Back to the Future: A Lot at Stake for Both Sides in Venue Rule Change

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By Rachel C. Bekerman, Esq. and T. Kevin FitzPatrick Esq.

In a move that shocked health care practitioners and facilities throughout the state, the Pennsylvania Supreme Court Civil Procedural Rules Committee published a notice on Dec. 22, 2018, that it would be considering a major change to the rule governing venue in medical practice lawsuits. The proposal sought to rescind the current venue rule, Pa. R.C.P. 1006(a)(1), which requires medical malpractice plaintiffs to bring suit in a county where the alleged cause of action arose. The current rule was enacted in the early 2000s, along with a series of other health care reforms promulgated by the Medical Care Availability and Reduction of Error (MCARE) Act, which was formed in response to the medical liability crisis at that time. The brief reasoning the Civil Procedural Rules Committee offered for now rescinding the venue reform was that the "current rule provides special treatment of a particular class of defendants, which no longer appears warranted," citing a significant reduction in medical professional liability actions over the past 15 years.

The Civil Procedural Rules Committee initially advised it would accept feedback from the public on its proposal until Feb. 22. The radical nature of the change, along with the brief, two-month feedback period, raised great concern among the health care and legal communities and businesses across the state.

Under the prior venue rule, medical malpractice plaintiffs were permitted to bring suit in almost any jurisdiction where the health care provider defendants had an administrative office, trained their staff, or had any another physical or business presence. This allowed medical malpractice plaintiffs a wider selection of jurisdictions to bring suit and resulted in plaintiffs choosing the most plaintiff-friendly jurisdiction available to them. Most medical malpractice lawsuits in Pennsylvania ended up being filed in Philadelphia and Allegheny Counties. By the early 2000s, Pennsylvania became one of the highest paying states in the country for medical malpractice cases. Rising liability insurance rates caused many health care providers to cease practice in Pennsylvania and deterred new providers from coming to Pennsylvania. After the 2002 state health care reforms, medical malpractice filings in Pennsylvania greatly reduced and the liability insurance market stabilized, encouraging health care providers to return to Pennsylvania practice.

Many believe that the medical malpractice venue rule was one of the most effective components of the health care reforms, explaining the great shock that reverberated throughout the health care and legal communities when the Civil Procedural Rules Committee, seemingly out of the blue, proposed to rescind the rule. Numerous state

health care organizations and legal organizations mobilized after the Dec. 22 notice in order to respond to the rules committee's proposal. The primary thought process has been, why attempt to fix something that isn't broken, and why tamper with a system that is working?

On Feb. 5, in a 31 to 18 decision, the Pennsylvania Senate passed Senate Resolution No. 20 (SR20), which proposed delaying the venue change decision until January 2020 in order to allow the Legislative Budget and Finance Committee to conduct a detailed study of the impact of the current medical malpractice venue rule and the implications of reverting the rule back to its pre-reform state. Shortly following SR20, the Supreme Court announced it would defer consideration of the controversial change until after the legislative committee completed its study.

In her memorandum proposing SR20, Sen. Lisa Baker, majority chairwoman of the Pennsylvania Senate Judiciary Committee, described how the current venue rule helped stabilize the crisis of the early 2000s. She questioned the Civil Procedural Rules Committee's immediacy in pushing such a major change, particularly in light of the public's apparent silence on the matter. Baker also questioned the motive of the venue rule change, stating "'fairness' has been offered as justification, but fairness for whom is the big question mark hovering over this issue." Baker expressed the general concern raised over the venue change rule being pushed through unchallenged, and consequently, "messing with success" by reversing the progress made by health care reforms. She further addressed the potential destabilization of Pennsylvania's medical system, which has become a significant portion of its economy.

SR20 cites statistics highlighting the Pennsylvania medical liability crisis of the early 2000s, including that medical malpractice claimants received awards that were almost one-third above the national average, higher than typical awards of the prominently liberal state of California. SR20 points out that Philadelphia County plaintiffs were twice as likely to win a jury trial than in any other jurisdiction in the entire country, with numerous verdicts exceeding $1 million. SR20 recognizes that "the rising cost of legal claims was the greatest component affecting affordability of liability coverage" for health care providers in Pennsylvania, causing them to abandon Pennsylvania practice. After explaining the responsive health care reforms enacted, including the well-regarded venue rule reform, SR20 declares that "the medical malpractice crisis which existed in Pennsylvania in 2002 has abated."

With that backdrop, SR20 pronounces its focus on determining the effectiveness of the current venue rule over the past 15 years and the potential impact of rescinding it. SR20 requires the Legislative Budget and Finance Committee to study the availability of medical care generally, as well as the range of available services and specialties throughout the commonwealth. The committee must determine the cost and affordability of medical liability insurance in each locale. Finally, the committee must research the speed and fairness of compensation to medical malpractice claimants. The committee is required to hold at least one public hearing to consider viewpoints from all sides of the matter. The committee's findings will be presented to the General Assembly by Jan. 1, 2020.

As stated in her memorandum, Baker believes SR20 will "give the legal community, the medical community, the business community, and the public ample opportunity to weigh in with statistics, trends, arguments, and philosophies," making the jury on the proposed venue rule change "the public at large rather than a small segment of the legal community." For the remainder of the year, we can certainly expect to see activism from these communities in the form of letters, testimony, and perhaps, independently sponsored studies.

The proposed venue rule change has been polarizing because there is much at stake for both sides. From the plaintiff's perspective, there is much to gain from friendlier jurisdictions becoming available to a greater number of claimants, especially given the expansion of major health systems throughout the state. On the other hand, health care providers, their counsel and liability insurance carriers fear a revival of the medical liability crisis and argue that proper access to justice is clearly accomplished under the current rule. Regardless of where one falls on the issue, the legislative committee's study and analysis should be widely seen as positive, because two months was simply not enough time for Pennsylvanians to process and weigh in on an idea that has such significant implications for our health care and economy.

Kevin Fitzpatrick is director of the health care department at Marshall Dennehey Warner Coleman & Goggin and Rachel C. Bekerman is an associate in the department. They may be reached at tkfitzpatrick@mdwcg.com and rcbekerman@mdwcg.com.