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June 21, 2019

VIA EMAIL: clatta@palbfc.us

Christopher Latta, Deputy Executive Director
Legislative Budget and Finance Committee
P.O. Box 8737
Harrisburg, PA 17105-8737

Re: Venue Rule Testimony of Katherine B. Kravitz (PBA)

Dear Mr. Latta:

Enclosed please find my venue rule testimony which I will be presenting on June 25, 2019 at 11:00 a.m. before the Budget & Finance Committee.

Very truly yours,



Katherine B. Kravitz

KBK:kag
Enclosure

Testimony re: SR20 before the Legislative Budget & Finance Committee

Katherine B. Kravitz
Barley Snyder
Lancaster, PA
June 25, 2019

Thank you for the opportunity to offer testimony before the committee today.

I would like to start by taking you back to 2000; that year, Measles was declared to be eradicated in this country, thanks to a highly effective vaccination program. So why then, have we seen more than double the measles cases in the first six months of this year than there were in all of last year? Before you say Mrs. Kravitz, you are in the wrong hearing, let's answer the question, because what happened was at least in part due to the fact that pockets of people throughout the country decided that the vaccination that had kept the problem at bay all these years, was no longer needed. That is where that problem and this one intersect, because it truly defies logic to consider doing away with a tried and true prophylaxis when the problem it was designed to prevent would very likely reoccur.

Given the relative stability the professional liability insurance market has experienced in the last 15 years, it would be easy to forget just about the problem in question. So let's review:

- Premiums for Pennsylvania physicians in the essential areas of internal medicine, general surgery, and obstetrics/gynecology increased by 100% or more between 2000 and 2002; premiums for orthopedists in Pennsylvania were some of the most expensive in the country;
- Pennsylvania hospitals had among the worst insurance availability problems in the nation;
- A glut of cases were filed in Philadelphia County, overburdening that counties system and forcing health care providers to litigate in foreign venues;
- Several of the major liability insurance providers, including PHICO, PIC and MIIX, went belly up, leaving behind underfunded claims, gaps in insurance, health care providers personally exposed to liability;
- Emergency rooms, labor and delivery units and entire hospitals closed their doors, severing community access to care.

That situation was not good for patients, for plaintiffs or for health care providers. In reality, hospital closures continue to be a problem, particularly in rural America. In order to survive, and in attempt to provide the best service possible to their communities, many hospitals of various sizes and capacities, have integrated with regional health systems based in larger venues like Philadelphia and Pittsburgh. Our legislature demonstrated keen insight into the future of health

care when it acknowledged in prior legislation, the detrimental impact forum shopping would have on providers from smaller communities if, for example, they could be dragged into Philadelphia for litigation simply because Philadelphia was the home base of a system they joined. In fact, one of the arguments I have heard from Plaintiff attorneys in support of revoking the venue rule is that 'those big systems knew what they were getting into' and, 'they did it for money.' I do not think that bringing a community hospital into the fold is necessarily a big cash cow for health systems. Indeed, revocation of the venue rule would more likely discourage what might be hospital saving affiliations, because the potential to be sued in Philly or Allegheny would add another layer of potential liability for *all* involved.

However, regardless of the economics of healthcare integration, dragging the Dauphin County provider into Pittsburgh or forcing the Lancaster county provider to litigate in Philadelphia punishes the Dauphin county hospital, the Lancaster County doctors more than the Health System itself. Frankly, no health care provider should be punished for looking for ways to provide better and more healthcare service to more people, and that is what you do if you take away the venue rule.

Another argument that has been proffered in support of revoking this preventative measure is the suggestion that would-be plaintiffs are going uncompensated because of it. While no objective data has been provided in support of this assertion, the Plaintiffs Bar seems to point to the overall reduction in medical malpractice claims being filed, and the fact that there are counties in the Commonwealth where Plaintiff's verdicts in a medical malpractice case are rare. In response to such claims, consider the following:

