



Penn Medicine
Lancaster General Health

**Remarks of Christopher Addis, MD
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**Testimony at the House Republican Policy Committee
SR 20: Policy Hearing on Medical Malpractice and Venue Shopping
Thursday, February 14, 2019 at 10:00AM**

**Irvis Office Building, Room G-50
Harrisburg, PA**

Good Morning Chairman Oberlander and members of the House Republican Policy Committee. I am Dr. Chris Addis, Chairman of the Department of Medicine and Senior Physician Leader for Medical Subspecialties for Penn Medicine Lancaster General Health. I have also worked as a Hospitalist for the last 28 years. In these capacities, I have the good fortune of treating patients and working with the many types of providers who care for them. On behalf of Penn Medicine Lancaster General Health, thank you for convening this hearing and the invitation to testify regarding the proposed changes to the Pennsylvania Supreme Court's Civil Procedure Rules with respect to venue in medical malpractice cases. I am testifying today to express our strong opposition to such a change.

We have serious concerns about the proposal to rescind subdivision (a. 1), which limits venue in medical professional liability actions to the County in which the cause of action arose. The broader venue rule in effect prior to the court's reform of 2003 allowed health care providers to be sued in locales that had no real connection with the alleged act of medical malpractice. As a result, Pennsylvania experienced a medical malpractice crisis in which liability insurers left the market, limited their insurance offerings, and experienced significant downgrades in their credit ratings. This both sharply reduced the availability of medical liability insurance to providers and left hospitals and physicians facing skyrocketing premiums while creating a hostile recruiting environment. To continue to keep doors open, many hospitals were forced to reduce services.

We believe the effort to revert to this prior rule will reverse the positive impact Act 13 of 2002, the Medical Care and Reduction of Errors Act ("MCARE Act") and the Court's 2003 adoption of new venue rule as well as certificate of merit have had on stabilizing the medical liability markets and reducing the number of physicians leaving the state for more favorable practice conditions. If the Rules Committee believes that the venue rules for professional liability actions should be revisited, it would be best served recommending to the Supreme Court that a special Committee be empaneled specifically for the purpose of determining — in public, on the record, and with input from various experts and stakeholders—the wisdom of any proposed rule changes. Proceeding with the Rules Committee's current plan raises serious due process concerns that should give anyone pause. We believe it is imperative to conduct a thorough study of the impact of this proposed change in advance of enactment.

As an example, Senate Resolution 20 would permit the Legislative Budget and Finance Committee to examine the impact of venue for medical professional liability actions on access to medical care and maintenance of health care systems across the Commonwealth. It would also request that the Pennsylvania Supreme Court delay action on the proposed amendment to Pa.R.C.P. No. 1006.

The history on this matter is instructive. In the years leading up to 2002, when the MCARE Act was passed, physicians, hospitals, and other healthcare providers in Pennsylvania were faced with a professional liability insurance market in distress. A report funded by the independent *Pew Charitable Trust* surveyed the extent of the problem, noting that:

- Between 2000 and 2002 professional liability premiums increased by 100% or more for Pennsylvania physicians in internal medicine, general surgery, and obstetrics/gynecology;
- Premiums for orthopedists in Pennsylvania were some of the most expensive in the Country and growing much more rapidly than the national average; and
- Pennsylvania had among the worst insurance availability problems in the nation for hospitals.

The source of these problems, the Pew report concluded, was medical malpractice litigation in the state, and particularly outcomes in Philadelphia courts:

“Health care providers in Pennsylvania have encountered steep increases in the cost of liability insurance since 2000, as many liability insurers have withdrawn from the market and premiums have risen for available coverage.

While cyclical changes within the insurance industry are clearly a factor affecting the affordability of liability coverage in Pennsylvania and elsewhere, ***the largest component is the rising cost of legal claims.***

Pennsylvania exceeds national averages for legal costs because of high claims rates and payouts. This is particularly the case in Philadelphia, where plaintiffs are twice as likely to win jury trials as in the rest of the Country, and where a substantial percentage of cases result in verdicts greater than \$1 million.”

The legislative solution to this problem was the passage of the MCARE Act, which, among other things, set standards for experts testifying in medical malpractice actions, and imposed new requirements on the calculation of damages. In addition to the venue rule change, the Supreme Court also adopted a rule mandating certificates of merit at the outset of litigation to ensure that there is a colorable basis for the claims pursued.

Additionally, first drafts of the bill that would become the MCARE Act also included provisions to address forum shopping, requiring that medical professional liability claims be brought only in the County in which “the alleged acts or omissions giving rise to the claim predominately occurred.” Those provisions were ultimately placed in a separate bill that was passed unanimously by the Pennsylvania Senate and by an overwhelming majority of the Pennsylvania House (186-12). Although the venue statute was eventually declared an unconstitutional exercise of legislative power by the Pennsylvania Commonwealth Court in 2007, the Supreme Court adopted similar restrictions on venue in medical malpractice actions Rule 1006(a.1) of the Rules of Civil Procedure.

