



May 24, 2023

Kathleen D. Bruder, Esq., Chair
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635r
civilrules@pacourts.us

Re: Early Review of Impact of Medical Malpractice Venue Rule Changes

Dear Chair Bruder:

On August 25, 2022, the Supreme Court issued amendments to PA Rule of Civil Procedure 1006, which greatly expanded the scope of venue in medical liability cases in the Commonwealth. As of January 1, 2023, the new venue rule eliminated the requirement that medical malpractice cases be filed only where the cause of action arose.

Rule 1006 (f) provides: **The Civil Procedural Rules Committee shall reexamine the 2022 rule amendments two years after their effective date.**

Due to the alarming rise in medical malpractice cases filed in Philadelphia since the beginning of 2023, the resulting liability premium increases on health care providers, and the impact on the Philadelphia Court of Common Pleas, the Pennsylvania Coalition for Civil Justice Reform (PCCJR) urges the Civil Procedural Rules Committee to undertake an immediate review of the full impact of the amendments to Rule 1006 which took effect January 1, 2023.

Increase In Filings in Philadelphia

The impact of this rule change has been immediate and severe. As the Pennsylvania Coalition for Civil Justice Reform advised this committee in our original comment letter dated February 21, 2021, medical malpractice case filings in Philadelphia have soared during the first four months of 2023 and insurance premiums are increasing as a direct result.

The record for the first four months of 2023 reveals that plaintiff attorneys are flocking en masse to Philadelphia to file malpractice cases which could not have been filed there under the previous rule. The Philadelphia Court of Common Pleas tracks the number of medical liability case filings each month,

Pennsylvania Coalition for Civil Justice Reform • P.O. Box 653 • Harrisburg, PA 17108 • 717- 461-3577
<http://www.paforciviljusticereform.org>

offering irrefutable evidence of this trend. A chart supplied by the court is updated monthly and compares each month of 2023 with medical malpractice cases filed during the previous six years for the same month. Every month of 2023 has shown substantial increases in medical malpractice filings in Philadelphia over the previous six years for the same month.

The below chart from Philadelphia Common Pleas shows that there have been 51 medical liability cases filed on average each month in 2023. The next highest year is 2018 which averaged only 35 cases per month, a remarkable increase of 46%.

Medical Malpractice Cases Filed

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg./Mo.
2017	45	34	26	32	50	39	36	33	20	22	34	35	406	34
2018	44	31	29	37	33	33	42	29	36	47	35	22	418	35
2019	24	27	31	40	38	48	36	26	36	25	32	44	407	34
2020	29	33	29	31	24	28	33	36	19	33	30	23	348	29
2021	32	32	31	32	37	23	32	23	26	24	39	13	344	29
2022	18	24	23	24	20	26	21	21	28	20	25	25	275	23
2023	70	47	38	50									205	51

At the end of March, the [Legal Intelligencer](#) reported on a concomitant decrease in filings in the counties surrounding Philadelphia.

While the numbers themselves are disturbing, the real story behind the increase is only revealed upon an examination of the actual complaints filed. The Pennsylvania Coalition for Civil Justice Reform has obtained and analyzed the complaints and Writs of Summons for all medical liability cases filed in 2023 through the month of March. A review of the April cases is under way. We reviewed the filings to determine where the cause of action arose. Our findings are as follows:

	Cause of Action In Phila.	Cause of Action Outside of Phila.	Unable to Determine ¹
Jan 2023	24	36	10
Feb 2023	25	13	9
March 2023	23	17	4²
Total	72	66	23

The new venue rule has clearly had a major impact by dramatically increasing the number of cases filed in Philadelphia so far in 2023 over what otherwise would have been filed had the former rule remained in force.

¹ The inability to determine where the cause of action arose stems from relying on writs of summons when no complaint has yet been filed and the fact that addresses of parties are both inside and outside Phila.

² PCCJR's total of March cases is slightly higher than the court's, possibly because of nursing home cases we believe are medical liability related.

In the recent webinar of May 8, 2023, from the Philadelphia Court of Common Pleas, Judge Anders read from a slide which stated: “Venue rule change resulted in increased number of medical malpractice cases in Philadelphia starting in January 2023.” Judge Anders went on to state that he estimates a 25% to 50% increase in medical malpractice cases will be filed in Philadelphia this year, over pre-pandemic levels, because of the change in venue rules. The total number of medical malpractice case filings should be between 500-600 according to Judge Anders.

Liability Premiums Are Responding in Kind

The increase in doctors and hospitals from other parts of the state being sued in Philadelphia has predictably impacted the cost of their liability insurance. According to information provided by the Medical Professional Liability Association (MPLA), these increases are a direct result of the increased exposure to liability and damages that accompanies being sued in Philadelphia. And with new records being established, such as recent \$182.7 million, \$43.5 million, and \$25.9 million Philadelphia verdicts in 2023 alone,³ the pressures on malpractice insurance premiums will continue to grow as more and more plaintiffs’ attorneys seek to cash in by suing in Philadelphia.

