

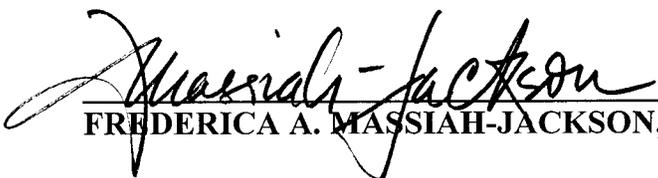
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

LYAH H. THACH	:		
Plaintiff	:		
	:	MARCH TERM, 2014	DOCKETED
vs.	:		
	:	NO. 0609	SEP 09 2014
ABINGTON MEMORIAL HOSPITAL	:		
Defendant	:		F. CLARK DAY FORWARD

ORDER

And Now, this ^{9th} day of September, 2014, after consideration of Defendant Abington Memorial Hospital's Motion to Amend this Court's Order of July 10, 2014, and to certify that the issue involves a controlling question of law as to which there is substantial grounds for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate determination of this case, and Plaintiff Lyah H. Thach's Response thereto, it is hereby **ORDERED** that the Defendant's Motion is **DENIED**.

BY THE COURT:



 FREDERICA A. MASSIAH-JACKSON, J.

Thach Vs Abington Memor-ORDMM



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
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LYAH H. THACH	:		
Plaintiff	:		DOCKETED
	:	MARCH TERM, 2014	
vs.	:		SEP 09 2014
	:	NO. 0609	
ABINGTON MEMORIAL HOSPITAL	:		F. CLARK
Defendant	:		DAY FORWARD

**MEMORANDUM in SUPPORT OF ORDER DENYING THE
DEFENDANT'S MOTION FOR APPELLATE CERTIFICATION**

MASSIAH-JACKSON, J.

September , 2014

I. FACTUAL BACKGROUND and PROCEDURAL HISTORY

In the Spring of 2012, Ms. Lyah H. Thach, a resident of Philadelphia, was 33 years old and 28 weeks pregnant. Amended Complaint, Paragraphs 1 and 8. On March 8, 2012, Ms. Thach was admitted to Abington Memorial Hospital for several days where she underwent testing, diagnostic imaging, and various treatments. Upon discharge on March 14, 2012, Abington Memorial Hospital provided weekly home healthcare visits from March 15, 2012 through April 17, 2012, in response to the Hospital's diagnosis of "strep viridans infective endocarditis with embolic events and CVA secondary to a history of rheumatoid fever, positive mitral valve thickening, and pregnancy." Amended Complaint, Paragraphs 9 through 17.

On April 17, 2012, Ms. Thach was discharged from home healthcare. On April 18, 2012, Ms. Thach presented to Abington Memorial Hospital with worsening weakness and numbness. She became unconscious and began seizing. Amended Complaint, Paragraphs 12 and 24. Ms. Thach has suffered at least two strokes, permanent and irreversible brain damage, Locked-In Syndrome (eye movement only), is fed through a tube, and requires round-the-clock assistance in all activities of daily living. Amended Complaint, Paragraphs 12, 24 and 26.

As a result of serious and permanent injuries sustained, Plaintiff-Thach initiated this medical malpractice civil action against Defendant-Abington Memorial Hospital in March, 2014. On April 10, 2014, the attorney for Plaintiff-Thach filed a Certificate of Merit pursuant to Rule 1042.3(a) and Rule 1042.10 of the Pennsylvania Rules of Civil

Procedure. One week later a Motion and Memorandum to Strike the Certificate of Merit was filed by counsel on behalf of Abington Memorial Hospital (Control No. 14042055). Responsive Answers and Memorandum in Opposition to the Motion to Strike were filed by Plaintiff-Thach. On July 10, 2014, this Court denied the Defendant's Motion to Strike the Plaintiff's Certificate of Merit and stated in part:

“The Certificate of Merit filed by the Plaintiff on April 10, 2014 is sufficient to support claims of vicarious liability against the Defendant.”

