

Proposed Venue Rule Change for Medical Professional Liability Actions in Pennsylvania

March 2019



Pennsylvania
MEDICAL SOCIETY[®]

ADVOCATE. EDUCATE. NAVIGATE.

Proposed Venue Rule Change for Medical Professional Liability Actions in Pennsylvania

March 2019

On Dec. 22, 2018, the Civil Procedural Rules Committee (Committee) published a proposed rule change in the *Pennsylvania Bulletin*.ⁱ **The proposed amendments would revise the venue rule for medical professional liability cases, significantly expanding the potential venues for medical professional liability actions.**ⁱⁱ

Prior to the reforms implemented in the early 2000s, Pennsylvania was losing the national competition for quality physicians. As a result of the adverse practice climate, doctors were retiring early or leaving the state and recruitment of new physicians was severely hampered. Due to the successful medical liability reforms of the early 2000s, Pennsylvania's medical care system has been able to maintain its position as one of the best in the nation and is an integral part of the state's economy. Pennsylvanians cannot and should not allow the beneficial reforms to be undone with this proposed rule.

The proposed changes to the venue rule will appreciably increase the number of counties that plaintiffs will be allowed to sue health care providersⁱⁱⁱ in medical professional liability actions. Accordingly, plaintiffs will likely seek to bring cases in counties where juries are perceived to be more “plaintiff-friendly” and more likely to render verdicts in their favor. The result will be a domino-effect of negative implications for the medical professional liability insurance market, physicians and other health care providers, and most importantly, access to quality patient care for all Pennsylvanians.

This document provides an overview of the existing venue rule, a summary of the Committee's proposed changes to the rule, and its potential ramifications.

History

In 2002, the Pennsylvania General Assembly enacted the Medical Care Availability and Reduction of Error (MCare) Act. This Act, in part, sought to stabilize medical rates in Pennsylvania and reduce the number of physicians leaving Pennsylvania to practice in states where medical rates were not as high.

The Act established the Interbranch Commission on Venue — a commission created “to review and analyze the issue of venue as it relates to medical professional liability actions filed in [Pennsylvania]” and create “recommendations for such legislative action or the promulgation of rules of court on the issue of venue.”^{iv}

Based upon the Committee's recommendations, the General Assembly enacted Act 27-2002, which added a provision to the Judicial Code providing that medical professional liability cases shall only be filed in the county where the cause of action (i.e., the alleged harm or violation) arose.^v The Pennsylvania Supreme Court, in January 2003, promulgated amendments to Rule 1006 that adopted the language of Act 27.

What Is Venue?

In layman's terms, venue is the locale in which a lawsuit may commence or take place. For cases in state court, venue rules dictate the county in which a plaintiff can sue. In the federal court system, the venue rules prescribe the district in which a lawsuit may be initiated.

Current Rule

Rule 1006 (a.1) provides that a medical professional liability action may be brought against a health care provider for a medical professional liability claim^{vi} only in the county in which the cause of action arose; this

rule does not apply to causes of action that arise outside of the Commonwealth. Medical professional liability actions involving partnerships, unincorporated associations, corporations, and similar entities are subject to this rule as well.

In joint and several liability cases (where two or more health care providers are being sued), a case may be brought against all health care providers in any county in which venue may be attributed against any one of the health care providers.^{vii} Currently, in joint and several liability actions involving physicians and non-health care defendants, plaintiffs are prohibited from filing lawsuits in the county where venue is only appropriate for the non-health care defendant.^{viii}

In actions in which multiple causes of action are asserted but only one is a claim for medical professional liability, venue is limited to the county in which the claim for medical professional liability arose.^{ix}

The current venue rule does not create jurisdiction in Pennsylvania over a foreign cause of action. Lawsuits based on medical treatment furnished in another state cannot be brought in Pennsylvania even if the defendants have substantial contacts within the state.^x

Proposed Rule Change

The Committee is proposing to bring venue for medical professional liability cases in-line with venue rules for all other types of civil cases. **If the proposed amendments are adopted, venues for medical professional liability actions will expand significantly.**

Under the proposed rule, *in addition to permitting venue in the county in which a cause of action arose*, a medical professional liability action against a health care provider may be brought in a county where:

1. the individual may be served;
2. a transaction or occurrence took place out of which the cause of action arose;
3. venue is authorized by law; or
4. the property or a part of the property, which is the subject matter of the action, is located provided that equitable relief is sought with respect to the property.

Medical professional liability actions involving partnerships, unincorporated associations, or corporations will no longer be limited to the county in which the alleged medical error occurred. The proposed rule would allow medical professional liability actions involving these entities to be brought in any venue where an action against the entity is authorized by law.^{xi}

In addition, when filing a joint and several liability action against a physician and another defendant who is not a health care provider, the patient will be allowed to sue both defendants in the county where the non-health care provider may be sued.

