



February 22, 2019

Karla M. Shultz  
Counsel Civil Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635

**RE: Pennsylvania Chamber of Business and Industry Comments to Proposed Amendment of Pa.R.C.P. Nos. 1006, 2130, 2156, and 2179.**

Dear Counsel Shultz:

The Pennsylvania Chamber of Business & Industry (“PA Chamber”) appreciates the opportunity to provide comment on the Pennsylvania Supreme Court Civil Procedural Rules Committee (“Committee”) Notice of Proposed Rulemaking regarding the abovementioned rules governing venue in medical professional liability actions. The PA Chamber is the largest broad-based business advocacy association in this Commonwealth representing nearly ten thousand job creators of all sizes from all industry sectors. On behalf of these employers, the PA Chamber advocates for policies that offer a high level of quality care, affordable options, greater flexibility and increased accessibility without undue regulatory burden and bureaucracy. After careful review and consultation with many consumers and purchasers of health care and various stakeholder groups, the PA Chamber has concluded that this proposed rule will result in diminished access to health care and is not in the best interests of consumers.

Balancing cost, quality and accessibility within the health care system remains a challenge for all stakeholders in the process, including government, insurers, providers, purchasers and consumers. That challenge came to a head in the early 2000s when access to critical health care reached a point where the General Assembly and the Court stepped in and implemented policies in order to re-balance the delivery system. In 2002, Act 13 was signed into law as the Medical Care Availability and Reduction of Error Act (Mcare). The legislation encompasses a sweeping range of changes, including new duties, responsibilities, regulations, and administrative functions in three major areas: insurance reform, medical professional liability (tort) reform, and patient safety.

One focal point of the Mcare Act was the issue of venue. Venue is a major focus of employers throughout the Commonwealth as the current rules for venue in civil complaints (except for medical

malpractice) overly favor plaintiffs many times resulting in cases being filed in jurisdictions with no logical connection to the cause of action. This has become such a problem that the Commonwealth (namely Philadelphia) has received the stigma of being one of the homes of the Nation's Judicial Hellhole<sup>1</sup>, according to the American Tort Reform Foundation. As you might expect, job creators tend to avoid places that have been named Judicial Hellholes because of the perception that employers will be disadvantaged by an unlevel playing field in civil litigation. This was most certainly the case during the physician access crisis where an inordinate amount of medical malpractice complaints were filed in urban jurisdictions such as Philadelphia and Allegheny counties.

The Mcare act contained a provision that provided for the Interbranch Commission of Venue for the purpose of creating a broad stakeholder group to study the Commonwealth's venue rules as it relates to medical malpractice. That Commission found that these venue rules needed to be changed and made that recommendation to the Court which in turn voted to change the venue rule to what it is today. This comprehensive, multi branch and well thought out process resulted in a venue rule that reduced the number of complaints filed in Philadelphia by nearly 60 percent in the first year alone<sup>2</sup>. The statewide result is that medical malpractice lawsuits are more evenly dispersed throughout the Commonwealth. Claims are now filed in the county where the plaintiff received medical treatment. As then Pennsylvania Supreme Court Chief Justice Ronald Castille observed, "—Most importantly, justice for our citizens is still being delivered where patients are truly injured by medical mistakes<sup>3</sup>."

The PA Chamber questions the process by which the Committee is proposing the change. As stated above, the medical malpractice rule change in 2002 was the product of input from the legislature, a private commission, many stakeholders and the Court itself. The justification in the notice for Committee's current proposal – a return to the venue rules that contributed to a healthcare access crisis – is a few short sentences with little rationale. One stated reason for the change is the disparate treatment of a certain class of plaintiffs. The PA Chamber respectfully submits to align the current medical malpractice venue rule with ALL civil complaints. This will prevent forum shopping and give all parties more predictability and certainty in the filing of lawsuits.

Finally, the proposed medical malpractice venue rule change is inconsistent with current law<sup>4</sup>. The General Assembly did in fact pass a medical malpractice venue statute that mirrors the current rule on the subject.<sup>5</sup> Although the law was challenged in court,<sup>6</sup> an ultimate disposition of the case did not occur as the Pennsylvania Supreme Court acted to change the rule and deemed the challenge moot. This proposed rule contravenes current law and the legislative intent of the Pennsylvania General Assembly. Therefore, the Committee should rescind the proposed rulemaking.

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<sup>1</sup> <http://www.judicialhellholes.org/2018-2019/philadelphia-court-of-common-pleas/>.

<sup>2</sup> <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/statewide-civil-cases>.

<sup>3</sup> News Release, Administrative Office of the Pennsylvania Courts, Latest Medical Malpractice Data Show Number of Cases and Verdicts Reach New Low, Apr. 20, 2010.

<sup>4</sup> 42 PA. CONSOL. STAT. § 5101.1(b).

<sup>5</sup> Pennsylvania Act 127 of 2002.

<sup>6</sup> NorthCentral Pennsylvania Trial Lawyers Ass'n v. Weaver, 827 A.2d 550, 559 (Pa. Commw. 2003).

Based on many accounts and data from stakeholders, medical practitioners, purchasers of health insurance, policymakers and the Court itself, the Mcare Act and the subsequent venue rule change achieved its desired results. Physicians have increased access to insurance and stable, predictable premiums. Employers and employees throughout this Commonwealth have had access to much needed critical care restored. This proposed rule change is not in the public interest and, among other adverse outcomes, will likely lead to increased medical liability insurance rates, access issues for consumers and increased health care costs for businesses and consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Barr", written in a cursive style.

Gene Barr  
President and CEO