On August 11, 2014, the Defendant-Hospital filed a Motion and Memorandum, seeking appellate certification that this Court's July 10, 2014 Order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter. 42 Pa. C.S. §702; Rule 1311 of the Pennsylvania Rules of Appellate Procedure. (Control No. 14081092).

Following the filing of Plaintiff's Response in Opposition, this Court coordinated a telephone conference with counsel on September 4, 2014, seeking, inter alia, clarification of Paragraphs 12 through 15 of Defendant's Motion for Appellate Certification and pages 4-5 of Defendant's Memorandum. Counsel for Defendant-Hospital did promptly provide written clarification by identifying the medical professionals for whom Defendant asserts separate Certificates of Merit should be filed where as here, the Plaintiff based her claim on the

vicarious liability of Abington Memorial Hospital. Defendant's letter dated September 4, 2014, states in pertinent part:

“Defendants [sic] request certificates of merit for all IDENTIFIED AGENTS listed in the Amended Complaint: (1) Victoria Myers, M.D.-OB/GYN; (2) Brad Klein, M.D.-Neurology; (3) Richard Borge, M.D.-Cardiology; (4) Neely Nelson, M.D.-OB/GYN (Resident at the time); (5) Karan Hadley, RN-Home Health Nurse; (6) Bethany Perry, M.D.-OB/GYN; (7) Richela Stoddard, RN-Home Health Nurse; and (8) Frederick Bartlett, M.D.-OB/GYN. If Plaintiff is critical of the care provided by Rochelle Krimker, OT and Mary Ann Pritchett, PT, two individuals that Plaintiff deposed during venue discovery to secure venue in Philadelphia, certificates of merit should be filed supporting the allegations alleged against Abington Memorial Hospital for their actions. Defendants also request certificates of merit covering the medical specialties of any UNIDENTIFIED AGENTS the Plaintiff deems Defendant vicariously liable and for whom the Plaintiff's expert has identified as providing negligent care during Lyah Thach's admission to Abington Memorial Hospital on March 8, 2012, following her discharge at her home on Van Kirk Street and during her Abington Memorial Hospital admission beginning April 18, 2012. Defendant can provide samples regarding the certificates of merit for the unidentified agents upon request of the Court.”

After careful consideration of the issues raised by the parties, the Motion of Defendant-Hospital to certify for appeal the interlocutory Order dated July 10, 2014 is **DENIED.**

II. LEGAL DISCUSSION

A. Defendant-Hospital Has Chosen the Wrong Forum to Seek Changes To the Pennsylvania Rules of Civil Procedure

Rule 1042.3(a)(2) of the Pennsylvania Rules of Civil Procedure was adopted by the Supreme Court of Pennsylvania on January 27, 2003. The Form of a Certificate of Merit is set forth in Rule 1042.10, which was initially adopted by the Supreme Court of Pennsylvania on January 27, 2003. The words are clear and without ambiguity.

If this Defendant-Hospital or its counsel propose new forms or new wording or other amendments, the proper forum for such recommendations is the Supreme Court's Civil Procedural Rules Committee. Instead, Defendant sets forth in its Memorandum dated April 17, 2014, pages 16 through 20, the proposed language for a Certificate of Merit which does not appear in the Pennsylvania Rules of Civil Procedure and has not been endorsed or adopted by the Supreme Court of Pennsylvania. The Hospital's bald suggestions are not a proper legal basis to support its Motion to Strike Plaintiff-Thach's Certificate of Merit.

It is not the role of this Trial Court to second-guess what Justice Thomas Saylor termed a "subtext" in Pennsylvania's medical malpractice litigation practice. In his Dissenting Opinion in Freed v. Geisinger Medical Center, 5 A.3d 212 (Pa. 2010), Justice Saylor commented on the relationship of the Supreme Court to the Legislature and the Certificate of Merit requirement. 5 A.3d at 225-228. Clearly, the Supreme Court's Civil Procedural Rules Committee provided the language and template for Rule 1042.10 with a wisdom which far out-weigh's this Trial Court or the Defendant-Hospital.

