

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 2864 EDA 2025

MICHELLE STENGER and MICHAEL STENGER,

Appellants,

v.

REGIONAL WOMEN'S HEALTH GROUP, LLC, MAIN LINE HEALTH, INC.,
MAIN LINE WOMEN'S CARE LTD., WOMEN'S CARE GROUP OF PA, and
THOMAS S. DARDARIAN,

Appellees.

**BRIEF OF THE AMERICAN MEDICAL ASSOCIATION AND THE
PENNSYLVANIA MEDICAL SOCIETY AS AMICI CURIAE IN SUPPORT
OF APPELLEES**

On Appeal from the October 31, 2025 Order of the Court of Common Pleas of
Philadelphia County, Civil Division, in Case No. 250402703.

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Table of Contents

Table of Contents	ii
Table of Authorities.....	iii
Statement of Interest of Amici Curiae.....	1
Summary of the Argument	3
Argument.....	4
I. The Court should not create special rules for forum-selection clauses in medical-treatment contracts.....	5
II. The Court need not address whether the forum-selection clauses contravene unspecified “public policy.”	14
Conclusion	16
Combined Certificates Of Compliance And Service	17

Table of Authorities

Supreme Court Cases

Cent. Contr. Co. v. C. E. Youngdahl & Co., 209 A.2d 810 (Pa. 1965) .4, 6,
9, 14

Emert v. Larami Corp., 200 A.2d 901 (Pa. 1964).....6

In Re Rea’s Appeal, 13 W.N.C. 546 (Pa. 1883).....7

Cases

Atl. Marine Constr. Co. v. U.S. Dist. Ct., 571 U.S. 49 (2013)9

Churchill Corp. v. Third Century, Inc., 578 A.2d 532 (Pa. Super. 1990)
.....13

Commonwealth v. Santiago, 980 A.2d 659 (Pa. Super. 2009)10

Healy v. E. Bldg. & Loan Ass’n, 17 Pa. Super. 385 (1901)7

Ins. Co. v. Morse, 87 U.S. (20 Wall.) 445 (1874)7

Kasparyak v. Stadarskyy, No. 2781 EDA 2025, 2026 PA Super 185, 2026
LX 420445 (Aug. 19, 2026)14

Kindred Nursing Ctrs. Ltd. P’ship v. Clark, 581 U.S. 246 (2017)13

Krenger v. Pa. RR., 174 F.2d 556 (2d Cir. 1949).....8

McNulty v. H&R Block, Inc., 843 A.2d 1267 (Pa. Super. 2004)13

Nute v. Hamilton Ins., 72 Mass (6 Gray) 174 (1856)7

O’Hara v. First Liberty Ins., 984 A.2d 938 (Pa. Super. 2009)15

Somerlot v. Jung, 343 A.3d 324 (Pa. Super. 2025) 3, 6, 9, 10, 12

The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)8

Rules

Pa.R.A.P. 531.....1

Pa.R.A.P. 2137.....	5
Pa.R.Civ.P. 1006.....	6
Pa.R.J.A. 103	14

Other Authorities

Restatement (First) of Contracts § 558.....	8
Restatement (Second) of Conflict of Laws § 80.....	8

Statement of Interest of Amici Curiae¹

The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty area and in every state, including Pennsylvania. In support of its mission, the AMA regularly participates as amicus curiae in state and federal courts, including Pennsylvania courts.

The Pennsylvania Medical Society (PAMED) is a Pennsylvania nonprofit corporation that represents physicians of all specialties, residents and medical students, and is the Commonwealth's largest physician organization. PAMED advocates on behalf of physicians and

¹ No other person or entity other than the AMA or PAMED, their members, or their counsel, paid in whole or in part for preparing or authored this Brief. *See* Pa.R.A.P. 531(b)(2).

patients for their wellbeing and the betterment of the provision of healthcare. PAMED regularly participates as amicus curiae before Pennsylvania appellate courts in cases raising important healthcare issues, including issues that have the potential to adversely affect the quality of medical care.

The AMA and PAMED appear for themselves and as representatives of the Litigation Center of the AMA and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of all states and the District of Columbia. The mission of the Litigation Center is to represent the interests of patients and physicians in the courts of the United States, according to policies of the AMA.

* * *

The AMA and PAMED have a strong interest in ensuring that malpractice cases against physicians are tried in appropriate forums. Contractual forum selection clauses are noncontroversial provisions that appear in many contracts. There is nothing unreasonable, unfair, or unconscionable about agreeing to litigate medical-malpractice cases in the venue where the medical care occurred.