- The venue rule was *meant* to reduce the number of claims brought inappropriately in Philadelphia County. This goal has been accomplished as evidenced by the fact that while Philadelphia County has seen a robust decline in cases, Bedford, Bucks, Crawford, Greene, Indiana, Lancaster, Lawrence, Luzerne, Montgomery, Washington and Wayne Counties all have experienced *increases* in the average number of claims filed. My home county of Lancaster has seen an increase of over 270%.
- In addition, although loopholes to the Certificate of Merit Rule have in recent years detracted from their effectiveness, that aspect of the MCARE Act has undoubtedly also reduced the number of claims brought by weeding out those that cannot be supported by a qualified expert.
- The contention that Plaintiffs are not being compensated as evidenced by the lack of verdicts in some more conservative counties completely ignores the fact that many many more claims are resolved through settlement than are litigated in the courts. In its 2018 Report, the MCARE Fund reported that 1700 claims had been resolved through Alternative Dispute Resolution of one kind or another since 2003, and that is only the cases that reached the fund layer; many other cases that do not reach the Fund's coverage are also resolved through settlement, with or without ADR.
- In 2018, the Fund and Primary Insurers paid out \$777 Million to Medical Malpractice Plaintiffs, which again, represents only a part of the overall payouts for all claims. Still, this number alone reflects a 30% increase in payouts for both the Fund and Primary Insurers over the last 5 years. While many factors affect these numbers, it is difficult to argue that Plaintiffs are going uncompensated in the face of such statistics. Indeed, one

prominent Philadelphia Plaintiffs firm has famously advertised the \$400 Million it recovered for clients in one recent year. I do not think that advertisement was born of a sense that either the firm or its clients had been short shrifted by a having to actually litigate their cases in the county where the events at issue occurred.

- An analysis performed by Diedrich Healthcare on 2018 medical malpractice payouts shows that Pennsylvania was ranked second in the country in total payouts and fifth in payments per capita. There is no reason, therefore, to believe that fewer victims of medical negligence are being compensated, or that revoking the venue rules would solve this imagined problem.
- Finally, many counties, Lancaster included, are beginning to see verdicts in Medical Malpractice cases. Don't tell Joe Roda or April Kutay that you cannot win in Lancaster, because they have both had seven figure verdicts in Lancaster within the last 5 years or so.

Plaintiff attorneys may also point to Forum Non Conveniens rules as being the proper remedy for addressing an inappropriate choice of forum. However, these attorneys know very well that the burden of proof for such a motion is terribly high. Furthermore, pursuing such motions are very labor intensive, sometimes involving Depositions and other Discovery just to resolve that issue. Medical Malpractice litigation is already costly and protracted enough without adding that additional burden.

It has been suggested that it is appropriate to bring cases in Philadelphia because the juries there 'get it right' while many other counties just do not fulfill their duties. This argument is an unacceptable affront to the men and women who give up their time to serve on juries, and swear or affirm to uphold the law in doing so. Because jurors in one county may be more conservative than jurors in another is certainly not a reason to artificially herd all cases in to Philadelphia.

Another common refrain among Plaintiff attorneys who support returning to the detrimental way of old is 'Why should Medical Malpractice cases be treated any differently than any other cases when it comes to venue?' To begin with, a hospital which is a part of a healthcare system based in say, Philadelphia is not like a McDonald's franchise. Rather, hospitals maintain autonomy, with separate governing boards, separate medical staffs, and separate licenses. The hospital remains entrenched in and committed to its own mission in its home community. Another reason to continue employing this appropriate preventative measure is the fact that health care is not an optional commodity; generally, most people will at some point in their lives be required to seek medical care. This underscores the need to ensure that all people retain access to care. Keeping the professional liability insurance market stable, and making Pennsylvania a welcoming place for new providers is essential to creating and maintaining that access to care. The venue rule is, by the way, not an unprecedented tweak to the general rules in recognition of a particular need. For example, in the 60's Pennsylvania legislators passed the Mental Health Procedures Act, which granted qualified immunity to behavioral health providers, as a part of the Act's overarching goal of assuring "the availability of adequate treatment to persons who are mentally ill[.]" See 50 P.S. §7102 (Statement of Policy).

In summary, it is of key importance that all citizens of the Commonwealth continue to have access to high quality, comprehensive health care. The venue rule helps achieve that, and there is

no evidence that anyone has been harmed by it. Rather, after the rule was enacted, filings went down in Philly and up in other places, because they were now being brought in the right place. Cases are still brought, cases are still fully and fairly litigated. Many are still resolved fairly through ADR. The venue rule is also not a crazy, illogical rule; it is not burdensome to comply with the rule. As a litigator, when I talk to juries at the end of a case, I am invariably asking them to put the evidence onto those scales of justice, and see which way the scales tip. Here, if you do that, the scales tip overwhelmingly in support of maintaining the venue rule as is; it is a tried and true preventative measure which has succeeded in solving a destructive, harmful problem. Even though the problem is not a "disease" per se, like measles, discontinuing administration of the venue rule's good medicine is simply a bad idea on many levels.

Thank you.