B. This Trial Court May Not Usurp the Policy Concerns Addressed By the Pennsylvania Supreme Court Since 2003.

Former Chief Justice Ralph J. Cappy and current Chief Justice Ronald D. Castille have consistently expressed the expectation that pre-certification of medical malpractice litigation will ensure that the plaintiff in a medical malpractice action has met certain standards to establish a cause of action against the entity against whom a claim is asserted. (Prior to 2003, there were no standards) See, Court Exhibit “A” collectively attached hereto. In this case it is only the named defendant, Abington Memorial Hospital, which is the entity against whom a claim has been asserted. Defendant-Hospital is alleged to be vicariously liable for actions of several identified and unidentified medical professionals.

Defendant-Hospital contends that because in other cases, certain plaintiffs have filed multiple Certificates of Merit, then this Trial Court is bound by those “precedents.” This Court does not agree. The words of the Supreme Court at Rule 1042.10 requires that the Plaintiff name the **Defendant against whom the claim has been asserted:**

“Certificate of Merit as to _____
(Name of Defendant)

.....

the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work

that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;”

There is no suggestion expressed or implied in the Pennsylvania Rules of Civil Procedure that a plaintiff must file 36 Certificates of Merit when there is only one defendant. See, Defendant’s Memorandum, dated April 17, 2014, page 15.

The policy and Rules were adopted as the first step to weed out certain litigation early in the process. Chief Justice Cappy provided the background of the Certificate of Merit (“COM”) in Womer v. Hilliker, M.D., 908 A.2d 269 (Pa. 2006) at 266:

“The procedure we provided in the professional liability action rules centers on the filing of a COM. On the one hand, the presence in the record of a COM signals to the parties and the trial court that the plaintiff is willing to attest to the basis of his malpractice claim; that he is in a position to support the allegations he has made in his professional liability action; and that resources will not be wasted if additional pleading and discovery take place. *See* Pa.R.C.P. No. 1042.4, Pa.R.C.P. No. 1042.5. On the other hand, the absence from the record of a COM signals to the parties and the trial court that none of this is so and that nothing further should transpire in the action, except for the lawsuit’s termination. *See* Pa.R.C.P. No. 1042.6.” (footnotes omitted).

The Supreme Court commented that Rule 1042.10 (formerly Rule 1042.8) “displays a sample COM that shows precisely what Rule 1042.3 requires.” 908 A.2d at 278:

“Rule 1042.3 is clear and unambiguous in its mandate that in every professional liability action a specific representation about the plaintiff’s claim must be filed in the official record in a document called a ‘certificate of merit’ at the time the complaint is filed or within sixty days thereafter. Pa.R.C.P. No. 1042.3(a). Pa.R.C.P. No. 1042.8 provides that ‘the certificate required for filing by Rule 1042.3(a) shall be

substantially in the following form,' and displays a sample COM that shows precisely what Rule 1042.3 requires."

During pre-trial discovery, after expert trial witness reports are exchanged, and, after dispositive motions are ruled on, the parties have continuing opportunities to assess the cause of action. Chief Justice Castille commented after ten years of these certification rules that the Supreme Court's Rules of Civil Procedure balanced "new requirements for filing medical malpractice claims with the need for access and fairness in the state court system." See, Court Exhibit "A", June 20, 2014.

C. Notes and Explanatory Comments Have Not Been Adopted By the Supreme Court

Rule 129(e) of the Pennsylvania Rules of Civil Procedure states:

"(e) A note to a rule or an explanatory comment is not a part of the rule but may be used in construing the rule."

See also, Laudenberger v. Port Authority of Allegheny County, 436 A.2d 147, 151 (Pa. 1981).

Rule 127(b) of the Pennsylvania Rules of Civil Procedure states:

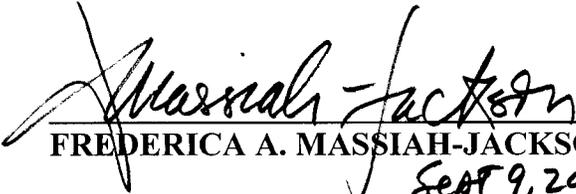
"(b) Every rule shall be construed, if possible, to give effect to all its provisions. When the words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."

