

October 27, 2025

To the Members of the Senate State Government Committee:

Good morning. My name is Mark Zolfaghari. I am an attorney, and I serve as the Chief Medical Litigation Officer for St. Luke's University Health Network. I have been practicing law since 1995, solely in the field of medical malpractice defense, first with an insurance defense firm in the suburbs of Philadelphia, then with Blank Rome in Philadelphia, and now for the last 13 years with St. Luke's. St. Luke's is a non-profit, regional, fully integrated, nationally recognized network providing services at 16 campuses and more than 350 sites in Lehigh, Northampton, Carbon, Schuylkill, Bucks, Montgomery, Berks, Monroe and Luzerne counties in Pennsylvania and Warren and Hunterdon counties in New Jersey.

In 2019, you kindly invited me to testify about the likely effects of the proposed changes to the venue rules, and I thank you for inviting me back to testify about the detrimental effects on Pennsylvania's healthcare systems as a result of the 2023 changes.

My testimony today has four (4) objectives:

1. Provide an overview of the impact the change to the venue rules has had on medical malpractice insurance rates and healthcare costs;
2. Discuss how the medical malpractice climate in the Commonwealth inhibits our ability to provide access to healthcare providers and specialists for our patients, especially those in rural areas;
3. Refute claims of unfairness as pronounced by the Rules Committee in its recommendation to change the venue rules; and
4. Bring forth options for this Committee and the Legislature to improve healthcare cost and access for the residents of the Commonwealth.

As this Committee is aware, the MCARE Act was passed in 2002 in part to respond to a crisis in the medical malpractice insurance marketplace. As noted in the MCARE Act, the General Assembly recognized that: "recent changes in the health care delivery system have necessitated a revamping of the corporate structure of various medical facilities and hospitals across this Commonwealth. This has unduly expanded the reach and scope of existing venue rules."

The General Assembly established the Interbranch Commission on Venue which recommended in 2002 the rules on venue that were adopted by the Supreme Court in 2003. These rules required that claims against health care professionals and hospitals be filed in the county where treatment was rendered. This reform was widely seen as the most important step in Pennsylvania's efforts to address the medical liability insurance crisis and as a byproduct substantially reduced medical malpractice filings statewide.

On December 22, 2018, the Civil Rules Committee of the Supreme Court of Pennsylvania published a proposal to change the venue rule to the pre-2002 version, for the alleged purpose of restoring “fairness to the procedure for determining venue.” The Civil Rules Committee claimed the review of the rule was “pursuant to a request.”

On August 25, 2022, the Supreme Court of Pennsylvania eliminated the MCARE Act venue rule for medical liability actions, and, beginning January 1, 2023, reset the rule regarding medical malpractice suits so that they could 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.

First, the cost impact of the venue rule change.

St. Luke’s is a healthcare organization that has never provided medical services in Philadelphia. Nevertheless, on January 2, 2023, St. Luke’s was the first defendant with a case filed against it in Philadelphia regarding treatment that occurred outside of Philadelphia pursuant to the new venue rules. The plaintiff claimed venue in Philadelphia due to a co-defendant’s ancillary work in Philadelphia that was not relevant to the care provided to the plaintiff in Lehigh County.

Since that time, St. Luke’s has been sued in four other matters in Philadelphia for care rendered outside of Philadelphia County. These cases would have been filed in the county where treatment occurred under the prior rules. Given the logistical burden, I cannot manage these cases, so outside counsel was retained. The cost to date of defending these cases is over \$500,000.

To give you a real-world impact of what \$500,000 means to a health system like St. Luke’s, the President of St. Luke’s Physicians Group (SLPG) could pay for an additional Developmental Pediatric Specialist for two years with those funds. Developmental Pediatric Specialists treat children with speech, cognitive, motor, or social delays with concerns for autism; infants and children who are at higher risk for developmental delays due to prematurity, foster care, or other health problems; children with down syndrome and other genetic differences; and developmental issues related to low muscle tone, spasticity, or cerebral palsy. One specialist manages 1,000 visits per year, and St. Luke’s currently has a 12 to 18 month waiting list to see a Developmental Pediatric Specialist in our network.

Instead of being able to recruit, hire, and pay for one of these high demand providers, and reducing the wait time of special needs children in our service area, we are forced to spend these funds on legal fees to defend cases in Philadelphia, which we would not do if the venue rules had not changed.

It is no secret that hospitals and healthcare systems are struggling not only in Pennsylvania, but nationwide. According to the American Medical Association (AMA), Medicare physician pay has declined 33% since 2001, when adjusted for inflation. The recent passage of the One Big Beautiful Bill calls for more stringent Medicaid enrollment policies, the expiration of Affordable Care Act (ACA) enhanced premium tax credits, and reductions to State Directed Payments which help hospitals care for uninsured and underinsured patients. These changes add to financial strain on hospitals and healthcare providers, leading to hospital closures, maternity care deserts, and a lack of access to quality care for patients, which is especially concerning at a time most Pennsylvania hospitals are losing money.

Additionally, in the year in which the rule change took effect, our excess carrier offered us the following dilemma, due to possibility of claims being filed in Philadelphia: pay an extra \$1 million in premium fees or have our excess attachment point increase by \$3 million per claim. This was based not on any past claim but solely on the *potential* of a case being filed against St. Luke's in Philadelphia. Given the reimbursement cuts and increases in insurance premiums and legal costs, care offerings are impacted, and families in the Lehigh Valley and surrounding counties are forced to wait for the care they need for their children.

Second, the medical malpractice climate in the Commonwealth increases the cost of healthcare for everyone and inhibits our ability to provide access to healthcare providers and specialists for our patients, especially those in rural areas.

