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Dear Members of the Senate Consumer Protection and Professional Licensure Committee,

Thank you for allowing me the opportunity to provide testimony on the subject of venue in medical malpractice cases.

My name is Mark Lopatin. I am a retired rheumatologist and have been a health-care advocate for over 20 years. That includes authoring a book and teaching a course at Temple University's adult learning institute about our health care system. I also served as Chair of the Montgomery County Medical Society for five years and on the Board of the Pennsylvania Medical Society for nine years. I have written multiple op-eds and done a number of podcasts on various health-care related topics. I also served as co-chair of the Montgomery County Medical Legal Committee for nine years, so the intersection of medicine and law has been a long-standing interest of mine. Today, the focus is on medical malpractice and more specifically venue.

Venue refers to the location where a lawsuit may be filed. It is a critical issue for me based on my own personal experience, which I described extensively in my book and will describe briefly here.

I first saw the patient RF in 1997. She presented with diffuse musculoskeletal pain of ten years duration. I diagnosed her with fibromyalgia (FMS), a condition characterized by chronic, widespread, muscle and joint pain in the absence of any objective findings on exam, x-ray, or labs. I had been treating her for about a year when she developed problems with her hearing. She saw an ENT physician who diagnosed her with

fibromyalgia (FMS), a condition characterized by chronic, widespread, muscle and joint pain in the absence of any objective findings on exam, x-ray, or labs. I had been treating her for about a year when she developed problems with her hearing. She saw an ENT physician who diagnosed her with Autoimmune Sensorineural Hearing Loss (AISNHL). The ENT physician prescribed high dose steroids in an effort to save her hearing. A few weeks later, she reported increased aches and pains to me, which was not unusual for her, but thereafter she began to complain of pain localized to one knee. I therefore ordered an MRI and she was found to have avascular necrosis (AVN). AVN is a condition characterized by a loss of blood supply to the bone, similar to what happens in a heart attack. It produces significant pain in the affected joint and is a known but uncommon side effect of steroids, typically occurring only with prolonged use at high doses. RF saw an orthopedic surgeon and was subsequently found to have widespread AVN affecting multiple joints, which would be distinctly unusual, especially so soon after starting steroids.

She required multiple surgeries and opted to file a lawsuit against her ENT doctor as a result. I was also named in the suit simply because I was a treating physician, even though I was the one who had made the diagnosis, and had rapidly and successfully weaned her off the steroids with preservation of her hearing. Despite that, I was charged with failure to diagnose her AVN soon enough and for weaning steroids too slowly. Neither was true. My attorney verified that I had done nothing wrong and that my chart was well documented. He then told me to ignore all of that, because the venue for the case would be Philadelphia. Even though I practiced in Montgomery County, the ENT physician had an office in Philadelphia. My attorney noted that Philadelphia juries were notorious for large jury awards and for being sympathetic to plaintiffs. He warned me that the proper care that I provided would likely be irrelevant in their decision-making, based on his prior experiences. Their verdict would likely be a matter of whether they viewed the plaintiff sympathetically.

Philadelphia is well known as a judicial hell hole, based on high verdicts, increased litigation tourism, liability expanding decisions and the systematic application of laws and court procedures in an unfair and unbalanced manner, according to the American Tort Reform Foundation.¹ Plaintiffs are three times more likely to win a lawsuit in Philadelphia than in Montgomery County and jury awards tend to be higher there.

Jury Verdicts 2010 – 2022

Montgomery 133

Verdicts	Plaintiff wins
2020–2022 16	
D / P – 12 / 4	25.0%
2015–2019 46	
D / P – 40 / 6	13.0%
2010–2014 71	
D / P – 64 / 7	9.9%
Total 133	
D / P – 116 / 17	12.8%

Philadelphia 245

Verdicts	Plaintiff wins
2020–2022 23	
D / P – 12 / 11	47.8%
2015–2019 98	
D / P – 63 / 35	35.7%
2010–2014 124	
D / P – 77 / 47	37.9%
Total 245	
D / P – 152 / 93	38.0%

State 1303

Verdicts	Plaintiff wins
2020–2022 159	
D / P – 112 / 47	29.6%
2015–2019 498	
D / P – 394 / 104	20.9%
2010–2014 646	
D / P – 507 / 139	21.5%
Total 1303	
D / P – 1013 / 290	22.3%

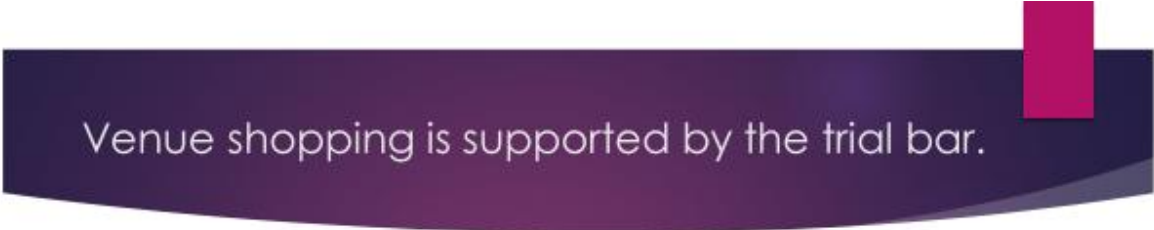
I therefore had good reason to be fearful of a trial in Philadelphia. My attorney advised me to settle the case, based solely on venue, despite his assurance that I had done nothing wrong. I became doubtful as to whether I wanted to rely on a Philadelphia jury given my attorney's warnings.

