



Kevin P. Black, M.D.

Interim Dean, Penn State College of Medicine (effective July 1, 2019)

Panel V – Medical Colleges

June 26, 2019

10:15 – 11:15 a.m.

Good morning Chairman Mensch, Vice Chairman Brewster and members of the Legislative Budget and Finance Committee (Committee). Thank you for the opportunity to appear before the Committee to offer my insights on the potential impact the proposed amendment to Pa.R.C.P. No. 1006 may have on medical colleges in the Commonwealth of Pennsylvania.

I would first like to thank Senator Lisa Baker for introducing Senate Resolution 2019-20, directing this Committee to conduct a study of the impact of venue shopping for medical professional liability actions on access to medical care and maintenance of health care systems in this Commonwealth and requesting that the Supreme Court delay action on the proposed amendment. Penn State Health and the Penn State College of Medicine commend Senator Baker for her efforts to ensure that the proposed rule be suspended to allow for the Legislative Budget and Finance Committee to conduct a full examination of its implications.

For the record, Penn State College of Medicine, Penn State Health and its affiliated hospitals and physician practices are opposed to the Pennsylvania Civil Rules Committee's proposed amendment and, as such, submitted formal comments in opposition to the proposed amendment on February 19, 2019, to the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania under the signature of Dr. Craig Hillemeier, Sr. Vice President of Health Affairs for Penn State University, Dean of Penn State College of Medicine & CEO of Penn State Health.

I have been a faculty member and physician at the Penn State College of Medicine and Hershey Medical Center for 26 years, during which time I have practiced orthopaedic surgery (which I still do), taught medical students and orthopaedic surgery residents, and served as residency program director. For the past 16 years I have served as Chairman of the Department of Orthopaedics and Rehabilitation, and for the past 6 years as Vice Dean of our University Park Regional Medical Campus. I have been president of the Pennsylvania Orthopaedic Society and American Orthopaedic Association, the leadership society within the orthopaedic profession, largely comprised of leaders in academic medicine. On July 1, I will assume responsibility as Interim Dean of our College of Medicine.

Having practiced in Pennsylvania since 1993, I have experienced first-hand the impact of how a malpractice crisis impacts not only the care of our patients, but the educational experience of our medical students and residents. There is abundant peer review literature, some of which I will share with you now, which is supportive of what I have directly experienced. I will address this from two different but related domains. First, will we be able to attract and retain teaching physicians to our medical schools?

In 2003, one year AFTER the Medical Care Availability and Reduction of Error (MCARE) Act went into effect, and in response to Pennsylvania's medical malpractice crisis, researchers from the Harvard School of Public Health and Columbia Law School surveyed physician specialists from this state to obtain further information regarding the impact of the malpractice climate on physician plans to move their practices out of Pennsylvania, retire early, change practice patterns and understand access issues for patients. Strong majorities reported increased waiting times and driving distances for patients. 11% said they would retire or definitely move their practice out of state in the next two years, and another 29% said they were very or somewhat likely to move their practice out of state. In addition, 42% of specialists had reduced or eliminated high risk aspects of their practice. Do you want to run the risk of this happening when, in a 2016 report from the Association of American Medical Colleges, in which every combination of scenarios was modeled, a shortage of between 62k and 95k physicians is projected for our country?

Numerous investigations clearly indicate the association between the malpractice environment and the practice of defensive medicine. The latter includes the ordering of unnecessary tests, deviation from clinical practice guidelines, and avoidance of high risk patients. While each of these, by itself, is harmful to patient care, their practice in a teaching hospital will result in a generation of physicians that adopt similar unhealthy practice habits. In addition, the risk avoidance behavior of community physicians will result in referral of increased numbers of the most complex patients to teaching physicians at medical schools, contributing to stress and burnout which are already at unprecedented levels.

"Burnout", for which the rate is already twice as high among physicians relative to the overall population, will only be exacerbated by a return to the malpractice climate of 15-20 years ago. This will impact all aspects of a physician's professional and personal life. Not only is burnout associated causally with medical error, but it will also negatively impact the other core missions of medical schools and academic medical centers. In 2018 Medscape surveys rated Pennsylvania the 14th highest burnout rate among physicians nationally. Although admittedly multifactorial, Pennsylvania's malpractice climate, even now, is a likely contributing factor with the 4th highest malpractice award payout amount per capita.

The second domain relates to one of the core missions of a college of medicine: to improve the health and quality of life of our communities. One of the ways in which we do this is in training the next generation of physicians, with the hope that the most outstanding will remain to practice in our state. From 2002 to 2005, 16% of residents completing their training at Milton S. Hershey Medical Center remained in our state. Between 2006 and 2019, that number averaged 30%. These physicians are caring for many people in this room today, as well as your families and friends. I have no doubt, that elimination of venue shopping in 2002 contributed significantly to our ability to retain our best and brightest.

Thank you again for the opportunity to appear before the Committee and share my concerns with the deleterious impact the proposed rule change could potentially have on undergraduate and graduate medical education in this Commonwealth, ultimately impacting the overall healthcare delivery system. At this time I'd be pleased to answer any questions.