

Pa. Lawmakers Must Save Medical Liability Venue Rule

By **Curt Schroder** (October 5, 2021, 5:23 PM EDT)

Over the past five years, there has been a seismic shift in the membership of the Civil Procedural Rules Committee of the Pennsylvania Supreme Court. The committee consists of lawyers and judges who advise the court on changes to the Pennsylvania Rules of Civil Procedure.

For many years — and as recently as 2015 — the committee was generally equally divided between plaintiff and defense lawyers. Since then, that balance has come undone, as defense-oriented members serve their full term and go off the committee, and are replaced by members of the plaintiffs bar.



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With the most recent appointment in July, there are now six plaintiffs attorneys and three defense attorneys on the committee — meaning that plaintiffs attorneys now outnumber defense attorneys two to one.

One of the major issues before the committee is the fate of the current medical liability venue rule, Pennsylvania Rule of Civil Procedure 1006(a.1). This rule requires medical professional liability actions against health care providers to be brought only in the county where the cause of action arose.

Rule 1006(a.1) was enacted statutorily by the Pennsylvania Legislature, and placed in the Civil Rules by the Pennsylvania Supreme Court in 2002. The court acted in response to the report of the Interbranch Commission on Venue, on which I served.

Back then, Pennsylvania was in the midst of a medical liability crisis, as rapidly escalating liability insurance premiums threatened Pennsylvanians' access to health care. A 2003 report by The Pew Charitable Trusts, titled "Understanding Pennsylvania's Medical Malpractice Crisis," provides crucial insight into the problems facing health care and patients during the early 2000s.

According to the report, malpractice premiums for Pennsylvania physicians started to rise in the late 1990s at a sharp rate, putting Pennsylvania well above the national average. The report concluded that the largest component fueling rising insurance rates was the cost of investigating, defending and paying legal claims.

As a result, family practices were being squeezed out of existence, maternity wards were closing and high-risk specialty care became scarce.

For instance, the Pittsburgh Post-Gazette reported on Jan. 21, 2001, that Frankford Hospital's trauma unit in Philadelphia closed for four days because its orthopedic surgeons decided to give up operating rather than renew their malpractice insurance. In the end, the hospital lured the surgeons back by agreeing to pay a portion of the doctors' premiums, which had jumped to six figures.

By way of another example, in an article dated Aug. 25, 2002, the New York Times reported that Mercy Hospital in Philadelphia closed its maternity ward, Jefferson Health closed the maternity ward at its Methodist Hospital in Philadelphia, Brandywine Hospital in Chester County closed its trauma center and Paoli Hospital closed its paramedic unit. All these closures, according to the Times, were the direct result of the medical malpractice crisis.

The Pew report identified one of the chief culprits causing this crisis: plaintiffs attorneys seeking jackpot verdicts and high settlements in Philadelphia's notoriously high-verdict court system. According to the report:

Philadelphia plaintiffs were more than twice as likely to win jury trials as the national average, and over half of the awards were for \$1 million or more. Philadelphia juries awarded sums of this magnitude 87 times (between 1999 and 2001). The number of million-dollar awards plus settlements in all of California during this period was only slightly larger.

Prior to 2002, the venue rule in effect allowed plaintiffs' attorneys to game the system and file suit in high-verdict locales, such as Philadelphia, regardless of whether the alleged medical malpractice occurred there or had any real connection to the city. The venue rule was so broad that physicians from all over the state were being hauled into the Philadelphia court system.

Thanks to the efforts of a joint interbranch commission of the courts and the Legislature established in 2002 by the MCARE Act, the Pennsylvania Supreme Court amended the venue rules to require that a medical liability suit could only be brought in the county in which the alleged injury occurred. The results of this rule change were immediate and dramatic.

Statistics compiled by the Supreme Court reveal that, in the three years before the rule change, an average of 1,204 medical malpractice cases were filed in Philadelphia courts annually. In the year after the change, only half that number of medical liability cases were filed in Philadelphia. As the years wore on, and Rule 1006(a.1) became part of the fabric of our court system, the numbers of medical liability cases filed in Philadelphia continued to decline steadily each year.

Fewer cases in Philadelphia and other high-verdict jurisdictions resulted in more stability in medical liability premiums. Insurers returned to the Pennsylvania market, and health care access improved for Pennsylvanians.

Medical liability claimants still have their day in court, but now the court has a close connection to the cause of action — thanks to the elimination of forum shopping that was rampant pre-2002. Juries are now comprised of residents with a stake in balancing the rights of a claimant with the need for readily available health care.

However, the plaintiffs bar never liked Rule 1006(a.1), because lower verdicts meant lower contingency fees. For that reason, the plaintiffs bar has waged a war against the common-sense reform ushered in by Rule 1006(a.1), including arguing that the rule is unconstitutional. In 2019, the plaintiff's bar apparently found a receptive audience, as the Civil Procedural Rules Committee agreed to consider reverting to the former venue rule that allowed forum shopping to proliferate in Pennsylvania.

A decision this consequential should be made by the Legislature. The General Assembly is in a better position than the Civil Procedural Rules Committee to make this determination, as it has the means to hold hearings, investigate, find facts and properly weigh the merits of this policy decision.

The state Senate Judiciary Committee has held hearings, and is considering surveying physicians as to reasons why they have retired or left the state to practice elsewhere. The Pennsylvania House has also expressed concern, and has held informal meetings for its members on this proposed policy change.

While the committee has yet to take formal action on the proposal to repeal Rule 1006(a.1), medical providers, health care companies, insurers and the business community are concerned that the imbalance on the Civil Procedural Rules Committee could signal the demise of Rule 1006(a.1). Such a move on the part of the committee would be unwise.

The current venue rule has worked and contributed to the stabilization of both the availability of professional liability insurance and the availability of medical care — especially in high-risk specialties. The only objection to Rule 1006(a.1) from the plaintiffs bar is that the rule has worked too well. That is not a reason to discard nearly two decades of success and progress.

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