

Pennsylvania Supreme Court Reverses 20-Year Ban on Venue Shopping In Medical Malpractice Cases

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In August, the Civil Procedural Rules Committee of the Pennsylvania Supreme Court enacted an obscure procedural court change that will drastically alter the landscape for medical malpractice cases in 2023 and beyond. For two decades, medical malpractice plaintiff attorneys were limited to bring claims only in the county where the alleged malpractice took place. In 2002, the Medical Care Availability and Reduction of Error Act, 40 P.S. § 1303.501, et seq. (hereinafter “MCARE Act” or “Act”) was passed to reform the law on medical professional liability within the Commonwealth of Pennsylvania. The MCARE Act was implemented to address the increased filing of medical malpractice cases. Before its passage, approximately 2,700 medical malpractice cases were initiated in the Commonwealth every year. Following the MCARE Act and Rule 1006(a.1), the number of malpractice filings decreased to approximately 1,500 annual filings.

Not anymore. On August 25, 2022, the Supreme Court of Pennsylvania eliminated this rule. Starting in 2023, plaintiffs may sue in any Pennsylvania county in which care occurred, where a defendant could be served, or where any transaction or occurrence giving rise to the suit took place. See Rule 1006 (a).

The Rule change will have sweeping effects. First, adding venue shopping to the mix will likely mean higher awards to malpractice plaintiffs. As was the case before the passage of the MCARE Act in 2002, there may, again, be an increase in frivolous claims and venue forum shopping. Specifically, plaintiffs may choose to file many medical malpractice lawsuits in counties that are perceived to be plaintiff-friendly. Court venues in certain cities tend to have more liberal juries, and when given a choice, attorneys looking for the biggest payoff flock to those courts. Next, the change may impact the malpractice insurance markets and result in a rise in malpractice insurance costs. Last, the Rule change could see a decrease in accessibility of health care for patients. In the early 2000s, before the MCARE Act was enacted, hospitals across the Commonwealth announced layoffs tied to skyrocketing malpractice insurance costs. At that time, job reductions were often the result of the hospital group needing to

absorb the steep malpractice insurance premium costs.

With the potential for skyrocketing insurance premiums, doctors may look to take their practice to doctor-friendly states. Pennsylvania could lose good, established doctors, and new doctors may not wish to settle in the Commonwealth. That loss would be detrimental to patient health care.

Note that it is the Supreme Court of Pennsylvania, and not the Pennsylvania Legislature, that has the authority to change the venue rule. The rule change preempts any legislative changes under the court's exclusive rule-making authority. As the Supreme Court of Pennsylvania made this change, we should not expect that the venue carve-out rule will soon be seen again.

The elimination of the venue carve-out rule greatly impacts the medical malpractice landscape in Pennsylvania and could have sweeping effects across the health care field. If you have questions concerning Rule 10006(a.1), its revision, the MCARE Act, or medical liability, contact a member of Reminger's Medical Malpractice Practice Group.