



MEDICAL PROFESSIONAL LIABILITY ASSOCIATION

February 19, 2019

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Via e-mail: civilrules@pacourts.us

Dear Ms. Shultz:

On behalf of the Medical Professional Liability (MPL) Association and the medical professional liability insurance community, I would like to thank the Civil Procedural Rules Committee for providing the opportunity to share our perspective on the proposed changes to Rule 1006 - Venue.

The MPL Association is the insurance industry trade association that represents a full range of organizations providing MPL insurance coverage for the nation's physicians, nurses, hospitals, clinics and the wide array of medical clinicians and facilities. MPL Association members include insurance companies, risk retention groups, captives, trusts, and other entities owned and/or operated by their policy holders, as well as other insurance carriers with a substantial commitment to the MPL line. MPL Association members insure more than two-thirds of America's physicians in private practice, as well as dentists, nurses and nurse practitioners, and other healthcare providers, and they insure more than 2,000 hospitals nationwide.

In the "Explanatory Comments" accompanying the proposed rule change, the Committee references several statements to justify the change which appear to be inaccurate or misleading. We address these below:

"There has been a significant reduction in those [MPL] filings for the past 15 years."

While factually correct, this statement is misleading because it suggests that the venue rule has somehow inappropriately impeded the filing of legitimate MPL claims--without providing any evidence to support the statement. In fact, the reduction in claims, and correlated reduction in jury verdicts may be the result of any numbers of reasons (including improved patient safety and the use of technology to identify and address risks). A review of data from the MPL Association's Data Sharing Project (DSP), the largest, collaborative ongoing MPL data base of closed claims in the United States, comprising more than 300,000 claims, also suggests that the reduction in verdicts is not out of the ordinary. From 2007 to 2017, jury verdicts in Pennsylvania dropped 45%. In that same time period, DSP data indicates that verdicts nationally dropped 46%. If the venue rule was the primary cause, or even a significant cause, of the reduction in Pennsylvania cases going to verdict, it would be logical to assume that the reduction would have been significantly higher than the national average.

The number of MPL claims filed can, and does, vary substantially from year to year, based on a variety of factors, so it is important to recognize that many reasons could exist for the reduction in the number of claims going to verdict in a given year. That said, the comparison in the reduction of jury verdicts between Pennsylvania and national statistics should not be ignored, especially since there is no compelling evidence to suggest the reduction would not have occurred in the Commonwealth absent the venue rule.

“This reduction [in MPL verdicts] has resulted in a decrease of the amount of claim payments resulting in far fewer compensated victims of medical negligence.”

Again, the statistics tell a far different story than this statement would suggest. Yes, the number of individuals receiving jury awards has dropped as the number of claims being filed has declined--this is to be expected as there is a direct correlation between the number of claims filed and the number of verdicts which are reached. It is therefore important to note the percentage of cases resulting in a verdict for the plaintiff since the rule change was made in 2003. Plaintiffs in Pennsylvania MPL cases have received a jury award, on average, in 20% of the cases that go to verdict--a number that has held remarkably consistent over the last 15 years. Nationally, DSP statistics indicate that plaintiffs, on average, receive a jury award in less than 10 percent of cases that go to verdict. This number, too, has remained consistent over the years. Thus, MPL plaintiffs in Pennsylvania have not only seen the rate of jury awards remain steady over the years, they have consistently received jury awards at twice the national rate.

Taking a look at the size of jury awards also strongly suggests that Pennsylvanians continue to enjoy higher than average MPL awards when a jury finds in the plaintiff's favor. Over the years since the venue rule was changed, MPL damage awards in the Commonwealth have been consistently higher than the average of awards found in the MPL Association data from the nation as a whole. Looking at the United States overall, the “average” plaintiff receives an MPL jury verdict in excess of \$1 million only 19% of the time while more than 45% of Pennsylvania's MPL plaintiffs receive such awards. DSP data shows that only one-half of one percent of MPL awards in the U.S. exceed \$10 million, while the percentage of awards in Pennsylvania exceeding \$10 million is 12 times higher. Clearly, the venue rule has not hindered the ability of plaintiffs to receive significant MPL damage awards.

The current venue rule “no longer appears warranted.”

The statement “no longer appears warranted” acknowledges that the venue rule as it currently exists *was* clearly warranted when it was adopted. Indeed, the venue rule brought stability to the MPL market in Pennsylvania because it eliminated the practice of plaintiffs and/or trial attorneys seeking venues with little or no connection to the case in question simply to gain access to courts with a past record of generously finding for plaintiffs and awarding large damage awards. Reverting to the previous venue rule will only serve to restore an environment that helped create the MPL crisis of the early 2000s in which patient access to care was severely impacted.

As the data above indicates, with the current venue rule in place victims of suboptimal medical outcomes continue to fare quite well in the Commonwealth's courts, winning more often than their counterparts across the country, and receiving higher awards when they do. In addition, the data strongly suggests that they have in no way been inhibited in their access to the courts since the current venue rule was put in place. The only thing that has changed in the intervening 15 years is that the MPL

insurance market has stabilized, reducing liability insurance premiums for healthcare professionals, creating a better environment for them to practice, and maintaining access to quality healthcare for Pennsylvanians. With all these positive outcomes, it would be extremely risky to alter the venue rule and potentially restore the conditions which precipitated the last MPL crisis.

We appreciate this opportunity to provide you with the above information and data regarding the MPL marketplace in Pennsylvania and to demonstrate that the statistical evidence does not call for any alteration of Rule 1006. We would be pleased to provide any additional information that you may find helpful or to respond to any questions you may have. You may contact me at batchinson@MPLassociation.org or 301.947.9000. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian K. Atchinson
President & CEO