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February 22, 2019

Thomas G. Saylor
Chief Justice
Supreme Court of Pennsylvania
601 Commonwealth Avenue
Suite 1500
Harrisburg, PA 17106-2635

Dear Chief Justice Saylor:

Thank you for allowing all interested parties to submit comments to the Civil Procedural Rules Committee (Committee) regarding the Committee's recent proposal to repeal Pa.R.C.P. 1006(a.1). As members of the House Majority Policy Committee—unlike the Civil Procedural Rules Committee—we held a transparent public hearing on venue shopping as it relates to medical malpractice on Thursday, February 14, 2019, to hear from many stakeholders about how the proposed venue rule change would affect their industries, as well as the 12.8 million Pennsylvanians who rely on quality, affordable health care to survive.

Upon the adjournment of that hearing, we were pleased to learn—by receipt of your letter to House Republican Leadership—that the majority of the Pennsylvania Supreme Court (Court) chose to postpone consideration of the venue rule change. We thank you for this decision, because—as we have heard from the many stakeholders, as summarized below—the venue rule will continue to preserve Pennsylvania's robust health care system. Further, we ask the Court to not repeal the venue rule in the future because the venue rule represents the right public policy for Pennsylvanians.

As we are sure you are aware, Pennsylvania experienced a statewide medical malpractice crisis in the early 2000s as the volume of medical malpractice actions filed in Philadelphia increased dramatically. According to a Pew Research Foundation study, between 1999-2001, Philadelphia juries decided in favor of plaintiffs 40 percent of the time—twice the national average (Appendix B). Further, in 2001 alone, Philadelphia juries decided about the same number of verdicts with awards of \$1 million or more as the entire state of California (Appendix A). These conditions made Philadelphia County the most ideal venue in which the plaintiff could file a medical malpractice action to increase the likelihood of the verdict decided in his or her favor—even if the alleged medical practice action did not take place in

Philadelphia, the Physician allegedly involved in the incident did not practice in Philadelphia or the plaintiff did not reside in Philadelphia. As a secondary effect, many physicians chose to settle out-of-court on actions that in many cases were without merit, instead of losing weeks away from treating their patients. Moreover, many recently graduated medical students and practicing physicians chose to leave Pennsylvania, due to the uncertain medical malpractice climate (Appendix D).

Further, the medical malpractice crisis also caused insurance premiums to rise and the overall cost of health care to skyrocket. According to a Wall Street Journal study in 2003, insurance premiums for physicians practicing high-risk specialties increased an average of 100 percent between 2000 and 2002—an average of 69-90 percent above the national average (Appendix A). Dr. Robert deRosario, OBGYN, of Lemoyne, Pennsylvania, almost closed his practice in 2003, because he struggled to find an insurance company to write a policy for him. Of the few insurance companies that would write a policy, he could not afford the premiums, leading him to be within days of closing his practice when the initial venue rule change took effect.

In an effort to address the medical malpractice crisis, the General Assembly passed Act 13 of 2002, which, among other provisions, established the Pennsylvania Interbranch Commission on Venue (Commission). The Commission's composition included appointees from all three branches of government and represented all political points of view. Following several meetings, the Commission released a report on August 8, 2002, which recommended restricting venue in medical malpractice actions to only where the action arose. Acting on this recommendation, the General Assembly passed Act 127 of 2002 and the Court adopted the venue rule in 2003.

Following the enactment of Act 127 and the Court's action, the law and rule resolved the medical malpractice crisis, leading to stability in the court system and the insurance and health care industries. The average number of medical malpractice actions filed in Philadelphia decreased from 1,204 actions between 2000-2002 to 406 in 2017—a 60 percent decrease! Meanwhile, neighboring Montgomery County saw an increase in filings from 22 filings between 2000-2002 to 107 in 2017—a 386 percent increase. It is important to note, however, that data from the National Practitioner Data Bank with regard to claim payments, when cross-referenced with the Administrative Office of Pennsylvania Courts, indicates **payouts have remained stable during the past decade (Appendix A). The reduction in filings in Philadelphia County and stability seen across the insurance and health care industries demonstrate that the current venue rule is working.**

Yet, on December 22, 2018, the Committee announced its plan to consider repealing this successful venue rule, thereby allowing—once again—medical malpractice actions to be brought in “any venue authorized by law” (Pa. Bulletin, Doc. No. 18-1964). Subsequently, we have heard from countless taxpayers of Pennsylvania concerned about the impact on their health care, as well as from stakeholders about how the repeal of the venue rule will directly affect Pennsylvania's health care industry.

The most immediate and primary concern that we heard is that the repeal of the venue rule will directly lead to a new medical malpractice crisis, similar to what occurred in the 1990s and early 2000s with the severe implications previously outlined. However, changes in the health care industry over the past decade would further exacerbate a future crisis.