In the case at bar Defendant-Hospital is faced with Rule 1042.3(a)(2) and Rule 1042.10 which are clear and free from all ambiguity. This Defendant's attempts to add impediments to the litigation only days after the commencement of the civil action and prior to normal pre-trial discovery, appear to be a pretext designed to delay Philadelphia Case Management protocols.

III. CONCLUSION

Only the Supreme Court of Pennsylvania may amend or modify its Rules of Civil Procedure or the policy decisions relating to Certificates of Merit. Defendant-Hospital has failed to articulate how an immediate appeal will materially advance the ultimate termination of this litigation. For all of the reasons set forth above, the Motion of Abington Memorial Hospital for Appellate Certification of the July 10, 2014 Order is **DENIED**.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON
Sept 9, 2014

NEWS RELEASE

CONTACT:

Art Heinz, communications coordinator
(717) 795-2062

FOR IMMEDIATE RELEASE

Supreme Court acts on Governor's recommendations to resolve medical malpractice concerns

HARRISBURG, June 23, 2003 — As complex medical malpractice issues remain a concern nationally and in Pennsylvania, the Supreme Court of Pennsylvania has agreed to take immediate action in response to recommendations contained in Gov. Edward G. Rendell's plan for medical malpractice liability reform.

Specifically, Chief Justice of Pennsylvania Ralph J. Cappy today announced three steps that will advance active and thoughtful consideration of the various judicial branch-related issues raised in the governor's plan.

First, the Chief Justice has appointed Justice William H. Lamb to develop an implementation plan for a voluntary medical malpractice mediation program. The voluntary program would be similar to plans for such a program adopted in Act 135 of 1996. While Act 135 was ruled unconstitutional, aspects of the statute involving a mediation program were not a subject of the ruling.

Second, Chief Justice Cappy has selected Allegheny County Common Pleas Court Judge R. Stanton Wettick, who also serves as chair of the Supreme Court's Civil Procedural Rules Committee, to chair an *ad hoc* "think tank" comprised of four prominent attorneys, two plaintiff's practitioners and two defense practitioners. The purpose of the "think tank" will be to:

- Immediately review recommendations contained in the governor's plan that do not involve the compilation of statistics and are non-mediation related;
- Consider issues and any related topics underlying the recommendations;
- Creatively devise action steps -- in the form of recommendations to the Supreme Court -- that will help to solve problems identified in the governor's report as being within the purview of the judicial branch of state government.

(MORE)

The Chief Justice will work with Judge Wettick as chairman, and the other “think tank” members:

William R. Caroselli, a partner in Caroselli, Beachler, McTiernan & Conboy LLC, Pittsburgh

Peter J. Hoffman, a partner in McKissock & Hoffman, PC, Philadelphia

Edwin L. Klett, a partner in Klett, Lieber, Rooney and Schorling, PC, Pittsburgh

James F. Mundy, a partner in Raynes, McCarty, Binder, Ross & Mundy, Philadelphia

Third, the Chief Justice has directed Court Administrator of Pennsylvania Zygmunt A. Pines and the Administrative Office of Pennsylvania Courts’ Policy Research Department to work closely with and assist relevant governmental agencies and others in developing an efficient means of collecting medical malpractice statistics described in the governor’s plan.

In a brief discussion regarding his appointment, Justice Lamb told a recent seminar of the Pennsylvania Bar Institute that the adoption of a mediation plan has the “...full and unanimous approval of the Supreme Court.” Justice Lamb noted that the Chief Justice had asked him to move quickly and he praised the Chief’s immediate leadership in this “important 21st century effort.”

“You’ve got the Supreme Court interested, the Governor’s Office interested, and the General Assembly interested. You’ve got the attention of the bar, at least in the malpractice area, and you’ve got me, who’s used to getting things done,” Lamb said.

“The ‘think tank’ appointments that I am announcing today are carefully selected with several criteria in mind, just as I have specifically chosen that term to partly describe the nature of their assignment by the Supreme Court,” the Chief Justice said.