I agonized over the decision. Should I surrender or should I fight? With the threat of a high judgment, were my personal assets at risk? Could I possibly lose everything if I went to trial? Yet, if I settled, would I be able to look at myself in the mirror? How could I tell my children to fight for justice? These thoughts weighed very heavily on me.

Ultimately I decided to follow my attorney's advice, but that was not the end of it for me. After agreeing to settle the lawsuit, I was consumed with rage and could not rid myself of the venom inside me, no matter how many times I vented. I felt violated and even a little paranoid. Who else would sue me? What if another patient had an unfortunate outcome or an adverse reaction to medication despite proper care? I was distraught. How could I continue to care for patients with these thoughts hanging over my head? I struggled to prevent the patients whom I had sworn to help from being viewed as potential adversaries. Ultimately, I required professional counselling to help me recover. Even today, more than 20 years later, I still get tremulous at times when I write or speak about what I experienced. None of that would have happened were it not for venue! Had the case been tried in Montgomery County, I would not have settled.

My experience is not unique. A medical malpractice lawsuit is traumatic for a physician. In one survey of 99 physicians who had a claim completed during the previous year, 80.8% acknowledged having suffered significant emotional distress, regardless of the claim's outcome.² Another study of 220 Cook County physicians who were sued revealed that 90% said they were significantly affected emotionally by their lawsuit.³ The most disturbing aspect was that 10% actually contemplated suicide. And these were all lawsuits that they had won. In fact, the husband of one of my former partners actually did commit suicide because of a lawsuit.

The recent Pennsylvania Supreme Court ruling on venue only makes the situation worse. Because of an increased likelihood of a plaintiff victory and the threat of a higher award, a lawsuit in Philadelphia poses a greater threat to a physician, which makes them more likely to settle regardless of the merits of the case.



Venue shopping is supported by the trial bar.

Defendants more likely to settle a lawsuit in Philadelphia

Defendants more reluctant to settle a lawsuit in Montco.

Awards in Philadelphia tend to be higher than the rest of the state.*

50% of verdicts > \$1,000,000 in Philadelphia

36% of verdicts > \$1,000,000 in the rest of the state

*ACTUARIAL REVIEW OF THE PROPOSED AMENDMENT TO THE MEDICAL PROFESSIONAL LIABILITY VENUE RULE
Pennsylvania State Senate Judiciary Committee

Attorneys have assured me that frivolous lawsuits do not occur. However, according to a survey that I conducted of over 1000 physicians, 87% acknowledged settling a lawsuit even though they felt they had done nothing wrong. That is a stunning commentary! It means that any lawsuit, especially one filed in Philadelphia, has the potential to be a winner regardless of the merits of the case.

The need for tort reform, including venue, was a huge issue in the early 2000's. Physicians were fleeing the state and it was very difficult to attract new physicians especially in southeastern

Pennsylvania. Malpractice premiums were sky high at the time and physicians revolted. It was a national issue with physicians picketing and articles appearing in Time, USA today, and Newsweek on the subject.



Venue was a significant part of that crisis. As part of the reforms that took place at that time, Act 27-2002 ruled that a medical malpractice lawsuit must be filed in the county in which the alleged malpractice took place.

As a result, there was a significant drop in the number of lawsuits filled in Philadelphia in the years to come.

Med mal lawsuits filings in Montco and Phila.*

	Mont	Phila
2000 – 2003	20	1047
2004 – 2007	101	564
2008 – 2011	87	461
2012 – 2015	99	384
2016 – 2019	107	402
2020 – 2022	124	322

*Unified judicial system of Pennsylvania - www.pacourts.us

However the Supreme Court overturned that venue ruling in 2022, and this took effect starting in 2023. Since then, the number of lawsuits filed in Philadelphia has increased dramatically.

Medical Malpractice Cases Filed in Phila.

	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	53	42	43	50	43	44	33	43	544	45
2024	42	42	51	59	55	57	46	54	36	56	48	70	616	51
2025	66	50	50	44	50	62	50	54	44				470	52

This greatly affects physicians adversely. More importantly, however, we must realize that lawsuits don't just affect physicians. They have a downstream effect that involves and harms other patients. While venue may not be a direct cause, it can act as an amplifier as it turns the volume up on what physicians experience. Again, without venue, I would not have settled what I deemed to be a frivolous lawsuit.