Summary of the Argument

The Superior Court should affirm the order transferring this case from Philadelphia County to Montgomery County. Appellant, Michelle Stenger, signed multiple documents containing forum-selection clauses that required her to file any lawsuit against Appellees related to her medical care “in the County in which the medical care was provided.” Pennsylvania courts enforce reasonable contractual forum-selection clauses generally. They also will do so specifically in medical-malpractice cases. *Somerlot v. Jung*, 343 A.3d 324 (Pa. Super. 2025), *appeal granted*, No. 449 EAL 2024, 2026 LX 505887, 2026 WL 2685241 (Pa. Sept. 14, 2026). The Court need only apply *Somerlot* here. That decision was correct, and the ways by which Appellants try to avoid their contractual obligations are unavailing.

Argument

Under Pennsylvania law, a pre-dispute forum selection clause is enforceable unless it is unreasonable, and it is unreasonable only if it would, “under all circumstances existing at the time of litigation, seriously impair plaintiff's ability to pursue his cause of action.” *Cent. Contr. Co. v. C. E. Youngdahl & Co.*, 209 A.2d 810, 816 (Pa. 1965). Appellants would have this Court carve out a medical-malpractice-only exception to this general rule. On what basis they would do so is unclear. The Court should not provide special treatment for a particular class of plaintiffs.

The issue is whether it should enforce the terms contained in multiple forms that Appellant, Michelle Stenger, signed that required her to sue Appellees in Montgomery County. Appellants live in Schwenksville, Montgomery County. (R. 2a.) Michelle Stenger underwent a hysterectomy at Bryn Mawr Hospital, also in Montgomery County. (R. 4a-6a.) She claims that she sustained injuries resulting from that procedure due to medical malpractice. (*Id.*) Yet Appellants sued Appellees in Philadelphia County, asserting that at least one appellee regularly conducts business there. (R. 4a.)

After this Court decided *Somerlot*, Appellees, Regional Women's Health Group, LLC (RWHG), and Thomas Dardarian, D.O., filed preliminary objections challenging venue based on a consent-to-treat form containing forum-selection clauses that Michelle Stenger had signed. (R. 75a-83a.) RWHG and Dr. Dardarian noted that the forum-selection clause was in plain English, was clear and unambiguous, and required Appellants to sue in Montgomery County. (R. 211a.) The other appellees joined in RWHG and Dr. Dardarian's arguments. After the trial court sustained the Appellees' preliminary objections and ordered the case transferred to Montgomery County, Appellants appealed.

The AMA and PAMED submit this Brief in support of Appellees to rebut Appellants' general arguments for why the Court should disregard the forum-selection clauses. The AMA and PAMED also join Appellees' briefs, *see* Pa.R.A.P. 2137, which separately explain why the Court should reject Appellants' contentions that no enforceable forum-selection clause existed.

I. The Court should not create special rules for forum-selection clauses in medical-treatment contracts.

For over 60 years, Pennsylvania courts have enforced contractual forum-selection clauses so long as they are reasonable. *Cent. Contr.*, 209

A.2d at 816. “Under principles of contract law, parties are free to pre-select among all possible proper venues which venue will decide legal disputes that might arise between them.” *Somerlot*, 343 A.3d at 327. No one suggests that Montgomery County is an improper venue. It cannot be an improper venue. Appellants’ claims arose there. Pa.R.Civ.P. 1006(a)(2). Nor can Appellants claim that litigating in Montgomery County would be inconvenient. In fact, Appellants—who reside in Montgomery County—live much closer to the Montgomery County Courthouse than Philadelphia City Hall. (*E.g.*, R. 82a, 93a, 212a-13a.) And the Court may take judicial notice that the site of the alleged malpractice, Bryn Mawr Hospital, is less than ten miles from the Montgomery County Courthouse. *Emert v. Larami Corp.*, 200 A.2d 901, 902 n.1 (Pa. 1964).

In effect, Appellants would create a judicial carve-out from the general rule for a special class of litigants. Forum-selection clauses are enforceable unless unreasonable. Courts generally have enforced forum-selection clauses for the past 100 years. Examining the history of forum-selection clauses shows the flaw in Appellants’ arguments. In the mid-19th century, courts generally refused to enforce contractual forum-

selection clauses. They reasoned that general law established the rules for venue, and private parties could not disturb those laws. *Nute v. Hamilton Ins.*, 72 Mass (6 Gray) 174, 184 (1856), *cited in In re Rea's Appeal*, 13 W.N.C. 546, 547 (Pa. 1883). Courts also held that litigants could not “oust” courts of “jurisdiction” by private agreement. *See Ins. Co. v. Morse*, 87 U.S. (20 Wall.) 445, 451-52 (1874). Thus, in *Rea's Appeal*, the Pennsylvania Supreme Court held that pre-dispute forum-selection clauses contravened public policy because they ousted courts of “jurisdiction.” *Rea's Appeal*, 13 W.N.C. at 546. The Court reasoned that all litigants could enter into forum-selection clauses and avoid answering in a tribunal for breach of contract. The *Rea's Appeal* Court voided an intrastate forum-selection clause. This Court later extended *Rea's Appeal* to contracts that required suits to be filed in other jurisdictions. *Healy v. E. Bldg. & Loan Ass'n*, 17 Pa. Super. 385, 391 (1901) (refusing to enforce forum-selection clause in stockholder's certificate that required suits to be filed in Onondaga County (Syracuse), New York).

