

Pennsylvania Medical Society

Testimony to

Legislative Budget and Finance Committee

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Presented by:

Danae Powers, M.D.

President

Pennsylvania Medical Society

Good morning Chairman Mensch, Vice Chairman Brewster, and members of the Legislative Budget and Finance Committee. I am Dr. Danae Powers, President of the Pennsylvania Medical Society, a physician member organization of more than 23,000 physician members. I appreciate the opportunity to provide a physician's perspective on the proposed venue rule change and to be the voice of Pennsylvania physicians.

PAMED would like to extend our sincere thanks to Senate Judiciary Chair Lisa Baker and her Senate co-sponsors for introducing and advocating for Senate Resolution 20.

By way of background, I am a board-certified anesthesiologist serving rural Pennsylvania counties around State College. I completed my medical degree from Albany Medical College through a combined bio-medical program with Rensselaer Polytechnic Institute in Troy, NY. I have also worked for the University of Pittsburgh Medical Center liver transplant team as well as the University of Pittsburgh School of Medicine. While in Pittsburgh, I also worked for Allegheny General Hospital directing anesthesia research and teaching.

Because of this resolution, we have been afforded the opportunity to explain the potentially harmful impacts of this proposed change. What may seem like a procedural change, will in fact, impact the physician workforce and the 12.8 million Pennsylvanians we care for every day.

*We sincerely believe that patients who have suffered loss deserve their opportunity to be heard in a court. And, regardless of our perspective in this discussion, I know this to be true: we are all committed to protecting and promoting the health of Pennsylvania's citizens and ensuring fairness in the judicial system.*

The Pennsylvania Medical Society strongly opposes the proposal presented by the Civil Procedural Rules Committee. The proposal presented by the Committee threatens three distinct but inter-related issues: forum shopping in metropolitan markets across the Commonwealth, the stability of liability premiums for physicians to practice in the state, and perhaps most importantly, the impact on patients and their ability to access quality care.

#### **[Forum shopping/Venue shopping]**

First, the venue rule, which went into effect in 2003, was designed to address forum shopping—the proclivity of plaintiff's attorneys to file medical professional liability actions in high verdict counties, such as Philadelphia, even when there was no sensible connection between the county and the care received by the plaintiff.

Philadelphia is regularly used as an example of the potential abuse of venue.

- Between 2000-2002, Philadelphia County averaged 1,204 medical malpractice filings—44 percent of the cases filed statewide.

- From 2003-2017, after the venue restricts were put in place, the highest number of filings in Philadelphia was 586 filings—29 percent of the cases filed statewide.
- Since courts prohibited forum shopping in 2003, there was a 66.3% decline in medical liability cases filed in Philadelphia County.

One of my colleagues explained of a time in the early 2000s when he was involved in a lawsuit. He had only seen the patient as a referral, had done nothing wrong and had no direct, long-term involvement in the patient's care, but when the lawsuit was filed, he of course was part of it. The action was filed in Philadelphia, where the physician wasn't even from. His attorney and insurance carrier recommended settling the course based upon nothing except the fear of the Philadelphia court system and the fact that litigating the case in Philadelphia was going to be more costly than settling.

As I stated earlier, we sincerely believe that patients who have suffered loss deserve their opportunity to be heard in a court room. Physicians and other health care providers likewise deserve the opportunity to be able to defend themselves without the demonstrated bias of some jurisdictions.

Returning to a rule that permits medical professional liability suits in the county where the defendant regularly does business will mean that a physician will be required to defend a case possibly hundreds of miles away from where they work, robbing other patients of the care they would have otherwise been able to provide.

Thankfully, the certificate of merit and possibly other reforms have had positive effect. The number of cases filed, and physicians sued, declined significantly. While at the same time, both the plaintiff and defendant were given a fair opportunity to be heard in their local community, by local jurors and judges.

#### **[Liability Premiums]**

Second, the proposed changes could also usher the return of skyrocketing medical liability premiums for physicians that we say and felt in the late 1990s and early 2000s. Even with our current reforms in place, medical liability insurance costs in Pennsylvania still rank near the highest in the nation. These proposed changes threaten to make that even worse.

