

Proposed Venue Rule Change — Key Talking Points

On Dec. 22, 2018, the Civil Procedural Rules Committee published a proposed rule change in the *Pennsylvania Bulletin*. This proposed change would revise the venue rule (the county in which a case may be filed) for medical liability cases.

The Pennsylvania Medical Society (PAMED) has mobilized a movement through stakeholder involvement to flood the Committee with comments. An Executive Summary, Overview, Stakeholder Resources, and more, can be found at www.pamedsoc.org/VenueRule.

Here are some key talking points:

Overview

- Currently, medical liability claims can only be filed in the county where the alleged medical error occurred.
- A committee within the Pa. Supreme Court is proposing a rule change that would increase the number of venue options for medical liability lawsuits.
- This could bring back “forum shopping,” where personal injury attorneys seek to move claims to counties that award higher payouts to plaintiffs.
- This has the potential to impact patient access to quality care.
- Patients injured in medical negligence cases should be compensated. However, PAMED believes that physicians have the right to a fair process and hearing medical liability cases in the location where the alleged medical error occurred helps ensure the process is balanced for both parties.

- **Thinking this doesn't impact you, think again:**
 - *I'm employed and my hospital or health system pays my medical liability premium.* If this proposed rule change is adopted, it could cause rates to increase, and that money has to come from somewhere – your compensation, patient care innovations and other improvements, your employer only paying a percentage of your liability premiums and requiring you to pay the rest?
 - *I'm young, I don't remember this crisis from the past.* If you're a young physician, you likely don't remember the early 2000s when Pa. was in the midst of a medical liability crisis, but your older colleagues can tell you all about it. Pa. is already one of the toughest places to practice medicine according to watchdog groups for medical liability issues. Anything that potentially makes this worse could make it difficult to recruit and retain physicians. That has a direct impact on patients and their access to care.
 - *I'm not in the Philadelphia area.* This rule change would still impact you as insurers spread the risk statewide.

If “Venue” Rule Changes as Proposed

- We’ll return to the days of unchecked medical liability awards.
- Liability premiums will skyrocket for physicians, which could ultimately drive up health costs for everyone.
- Recruiting physicians to the state and keeping them here may be a challenge.
- Patients may have to say goodbye to their physicians. Physicians could potentially leave Pa. for less litigious states, and patient access to care would suffer, especially among high-risk specialties such as neurosurgery and OB-GYNs. Long-standing, trusted patient-physician relationships could be broken.
- Innovations in patient care will grind to a halt.
- Because many of these trials could likely move to where plaintiffs can get the highest payout, venues such as Philadelphia and Pittsburgh would see a back-log in cases and delay justice for those residing in those cities.
- Patient care will suffer.

Impact of Prohibiting “Forum Shopping”

- The courts say they made a special exception when they prohibited forum shopping in 2003 because there was a crisis and the system has since stabilized.
- PAMED argues that prohibiting forum shopping is a major reason for stabilizing the medical liability market and allowing forum shopping to return would eventually bring us back to the crisis we faced in the early 2000s.

Stats – Decreasing in Filings

- Philadelphia is regularly used as an example of the potential abuse of venue.
- Since courts prohibited forum shopping in 2003, there was a 66.3% decline in med liability cases filed in Philadelphia County.
- Between 2000-2002, Philadelphia County averaged 1,204 medical liability filings; from 2003-2017, the highest number of filings were 586 filings.

Stats – Physician Lawsuits

- While patients injured in medical negligence cases should be compensated, the vast majority of lawsuits do not hold up in court, suggesting a high number of meritless claims.
- According to research from the American Medical Association:
 - More than 1 in 3 physicians, 34%, have had a medical liability lawsuit filed against them at some point in their careers.
 - 68% of those claims are dropped, dismissed, or withdrawn by the plaintiff.
 - Of the claims decided by a trial verdict, the vast majority (88%) were won by the defendants.
 - Attorney costs to defend against a medical liability claim runs into the tens of thousands of dollars. The higher number of claims could increase medical liability premiums for all physicians in the state.