Over time, the 19th-century rule slowly eroded, as courts came to recognize its dubious logic. It came to be viewed as a “vestigial legal

fiction” designed to protect the power and business of a particular court that reflected “something of a provincial attitude regarding the fairness of other tribunals.” *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972), *superseded by statute on other grounds*, 28 U.S.C. § 1404(a).

Some courts also noted the anomaly of permitting plaintiffs to choose a forum when filing suit but barring them from making the same choice before claims arose. *Krenger v. Pa. RR.*, 174 F.2d 556, 560-61 (2d Cir. 1949) (L. Hand, J., concurring). Both the 1932 Restatement (First) of Contracts § 558, and the 1971 Restatement (Second) of Conflict of Laws § 80 provided that forum-selection clauses should be enforceable unless they are unfair or unreasonable. The latter restatement plainly states the rule: “The parties’ agreement as to the place of action will be given effect unless it is unfair or unreasonable.” Restatement (Second) of Conflict of Laws § 80.

In 1965, the *Central Contracting* Court finally abandoned the 19th-century rule in Pennsylvania:

The modern and correct rule is that, while private parties may not by contract prevent a court from asserting its jurisdiction or change the rules of venue, nevertheless, a court in which venue is proper and which has jurisdiction should decline to proceed with the cause when the parties have freely agreed that litigation shall be conducted in another forum and where

such agreement is not unreasonable at the time of litigation. *Cent. Contr.*, 209 A.2d at 816, *cited in* Restatement (Second) of Conflict of Laws § 80, Reporter's Notes. A forum-selection clause is unreasonable, "only where its enforcement would, under all circumstances existing at the time of litigation, seriously impair plaintiff's ability to pursue his cause of action." *Id.* Mere inconvenience or additional expense cannot be unreasonable. *Id.* And the party asserting unreasonableness has the burden of proving it. *Id.*

The Supreme Court's decision in *Central Contracting* represents the dominant, modern view for forum-selection clauses. In federal court, forum-selection clauses are given near-dispositive weight in motions to transfer venue. *See Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 52 (2013). States may restrict the use of forum-selection clauses by statute, but no such statute exists here.

Last year, this Court held that *Central Contracting* applies to forum-selection clauses in medical consent-to-treat contracts. *Somerlot*, 343 A.3d at 331. Under *Central Contracting*, the reasonableness of a forum-selection clause is tested "at the time of suit." *Id.* at 333. There, as here, the plaintiffs lived, and received medical treatment, in the

county of the forum selection. *Id.* at 334. On these points, *Somerlot* is indistinguishable. Even though the Supreme Court granted allowance of appeal, it continues to bind this Court unless it were to be overruled. *See Commonwealth v. Santiago*, 980 A.2d 659, 666 n.6 (Pa. Super. 2009).

This Court should apply *Central Contracting*, *Somerlot*, and the general rules for forum-selection clauses to the contracts at issue. Under that general rule, forum-selection clauses are enforceable unless they are unreasonable. There is nothing unreasonable about requiring that litigation by Montgomery County plaintiffs against Montgomery County defendants for claims that arose in Montgomery County be litigated in Montgomery County. By demanding to disregard the forum-selection clause, Appellants ask the Superior Court to overrule *Central Contracting* and return to the 19th-century rule for forum-selection clauses. The Court should reject Appellants' invitation.

Appellants and their Amicus otherwise assail the forum-selection clause with meritless claims about contract formation and lack of consideration. The record does not support those arguments. Appellees' continued treatment of Michelle Stenger was part of consideration for

the forum-selection clauses. (R. 207a-08a.) Indeed, Michelle Stenger acknowledged that signing updated forms was necessary to continue the physician/patient relationship. (*Id.*)

The Court should similarly reject Appellants' wafer-thin argument on unconscionability. Appellants first claim that the parties "did not intend" that the forum-selection clause apply to the claims here. This contention is risible. The forum-selection clause was part of a document that Michelle Stenger signed nine days before her elective surgery and applied to "any lawsuit or legal action which is in any way related to the medical care" that she received. (R. 81a, 142a.)

Appellants also claim that the forum-selection clauses are unconscionable because they are unsupported by additional consideration. This argument is circular. If the provisions lacked consideration, then there would be no contract to enforce. And Appellees demonstrated that their continued treatment of Michelle Stenger supplied the required consideration.

