

## MELISSA A. DZIAK

SHAREHOLDER



### AREAS OF PRACTICE

Health Care Liability  
Trucking & Transportation Liability  
Product Liability  
General Liability

### CONTACT INFO

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50 Glenmaura National Boulevard  
Moosic, PA 18507

### ADMISSIONS

New York  
2004

Pennsylvania  
2010

U.S. District Court Northern District  
of New York  
2014

U.S. District Court Southern  
District of New York  
2011

U.S. District Court Eastern District  
of Pennsylvania  
2011

U.S. District Court Middle District  
of Pennsylvania  
2009

### EDUCATION

Brooklyn Law School (J.D., 2003)

LeMoyne College (B.S., 1998)

### HONORS & AWARDS

Certified Mediator, United States  
District Court for the Middle District  
of Pennsylvania

### OVERVIEW

Melissa is a shareholder in the firm's Health Care Department. For more than a decade, she has defended physicians, nurse practitioners, registered nurses, home health aides, physical therapists, psychologists, hospitals, ambulatory surgery centers, physician practice groups, long-term care facilities, and home health and medical device manufacturers in Pennsylvania and New York. Melissa has successfully defended clients through trial in several state and federal court jurisdictions, as well as negotiating favorable settlements in high-exposure cases. Melissa has also represented health care professionals, including veterinarians, before various licensing boards in New York State relating to professional licensing matters. She has successfully litigated favorable outcomes for her clients before these boards, including negotiating dismissals of actions without any discipline.

In addition to defending health care professionals, Melissa also represents and advises one of the largest national independent foodservice distributors, providing strategic legal guidance and representation in high exposure litigation.

Melissa is a Certified Mediator for the United States District Court for the Middle District of Pennsylvania. In this role, Melissa acts as a mediator for the Court, providing an alternative means of resolving civil disputes in the areas of personal injury, premises liability, medical malpractice and FELA litigation.

Melissa has more than 15 years of experience in the court room, having worked as an Assistant District Attorney in Westchester County, New York, prior to starting her career as a civil litigator. Before joining Marshall Dennehey, Melissa was the managing partner in a large, multidisciplinary regional law firm in northeastern Pennsylvania and New York State.

Outside of the courtroom, Melissa is committed to increasing and promoting diversity within her firm and the legal industry. She currently serves on the Marshall Dennehey Diversity, Equity and Inclusion Committee working to improve the recruitment, retention and advancement of diverse attorneys and professionals. In addition, Melissa is a member of the Pennsylvania Bar Association's Commission on Women in the Profession and the Promotion of Women Committee. She also serves on the Mentoring Committee, providing guidance and support to assist women lawyers in attaining their goals within the profession.

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## ASSOCIATIONS & MEMBERSHIPS

Association for Health Care Risk Management of New York (AHRMNY)

American Society for Health Care Risk Management (ASHRM)

Pennsylvania Bar Association, Promotion of Women Committee, member; Commission on Women in the Profession, member; Mentoring Committee, member

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## YEAR JOINED

2019

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## PRO BONO ACTIVITIES

Lackawanna Pro Bono

## THOUGHT LEADERSHIP

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

**Health Care Liability**  
**May 14, 2024**

#### CLASSES/SEMINARS TAUGHT

*Mitigating Physician Liability in the Emergency Department Setting*, Robert Packer Hospital, May 2024

*Liability Risks of AI in Healthcare*, co-presenter, 1st Annual Upstate Educational Meeting, Association for Healthcare Risk Management of New York, Saratoga, NY, October 30, 2023

*Legal Update: Advanced Practice Providers*, CHART Institute webinar, October 24, 2023

*Claims Hot Topics Roundtable*, panelist, Claims and Risk Management/Patient Safety Workshop hosted by the Medical Professional Liability Association, September 21, 2023

*Mitigating Physician Assistant Legal Liability*, Marywood University, February 2022

*Mergers & Acquisitions in the Health Care Landscape*, Michigan Society of Healthcare Risk Management, February 2020

*Mergers & Acquisitions in the Health Care Landscape*, American Society for Health Care Risk Management, October 2019

#### 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

## RESULTS

### Dismissal of All Claims Obtained in High-Value Medical Malpractice Case

**Health Care Liability**  
**June 28, 2023**

We obtained complete dismissal of all medical malpractice claims against a hospitalist physician where the plaintiff's demand was \$23.9 million. As our client treated the plaintiff, a 53-year-old who had a stroke, promptly and within the standard of care, in addition to her not being on shift at the time of alleged malpractice, the court dismissed our client outright.

