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

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In the last decade, there has been an increasing tendency for medical malpractice plaintiffs to include as defendants not only the health care providers who rendered the allegedly negligent care and the practice groups with which they were affiliated or employed, but also to name those corporations or limited liability companies which either managed or provided support services to the defendant practice groups on a "piercing the corporate veil" or "alter ego" theory. The argument posits that the group and the company by which it is managed are not distinct entities, but rather one enterprise—at least for medical malpractice liability.

Although this trend can be justified for the sake of completeness, (i.e., making sure that every potentially culpable party is joined in one suit), it is more likely an effort by plaintiffs to marshal as much insurance coverage as possible so that a favorable decision, especially the recent inclination to "nuclear verdicts," can be satisfied in full, or as much as possible. This article explores the historical roots and status of the "piercing the corporate veil" doctrine in New Jersey and Pennsylvania, with some practical suggestions for defending such efforts when applied in medical malpractice cases.

New Jersey Cases

In New Jersey, the judiciary's reticence to readily disregard the corporate form likely has its roots in the maxim that "equity look[s] at the substance, not merely the outward form." *Stockton v. Cent. R. Co. of New Jersey*, 50 N.J. Eq. 52, 73, 24 A. 964, 972 (Ch. 1892). In this regard, the former New Jersey Court of Chancery relied on *Stockton* in expressing one of the first formulations of the doctrine: "Where the corporate form is used by individuals for the purpose of evading the law, or for the perpetration of fraud, the courts will not permit the legal entity to be interposed so as to defeat justice." *Trachman v. Trugman*, 117 N.J. Eq. 167, 170, 175 A. 147, 149 (Ch. 1934).

The quintessential modern New Jersey opinion on the issue is *State Dep't of Env't Prot. v. Ventron Corp.*, 94 N.J. 473, 500, 468 A.2d 150, 164 (1983), holding: "Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil. The purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, to perpetrate fraud, to accomplish a crime, or otherwise to evade the law." *Simplot India v. Himalaya Food Int'l*, No. 3:2023cv01612 (D.N.J. 2024) (recognizing *Ventron* as the "seminal" New Jersey decision on the doctrine).

In the decades since *Ventron*, the alter ego doctrine has been applied in different scenarios and varying fact patterns, such as holding closely held companies jointly and severally liable for each other's debts. "While in most cases courts have been willing to pierce the corporate veil in the parent-subsidiary context, given the ease with which the individual owners here altered their organizations and closely held assets, there appears to be no reason to limit the application of the rule to parent-subsidiary relationships." *Stochastic Decisions v. Di Domenico*, 236 N.J. Super. 388, 395, 565 A.2d 1133, 1136 (App. Div. 1989).

More recently, the New Jersey Supreme Court refused to allow a general partnership and a limited partnership owned by the same individuals "to pierce their own corporate veil" to obtain the benefit of title insurance provided to the general partnership following the conveyance of the subject land to the limited partnership. The carrier refused to cover the property following the conveyance, contending that the entities were separate and distinct, and that, as the policyholder, the general partnership was the sole insured.

The court opined: "Reliance on the alter ego doctrine to pierce the corporate veil does not aid the Shotmeyers either. Here, the Shotmeyers set up different, legitimate business structures to further their personal and business plans. They did not use their partnerships to commit fraud or defeat the ends of justice. The alter ego doctrine, therefore, does not apply." *Shotmeyer v. New Jersey Realty Title Ins.*, 195 N.J. 72, 86–87, 948 A.2d 600, 608 (2008).

Pennsylvania Cases

In Pennsylvania, historically, the concept of piercing the corporate veil was disfavored; courts only applied the doctrine when the targeted corporation or business was acting as an "alter-ego" of an owner. However, in 2021, the Pennsylvania Supreme Court unanimously adopted the more expansive theory of "enterprise liability" in *Mortimer v. McCool*, 255 A. 3d 261 (Pa. 2021). Under this broader view, Pennsylvania law now permits the liability of one entity to be attributed to its corporate counterparts through both vertical veil piercing, i.e., holding a corporation's shareholders, directors or officers liable, and horizontal piercing, holding related corporate entities who share common ownership and an administrative nexus liable with the "sister" corporation.

In practice, Pennsylvania law permits enterprise liability to attach only when there is "such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist" and "adherence to the corporate fiction" would endorse "fraud, wrong or injustice." *Mortimer v. McCool*, supra at 286-287. Although the enterprise theory doctrine seemingly casts a wider net on potentially liable corporate entities, the threshold is high in that corporate misconduct must be "truly egregious" for enterprise liability to be applied.

Plaintiffs may rush to assert—often unjustifiably—that the medical practice group and the entity which managed the group are "one in the same" for liability. As the above decisions make readily apparent, proving such allegations is an entirely different matter. At the outset of the litigation, defense counsel should serve carefully crafted and directed interrogatories and document

demands “drilling down” on the piercing claims.

To avoid the “proverbial” discovery response claiming such requests are “over-broad and burdensome,” defense counsel should narrowly tailor the requests for only the information in the plaintiff’s possession at the time the complaint was filed—i.e., those documents and facts required to plead the allegations in good faith and to avoid potential frivolous litigation sanctions. Such demands will often result in the production of marketing materials or websites, or worse, will refer the defendant to the medical records for the relevant information.

Although courts will often give plaintiffs numerous opportunities to supplement offending answers to stave off dismissal, judicial patience is not unlimited. Persistent defense motion practice may result in dismissal of the unrelated corporate entities if responsive information is not forthcoming after several orders compelling fully compliant answers.

The arsenal of defense strategies is not just limited to pointed discovery demands. Going on the offensive offers several adventages. An optimal starting point is in the law of the jurisdiction. Many venues specifically allow the management of a medical practice by a corporate entity. In the same way, reliance should be made on the requirement that a medical practice be owned by licensed professionals, and cannot be owned by a general business entity such as a corporation or limited liability company which will often be the corporate form in which the managing entity operates. This approach, grounded in the law, counters one of the hallmarks of the piercing the veil doctrine—that of overlapping ownership.

Further, the assertion by plaintiffs that the medical practice group and the managing entity have identical business functions is often unfounded. The defense must be prepared to demonstrate that these two entities engage in wholly different business functions. Likewise, reliance should be firmly placed on the fact that only licensed health care providers can render medical care and, in doing so, rely on their education, training, experience and independent judgment, free from interference by a corporate entity or any other source.

Finally, production of the contract between the managing entity and the group, and the agreements between the group and the health care providers (even before requested in discovery), will often prove effective, as most will have clauses which establish the separate ownership and divergent business functions which argue against piercing the corporate veil. And, should the deposition of a corporate designee be noticed during discovery, it goes without saying that the entity’s corporate designee must be well-versed in the distinct and unrelated roles and responsibilities of the entities, effectively establishing through sworn testimony that there is no basis to pierce the corporate veil.

In summary, there has been an increasing trend toward unusually high verdicts not only in medical malpractice litigation, but also in civil litigation generally. One theory for these exorbitant “nuclear” verdicts is that most jurors now have a prevailing sentiment of corporate and/or medical distrust. Joining corporate entities to lawsuits seems to be a tactic to proliferate the pro-

verbial deeper pockets required to either settle a case ahead of trial or to support a larger verdict. Defendants must be strategic in their attempts to mitigate the implications of adding non-involved corporate entities from the onset of, and throughout, the litigation.

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