

Changes to Pennsylvania's Medical Malpractice Venue Rule Will Have Sweeping Effects

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AMENDMENT TO RULE 1006(A.1)

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. The MCARE Act also established the Interbranch Commission on Venue and the report of the Commission made recommendations to address the issue of venue in medical malpractice matters.

Accordingly, Rule 1006(a.1) of the Pennsylvania Rules of Civil Procedure was implemented as a result. This Rule was known as the venue carve-out rule, stating that “a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.” Concurrently, the General Assembly enacted 42 Pa. Cons. Stat. Ann. Section 5101.1 to implement the same venue rule as Rule 1006(a.1). The General Assembly’s enactment of Section 5101.1 was determined to be unconstitutional by the Commonwealth Court because it infringed on the Supreme Court’s exclusive power to create procedural rules. See *North Central Trial Lawyers v. Weaver*, 827 A.2d 550 (Pa. Commw. Ct. 2003), as amended (June 25, 2003).

Rule 1006(a.1) was created to eliminate frivolous claims and to prevent forum shopping. The MCARE Act was successful in this goal. Before passage of the MCARE Act, approximately 2,700 medical malpractice cases were initiated in the Commonwealth on a yearly basis. After the MCARE Act was implemented along with the related change in the Rules of Civil Procedure concerning venue, the number of medical malpractice matters decreased to approximately 1,500 annual filings. However, the changes to the venue rules in medical malpractice actions were controversial. The primary reason that this rule change was widely contested was because areas of the law do not recognize this same venue protection that was afforded to Defendant healthcare providers in medical malpractice matters.

On August 25, 2022, the Supreme Court of Pennsylvania eliminated the venue carve-out rule. Effective January 1, 2023, medical malpractice suits may be filed in any 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 amendment to this rule did not come as a surprise to either side of the bar. The Supreme Court of Pennsylvania Civil Rules Committee first considered amendment to this rule “pursuant to a request.” See [Civil Procedure Rules Committee Adoption Report](#). Thereafter, on December 22, 2018, the Supreme Court of Pennsylvania Civil Rules Committee proposed rescission of Rule 1006(a.1), stating that the Rule “no longer appears warranted.” See 48 Pa.B. 7744. Finally, the notice of proposed rulemaking to Rule 1006 came on February 22, 2019.

IMPLICATIONS

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 which are perceived to be plaintiff-friendly such as Philadelphia County. As reported in an article in [Spotlight PA](#), “[c]ourt statistics show that from 2000 to 2003, Philadelphia issued 407 of the 1,144 verdicts involving medical malpractice. Of those 407 cases, 58 ended with payouts between \$1 million and \$5 million; 16 had payouts between \$5 million and \$10 million; and 9 had payouts of more than \$10 million.” See *also* [Medical Malpractice Statistics, Case Filings](#).

Additionally, as noted in a report by the Pennsylvania Legislative Budget and Finance Committee, the amendment to Rule 1006(a.1) may impact the malpractice insurance markets and result in a rise in malpractice insurance costs. However, the Committee did note in its report that the data analyzed did not necessarily forecast rises in healthcare costs and/or physician retention.

While the revision of Rule 1006(a.1) will permit filings of medical malpractice suits in various counties as of January 1, 2023, there are other protections available to healthcare providers to lessen the impact of forum shopping. Defendants can seek to transfer matters to a different county based upon the doctrine of *forum non conveniens*. It is unknown whether trial courts will support the application of the doctrine of *forum non conveniens* to prevent forum shopping and uphold fair and equitable venue rules.

Only the Supreme Court of Pennsylvania, and not the Pennsylvania Legislature, has authority to challenge the venue rule. Indeed, the rule change specifically preempts any legislative changes under the court’s exclusive rule making authority. Being that it was the Supreme Court of Pennsylvania that just made this amendment, it is unlikely that the venue carve-out rule will be seen again in Pennsylvania anytime soon.