

State Court's Proposed Venue Rule Change Impacts YOU!

On Dec. 22, 2018, the Civil Procedural Rules Committee of the PA Supreme Court published a proposed rule change in the *Pennsylvania Bulletin*. This proposed change would revise the venue rule (the county in which a case may be filed) for medical liability cases. No matter where you live in Pennsylvania, or what your practice entails, you will be affected!

If you don't remember the early 2000s when Pa. was in the middle of a medical liability crisis, physicians were leaving the state in droves, leaving patients without their physicians, and medical liability premiums were going up statewide. Only four percent of medical school and residency graduates were staying in Pennsylvania because of the med mal environment.

We simply can't afford to return to those days. Patient access to quality care, costs of medicine and your entire practice environment would be impacted. Read the information below and help us by writing a letter yourself.

PA-ACP is committed to protecting its members and patients and is fighting this rule change. We are asking your help by personally filing comments opposing the change the Committee before February 22.

BACKGROUND – MED MAL, VENUE AND PA COURTS

In the early 2000's, doctors' fees and hospital incomes were being cut by the growth of managed care, limits on payments, etc., and hospitals were facing huge legal liabilities - at the same time costs of operations for hospitals and private practitioners/small groups were increasing.

Med mal premiums increased at double digit rates. Act 135 of 1996's CAT Fund (Catastrophic Liability Fund) changes coincided with an effort by the judicial system to resolve a large backlog of malpractice claims, many tied up in the Philadelphia court system. The result was that private insurers faced unexpected payments and began to charge more for premiums, while providers were forced by mandated CAT Fund changes to boost the amount of private coverage they had to purchase.

Three of the state's five major private medical-liability insurers ceased writing policies in Pennsylvania. Insurance premiums shot up in certain specialties, threatening providers' financial viability. Reinsurance costs jumped after the 2001 terrorist attacks. Annual CAT/MCARE Fund assessments on providers rose sharply, in part to cover high unfunded liabilities from past cases. The result was widespread concern among medical professionals and patients, fueled by accounts of physicians leaving the state or retiring from practice and threatened reductions in hospital services, especially in rural Pennsylvania.

Three major attempts to rein in costs of lawsuits resulted in acts of the legislature in 2002. "Venue shopping" was one of the key pieces passed. PA providers had long complained that malpractice plaintiffs' attorneys sought the most favorable jurisdiction to try their cases— usually Philadelphia, which typically generated the state's highest payouts as well as highest rates of successful claims.

In 2002, after several years of work with the Governor, the General Assembly and stakeholders, two laws were passed to control the med mal crisis. Act 13 of 2002 made many changes in the lawsuits themselves, and later that year, Act 127 mandated that any alleged medical malpractice suit must be filed in the county where the alleged action occurred – and was upheld by the State Supreme Court. The impacts-especially on filings in Philadelphia, were quick and dramatic.

PHILADELPHIA COURTS AND VENUE SHOPPING

In 2001, CAT Fund director John Reed said that “physicians in counties surrounding Philadelphia are apparently being sued in Philadelphia courts in increasing numbers because of the ease with which plaintiff attorneys can shift trial venues.” Stakeholders were involved in the MCARE Act negotiations but were unable to reach agreement on reforming venue rules. But Act 13 established an “Interbranch Commission on Venue” including members of the judiciary and trial lawyers to study the problem. The Commission recommended malpractice cases be filed only in the county where an injury occurred. This became law in October with Act 127 of 2002 – an Act that was upheld by the Pennsylvania Supreme Court, which had already adopted similar procedural rules.

Prior to Act 127’s passage, plaintiffs filing in Philadelphia were more than twice as likely to win jury trials relative to the national average, and over half of these medical liability awards were for \$1 million or more. The National Center for State Courts documented a 40 percent win rate for plaintiffs in Philadelphia medical trials in 2001, three times the plaintiff win rate in Allegheny County. NCSC also found that Philadelphia trials were four times more likely to be appealed than those tried in Pittsburgh. And according to the Pew Charitable Trusts, the number of medical liability verdicts that exceeded \$1 million in Philadelphia rivaled all of those in the entire state of California in 2000-2002.

