



**Testimony of  
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**Before the Senate Judiciary Committee's  
Hearing on the LBFC's Report on Medical Liability Venue**

**September 8, 2020.**

Chairman Baker, Chairman Farnese, and members of the Judiciary Committee, thank you for this opportunity to comment on the Legislative Budget and Finance Committee's (LBFC) report: A study of the Impact of Venue for Medical Liability Actions.

My name is Curt Schroder. I am the Executive Director of the Pennsylvania Coalition for Civil Justice Reform (PCCJR). PCCJR is a nonpartisan advocacy organization comprised of a diverse group of organizations and individuals committed to bringing fairness to Pennsylvania's laws and courts by raising awareness of civil justice issues and advocating for legal reform.

I believe the LBFC did its best to understand a complicated topic and issue a report accordingly. However, after the report's release, a number of issues came to light and questions have arisen about whether the LBFC reviewed and considered all relevant and pertinent material. The conclusions of the report, to the extent the report contains firm conclusions, are therefore called into question and the report itself should be revisited. This committee is providing a valuable public service in allowing us to air these issues and concerns.

The LBFC report on page 24 states that while various sources of physician data were reviewed "We found most of these sources to be inadequate for this study." Chris Latta stated in his remarks before the LBFC on the day the report was released: "Based on that review, we found there is a lack of comprehensive, detailed data on the number of physicians practicing in Pennsylvania – particularly by specialty."

Yet during the Senate Appropriations Committee hearing of February 20, 2020, Senator Phillips-Hill questioned Secretary Boockvar concerning the Department of State's data on physicians practicing in the Commonwealth. Senator Phillips-Hill asked Secretary Boockvar whether the department has the ability to keep track and identify all physicians practicing in Pennsylvania. Secretary Boockvar responded that the Department of State does have that information and that she would be happy to provide this information. Secretary Boockvar also stated that she was not aware that LBFC staff asked for this physician information.

I later learned that LBFC staff claims they did request the information but did not receive it from the Department of State. I am less concerned with whether LBFC asked for the physician information or whether the Department of State did not provide it. The point is it apparently was not reviewed during the research leading up to issuance of the report. Would the physician data collected by the Department of State fill in the pieces the LBFC felt were missing in other sources of data? Perhaps. But we will never know unless and until the LBFC actually has access to this data to make a determination.

It has also come to light that when physicians renew their licenses every two years through the Bureau of Professional and Occupational Affairs of the Department of State, the Bureau cooperates with the Department of Health in surveying physicians. Based on the information collected, the Department of Health issues a report: "Pulse of Pennsylvania's Physician and Physician Assistant Workforce." The most recent report dated August 2017 states:

***Physicians and physician assistants renew their Pennsylvania license to practice medicine every two years through the Department of State, Bureau of Professional and Occupational Affairs (BPOA). In cooperation with the BPOA, the Department of Health's Bureau of Health Planning surveys physicians and physician***

***assistants who are renewing their license. The surveys are designed to collect information on the characteristics and distribution of the physician and physician assistant workforces in the commonwealth.***

These reports are available on the Department of Health's Website on the Health Care Workforce Reports page. The surveys have been performed since 2002. Yet there is no mention of these reports or the information they contain anywhere in the LBFC's report. Did the LBFC read these reports? If they did and chose not to include this information in the report, why did they so decide? This is yet another source that could possibly fill in the blanks of physician data that the LBFC found wanting in other sources it did review.

My biggest concern however is that the LBFC failed to address a report by Milliman which was issued in 2019. The LBFC was given this report by multiple sources yet made no reference to the Milliman report. No explanation is given as to why the LBFC chose not to comment on the Milliman report. Milliman is a highly credible, respected authority on liability insurance matters and uses actuarial analyses that are missing in the LBFC's report.

The key findings of the Milliman report, should the proposed medical liability venue rule be adopted, are:

- **Statewide Impact: The current average statewide MPL costs and insurance rates for physicians in Pennsylvania could increase by 15%;**
- **Local/County Impact: Many individual counties could see increases in physician MPL costs and rates of 5%, while counties surrounding Philadelphia could see larger increases of 45%;**
- **Physician Specialty Impact: High-risk physician specialties, such as Obstetrics/Gynecology (OB/Gyn) and General Surgery, could experience additional cost and rate increases of 14%.**

The Milliman report directly challenges the findings and conclusions of the LBFC's report. Should the proposed medical liability venue rule be adopted, and cases must no longer be filed where the cause of action arose, the results will be dramatic according to Milliman. That is because plaintiffs' attorneys will opt to file suit in Pennsylvania's major cities where verdicts are often out of touch with reality. Before the current venue rule was adopted, plaintiffs' attorneys filed medical liability cases in places like Philadelphia even if the case had no real connection to the city. They did so hoping to hit a jackpot verdict and therefore take home a hefty contingency fee. If the proposed rule is adopted, the Milliman report shows that history will repeat itself and medical liability premiums will increase, in some places and in some specialties, dramatically. This will burden health care providers and endanger patient access to critical, needed care in Pennsylvania.

