David has extensive trial and courtroom experience throughout New Jersey, New York and Pennsylvania. In addition to his trial court work, he has argued before the New Jersey Supreme Court and has handled numerous appeals in the Appellate Division of the New Jersey Superior Court. He has also served as an author and speaker on current trends and issues impacting his clients.

Giving back and contributing to his community is a top priority for David. He provides pro bono legal services through Volunteer Lawyers for Justice and has been honored with the organization’s “Volunteer of the Year” award.

## Education

- Seton Hall University School of Law (J.D., *cum laude*, 1989)

## Practices

- Medical Malpractice
- Behavioral Health Risk & Liability

- Montclair State University (B.A., *summa cum laude*, 1986)

## Admissions

- New Jersey, 1989
- U.S. District Court District of New Jersey, 1989
- U.S. Court of Appeals 3rd Circuit, 1989
- Pennsylvania, 2020
- U.S. District Court Eastern District of Pennsylvania

## Honors & Awards

- AV® Preeminent™ by Martindale-Hubbell®

## Published Works

- Navigating a New Legal Landscape: Protecting the Corporate Veil in the Med Mal Suit | *New Jersey Law Journal*, *New Jersey Law Journal*, May 14, 2024
- "Turnabout is Fair Play: When an Expert Switches Sides on the Eve of Trial," *New Jersey Law Journal*, Medical Malpractice Supplement, May 8, 2023

## Significant Representative Matters

- Obtained summary judgment on behalf of an obstetrician in a medical malpractice action. The plaintiff alleged that our client did not obtain the requisite informed consent from our client to undergo a trial of labor after having two prior cesarean section deliveries ("TOLAC x2"). The court found that the plaintiff's lack of informed consent claim was without foundation as she had an awareness of the risks of TOLAC x2. Rather, the court found that her claim was premised on the assertion that the physician performing the TOLAC x2 failed to convert the TOLAC to a C-section quickly enough when complications arose. The court held that as matter of law our client had no obligation to discuss the risk that the doctor in the delivery room may wait too long to pivot to a C-section, which was the actual cause of the plaintiff's alleged harm.
- Obtained a dismissal in the Superior Court of New Jersey on personal jurisdiction grounds of a multi-count complaint brought by a New Jersey based medical laboratory against our client, an Arizona company which provides both medical services and health insurance to Arizona residents. The plaintiff argued that our client was amenable to suit in this State, asserting that our client had business interactions with the laboratory in New Jersey. In opposition, we were able to establish that not only was such assertion untrue, but also that any claims sent by the plaintiff to our client for testing services would have been processed in Arizona and that our client did not have any contacts – much less the constitutionally mandated minimum contacts – necessary for personal jurisdiction in New Jersey. In addition, finding that the plaintiff did not conduct any due diligence before filing suit, and did not make any attempt to take jurisdictional discovery while the motion was pending, the Court dismissed the action with prejudice in New Jersey, despite the plaintiff's argument that a dismissal without prejudice was appropriate, thus leaving to the courts of Arizona whether such a dismissal has preclusive effect in any suit brought there under these facts.
- Obtained summary judgment for a large insurance carrier in a coverage action in New Jersey Superior Court, Essex County. The client's insured, a sports and recreation facility, named the company in a third-party complaint seeking coverage for injuries allegedly sustained by plaintiff in a tennis court accident. The subject policy had an

express condition requiring the provision to the carrier of a waiver and release signed by a participant in connection with the submission of a claim. Having to concede that a waiver and release was not obtained nor provided to the carrier in connection with the claim, the insured tried to “re-write” the condition to say that a waiver and release was not required as the plaintiff bypassed the system in place, and participated without authorization. In a case of apparent first impression in New Jersey, the Court found the policy language clear and unambiguous and enforced it as written, declining the insured’s invitation to engage in “linguistic gymnastics” to find against our client.

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## Results

### **Summary Judgment Secured in a Complex Medical Malpractice Case**

We obtained summary judgment on behalf of an obstetrician in a medical malpractice action. The plaintiff alleged that our client did not obtain the requisite informed consent from the plaintiff to undergo a trial of labor after having two prior cesarean section deliveries (TOLAC x2). The court found that the plaintiff’s lack of informed consent claim was without foundation as she had an awareness of the risks of TOLAC x2. Rather, the court found that her claim was premised on the assertion that the physician performing the TOLAC x2 failed to convert the TOLAC to a C-section quickly enough when complications arose. The court held that our client had no obligation to discuss the risk that the doctor in the delivery room may wait too long to pivot to a C-section, which was the actual cause of the plaintiff’s alleged harm.

### **Dismissal Obtained in Multi-count Complaint in the Superior Court of New Jersey**

We successfully secured a dismissal in the Superior Court of New Jersey on personal jurisdiction grounds. This was a multi-count complaint brought by a New Jersey-based medical laboratory against our client, an Arizona company which provides both medical services and health insurance to Arizona residents. The plaintiff argued that our client was amenable to suit in this state, however, we were able to establish that, not only was such an assertion untrue, but also that any claims sent by the plaintiff to our client for testing services would have been processed in Arizona and that our client did not have any contacts—much less the constitutionally mandated minimum contacts—necessary for personal jurisdiction in New Jersey. As a result, the court dismissed the action with prejudice in New Jersey.

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## Thought Leadership

May 14, 2024

### **Navigating a New Legal Landscape: Protecting the Corporate Veil in the Med Mal Suit**

May 8, 2023

## **Turnabout Is Fair Play: When an Expert Switches Sides on the Eve of Trial**