

February 15, 2019

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
SUPREME COURT OF PENNSYLVANIA
P.O. Box 62635
Harrisburg, PA 17106-2635

Re: Public Comment in Opposition to Proposed Amendments to Pa.R.C.P. Nos. 1006, 2130, 2156, and 2179

Dear Ms. Shultz:

The Doctors Company, founded in 1970, is the nation's largest physician-owned medical malpractice company. We are writing concerning a contemplated change to venue rules that we believe may negatively impact our members and the patient population. The proposed amendments to Pa.R.C.P. Nos. 1006, 2130, 2156, and 2179 expressly delete section 1006(a.1), introduces inherent venue inequity into medical malpractice actions, and ignores the past healthcare debacle that led to the creation of section 1006(a.1).

Rural vs. Urban Healthcare Resources

Forum shopping is particularly problematic in medical malpractice actions, because rural and urban juries bring different experiences regarding healthcare providers and resources to the jury box. According to 2014 statistics from the Center for Rural Pennsylvaniaⁱ, a legislative agency of the Pennsylvania General Assembly:

- Rural residents have only one physician for every 586 residents. Urban residents have one physician for every 266 residents.
- Regarding the availability of hospital beds, there are only 2.17 beds for every 1,000 rural residents versus 6.9 beds for every 1,000 urban residents.
- In matters of life and death, rural infant mortality is 6.1 for every 1,000 live births and 6.9 for every 1,000 live births in urban areas.

Rural practitioners often face limitations that are simply out of the experience of urban practitioners, such as access to specialists, sub-specialists, advanced imaging, and testing resources. Jurors in urban centers, like Philadelphia, often bring a fundamentally different view of the practice of medicine than their rural or suburban peers. While the medicine at issue in a case should be drawn from the evidence, it ignores reality to suggest there is no difference in experience between rural and urban jurors.

Past as Prologue

In the early 2000s, Pennsylvania faced a healthcare access crisis when medical malpractice venue shopping was rampant. Plaintiffs' attorneys took advantage of ineffective venue laws and filed suit in

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high judgment urban areas, such as Philadelphia, regardless of whether the alleged medical malpractice occurred there or the other side of the state.

This led to an overloaded Philadelphia court system, an increase in jury awards, and physician flight out of state. Statistics compiled by the Supreme Court revealed that between 2000 – 2002, an average of 1,204 medical malpractice cases were filed in the Philadelphia courts each year.

In 2002, based on recommendations from a joint interbranch commission of the courts and the legislature, the Supreme Court amended the venue rules to require that medical liability suits be brought in the county in which the alleged injury occurred, which is also where the evidence and witnesses are usually located.

In 2003, medical liability case filings in Philadelphia were cut in half, and the numbers continued to decline each year until recently. As a result, the high-verdict area courts were less burdened and physicians stayed in-state, rather than migrate to fairer judicial climates in other states.

Fundamental Fairness

Lastly, at its core, it is fundamentally unfair to allow plaintiff's counsel's choice to remove a claim from the community where it arose, where the witnesses live, and the evidence is located, and ship the case hundreds of miles to another area that has little, if any, connection to the dispute.

Conclusion

The reforms currently in place have resulted in medical malpractice cases being filed and heard where they arose. The deletion of section 1006(a.1) is antithetical to the provision of equal justice under law, the competent administration of the courts, and providing patient access to healthcare providers.

We respectfully submit these comments to the proposed amendments to Pa.R.C.P. Nos. 1006, 2130, 2156, and 2179.

Sincerely,

THE DOCTORS COMPANY



Tamera K. Clark
Senior Vice President &
Regional Operating Officer - Northeast



Devin O'Brien, Esq.
Deputy General Counsel

:DWC

ⁱ http://www.rural.palegislature.us/demographics_about_rural_pa.html (accessed Jan. 7, 2019).