



February 18, 2019

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635

Dear Counsel Schultz:

The undersigned organizations are writing to register their strong opposition to the proposed changes to the venue rules in medical liability actions being proposed by the Civil Procedural Rules Committee.

Pennsylvania health care providers and consumers would be adversely affected by a change to the venue rule. By allowing venue in counties with only a tangential relation to the underlying cause of action, claimants could shop for verdict-friendly venues in which to file their suits. This could again lead to higher premiums for medical liability insurance, make Pennsylvania less attractive to physicians and other health professionals considering practicing in the state, increase medical costs, and adversely impact access to care for consumers.

Background. As you know, prior to 2002, Pennsylvania was facing a medical liability crisis. Medical liability insurers left the market, limited the sale of medical liability insurance, and experienced significant downgrades in their credit ratings. In turn, hospitals, physicians, and other healthcare providers faced skyrocketing premiums—leading many of them to leave the commonwealth or reduce services.

As a result of the passage of the Medical Care Availability and Reduction of Error (MCARE) Act, Act 13 of 2002, both the legislature and the Supreme Court adopted reforms that reduced the number of malpractice claims brought in Pennsylvania, especially in Philadelphia and Allegheny Counties. These reform efforts are widely seen as the most important step in Pennsylvania's efforts to address the medical liability insurance crisis, substantially reducing medical malpractice filings statewide.

In its proposed rule, the Civil Procedural Rules Committee is now proposing to rescind a key element of the 2002 reforms, i.e. the rule that limits venue in medical professional liability actions to the county "in which the cause of action arose." In the explanatory comment to the proposed rules, the Rules Committee states that "there has been a significant reduction in medical malpractice filings for the past 15 years," and that this reduction "has



resulted in a decrease of the amount of claim payments resulting in far fewer compensated victims of medical negligence.”

Why the Venue Rule Should Remain in Place. For the following reasons, our organizations do not believe that the venue rule should be rescinded.

- 1. The proposed rule change is not in the public interest**—The proposed rule changes will likely lead to, among other things, increased medical liability insurance rates, access issues for patients, and increased health care costs for businesses, consumers, and government payors.
- 2. The data on which the Committee relies does not support the conclusion that the current venue rule should be rescinded**—The reduction in court filings of medical malpractice actions demonstrates that the tort reform measures enacted by the legislature and the Supreme Court are working.
- 3. The Committee has not provided any data demonstrating that the current rule deprives alleged victims of access to the courts**—There is no evidence that counties where malpractice actions are currently being litigated are not rendering fair results.
- 4. The data provided by the Committee is incomplete because it does not include claims in which litigation was not filed**—The Supreme Court data tracks only those medical professional liability claims that were filed in court and tried to verdict, and does not include those claims in which litigation was not filed or those claims which were resolved outside of court. These claims must be taken into account before assuming that the alleged “special treatment” of medical liability claims is no longer warranted.
- 5. The proposal, if adopted, would represent a departure from the past practice of building consensus on rule changes that could have a significant public policy impact**—The Interbranch Commission on Venue, created under Act 13 of 2002, was comprised of appointments from the legislative, executive, and judicial branches of government. A majority of the members of the commission recommended that medical liability cases only be filed in the county in which the cause of action arises. The Pennsylvania Supreme Court



[The Urban Health Care Coalition of Pennsylvania](#)

Civil Procedural Rules Committee
February 18, 2019
Page 3

adopted the commission’s recommendation, as did the General Assembly through Act 127 of 2002. If the Committee’s proposed change is adopted, this would represent a departure from consensus approach adopted in 2002, and create a situation in which there would be two conflicting venue approaches, state law and a new court rule.

Recommendations. For all the reasons mentioned above, the Supreme Court should not implement the proposed rule change. At a minimum, however, any potential changes to the venue rules should only be made after careful evaluation and study of the potential impact of the rule changes and a determination by all three branches of government that the change is in the public interest.

Thank you for your thoughtful consideration of our concerns.

Sincerely,

- | | |
|--|---|
| Health Federation of Philadelphia | Pennsylvania Psychiatric Society |
| LeadingAge PA | Pennsylvania Rural Health Association |
| Healthcare Council of Western Pennsylvania | Pennsylvania Section of the American College of Obstetricians and Gynecologists |
| Pennsylvania Affiliate of American College of Nurse-Midwives | Pennsylvania Society of Physician Assistants |
| Pennsylvania Association of Community Health Centers | Pennsylvania State Nurses Association |
| Pennsylvania Athletic Trainers Society | Rehabilitation and Community Providers Association |
| Pennsylvania Chiropractic Association | Safety-Net Association of Pennsylvania |
| Pennsylvania Coalition for Oral Health | The Hospital and Healthsystem Association of Pennsylvania |
| Pennsylvania Coalition of Nurse Practitioners | The Urban Healthcare Coalition |
| Pennsylvania College of Emergency Physicians | |
| Pennsylvania Dental Association | |
| Pennsylvania Homecare Association | |
| Pennsylvania Medical Society | |
| Pennsylvania Optometric Association | |