

Proposed Venue Rule Change — Key Talking Points

Current Pennsylvania law specifies that medical malpractice cases may only be filed in the county in which the alleged malpractice occurred.

While the State Supreme Court has not acted on any proposed rule change, it continues to be a threat. PAMED is supporting Pennsylvania Representative Rob Kauffman’s Constitutional amendment resolution that would strip the Supreme Court’s ability to establish venue and place the matter in the hands of the legislature.

Here are some key talking points:

Overview

- Currently, medical liability claims can only be filed in the county where the alleged medical error occurred.
- The current fair venue rule was drafted after careful consideration by a commission composed of representatives of the legislature, Governor’s office, and the courts.
- The current venue rule has worked well for twenty years.
- A change in venue rule 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

- 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.
 - In the early 2000s, Philadelphia had almost as many million-dollar civil verdicts as the entire state of California.
- 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 – Health Care Providers Burnout

Why now? Health care workers all over the country are experiencing staffing shortages and burnout. A change in venue rule would just add to the stress that is already being experienced in the health care field.

- According to research from the Surgeon General’s Advisory on Health Worker Burnout
 - Even before the COVID-19 pandemic, the National Academy of Medicine found that burnout had reached “crisis levels”.
 - 35-45% of nurses and physicians and 45-60% of medical students and residents reported symptoms of burnout.
 - Throughout the pandemic, health workers have reported high rates of stress, frustration, and exhaustion with 93% reporting they were experiencing stress, 86% reporting anxiety and burnout and 41% reporting loneliness.
 - The combination of distressing work environments and increased demands for care during the pandemic led to record numbers of health care workers quitting or reporting they intend to quit.
 - One in 3 physicians, advanced practice providers, and nurses intended to reduce work hours
 - One in 5 physicians and 2 in 5 nurses intended to leave practice altogether.

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.