



February 22, 2019

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

Dear Ms. Shultz,

On behalf of the members of the National Federation of Independent Business (NFIB), I am writing in strong opposition to the proposed rule changes to Pa.R.C.P. No. 1006, 2130, 2156, and 2179 governing venue in medical professional liability actions.

NFIB is an incorporated nonprofit association of approximately 300,000 members across America and 12,500 in Pennsylvania. NFIB protects the interests of small businesses throughout America by ensuring that their voices are heard in the governments of the United States and the fifty States as they formulate public policy. NFIB has a strong interest in voicing the concerns of small businesses in Pennsylvania that the proposed amendments will result in increased medical insurance premiums and decreased access to medical care.

The cost of health insurance has long been reported as the greatest problem facing small business.<sup>1</sup> According to the NFIB Small Business Research Foundation, 52% of small business owners cite the cost of health insurance as a critical problem. This makes sense because the cost of health insurance has increased 56% in the past decade, outpacing increases in wages and inflation.<sup>2</sup> As a result, health insurance is unaffordable for many small business owners. And as rates have gone up, many have been forced to terminate their employer-sponsored plans, which makes them less competitive in this labor market.<sup>3</sup> The proposed changes of the Civil Procedural Rules Committee will likely increase the cost of health insurance, accelerating the rate at which small business owners may be forced to terminate their employer-sponsored plans.

The proposed amendments threaten to undue over a decade and a half of progress resulting from the Medical Care Availability and Reduction of Error (MCare) Act. The MCare Act sought to stabilize medical rates in Pennsylvania and to stem the exodus of physicians from the state, in part by ensuring that "medical professional liability insurance has to be obtainable at an affordable and reasonable cost."<sup>4</sup> The Interbranch Commission on Venue was charged with analyzing the effects of venue on medical professional liability actions filed in Pennsylvania. The Commission recommended the current rule in 2002.

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<sup>1</sup> See NFIB, SMALL BUSINESS PROBLEMS AND PRIORITIES 2016 7-8 (2016), <https://www.nfib.com/assets/NFIB-Problems-and-Priorities-2016.pdf> (last visited Feb. 15, 2019) (ranking 75 potential problems and priorities, and noting that health insurance costs have consistently ranked as "the number one small-business problem... for 30 years.").

<sup>2</sup> Agency for Healthcare Research and Quality, Center for Financing, Access to Cost Trends, Medical Expenditure Panel Survey-Insurance Component.

<sup>3</sup> See SMALL BUSINESS DROP HEALTH COVERAGE AND SHIFT EMPLOYEES TO OBAMACARE, PBS Newshour (Dec. 15, 2014).

<sup>4</sup> 40 Pa. Stat. Ann. § 1303.102 (West).

The existing rule restricts venue in medical professional liability cases to the county where the cause of action arose. This is reasonable and makes sense in light of the Commission's charge. The aim was to discourage venue shopping for plaintiff-friendly forums, which in turn would reduce the cost of medical liability insurance and stabilize market prices for health insurance.

The rule had the intended effect. Many providers who had left practice in the state due to their inability to obtain reasonably priced liability insurance returned when rates decreased, stemming the tide of an access to care problem that was confronting many communities.

Now, the Civil Procedural Rules Committee cites the success of Pa.R.C.P. No. 1006 as a justification for repealing the existing rule. In an explanatory comment to the Proposed Amendment, the Committee argues that the venue rule "no longer appears warranted" because "there has been a significant reduction in [medical professional liability] filings for the past 15 years."<sup>5</sup> Yet this reduction in filings is precisely what the venue rule encouraged. Filings in plaintiff-friendly venues such as Philadelphia County declined steeply from an average of 1,204 filings to 577 filings between 2002 and 2003, when the venue restrictions were first enacted.<sup>6</sup>

Reversing the venue rule will increase the number of filings, thereby driving up the price of medical professional liability insurance. These price increases will in turn be passed on to health insurance policy holders, including the thousands of small businesses in Philadelphia and throughout the Commonwealth.

It is also likely that the proposed rule change and resultant cost increase for liability insurance will again prompt many physicians to stop practicing in Pennsylvania. Given that many areas of the state already suffer from insufficient medical service coverage, especially in many high-risk specialties, the venue rule change and likely exodus of providers will no doubt exacerbate this trend. Availability of medical services is a critical aspect of the business climate because it affects employers' ability to attract and retain employees and their families. As a result, small businesses have a strong interest in ensuring access to medical care in the state.

We urge the Committee to reconsider the proposed amendments in accordance with the stated purpose of the MCare Act, which seeks to ensure that "medical professional liability insurance has to be obtainable at an affordable and reasonable cost in every geographic region of this Commonwealth."

Sincerely,



Hon. Gordon Denlinger  
State Director

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<sup>5</sup> Proposed Amendment of Pa.R.C.P. Nos. 1006, 2130, 2156, and 2179, Explanatory Comment.

<sup>6</sup> Unified Judicial System of Pennsylvania, Pennsylvania Medical Malpractice Filings: 2000-2017 (2018), <http://www.pacourts.us/assets/files/setting-2929/file-7458.pdf?cb=656af3> (last visited Feb. 14, 2019).