Likewise, the record also does not support Appellants' unconscionability argument. A contract or contract term is unconscionable only if there was a lack of meaningful choice in

accepting the challenged provision, and that provision unreasonably favors the party asserting it. *Somerlot*, 343 A.3d at 334. The party asserting unconscionability must prove it. *Id.*

Regarding procedural unconscionability, Appellants' contention that the forum-selection clauses were "take-it-or-leave-it" is wrong. The record shows that Michelle Stenger could have called RWHG to discuss the form but did not. (R. 212a.) She potentially could have asked RWHG for modification or to opt out of certain provisions, but she did not. (*Id.*) Just as in *Somerlot*, Michelle Stenger could have made a counteroffer or declined to continue treatment with Appellees. She did not. Appellants thus cannot show procedural unconscionability.

Nor can Appellants show substantive unconscionability. There is no evidence that the forum-selection clause is unilateral or unreasonably favors Appellees to the exclusion of Appellants. Even further, it is unlikely that *any* forum-selection clause that requires medical-malpractice cases to be filed where the treatment occurs could be substantively unconscionable. Such a clause is neutral as between the plaintiff/patient and defendant/healthcare provider. For example, the forum-selection clause did not require that Appellants file suit in

some distant place unrelated to the medical treatment. *Cf. Churchill Corp. v. Third Century, Inc.*, 578 A.2d 532, 536 (Pa. Super. 1990) (stating that forum-selection clause requiring litigation in Missouri over the purchase of a single, \$1,700 fax machine was “arguably” unconscionable).

The sole case Appellants cite, *McNulty v. H&R Block, Inc.*, 843 A.2d 1267 (Pa. Super. 2004), is distinguishable. *McNulty* was about an arbitration provision, not a forum-selection clause. In an alternative holding, this Court found the arbitration provision to be unconscionable because requiring the claimants to pay the arbitration costs essentially precluded them from bringing claims.² *Id.* at 1273.

The forum-selection clauses in no way preclude Appellants from filing their malpractice lawsuit. They simply dictate the forum in which that lawsuit should have been filed. No appreciable procedural difference exists between litigation in Philadelphia County versus Montgomery County. And any added expense to Appellants, if any, is not grounds to void the forum-selection clause. *Cent. Contr.*, 209 A.2d at

² It is also questionable whether *McNulty* remains good law in light of *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 581 U.S. 246, 253 (2017) (holding that states may not apply neutral rules in a way that disfavors arbitration).

816. Both counties are within Pennsylvania, and both courts are subject to the same substantive law and procedural rules. *See* Pa.R.J.A.

103(d)(2) (prohibiting local rules of court from deviating from statewide rules).

In short, a forum-selection clause requiring medical-malpractice litigation to be filed in the county where the medical care occurred cannot be unconscionable. Unconscionability should begin and end with *Central Contracting*. A forum-selection clause is invalid only if it is unreasonable, and it is not unreasonable to require litigation of a claim in the county where the alleged malpractice occurred.

II. The Court need not address whether the forum-selection clauses contravene unspecified “public policy.”

In their concise statement, Appellants claimed, in passing, that the forum-selection clauses violate public policy. (Concise Statement ¶ 4.) But they did not brief this issue. It is not properly before the Court. *See Kaspryak v. Stadarskyy*, No. 2781 EDA 2025, 2026 PA Super 185, 2026 LX 420445, at *4 (Aug. 19, 2026). In any event, Pennsylvania courts will void contracts based on public policy only in the clear cases in which the contract tends to injure the public, is against the public

good, or is inconsistent with good morals. *O'Hara v. First Liberty Ins.*, 984 A.2d 938, 943 (Pa. Super. 2009) (quotation omitted). In *O'Hara*, this Court declined to void a forum-selection clause in an auto insurance policy as against public policy. *Id.* The same result should happen here.

Conclusion

The Superior Court should affirm the order transferring this case to the Court of Common Pleas of Montgomery County.

Respectfully submitted,

Dated: September 25, 2026

**FOWLER, HIRTZEL, MCNULTY &
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By: */s/ Matthew D. Vodzak*

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Combined Certificates Of Compliance And Service

This Brief contains 2,615 words (exclusive of supplementary matter). In preparing this certification, I relied on the word count of the word processing system used to prepare the brief.

I certify that this Brief complies with the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information differently than non-confidential information.

This Brief is being filed electronically under Pa.R.A.P. 125 and served on all counsel under Pa.R.A.P. 121, and paper copies will be submitted under Pa.R.A.P. 124(c).

Dated: September 25, 2026

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Michelle Stenger and Michael Stenger : 2864 EDA 2025
Appellants :
v. :
Regional Women's Health Group, LLC, Main Line
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I hereby certify that this 25th day of September, 2026, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

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