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## **Pennsylvania Senate Judiciary Committee Hearing**

**September 8, 2020**

### **Testimony from the Pennsylvania Medical Society**

**Presented by John Gallagher, MD**

Good afternoon, Chairwoman Baker and Honorable Members of the Senate Judiciary Committee. I am John Gallagher, MD, Chairman of the Board of Trustees of the Pennsylvania Medical Society. I appreciate the opportunity to offer testimony on the proposed venue rule change and respond to the recent report that was completed by the joint Legislative Budget and Finance Committee. Additionally, I would like to applaud and commend you for advancing Senate Resolution 20 previously in order to provide more time to review this critical issue. As a physician who has practiced in the Commonwealth, I have seen and been directly affected by the medical liability crisis that Pennsylvanians faced in the late 90's and early 2000's.

Pennsylvania physicians are currently facing a litany of issues that take both their time and attention away from their most critical duties: caring for the citizens of this Commonwealth and providing the best treatment possible to those in need. These include the following:

- Dealing with electronic medical records;
- Burdensome government regulations;
- Appropriate coding;
- Concerns over opioid prescribing and ever changing guidelines and laws;
- Presume to see more patients;
- Work days extending beyond 12 hours; and
- Various other administrative hurdles including appealing adverse prior authorization outcomes and ensuring the course of treatment they determine for patients is one in which the patient can afford or have insurance cover.

I point out these issues, not to complain about my chosen profession, but to illustrate that physicians cannot simply handle an additional burden of practicing in fear.

I know that this committee has done its research and work in understanding the importance of preventing the proposed Civil Procedural Rules Committee venue rule change. As such, I do not want to be redundant as most of you are aware of the issues we raised when this rule change was

first proposed. However, it is necessary to quickly touch on these issues and what the climate was like for physicians, especially high-risk specialists such as OB/GYN's like myself during the late 1990s and early 2000s.

- Escalating liability premiums created a crisis where physician shortages, especially among high-risk specialties, made access to care for patients a burden and challenge. This affected vulnerable patients like older Pennsylvanians, newborns, expectant mothers, and trauma patients. Specifically, as a practicing OB/GYN during this time, the issue impacted me directly.
- Fear was the normal way a physician operated: fear of lawsuits in general, fear of the location of lawsuits, fear of unaffordable insurance premiums, and even fear of being able to be insured gripped Pennsylvania's high-risk specialty physicians.

In response to this crisis, as you know, the legislature appropriately and prudently responded by advancing a series of legislative and judicial actions resulting in the creation of the existing venue rule, which limits medical professional liability actions to the venue in which the medical error occurred. The rule, which went into effect in 2003, was designed to address forum shopping—the proclivity of plaintiff's attorneys to file medical professional liability actions in high verdict counties, such as Philadelphia, even when there was no legitimate connection between the county and the care received by the plaintiff. The number of cases filed, and physicians sued, declined significantly. Both the plaintiff and defendant were given a fair opportunity to be heard in local community, by local jurors and judges.

Today, thanks to the existing venue rule and the other measures established to address the crisis, Pennsylvania is a leader in health care. Pennsylvania is home to top-ranked hospitals and medical schools. Additionally, the state currently has, and continues to attract, some of the nation's best physicians to both rural and urban areas across the state, providing top-notch care in hospital settings and independent practices. I can tell you, with certainty, that this was not the case during the previously mentioned crises. Medical students were actively being told that it would be in their best interest to leave the Commonwealth and seek to practice elsewhere. We Do Not want to return to these days of sending these messages.

In light of the proposed venue rule, I would be remiss if I did not highlight the following negative consequences of the rule going into effect:

- Pennsylvania still ranks near the top nationwide in the cost of medical professional liability insurance.
- The increased cost of medical liability coverage may place providers and hospitals under greater financial strain. Many rural hospitals, already struggling to remain solvent, will be further threatened with closure should the cost of medical professional liability insurance increase further.
- Venue reform will likely increase the cost of defending lawsuits, which in turn would increase cost for the professional liability insurance carriers in the state.
- Finding professional liability coverage in the state will become more difficult.
- And, since professional liability insurance is required to practice in the state, physicians who cannot afford or cannot find coverage will likely, once again, be forced to adjust—seeking other practice alternatives, retiring, or leaving the state all together.

- In sum, Pennsylvania will lose its competitive national status as a state with the best health care systems in the nation, the state's economy will falter, and most critically, patients will suffer.

Turning to the recent report completed by the LBFC, I wanted to spend some time explaining why we feel this report is incomplete, inaccurate and inconclusive. The first and most glaring omission in the report was the failure to accurately ascertain the number of physicians practicing in Pennsylvania. It is our belief that a report on this subject cannot be deemed complete without this data.

Next, the LBFC report maintains that it was largely impossible to isolate one variable, venue in this instance, if multiple variables are occurring concurrently. We have never advanced a position that venue was the be-all-end-all, but rather that it was part of the overall package of tort reforms that led to market stabilization.

Third, throughout the report, the LBFC looks at national trends and whether what is occurring in Pennsylvania may be more a matter of what is happening nationwide. Regardless of the veracity of this notion, national trends cannot create an exact comparison when discussing an issue such as medical professional liability.

Lastly, the LBFC report states that defendants still retain the option to file a "forum non conveniens" motion. This is Not always true. Well established Pennsylvania jurisprudence provides that the plaintiff's choice of forum, although not absolute or unassailable, is given great weight. The burden is on the party challenging the plaintiff's choice of forum to show it was improper and mere inconvenience is not proper reason to have the venue transferred. Rather, the defendant has a high burden of proof to show, with detailed information on the record, that the forum chosen by the plaintiff is either vexatious or oppressive.

In summary, please make no mistake that PAMED believes that all patients should have the ability to seek recompense when they feel they have been harmed by actions occurring within the healthcare system. We also believe that all physicians have the right to a fair due process. Hearing medical liability cases in the location—that is, the venue—where the alleged medical error occurred helps ensure the process is balanced for both parties and provides the opportunity to have the merits of the case heard by a jury of one's peers.

We must learn from history. I believe the current venue rule, which stipulates that medical liability claims must be filed in the county where the alleged medical error occurred, helped stabilize the medical liability climate back in 2002. The result of the proposed venue rule change by the Civil Procedural Rules Committee will create a domino effect of negative implications for the professional liability insurance market, physicians, other health care providers, and most importantly, access to quality care for all Pennsylvanians.

Thank you again for the opportunity to provide testimony on this critical subject and for your ongoing efforts to address this situation.