So how are patients affected?

First off we must consider the emotional impact on physicians and how that can adversely affect the patient- physician relationship. As I alluded to previously, after I settled my lawsuit, I was emotionally damaged and viewed patients as potential adversaries, rather than as people who were seeking my help. That is not conducive to good patient care.

Second, physicians may stop seeing certain patients or doing certain procedures for fear of being sued. In my case, about 3 months after I settled the suit, a patient was referred to me with the same diagnosis of AISNHL, to get my opinion on the use of immunosuppressive drugs and steroids. Given the emotional trauma I had just experienced with that specific diagnosis, I told her flat out that I would not be able to take care of her. She would need to see another physician.

In the Cook County study that I alluded to previously, 50 percent of the physicians stopped seeing certain kinds of patients. Fifty percent stopped doing certain types of procedures. The end result is that patients may lose access to physicians and certain kinds of care. A prime example would be an Ob-gyn physician who opts to no longer deliver babies due to the threat of a malpractice lawsuit.

Third is the issue of documentation requirements. They are already inappropriately burdensome for physicians due to insurance and billing algorithms, but if we throw in the added risk of a lawsuit, physicians must spend more time documenting everything they think, everything they do, and everything they do not do, to protect themselves in case of a lawsuit. These demands can easily become excessive. Time spent on documentation is time that is not spent taking care of patients.

As one physician states, "Every word that I write on every form is crafted with the idea that a malpractice attorney will challenge me to defend my practice." Frankly, it is difficult to practice medicine when you feel you must justify every decision.

Fourth, we must consider the expected increase in malpractice premiums. As more cases are diverted to Philadelphia, there is an increased risk of a plaintiff's verdict and an increased risk of

higher dollar amounts. That will not sit well with malpractice insurers. The question is whether we will revert back to where we were in the early 2000's when the malpractice crisis caused physicians to flee the state, and created an environment which made it extremely difficult to attract new physicians. That is also an access to care issue. A prime example was when Abington Hospital actually closed its trauma center in 2002 as its physicians could not obtain affordable malpractice insurance.⁴

Last and most important is the practice of defensive medicine which is defined as the provision of medical services that are not expected to benefit the patient, but are instead undertaken to minimize the risk of a potential lawsuit. This results in unnecessary testing, unnecessary treatment, and unnecessary referrals to specialists or the ER. According to one survey, 93% of physicians report practicing defensive medicine.⁵ All of this causes astronomical increases in health care costs, with some estimates placing the figures high as 650 – 850 billion dollars/ year.⁶ More important, however, are the added anxiety, added risk, and added costs for patients as a result of defensive medicine. That same study noted that obstetricians estimated that 38% of all C-sections were performed to avoid litigation.

As a whole it is estimated that 35% of diagnostic tests, 29% of laboratory tests, 19% of hospitalizations, 14% of prescriptions and 8% of surgeries were medically unnecessary and defensive in nature!

The threat and adverse effects of medical malpractice lawsuits are significant for physicians and clearly affect the way that care is provided, to the detriment of patients. Venue shopping only makes it worse. Patients absolutely deserve to be appropriately compensated for gross negligence and egregious errors, but there is a big difference between an egregious error, an honest mistake and an adverse outcome. An overzealous legal system can harm patients for the reasons outlined above.

The medical malpractice landscape is already an uneven playing field. Venue shopping serves to increase the tilt even further towards the plaintiff's trial bar. Keep in mind that a physician loses a lawsuit as soon as he has been named, regardless of the ultimate verdict, and patients suffer as a result.

It is therefore imperative that the Pennsylvania Supreme Court ruling be overridden by placing venue in the hands of the legislature. It is critical that medical malpractice lawsuits again can only be filed in the county where the alleged action took place. Doing so will help physicians to focus more on patients, and will therefore enable patients to get better care.

And that is the most important consideration in all of this.

I thank you for your interest and your attention.

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<https://www.elsevier.es/en-revista-journal-healthcare-quality-research-257-articulo-physicians-as-second-victims-after-S2603647918300526>
- 3 Charles S, MD, et al., "Physicians' Self-Reports of Reactions to Malpractice Litigation," *American Journal of Psychiatry*, Apr 1984, 141 (4) 563–565.
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- 4 Statement of The Honorable James Greenwood, The Patient Access Crisis – The Role of Medical Litigation: Joint Hearing Before the Committee on the Judiciary and the Committee on Health, Education, Labor and Pensions, Feb 11, 2003, P 139.
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- 6 <https://www.healthcarefinancenews.com/news/defensive-medicine-adds-billions-healthcare-cost>