“It is important that those chosen have the necessary knowledge and experience to understand both the complexity and sensitivity of the issues surrounding medical malpractice reform. Their reputations must be impeccable, having earned the respect of their peers whether advocating for defendants or plaintiffs and they must be creative in approaching this challenging assignment, for few issues have confounded more Pennsylvanians than those of medical malpractice reform.

“I am confident that Messrs. Caroselli, Hoffman, Klett, and Mundy meet those criteria, just as I am confident that Justice Lamb and Judge Wettick will bring both their extensive experience and occasional sense of impatience to their respective tasks.”

Conceding the complexity of the tasks, the Chief Justice did not define time limits for completion of either project but did emphasize that Justice Lamb and Judge Wettick have agreed to give it their immediate attention. The Administrative Office has already begun its review and relevant consultations.

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ADMINISTRATIVE OFFICE of PENNSYLVANIA COURTS

NEWS RELEASE

CONTACT:

Art Heinz, communications coordinator
(717) 795-2062

FOR IMMEDIATE RELEASE

WWW.COURTS.STATE.PA.US

One-stop shop for court 'med-mal' info created

HARRISBURG, July 28, 2004 — Chief Justice of Pennsylvania Ralph J. Cappy today announced that state court rules, court-generated statistics and related information regarding medical malpractice litigation are now located on the state Judiciary Web site: www.courts.state.pa.us

“Our intent in creating this Web site is to establish a ‘one-stop shop’ for access to med mal information available from the Judiciary,” Chief Justice Cappy said. “While the Judicial Branch is but one participant among many in the ongoing med mal discussions, we thought it might be helpful to place in a widely-accessible public venue all the information about the Supreme Court’s actions in this area.”

Contained on the site are the med mal rules recently promulgated by the Supreme Court which established the following:

- pre-trial procedures in med mal professional liability actions (March 29, 2004)
- rules regarding professional liability actions (January 27, 2003)
- venue (March 5, 2003).

Also available on this site are statistics gathered by the Supreme Court’s Administrative Office for years 2000-2003 including:

- med mal filings statewide
- jury verdicts
- non-jury verdicts.

(MORE)

As additional statistics are generated in these and other areas, the web site will be updated with this new information, as well as rules changes and other pertinent information.

The site also provides links to other Pennsylvania sites and recent legislation with respect to medical malpractice issues. Visitors can access the page through a direct link at the top of the Judiciary's Web site.

"It is important to note that this effort to disseminate public information does not suggest, either explicitly or implicitly, any specific position by the state Judiciary with respect to med mal litigation issues currently in public debate," Chief Justice Cappy noted.

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ADMINISTRATIVE OFFICE of PENNSYLVANIA COURTS

NEWS RELEASE

CONTACT:

Tom Darr, Deputy Court Administrator
(717) 795-2000

FOR IMMEDIATE RELEASE

WWW.COURTS.STATE.PA.US

Court Announces Rules Changes in Med-Mal Litigation

HARRISBURG, August 20, 2004 — Chief Justice of Pennsylvania Ralph J. Cappy today announced three changes to the state's Rules of Civil Procedure governing aspects of medical malpractice litigation. These changes join three earlier civil rules' changes or additions with respect to med-mal issues, dating back as far as March, 2003.

"The rules being promulgated today are additional steps, with real value, in further demystifying the complex issues of trying medical malpractice cases in Pennsylvania's courts and supporting alternative adjudicatory procedures for those cases," said Chief Justice Cappy. "Our efforts are but part of the med-mal puzzle that engage all three branches of state government and interested parties, but they further demonstrate our commitment to help understand and resolve legitimate concerns."

Newly-adopted Rule of Civil Procedural 223.3 mandates a specific charge (instruction) by a presiding judge to a jury deciding a case involving bodily injury or death where a claim for non-economic loss is sought by the plaintiff. While the specific jury charge may be modified by agreement of both parties, the charge set forth in the new rule aims to define the components of non-economic damage claims and awards in clearly understandable terms for jurors. The rule also lists specific factors that jurors shall consider when deliberating non-economic damage awards. This rule will apply in all negligence litigation involving a claim for non-economic damages.

