

Must Med-Mal Cases Be Tried Only Where the Injury Occurred?

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Should Cases Be Decided Where the Alleged Injury Occurred?

Trial attorneys sometimes try to change the venue of a malpractice trial in an effort to get a more favorable jury for their client. Years ago, the Pennsylvania Supreme Court issued a rule that required plaintiffs to file their medical malpractice suit in the county where the alleged medical error occurred—and not where judicial history indicated a jury might view their claim more favorably. The decision, in effect, put an end to a practice popularly known in legal circles as "venue shopping."

However, responding to an urgent request from state Senate leaders, the Pennsylvania Supreme Court has agreed to set aside for now its proposed change to that rule, which was aimed at cutting down on the number of medical malpractice suits, according to a story last month in *The Morning Call*, among other news outlets.^[1]

Together with Democratic lawmakers, the trial bar has asked this current court to change the long-standing rule for two major reasons. First, they say, the venue restriction severely hampers plaintiffs' ability to find impartial juries in some rural counties, where jurors presumably tend to favor defendants over plaintiffs.

And second, the restriction unfairly singles out med-mal claimants, who, unlike plaintiffs filing negligence claims in other industries, face curbs on venue choice.

Word that the high court was contemplating a change to the venue rule prompted Senate Republicans to pass a resolution calling for a delay. On February 14, justices agreed to postpone their decision until year's end, pending the completion of a legislative study.

On the very same day, the House Republican Caucus hosted a public hearing where hospital officials, doctor groups, and others weighed in on the court's proposed change.

If the court went ahead and rescinded its rule against venue shopping, argued both physician and hospital representatives, regional healthcare partnerships with Philadelphia-based groups could be jeopardized. Why? Because doctors and hospitals would be reluctant to partner with facilities located in a city where juries tend to favor plaintiffs over defendants, rewarding the former with sizable judgments.

But independent experts consulted by *The Morning Call* voiced their skepticism.

"I don't see that logic," said Hanming Fang, a professor of economics at the University of Pennsylvania, who studies insurance and healthcare markets.

In principle, he explained, a change in the venue rule wouldn't affect such partnerships one way or another, since, under the high court's proposed revision, attorneys filing a medical malpractice suit could choose the City of Brotherly Love as their venue *whether or not* the facility where the injury occurred had an affiliation with a Philadelphia-based health system.

Still, the current rule prohibiting venue shopping—along with other reforms to the state tort system passed nearly two decades ago—seems to have had its intended effect: to drive down the number of suits and high-end judgments. Private insurance companies, for one, are reportedly collecting more money in malpractice premiums than they're paying out in claims. The result is that surpluses in the state-run med-mal compensation fund have risen to record levels.

Whether these surpluses have come at the expense of injured patients getting a fair shake in the Pennsylvania courts is something that, at the end of the year, justices will need to weigh carefully before deciding whether the venue rule should stand as it is or be altered.

Jury Sides With Teenage Stroke Victim

A young woman who suffered a [stroke](#) while undergoing cardiac catheterization as a teenager was awarded nearly \$14 million, reports a story in *The Seattle Times*.^[2]

In 2007, 12-year-old Latosha Evans received a heart transplant at Seattle Children's Hospital. Six years later, in 2013, her doctors discovered that a stent in her heart had fractured and would need to be replaced. The following year, she underwent an

elective cardiac catheterization, during which her surgeons noticed that they didn't have the right stents on hand. For this reason, they debated prolonging the procedure while they located the proper stents at a nearby facility.

Ultimately, they chose a different stent, but the procedure nevertheless lasted 4 hours, putting Evans at high risk for a stroke. Following surgery, she in fact exhibited signs of a stroke, but she wasn't tested for 4 hours, according to a statement released by her attorneys.

That lapse proved too long for her doctors to intervene and reverse the damage caused by the cerebrovascular incident.

In October 2015, Evans's parents filed a suit against Children's Hospital and Children's University Medical Group, claiming that the hospital and doctors were negligent in both causing their daughter's stroke and then failing to identify it in a timely manner.

Evans will require full-time care for the rest of her life as a result of a variety of injuries to her cognitive function, speech, memory, and mobility. The judgment included close to \$11 million for future economic losses and \$3 million in general damages.

The hospital released the following statement to the newspaper following the verdict's announcement: "We understand that navigating a complex medical condition can be very difficult, and our deepest sympathy goes out to Latosha Evans and her family. We remain steadfast in our commitment to patient safety and providing the highest quality medical care."

Patient: Hospital's Negligence Led to a Nasty Fall

CHI Mercy Medical Center in Roseburg, Oregon, is being sued by a woman who claims she fell and sustained severe injuries in 2017 during her treatment at the hospital for orthostatic hypotension, according to a story in *The News-Review*.^[3]

In her complaint, Renee Bates alleges that, because of the hospital staff's failure to supervise her properly, she fell off a bedside commode, striking her head on the floor of her hospital room. The force of the impact fractured her cervical spine, necessitating three surgeries to repair an instability and an injured disc.

The fall and resulting surgeries, says Bates, have led to a range of physical complications—including severe pain and loss of range of motion—affecting both her lifestyle and mental health.

Her lawsuit asks for \$910,000, which includes \$750,000 for noneconomic damages, \$150,000 for surgical expenses associated with treating her facial and cervical injuries, and \$10,000 for lost wages.

Hospital representatives indicated that they were aware of the suit but were unable to comment on pending litigation.

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