The Milliman report also challenges two of the underlying assumptions of the LBFC's report. First, the LBFC claims there is no way to isolate the impact of the venue rule change of 2003 from the rest of the reforms in the MCARE Act. Then the LBFC further opines that any improvement in liability rates was the result of "national trends" without explaining how they arrived at this conclusion. The Milliman report found a way to actually measure the impact of the venue rule reform and the impact of reversing it. The LBFC's report is unsatisfactory in that it did not address the Milliman findings.

Here are some additional major deficiencies we found in the LBFC report:

- Without explaining how they reached this conclusion, the LBFC claims that “national trends” were at work in leveling off liability premiums during the 2000s. While that claim is not substantiated with any statistics or data in the report, neither did the report answer the question: Would Pennsylvania have followed the national trends had it not enacted venue reform and the reforms contained in the MCARE Act?
- Page 93 of the LBFC Report discusses the 2012 MCARE Report when it says, “The Fund’s 2012 annual report, cited AOPC data, which showed a decrease in medical liability claims that may have previously been filed in Philadelphia—now being shifted to other counties. In the report, MCARE clearly states this could be due to venue reform or possibly ‘not at all.’” This is a terrible misreading of the MCARE 2012 Report!
  - The actual quote in the MCARE report was, “Furthermore, the reduced number of case filings, with a particular concentration in Philadelphia County, is likely a combination of some cases that would have been brought in Philadelphia previously that are now being brought outside Philadelphia (as a result of venue reform) or not at all.” (see pages 16-17 of the 2012 MCARE Report)
  - **Clearly, the MCARE report wasn’t implying that venue reform was “not at all” responsible for the shift in claims to other counties. The authors of the report were saying that the claims were being shifted to other counties or *not being filed at all*.**
- The LBFC report actually contains charts which demonstrate beyond any doubt the impact the venue rule had when it was enacted in 2003. Yet the authors of the report either didn’t recognize the importance of the data or chose not to comment. Exhibits 62 through 67 (pages 127 through 138) show pronounced decreases in liability rates, by specialty, in the suburban counties of Montgomery, Bucks, and Chester. **No national trend can explain the fact that these three counties had the largest rate reductions in the state.** Why the dramatic reduction in these three counties?? The Venue Reform of 2003 meant that doctors and hospitals in those counties were no longer being dragged into the Philadelphia Court system! Providers in these three counties were no longer tied to insurance rates in Philadelphia.
- The LBFC report uses the term “rhetoric” on pages 20 and 24 to describe arguments made in support of tort reform in the early 2000s. “Rhetoric” is a loaded term, serves to diminish the serious threat to health care that the medical liability crisis created, and shows a possible bias against the medical community.
- The report sets up strawmen in order to knock them down! Page 40 contains this example: “Similar to OB/GYNs, without data indicating significant widespread statewide trends we are led to believe that **medical insurance rates alone do not determine the availability of general surgeons.**” No one has EVER claimed that liability rates ALONE determine where a physician will practice. It is puzzling why the LBFC chose to respond to a claim that has never been made. Physicians will tell you that liability rates are a factor, not the sole determining factor, of where they practice. But make no mistake, liability rates are an important factor even if not the only factor.

- The LBFC's report fails to consider the impact of the proposed rule change on a hospital community that has seen consolidation since the 2003 venue reform rule was adopted. Instead the report makes this non sequitur: "But, we found no data to support a conclusion that a change to the venue rule would make GACHs more available (in number), as they declined during pre-and post-tort reform." The question that must be addressed is the impact of returning to venue shopping when more hospitals are owned by Philadelphia and Pittsburgh based health systems. The report is silent on this issue.
- While noting the prominent shift in claims from Philadelphia and Allegheny Counties after the 2003 venue rule was adopted, the report states on page 88: "However, later in this section we will highlight, other aspects of tort reform and may have had a more direct effect on claim filings such as the Certificate of Merit." Making this statement demonstrates a fundamental lack of understanding of the venue issue. The Certificate of Merit does not dictate where a claim is filed. The Certificate of Merit goes to the issue of whether a case has merit and therefore whether it can move forward. Venue determines where a case is filed, not the Certificate of Merit!

This committee must act to prevent a vague and inconclusive report from being used to scuttle the venue reform of 2003. The PCCJR urges this committee to take action to have the LBFC re-open its report. The LBFC should review all available records on physicians. The medical community has the right to know why the LBFC was silent on the Milliman report and its findings. In re-opening the report, the LBFC should give serious consideration to hiring an actuary so that a genuine actuarial analysis of the impact of the proposed venue rule is performed. At the very least, the LBFC could partner with an actuary from the Pennsylvania Department of Insurance. In addition, the errors in the report must be corrected and taken into consideration in determining the outcome of the review and report.

The LBFC clearly has more work to do.