St. Luke's recently merged with a suburban Philadelphia hospital just outside our service area that was in economic distress. Upon learning of this merger, I expressed concern for the increased exposure to Philadelphia due to the hospital's reliance on physicians that were provided by a Philadelphia hospital to provide specialty care, specifically neonatal intensive care unit (NICU) doctors. This concern, along with other issues at that hospital, has resulted in our plan to pause labor and delivery services at this campus at the end of this year. While we hope to restart this service, permanent closure of labor and delivery services at this campus are a significant possibility. There are 200,000 people in that hospital area relying on the decisions we make about services offered, and the exposure to the medical malpractice venue rule is a major contributing factor.

The current rule regarding venue allows for a plaintiff to sue a health care provider where they live or where a corporation "does business." This is highly concerning and is factored into every strategic plan undertaken by St. Luke's. Every contract we enter into must be viewed through the lens of "will this be considered 'doing business' in Philadelphia?"

These service-related decisions are not just limited to Philadelphia County, as there are adjacent counties to our service area where we have opportunities to expand access to care but have opted against it because they are high-risk venues that historically award higher than usual verdicts. If there is any question that these venues are higher risk for defendants, one must only ask why personal injury attorneys file there, instead of the venue where their client actually resides, works, and sought care.

Third, "Fairness."

In 2002, in response to a concern from its constituents, the Pennsylvania Legislature passed the MCARE Act, which in part attempted to confine medical malpractice lawsuits to the county where the care was rendered. Deeming this to be a violation of the separation of powers, the Supreme Court struck down the provision, but, recognizing the importance of the issue, investigated the potential for a rule change. The Court, following its investigation, instituted the now revoked rule requiring lawsuits to be filed where the care was rendered.

In 2018, the Rules Committee proposed the current rule, suggesting that venues with lower verdict values are somehow unfair to the patients bringing the claims. As every member of this panel, and the

Legislature as a whole, are in regular contact with the people of Pennsylvania, I ask you: Did any of your constituents come to you and say they felt they could not get a fair trial in the counties outside Philadelphia, or complain that a trial in their home county, where they seek medical care every day, was unfair? I suggest the answer is likely no.

While attorneys for plaintiffs will suggest there are fewer verdicts in favor of plaintiffs, or a disproportionate share of defense verdicts for those that went to trial, this argument fails to take into account the entire picture. As I offered in my 2019 testimony, based on the data from MCARE at the time, the MCARE fund paid \$181 million on 402 claims. Each claim payment by MCARE requires an initial payment of \$500,000 by a primary insurer. Therefore, based on this limited data, one can surmise that primary carriers and the MCARE Fund paid at least \$382 Million on those 402 claims to the plaintiffs and their counsel.

This data underestimates total payments to injured patients, as it does not include any payments over \$1 million, or settlements and awards on claims below \$500,000. As an example, the claim against HUP that is the subject of Ms. Nepps' testimony, which was in excess of \$180 million, would only account for a payment of \$500,000 by their primary insurer and \$500,000 by MCARE, leaving, \$179 million uncaptured by the above calculation.

The most recent data from MCARE suggests that MCARE paid \$275 million on 583 claims. Using a similar calculation, primary carriers paid \$291.5 million on those same claims, totaling \$566.5 million, not including payments not involving MCARE or in excess of \$1 million per claim. This is a 45% increase in claims over 2017, with a corresponding increase of 48% in payment, totaling \$184.5 million. Did the medical profession become 40% more negligent in the last seven years, or did a change in the litigation climate lead to an increase in claims and payments? I believe you can surmise the answer.

As the objective data suggests, litigation in Philadelphia is more likely to result in an award for a plaintiff and at greater monetary value than claims brought in the counties where the treatment occurred. So, we need to ask: How can subjecting physicians and hospitals that treat the citizens of the Lehigh County to such a disparate system ever be considered "restoring fairness" thereby justifying the change? What makes a Philadelphia jury "more fair" in determining the liability of healthcare providers in the Lehigh Valley than the citizens of the counties in which the treatment is rendered?

Fourth, what can the Legislature do to improve healthcare cost and access for the residents of the Commonwealth?

First, we ask that the Legislature reinstate venue restrictions. Second, we ask that the legislature implement caps on non-economic damages which will limit awards for pain and suffering to reduce excessive jury verdicts. Third, the legislature can incentivize physician retention through loan forgiveness and tax credits and/or liability subsidies for physicians who practice in high-risk specialties or underserved areas. These reforms are not just about protecting health care providers and hospitals, they are about preserving access to quality care for all Pennsylvanians. Without legislative action, the Commonwealth risks deepening its healthcare workforce shortages and driving up costs for patients and providers alike.

Finally, I would like to take you back to 1965. In 1965, Chief Justice Bell of the Pennsylvania Supreme Court predicted the malpractice crisis when the Court abolished the charitable immunity that previously applied to hospitals. As Chief Justice Bell noted in his dissenting opinion in *Flagiello vs. Pennsylvania Hospital*, eliminating nonprofit hospital immunity would “(a) harm all patients for the benefit of an injured few, and (b) jeopardize the existence of a number of hospitals, or (c) require them to reduce or curtail or eliminate a number of the essential services and their functions, facilities, research and other activities and benevolences” thereby harming the general public. Given the losses incurred by Pennsylvania hospitals and the resulting reduction of services across the Commonwealth, Chief Justice Bell’s prediction has been fulfilled.

As I have stated in my testimony, we are seeing an increase in malpractice insurance costs, an increase in healthcare costs, and reductions to physician services, leading to a reduction in services, which is fundamentally unfair to Pennsylvania residents.

Thank you.

Respectfully submitted,

/s/ Mark R. Zolfaghari

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