The below information is provided by MPLA and taken directly from public documents accompanying the recent rate increase filings submitted by The Doctors Company and Medical Protective:

The Doctors Company

“We are submitting a rate revision for the captioned program with a proposed effective date of May 1, 2023. Based on our current book of business, there is a 7% overall rate level *impact resulting from this revision*. (Emphasis added)

“This filing consists of the following revisions:

- Several counties have been moved into different territories in response to the amendment to the Medical Professional Liability Venue Rule.
- Columbia, Montour, and Susquehanna counties are now Territory B.
- Bucks, Chester, and Montgomery counties are now Territory C.
- Fayette, Lancaster, Somerset, and Westmoreland counties are now Territory D.
- The relativity for Territory A (Delaware and Philadelphia Counties) has been increased 5%.
- *Manual rates have been increased by specialty, with a minimum increase of 10.5% and a maximum increase of 16.1%* (Emphasis added)

A. MANUAL BASE RATES TERRITORIES

Territory A = Delaware and Philadelphia Counties

Territory B = Columbia, Lackawanna, Monroe and, Montour, Schuylkill, and Susquehanna Counties

Territory C= Bucks, Carbon, Chester, Dauphin, Lehigh, Luzerne, Montgomery, Northampton, Northumberland, Pike, Wayne, and Wyoming Counties

Territory D = Cumberland, Fayette, Franklin, Lancaster, Somerset, and Westmoreland Counties

Territory E = Remainder of State

Territory F = Crawford, Erie, Lawrence, and Mercer Counties

³ Judge Anders reported during the webinar of May 8, 2023, that the largest medical liability verdict from 2017-2019 was \$6 million.

Delaware	A	A	A was made the highest rated territory, in line with MedPro and PAJUA
Philadelphia	A	A	A was made the highest rated territory, in line with MedPro and PAJUA
Columbia	C	B	Moved up to same territory as Schuylkill due to cases shifting to this county.
Montour	C	B	Moved up to a higher rated territory in response to 12.6% Oliver Wyman indication
Susquehanna	E	B	Moved up to a higher rated territory in response to 77.8% Oliver Wyman indication
Bucks	D	C	Moved up to a higher rated territory in response to 3.2% Oliver Wyman indication and MedPro filing
Chester	D	C	Moved up to a higher rated territory in response to 15.1% Oliver Wyman indication and MedPro filing
Montgomery	D	C	Moved up to a higher rated territory in response to 49.2% Oliver Wyman indication and MedPro filing
Fayette	E	D	Moved up to a higher rated territory to better match MedPro's classification
Lancaster	E	D	Moved up to a higher rated territory in response to 61.5% Oliver Wyman indication and MedPro filing
Somerset	E	D	Moved up to a higher rated territory in response to 8.2% Oliver Wyman indication and MedPro filing
Westmoreland	E	D	Moved up to a higher rated territory to better match MedPro's classification

Medical Protective

“The Medical Protective Company (“MedPro”) respectfully submits rate revisions to the Physicians & Surgeons Occurrence and Claims Made programs in the state of Pennsylvania. This filing is in direct response to the Pennsylvania Supreme Court Order, issued August 25, 2022, rescinding various Rules of Civil Procedure (“Rules”), which limited venue in medical professional liability actions to the county where the alleged injury occurred (“Order”).”

Manual Rates

1. Territory Definitions

- **Territory 1** - Delaware & Philadelphia Counties
- **Territory 2** - Carbon, Columbia, Crawford, Cumberland, Dauphin, Erie, Franklin, Lackawanna, Lawrence, Lehigh, Luzerne, Mercer, Monroe, Montour, Northampton, Northumberland, Pike, Schuylkill, Wayne, and Wyoming Counties
- **Territory 3** - Remainder of State
- **Territory 4** - Bucks, Chester, Montgomery, Fayette, Somerset, and Westmoreland Counties

“In direct response to this Order, we are taking a modest initial approach by filing a base rate increase of 5%, and we are moving the three collar counties (Montgomery, Bucks, and Chester) that surround

Philadelphia from Territory 2 to Territory 4. The overall rate increase to Physicians & Surgeons will be 6.5%. The proposed effective date for these rate revisions is April 1, 2023, for new and renewal business. MedPro will closely monitor the actual impact of Order and we will plan to take further rate action as needed.” (Note – Actual change wound up at 4.75%.)

The Philadelphia Court System is Struggling

Prior to January 1, 2023, Philadelphia courts were already struggling with the medical malpractice case load. In a webinar hosted by Judge Daniel Anders on January 9, 2023, the following information was reported in a power point presentation:

“After the March 2023 pretrial conferences are held, the 2023 and 2024 trial calendars will be nearly fully scheduled for medical malpractice cases.

- More importantly, there are nearly three years’ worth of medical malpractice cases with 330 projected pretrial conferences from March to December 2023.
- If the status quo remains, we will – by the end of 2023 – fill up the trial calendars for 2025, 2026 and 2027. ▪ Cases filed in 2022 could get trial dates in 2028 or 2029
- Expected increase in new filings in 2023 due to change to venue rule”

To the credit of Judge Anders and the court system, a new system of case management has been adopted for medical liability cases in Philadelphia with an emphasis on encouraging settlement offers early in the case and moving cases more quickly to trial or resolution. However, it is still early in this experiment by the court, and it is not yet known whether this will be successful or whether cases will continue to drag on for years into the future. Further, the recent large verdicts mentioned earlier will not only attract more new suits to Philadelphia, they will also result in increased settlement demands from plaintiffs’ attorneys, which makes cases more difficult to resolve. Thus, the problem will clearly continue to grow.

The Committee Should Review the Rule Immediately

In light of the soaring increase in medical liability filings in Philadelphia, the concomitant increase in medical liability premiums with larger increases no doubt imminent, and the impact on the Philadelphia Court of Common Pleas, there is no reason to wait two years to review the impact of Rule 1006 as amended on August 25, 2022. PCCJR urges this committee to conduct an immediate review of the expanded venue rule to determine whether rescission or some other changes are necessary to protect patient access to health care and ensure a smooth functioning court system.

Respectfully Submitted:

Curt Schroder
Executive Director
Pennsylvania Coalition for Civil Justice Reform
P O Box 653
Harrisburg, PA 17108

curt@pccjr.org