Since enactment of the venue rule, many hospitals and health systems consolidated to share resources and make health care more accessible for patients. Notably, Lancaster General Health merged with Penn Medicine in 2015 to become Penn Medicine Lancaster General Health. This organizational relationship could open the door to a significant increase in the number of medical malpractice actions filed in Philadelphia—despite the fact that many of these actions would involve a physician providing medical treatment in Lancaster County to another resident of Lancaster County, being sued in Philadelphia (Appendix F).

It is also important to note: According to the Pennsylvania Health Care Association, \$5.39 per Medicaid resident per day is spent paying for frivolous lawsuits—costing taxpayers more than \$100 million in Medicaid dollars last year alone to pay for litigation costs and liability insurance. This \$100 million is paid under the current, stable medical malpractice climate (Appendix E). Repeal of the venue rule will cause these costs to increase as plaintiffs would be able to file more medical malpractice actions in Philadelphia, having a direct impact on taxpayers and the Commonwealth’s budget. We have also heard from Good Shepherd Rehabilitation Network (Good Shepherd), which already reports experiencing the impact of venue on insurance premiums. Good Shepherd stated that at the end of 2018, its incumbent excess insurer indicated it would no longer write coverage for organizations providing health care in Philadelphia, necessitating the need for Good Shepherd to find alternative insurance coverage and pay an increase in the cost of that replacement coverage (Appendix G).

We heard three specific arguments in favor of repealing the venue rule; however—upon further examination—each fails to pass muster:

1. **The current venue rule denies plaintiffs the ability to bring medical malpractice actions.** The current venue rule **does not** prevent a plaintiff from bringing action against a defendant for alleged medical malpractice; it merely limits where such action can be brought to the county where the action arose. In this way, plaintiffs are not denied access to the courts (Appendix A).
2. **The current rule provides special treatment of a particular type of action (medical malpractice actions) by restricting venue.** While the Court chose to limit venue specifically for medical malpractice actions, the Court should consider limiting venue for all civil actions. In this way, the Court would create equality for all civil actions, while not recreating the medical malpractice crisis of the early 2000s (Appendix C).
3. **270,000 incidents have been reported to the Patient Safety Authority in 2017, indicating a significant need to punish bad actors.** First, while 270,000 incidents may have been reported, this data point is highly misleading. Many of these incidents may have never actually caused harm to a patient, and only 455 incidents caused permanent harm to patient. Of those 455 incidents, not all of those actions would result in filings with the court. For example, a nurse may have drawn more insulin for a patient than necessary. Then, following protocol, a second nurse checked the amount prior to administering the insulin and identified the mistake. The incident was subsequently reported, despite no harm to the patient (Appendices D and F).
4. **Data compiled by the Court indicates a significant reduction in medical malpractice actions over the past 15 years.** This trend indicates that the venue rule is working, because it has been effective in resolving the medical malpractice crisis by reducing the number of medical

malpractice actions. For perspective, the General Assembly passed stricter Driving Under the Influence (DUI) laws to prevent individuals from driving under the influence of alcohol. With these laws, Pennsylvania has seen a reduction in DUI arrests. Because the DUI laws have been successful in reducing DUIs, the General Assembly would never consider repealing this law. Because if it did, Pennsylvania would likely lead to an uptick in DUIs again (Appendix F).

Finally, again, we appreciate you postponing consideration of repealing the venue rule and are confident that by preserving the current venue rule, taxpayers and patients will retain their bond with their physicians, Pennsylvania's health care industry will continue to thrive, and the insurance industry will remain stable. In the future, we humbly ask that if the Court considers repealing this venue rule that it:

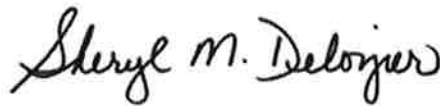
1. Study the exact impact of removing the venue rule, particularly how it will affect the delivery of quality health care to all Pennsylvanians.
2. Listen to Pennsylvania's residents, who have submitted comments on a proposed venue rule change to the Committee during the comment period.
3. Hold a transparent, public hearing similarly to the House Majority Policy Committee.
4. Preserve the health care of Pennsylvanians by preserving the current venue rule for medical malpractice actions.

Again, thank you for allowing us to submit our findings from the February 14th hearing. For your reference, we have also submitted the written testimony received by the House Majority Policy Committee with this letter.

Sincerely,



DONNA OBERLANDER
House Majority Policy Chairman
House of Representatives



SHERYL DELOZIER
House Majority Deputy Policy Chairman
House of Representatives



MINDY FEE
House Majority Deputy Policy Chairman
House of Representatives



MARCIA HAHN
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CRAIG STAATS
House Majority Deputy Policy Chairman
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JUSTIN WALSH
House Majority Deputy Policy Chairman
House of Representatives



JEFF WHEELAND
House Majority Deputy Policy Chairman
House of Representatives

Attachments

- cc: Justice Max Baer
Justice Debra Todd
Justice Kevin Dougherty
Justice David Wecht
Justice Sallie Updyke Mundy
Justice Christine Donohue
Civil Procedural Rules Committee