

## VICTORIA L. PEPE

ASSOCIATE



### AREAS OF PRACTICE

Health Care Liability

### CONTACT INFO

(973) 618-4153  
VLPepe@mdwgcg.com

425 Eagle Rock Avenue  
Suite 302  
Roseland, NJ 07068

### ADMISSIONS

New Jersey  
2023

New York  
2023

### EDUCATION

Maurice A. Deane School of Law  
at Hofstra University (J.D., 2022)

University of Maryland (B.A., 2019)

### OVERVIEW

Victoria focuses her practice on defending medical professionals and facilities against medical malpractice claims. Prior to joining Marshall Dennehey, she served as a judicial law clerk to the Honorable Russell J. Passamano, J.S.C., within the Superior Court of New Jersey, Essex Vicinage, Civil Division.

While in law school, Victoria was the recipient of the Public Service Award (Bronze), which is awarded to law school graduates who have completed a minimum of 250 hours of pro bono service during their law school career. She also served as managing editor and staff member of the *Hofstra Law Review*, and authored the article "Conceiving Consistency: Giving Birth to a Uniform 'Best Interests of the Child' Standard."

Outside of the office, Victoria enjoys long-distance running, trying new restaurants in New York and New Jersey, and taking trips to the New Jersey Shore.

### YEAR JOINED

2023

## THOUGHT LEADERSHIP

### LEGAL ROUNDUP - New Jersey

**Roseland**  
**Health Care Liability**  
**May 1, 2024**

An “almost perfect storm of events” warranted additional time to file an Affidavit of Merit. The Quarterly Dose – May 2024, has been prepared for our readers by Marshall Dennehey.

#### **An “Almost Perfect Storm of Events” Warranted Additional Time to File an Affidavit of Merit**

**Roseland**  
**Health Care Liability**  
**April 1, 2024**

The plaintiff and her husband, by way of a per quod claim, initiated a medical malpractice action against the defendants for, among other things, their alleged failure to administer pain injections at the correct vertebrae of the plaintiff

#### **An Affidavit of Merit Is Inappropriate if It Fails to Identify Any Individual Person(s) Who Were Negligent.**

**Roseland**  
**Long-Term Care Liability**  
**January 1, 2024**

The trial court dismissed the plaintiff’s complaint with prejudice for failure to provide an appropriate affidavit of merit (AOM) pursuant to N.J.S.A. 2A:53A-26 to -29. Case Law Alerts, 1st Quarter, January 2024 is prepared by Marshall Dennehey to provide information on recent developments of interest to our readers.

## RESULTS

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

**Health Care Liability**  
**March 1, 2024**

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.

## **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.