

The Verdict Is In

The Legislative Budget and Finance Committee, a joint committee of the Pennsylvania General Assembly, just issued its blockbuster, almost 150-page Report, "A Study of the Impact of Venue For Medical Professional Liability Actions". The Report was an effort of both parties that are in the entirety of the legislature.

In 2003, the Pennsylvania Supreme Court issued a Rule requiring that doctors and hospitals who are sued for malpractice must be sued in the county where the malpractice occurred, regardless of where they are found doing business. The question is, whether doctors and hospitals should continue to receive this special treatment or whether they should be treated like any other person or entity that can be sued wherever they are found doing business on a regular and substantial basis?

The Report looked comprehensively at medical health care in Pennsylvania and how the quality of care, the number of doctors and the costs of insurance are affected by creating burdens and hurdles to patients who bring legitimate medical malpractice claims. The definitive Report overwhelmingly concluded that viewing all the available data from 1996 to 2018, there was a decrease in medical malpractice filings. Among the five states with the highest medical malpractice payouts, Pennsylvania had the second lowest percentage (12.1%) of increase in total payout costs per capita between 1996 and 2018.

The study determined that the effects of the proposed rule change concerning where medical malpractice cases are brought on the number of medical malpractice filings and/or the value of medical malpractice payouts in Pennsylvania "could not be determined with any certainty. Due to the multiple variables involved in medical malpractice cases, we could not isolate the effect, if any, the proposed rule change to venue would have on the proper determination of, and fair compensation for injuries as a result of medical negligence by a health care provider."

In other words, the fears that treating doctors and hospitals, like any other individual or company in the state, would somehow decrease the availability of doctors or increase the cost of health care are **not true**. The data that the study looked at is completely convincing.

In sum, the study found as follows:

1. The available data does not support a conclusion that changes in the availability, cost and affordability of medical professional liability insurance are the result of changes in Pennsylvania law. The changes may be the result of national trends.

2. The availability of medical professional liability insurance has increased since 2002.
3. The cost of medical professional liability insurance increased dramatically from 1996 through 2007 before declining. This change also appears closely aligned to a national trend.
4. Since 2007, the cost of medical professional liability insurance decreased. This also is demonstrative of a national trend.

It is clear that with or without hurdles to patients bringing legitimate medical liability claims in Pennsylvania, the number of physicians and extenders has grown steadily ever since the keeping of records. Claims that physicians are leaving the state or have left the state due to medical malpractice cases are now shown to be a total fraud. Pennsylvania's statewide total of medical staff with clinical privileges per 10,000 residents has increased at the same rate from 1996 through 2018. In fact, before so-called "tort reform", the rate of physician increase was actually somewhat greater.

There has never been, since the beginning of recordkeeping in 1996, a drop in the total act of medical staff with clinical privileges per 10,000 residents except in an occasional year. The Report did not deal with records of the number of doctors prior to 1996, but the trend has been consistent since the early 1970s.

The number of hospitals in the United States between 1999 and 2016 has grown every year except for one, 2007, when the United States was in a major recession.

The problem in health care is not caused by patients who have suffered malpractice, but rather from innate characteristics of the health care system that traditionally has emphasized profits over patients.

The number of medical malpractice filings in Pennsylvania has declined precipitously from 2000 until 2007, and have been steady between 2009 and 2017. The Report also looked at each county in Pennsylvania to determine whether there were increases or decreases in the number of filings, as well as payouts.

The Report demonstrates that jury verdicts are usually in favor of the doctors and hospitals. Throughout the state, doctors and hospitals win between 55% and 85% of the time. The plaintiff rates of success concomitantly are between 15% and 45%, depending upon the county.

The number of medical malpractice filings and number of jury awards have decreased since 2003. "However, the available data does not support a conclusion on the effect of venue on changes in the number of filings and/or jury awards." Interestingly and very importantly to those interested in health care, the National Practitioner Databank (NPDB) showed that the severity of payments made on behalf of MDs/DOs in

Pennsylvania and nationwide from 1996 to 2018 has increased, while the number (count) of payments has decreased. The claims are more serious, but are fewer in numbers.

From the time that serious hurdles and burdens to bringing legitimate medical malpractice cases was established in 2003, insurance rates for counties in Pennsylvania dramatically increased and stayed high. Making more difficult for patients to sue in legitimate cases was a financial bonanza for the insurance industry. They took advantage of the difficulty patients had in bringing cases to raise rates. In the high-risk specialties such as OB/GYN, the insurance companies dramatically jacked up their rates **after** restrictions on lawsuits and those rates have been kept high.

The only ones who have benefitted by making it more difficult for patients to receive fair compensation are the pocketbooks of insurance companies. The Report on the availability of insurance and health care in Pennsylvania will stand as a landmark against the false claims hurled at those who bring legitimate medical liability cases.

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