Philadelphia had become a prime target for trial lawyers who filed thousands of lawsuits. For many lawsuits, it still is. Philadelphia courts – and trial lawyers - continue to ignore US Supreme Court decisions providing jurisdictional due process protections and limiting where cases can be filed in a state. Under the US Supreme Court’s Daimler AG v. Bauman and Bristol-Myers Squibb decisions, there is no good reason why eighty-four percent of the cases in Philadelphia against pharmaceutical companies are filed by out-of-state plaintiffs. Philadelphia Court of Common Pleas continues to be a magnet for mass tort claims from across the country and the court continues to look the other way when forum shopping occurs. When over 5000 product liability cases are filed against drug manufacturers in one year, up from 1000 to 1300 filed in 2015 and 2016, something is amiss.

Between 2000 and 2002, there was an average of 1204 medical malpractice cases filed in Philadelphia per year. That figure plunged by half in 2003 to 577, and continued to decline to under 400, until 2017! The total med mal filings statewide in 2002 were 2,733. After passage of Acts 13 and 127, the number dropped by 1,000, and has remained at near 1,500/year for the past ten years.

WHAT’S HAPPENING TODAY

Under current law, a medical professional liability action can only be filed in the county where the case of action occurred. Thus, a medical liability suit can only be initiated in the county where the alleged negligent health care services were rendered. If there are multiple defendants, venue is appropriate in any county in which at least one of the defendants can be sued.

But a decision by a lower court created a “precedent” to use a loophole to defeat the intent of current law (see Superior Court document). As a result, the State Supreme Court’s Civil Procedural Rules Committee has proposed [changes to the rules](#) governing appropriate venue in medical professional liability actions, which would expand the possible venues where a medical liability action can be initiated, by allowing a suit to be filed in any county where:

- A defendant may be served,
- The cause of action occurred,
- A transaction or occurrence took place out of which the cause of action arose,
- Venue is authorized by law, or
- The property or a part of the property, which is the subject matter of the action, is located provided that equitable relief is sought with respect to the property.

By allowing venue in counties with little to no relation to the underlying cause of action, claimants could shop for verdict friendly venues in which to file their suits. Geisinger for example has 188 affiliated facilities, and with these rules, a case could be filed in any county with a facility. An alleged action at Lancaster General could be filed in Philadelphia now that LGH is part of the Penn Healthsystem. An action at any of UPMC's 40 odd facilities could be filed wherever UPMC has a site in the system; and an alleged case of malpractice at one of Geisinger's 188 facilities, could be filed in any county were Geisinger has a facility.

As was the case before the current rule's adoption, this would lead to higher premiums for medical liability insurance and make Pennsylvania a less attractive place for physicians to practice. Even if you practice in Philadelphia, this change will affect you as medical malpractice premiums are raised for all physicians.

JOIN US, AND SEND AN EMAIL NOW OPPOSING THIS RULES CHANGE!

PA-ACP is formally opposing this rules change, and we are asking you to act to protect your practice and patients. Comments on the proposed changes should be submitted to the Civil Procedural Rules Committee before the Feb. 22 comment deadline. We urge you to oppose the change, use personal information if possible, and consider the following talking points in preparing your comments:

TALKING POINTS

- The rule change would effectively rewrite established state law for venue in these cases.
- It would return us to a practice climate that's oppressive, costly and harmful to patients.
- The resulting jump in liability premiums for physicians will drive up health costs for everyone.
- Recruiting physicians and keeping them here will be a challenge.
- Patient access to care would suffer across the board, but especially among high-risk specialties such as neurosurgery and OB-GYN, but not just these specialties. Primary care will be affected as well. Long-standing, trusted patient-physician relationships will be broken.
- This will have a chilling effect on clinical trials and medical innovations.
- Venues like Philadelphia and Pittsburgh would see a back-log in cases and delay justice for those residing in those cities.
- Patient care will suffer.

E-mail is the preferred method for submitting comments. Comments should be submitted to:

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