In actions in which multiple cause of action are asserted but only one is a claim for medical professional liability, venue will be allowed in any county where any of the actions would be appropriate.

Rationale for The Proposed Rule Change

In its notice published in the *Pennsylvania Bulletin*, the Committee cites the following justifications for changing the current rule regarding venue for medical liability lawsuits:

The Civil Procedural Rules Committee is proposing amendment of Rule 1006 to rescind subdivision (a.1), which limits venue in medical professional liability actions to the county in which the cause of action arose. The current rule provides special treatment of a particular class of defendants, which no longer appears warranted. Data compiled by the Supreme Court on case filings on medical professional liability actions (<http://www.pacourts.us/news-and-statistics/research-and-statistics/>) indicates that there has been a

significant reduction in those filings for the past 15 years. Additionally, it has been reported to the Committee that this reduction has resulted in a decrease of the amount of claim payments resulting in far fewer compensated victims of medical negligence.

The proposed rescission of subdivision (a.1) is intended to restore fairness to the procedure for determining venue regardless of the type of defendant. The proposal would apply to medical professional liability actions filed after the effective date of the amended rule. Conforming and stylistic amendments have also been made to Rules 2130, 2156, and 2179.

Effect of the Proposed Rule Change

Expanded Venue Options and Forum Shopping

Under the current rule, a medical professional liability action can only be brought where the cause of action occurred, whereas the proposed rule change would increase the number of available venues for lawsuits.

Here are a few examples to demonstrate how this rule change will allow plaintiffs to forum shop and choose the best county in which to file their claim, even if those counties are only remotely related to the cause of action; these counties are traditionally where plaintiff-friendly juries reside.

Scenario	Under Current Rule	Under Proposed Rule
Dr. Uro resides in County A and works at a hospital located in County B. Patient alleges that Dr. Uro committed a medical error while providing care at the hospital in County B.	Patient may bring the lawsuit against Dr. Uro only in County B.	Under the proposed rule, a medical professional liability action can be brought against the health care provider where he or she can be served. Because an individual can be served with a lawsuit where he or she resides, the patient has the choice of filing the lawsuit in County A or B.
Dr. Smith sees patient in County A and orders X-rays for patient. Patient A's X-rays are read and processed by a radiologist who works in County B. The radiologist sends a report regarding the X-rays back to Dr. Smith. Patient alleges he is injured by Dr. Smith as a result of the care provided in County A. The X-rays are to be used as evidence in the lawsuit.	Patient may sue Dr. Smith only in County A.	Under the proposed rule, the medical liability lawsuit could be brought in County B because a "transaction or occurrence" took place in County B that was a factor in filing the medical liability lawsuit (i.e., the reading and processing of X-rays). As a result, patient may sue Dr. Smith in County A or B.
Dr. Ortho replaces patient's knee at hospital located in County A. Dr. Ortho uses an implant manufactured by PADOCS — a surgical implant company that has a registered office in County B. PADOCS regularly conducts business in counties C, D, and E. Six months after surgery, patient is unable to walk and decides to file claims against Dr. Ortho and	Patient may sue Dr. Ortho only in County A.	In a joint and several liability action against a health care provider and a defendant that is not a health care provider, venue would be proper in any county in which a lawsuit may be brought against any of the defendants. As a result, the patient may sue in counties A, B, C, D, or E.

Scenario	Under Current Rule	Under Proposed Rule
PADOCs for medical malpractice and products liability, respectively.		
Omega Hospital is an incorporated, rural-based hospital located in County X. In 2018, minority ownership stakes in Omega Hospital were purchased by The Healthy Network Group, a partnership located in County Y, and Superior Medical School, an unincorporated association located in County Z. Dr. Jones is a physician who works for Omega Hospital. Dr. Jones and Omega Hospital are sued by one of Dr. Jones' patients for a surgical procedure that occurred at Omega Hospital.	Under the current rules, Dr. Jones and Omega Hospital may be sued in County X.	Under the proposed rules, Dr. Jones and Omega Hospital may be sued in County X (where the alleged cause of action occurred), County Y (where The Healthy Network Group conducts business), or County Z (where Superior Medical School conducts business).
Dr. Pitt is a surgeon at Local Hospital in County A. Patient alleges that Dr. Pitt committed a medical error during a surgery at Local Hospital. Local Hospital is owned by Big Health, Big Health owns and operates hospitals in 40 counties within Pennsylvania.	Patient may sue Dr. Pitt and Local Hospital only in County A, where the alleged error occurred.	Under the proposed rule, patient may bring their lawsuit in any of the 40 counties where Big Health operates a hospital and regularly conducts business.