The proposed rule would increase cost for the professional liability insurance carriers in the state and a domino effect could ensue:

- Medical liability carriers may voluntarily or involuntarily move out of the Pennsylvania market. Insurance carriers could become selective in who they choose to underwrite. This impacts all Pennsylvania physicians, as the number of carriers has the potential to decrease, making it increasingly difficult to find professional liability coverage in the state.
- Since professional liability insurance is required to practice in the state, physicians could be left with three options: seek other practice alternatives, retire, or leave the state all together, which Pennsylvania began to see in the early 2000s.

I have been told there is the feeling that this proposed change shouldn't bother physicians since most physicians are employed and therefore don't pay for their own medical liability insurance. Although it is true that more physicians are employed than in previous years; there are still significant numbers of physicians who continue to operate independently and do pay their own insurance and other costs.

These physicians often practice in medically underserved areas. Along with paying their own insurance, they are also employers supporting the local economy and community. Increases in these expenses means they must find cuts in their business operations, the same as any other business must do when faced with increasing costs and no increase in revenue.

This statement that physicians don't pay their own medical liability expenses also overlooks the fact that someone still pays these expenses. Whether it is a health care system or another entity, the ultimate cost must still be passed along to the consumer, in most cases the patients; either in higher out of pocket expenses, higher insurance premiums or both.

***[The impact on patients and their ability to access quality care/Rural Areas]***

Most importantly, the proposed venue rule changes could threaten patient access to quality physician care, particular in the state's rural areas:

- Forty-eight of Pennsylvania's 67 counties—home to more than 25 percent of the state's residents—are designated rural.
- Twenty-two percent of Pennsylvania's citizens live in areas with health care provider shortages.

The rural access to care problem links directly to and is exacerbated by the medical professional liability insurance issue.

A 2016 Pennsylvania Rural Health Association's report points out that affordable medical professional liability insurance is a major factor for physicians when contemplating where they will practice. And, although greatly improved from the early 2000's, Pennsylvania's liability climate continues to be a challenge, discouraging physicians from choosing to train or practice in Pennsylvania.

The difficulty of getting health care providers to locate in Pennsylvania's rural areas is well documented. If the current venue rule is changed, we will risk losing those providers who already live and work there and discourage others from choosing to care for patients in these areas.

Under the current rule, if sued for an alleged medical error, physicians who choose to practice in a rural area can expect to defend in his rural county, submitting to the liability and compensation judgments of the citizens of that county. If the venue reform is rolled back, however, it is more likely than not that the plaintiff will seek to sue in Philadelphia or some other jurisdiction with a record of high plaintiff success or verdicts. This means that the physician is away from their practice for a longer period of time, thus reducing patient visits during the legal proceedings and impacting a patient's ability to see their physician in a timely manner.

In addition to time away from patients, the rural physician will face a higher likelihood of plaintiff verdicts, a higher verdict or settlement amount, and a resulting higher MPL insurance rate and MCARE assessment.

***[Closing]***

I know that the liability crisis in the late 90's and early 2000's brought the Commonwealth's medical community to its knees as high-risk specialists like neurosurgeons curtailed complex surgeries, OB/GYN's stopped delivering babies, and the ability to recruit physicians to practice in the Commonwealth all but dried up. Vulnerable populations like older Pennsylvanians, newborns, expectant mothers, and trauma patients suffered while personal injury lawyers unfairly pocketed millions in contingency fees.

The current venue rule, which stipulates that medical liability claims must be filed in the county where the alleged medical error occurred, helped stabilize the medical liability climate back in 2003. And despite this, oddly enough, the Committee proposes to undo the very reform that helped create the stability by pointing to the significant reduction in medical professional liability actions over the past 15 years. To the contrary, a reversal of the venue rule will only serve as a catalyst for a resurgence in forum shopping for verdict counties like Philadelphia.

We must learn from history, or we are doomed to repeat it. The result of the proposed venue rule change by the Civil Procedural Rules Committee will create a domino effect of negative implications for the professional liability insurance market, physicians, other health care providers, and most importantly, access to quality care for all Pennsylvanians.

Thank you again for the opportunity to share with you my concerns regarding the proposed venue rule and I would be happy to address any questions you may have.