As the Civil Procedural Rules Committee correctly notes, the MCARE Act and new venue rules had the intended effect: court statistics show a significant decrease in malpractice filings between 2002 and 2003. More importantly, new filings in Philadelphia decreased both in absolute terms and as a proportion of total filings in the state. While Philadelphia was the venue in which 44% of the state’s new cases were filed on average between 2000 and 2002 that number dropped to 33% in 2003.

Notably, despite the major initial changes between 2002 and 2003, filings figures have largely stabilized and remained very consistent over the past ten-plus years, with new filings in 2017 just 15% lower than in 2003 and new filings in Philadelphia accounting for 28% of the state's total filings in 2017.

As would be anticipated by the Pew report's conclusion, these changes in the legal market resulted in the stabilization of the professional liability insurance market as well, although the market has continued to have capacity issues.

Now, the Civil Procedural Rules Committee (the "Rules Committee") has announced its intention to recommend that the Supreme Court do away with the special venue provisions applicable to medical malpractice litigation, which were overwhelmingly favored by the members of the Pennsylvania General Assembly and were part of a comprehensive package of legislative reforms designed to cure a significant public problem. The Rules Committee—a group of just 15 attorneys who have no accountability to the citizens of Pennsylvania—should not recommend the rule change to the Supreme Court because it (1) is not supported by the arguments in the *Notice of Proposed Rulemaking* and (2) has a significant potential to adversely affect the healthcare marketplace and should be subject to greater study and scrutiny by a more appropriate deliberative body.

The Rules Committee provides three justifications for their proposed rule change:

- 1) The special venue provision applicable to medical malpractice cases is no longer warranted because medical malpractice filings have been reduced;
- 2) Special treatment is being given to a particular class of defendants and "fairness" should be restored; and
- 3) It "has been reported to the Committee" that fewer victims of medical negligence are being compensated.

None of these arguments are compelling.

First, the argument that a rule designed to improve the marketplace for professional liability insurance should be terminated because it is having its intended effect is not valid on its face. That is akin to arguing that laws against drunk driving should be abolished based on evidence that the rate of drunk driving has decreased, which no one reasonable person would advocate. That the venue provisions have resulted in an improvement in the professional liability insurance market is a reason to **keep** the rule in place, not end it.

Second, as to the charge that medical malpractice defendants are being treated specially, these special venue provisions reflect the determination of policy-makers that, in some instances, specific parties and certain types of litigation ought to be treated differently from others, which is precisely the case with the venue provisions applicable to medical malpractice actions. Most people outside of the legal profession would likely be surprised to learn that the Rules Committee's conception of

“fairness” is a system in which a doctor in County A, who provides medical treatment in County A to another resident of County A, could be sued in County B, over 100 miles away.

Finally, the Rules Committee provides no actual data or citations to support their assertion that individuals injured by medical malpractice are not being compensated, so assessing the veracity of this claim, the extent of the problem, or the possible causes is impossible.

In 2015, Lancaster General Health merged with Penn Medicine to become Penn Medicine Lancaster General Health. We have serious concerns that this organizational relationship would open the door to a significant increase in the volume of medical malpractice suits filed and the percentage of those claims docketed in Philadelphia County – ***despite the fact that these suits would almost always involve a physician in Lancaster County, who provides medical treatment in Lancaster County to another resident of Lancaster County, being sued in Philadelphia County, over 100 miles away.***

We believe this proposed rule change would result in increased costs for physicians, patient/plaintiffs, witnesses and other related parties to travel and participate in court proceedings. Physician time would be further encumbered and diverted from supporting access to care due to the additional time required for this travel and trial participation in a distant venue.

More globally, we believe our former Lancaster General Health volume of lawsuits would increase substantially under the proposed rule change not merely returning to pre-2003 rates but more reflective of the volumes seen in the Philadelphia Court jurisdiction.

Penn Medicine Lancaster General Health is a community hospital. Approximately 95% of people who receive care in our facilities and through our providers live in Lancaster County or our adjacent Counties. We do not have patients travelling from Philadelphia County to Penn Medicine Lancaster General Health for their healthcare. Literally, everyone who would be party to a lawsuit filed in Philadelphia County would incur travel, lost work time, and increased costs for themselves and their family members/caregivers if the proposed rule change took effect. We also anticipate medical malpractice rates would again skyrocket as they did between 2000 - 2002.

Before the current law was passed, Pennsylvania venue laws helped create a medical malpractice crisis, limiting availability of insurance, driving up premiums, forcing physicians to retire or leave the state, and limiting patients' access to quality health care. We cannot afford to return to those days.”

Bovbjerg, Randall R; Bartow, Anna. “The Project of Medical Liability in Pennsylvania; Understanding Pennsylvania's Medical Malpractice Crisis; Facts about Liability Insurance, the Legal System, and Health Care in Pennsylvania”. *The Project of Medical Liability in Pennsylvania*, (2003).