Philadelphia is regularly used as an example of the potential abuse of venue. Prior to Mcare, Philadelphia County averaged 1,204 medical liability filings (a filing refers to the commencement of a civil action by complaint or praecipe for writ of summons) from 2000 to 2002. From 2003 through 2017, the highest number of filings in Philadelphia County occurred in 2007 with 586 filings. There was a 66.3% decline in medical liability cases filed in Philadelphia County from the average number of cases filed between 2000 and 2002 to 2017.^{xiii}

The amendments proposed by the Committee are likely to undo the decline in filings within Philadelphia and other plaintiff-friendly forums.

Increased Premiums for Medical Professional Liability Insurance

Expansion of the venue rules could potentially lead to an escalation in the professional liability premium costs for physicians and other health care providers.

Over the last decade, the medical professional liability insurance market has remained relatively stable. Accordingly, health care providers have enjoyed relatively low premiums in a favorable, soft market. Industry professionals, however, are signaling a turn in market conditions. A change in the venue rule will likely increase severity and claim expenses for the insurance industry, accelerating the hardening of the market and increasing premiums for physicians and other providers.

A Compromised State Medical System

As a result, Pennsylvania's physicians and citizens could experience a repeat of the crisis the state experienced in the early 2000s, and a re-emergence of the adverse practice climate in Pennsylvania, which included:

- Doctors leaving their practices and a severe hampering of physician recruitment
- Physicians less willing to go into high-risk specialties or perform risky, life-saving procedures
- Financial resources being shifted from medical care infrastructure to the increased cost of providing professional liability insurance
- Decreased access to quality patient care, particularly for low-income and underserved communities

The Pennsylvania Medical Society (PAMED) has submitted comments on the proposed rule change. In addition, PAMED is working with a multitude of stakeholders to respond to the proposed rule. If you have any questions or comments, please contact the PAMED Knowledge Center at **855-PAMED4U (855-726-3348)** or KnowledgeCenter@pamedsoc.org.

ⁱ 48 Pa.B. 774 (December 22, 2018). See <https://www.pabulletin.com/secure/data/vol48/48-51/1964.html>.

ⁱⁱ A medical professional liability action is any proceeding in which a medical professional liability claim is asserted, including an action in a court of law or an arbitration proceeding. 42 P.S. §5101.1(c).

ⁱⁱⁱ A health care provider is a primary health care center, a personal care home licensed by the Pennsylvania Department of Human Services under the Pennsylvania Welfare Code, or a person, including a corporation, university or other educational institution licensed or approved by Pennsylvania to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, hospital, nursing home, birth center, and an officer, employee or agent of any of them acting in the course and scope of employment. 42 Pa.C.S. § 5101.1(c).

^{iv} *Riggio v. Katz*, 64 Pa. D. & C.4th 395, 407 (Com. Pl. 2003), *aff'd*, 859 A.2d 844 (Pa. Super. Ct. 2004).

^v JUDICIARY AND JUDICIAL PROCEDURE—GENERAL AMENDMENTS, 2002 Pa. Legis. Serv. Act 2002-27 (S.B. 138) (PURDON'S)

^{vi} A medical professional liability claim is any claim seeking the recovery of damages or loss from a health care provider arising out of any tort or breach of contract causing injury or death resulting from the furnishing of health care services which were or should have been provided. 42 Pa.C.S. § 5101.1(c).

^{vii} P.R.C.P 1006(c)(2).

^{viii} In re: AMENDMENT OR RULES OF CIVIL PROCEDURAL RULES., No. 381, 2003 WL 25436743 (Pa.Com.Pl. Jan. 27, 2003).

^{ix} P.R.C.P 1006(f)(2).

^x P.R.C.P 1006(b) Explanatory Comment. See also Pennsylvania Court of Common Pleas, Lebanon County Motions, Oppositions and Replies Preliminary Objection for Improper Venue.

^{xi} Actions against partnerships, unincorporated associations, or corporations may be brought in a county where: the entity regularly conducts business; a transaction or occurrence took place out of which the cause of action arose; or the property or a part of the property, which is the subject matter of the action, is located provided that equitable relief is sought with respect to the property. In the case of corporations, an action may also be brought in a county where the corporation's registered office or principal place of business is located.

^{xii} The Unified Judicial System of Pennsylvania, Medical Malpractice Statistics, Pennsylvania Medical Malpractice Case Filings: 2000-2017, <http://www.pacourts.us/assets/files/setting-2929/file-7458.pdf?cb=656af3>. (accessed 1/3/19).