### Dismissal of all claims on the eve of trial where EMT plaintiff's demand was \$10 million.

**Emergency Medical Services**  
**Health Care Liability**  
**April 26, 2023**

The plaintiff was an Emergency Medicine Technician who was severely assaulted during an ambulance transport of a minor patient to a psychiatric facility. The client-physician had discharged the minor patient with orders for sedation and restraints, if needed, during transport. The plaintiff alleged these discharge orders were insufficient and violated standard of care. Our attorneys successfully argued that under Pennsylvania's Mcare Act our client-physician did not owe a duty to the plaintiff-EMT, only to the minor patient.

### Summary judgment for car dealership.

**Automobile Liability**  
**December 2, 2021**

Our attorneys successfully obtained summary judgment on behalf of a car dealership. The dealership rented a vehicle to the co-defendant, who was having his personal vehicle serviced at the dealership. The co-defendant was involved in an auto accident with the plaintiff while operating the dealership's rental. The plaintiff was operating a motorcycle, and significant damages were alleged.

## **SIGNIFICANT REPRESENTATIVE MATTERS**

Obtained complete dismissal of all claims on eve of trial where plaintiff's demand was \$10 million. Plaintiff was an emergency medicine technician (EMT) who was severely assaulted during an ambulance transport of a minor patient to a psychiatric facility. The client-physician discharged the patient with orders for sedation and restraints, if needed, during transport. The plaintiff alleged these discharge orders were insufficient and violated standard of care. The defense successfully argued that under Pennsylvania's Mcare Act, the client-physician did not owe a duty to the plaintiff-EMT, only to the minor patient, and further, that the plaintiff's Emergency Medicine expert was not qualified to opine on the standard of care provided by client-physician who is an Internal Medicine specialist in that plaintiff's expert had no expertise in the long-term management of psychiatric patients. Without an expert to opine on the applicable standard of care, the plaintiff's claim must fail. As a result, the court granted the motion for summary judgment and dismissed plaintiff's claims.

Obtained a defense verdict on behalf of a primary care physician who prescribed medication for the plaintiff to treat insomnia and depression. The plaintiff alleged that the prescription was not indicated and the dosage was over twice the recommended dosage. After taking the medication, the plaintiff suffered a neck injury requiring an anterior cervical decompression and fusion of the C5-C6 for central cord syndrome, which resulted in permanent nerve injury. The defense argued that based on the plaintiff's complaints and presentation, the medication was both indicated and the dosage was within the standard of care despite recommendations by the FDA and PDR.

Represented an OB/GYN and OB/GYN Practice Group obtaining a defense verdict in an alleged failure to properly manage a patient's labor and delivery resulting in a catastrophic injury to her child. The plaintiff's counsel argued that the pregnancy and labor were high risk requiring the use of intermittent auscultation (IA) during the second stage of labor. As a result of this alleged violation of standard of care, the infant-plaintiff suffered a catastrophic brain injury during the second stage of labor causing cerebral palsy and daily intractable seizures. The infant-plaintiff is wheelchair-bound, unable to speak and unable to feed himself requiring lifetime care. Through expert testimony, the defense argued that the pregnancy was not high risk, IA was not required during the second stage of labor, and that the infant-plaintiff's injury occurred at some point in the days prior to labor and delivery.

Obtained summary judgment in New York on behalf of a car dealership client. The dealership rented a vehicle to co-defendant, who was having his personal vehicle serviced at the dealership. That co-defendant was in an accident with the plaintiff while operating the dealership's rental. The plaintiff was operating a motorcycle and significant damages were alleged. The defense filed a motion for summary judgment pursuant to The Graves Amendment, which states that an owner of a motor vehicle that rents a vehicle to a person shall not be vicariously liable for harm to persons or property that arises out of the use or operation of that vehicle during the period of the rental, so long as certain additional criteria is met. The court agreed with the arguments raised in the motion and dismissed our client with prejudice.