A second new rule, Rule of Civil Procedure 1042.71, implements section 509 of the Mcare Act and requires a breakdown of every verdict into certain categories, thus facilitating prior orders of the Supreme Court which require statistics to be kept.

A third new civil procedural rule, Rule 4011, adds to provisions of an existing rule limiting the scope of discovery and deposition and in conformity with current state law which provides that most mediation communications and documents are privileged. These amendments will enhance the role of the mediation process as an important tool in helping to effectively decide medical malpractice cases.

Among other steps taken by the Supreme Court of Pennsylvania regarding medical malpractice issues are:

- o a rule to ensure that med mal cases are heard in the proper venue;
- o rules to speed med-mal litigation by requiring pre-certification of med-mal claims and early disclosure of expert reports;

(MORE)

- o the requirement that by January 1, 2005 all Pennsylvania jurisdictions that deal with med-mal claims will have a mediation program in place to provide “early intervention” in cases; and
- o the requirement that local courts begin collecting additional data on med-mal cases that will – in the long term – help all parties to better understand these complex issues.

Additionally, Pennsylvania’s court system announced in late July its creation of an electronic “one-stop shop” – a med-mal-related web page on the Judiciary’s Web site (www.courts.state.pa.us) – to centrally locate all efforts, statistics, rules and related topics within the Judiciary’s purview regarding medical malpractice issues.

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ADMINISTRATIVE OFFICE of PENNSYLVANIA COURTS

NEWS RELEASE

CONTACT:

Art Heinz, communications coordinator
(717) 795-2062

FOR IMMEDIATE RELEASE

WWW.COURTS.STATE.PA.US

Supreme Court of Pennsylvania
**Med Mal Rules' Changes
to Further Improve Data Collection**

HARRISBURG, December 27, 2004 — A change in descriptive wording required by Pennsylvania's Civil Procedural Rules of Court will help to more readily identify medical malpractice cases. The change is contained in an Order issued today by the Supreme Court of Pennsylvania. It outlines new filing requirements in certain civil actions to enhance the collection and accuracy of data in medical professional liability cases. Those new requirements will further improve the judiciary's ability to analyze statistical data regarding med-mal cases so that state policy makers can better understand relevant med-mal issues.

"These changes will enhance the collection and accuracy of data in medical professional liability cases and again underscore the judiciary's commitment to address an issue of significant importance to the Commonwealth's citizens," Chief Justice of Pennsylvania Ralph J. Cappy said. "This provides a mechanism for a more effective and uniform way to collect information that should prove valuable in addressing common sense solutions to the challenges faced by the complexity of medical professional liability."

New Rule 1042.16 requires the caption for all legal papers filed in a medical malpractice action to contain the designation "Civil Action — Medical Professional Liability Action." The new designation must be noted on a cover sheet in those counties that require a cover sheet.

In the same order issued today, the court amended Rule of Civil Procedure 1018 to clarify the requirements for captions in civil pleadings to cross-reference new Rule 1042.16.

The changes will assist the Administrative Office of Pennsylvania Courts in the performance of its statutory duties in obtaining and developing statistical information in medical professional liability actions imposed by the Medical Care Availability and Reduction of Error Act, also known as the Mcare Act.

A collaborative effort among members of the Supreme Court's Civil Procedural Rules Committee and AOPC staff provided the basis for the court's consideration of the changes.

(The order can be found on the Pennsylvania Judiciary Web site: www.courts.state.pa.us)

The Legal Intelligencer

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New Phila. Med Mal Filings Reached Decade Low Last Year, FJD Says

Amaris Elliott-Engel
2011-02-25 12:00:00 AM

The number of medical malpractice filings in Philadelphia Common Pleas Court fell to its lowest level in the last 10 years in 2010, according to court statistics.

There were 389 medical malpractice cases filed in 2010, down from 507 cases in 2009, according to statistics compiled by the First Judicial District.

The highest number of filings in the last decade was 1,352 in 2002.

Filings fell by over half in 2003 after reforms were undertaken by the state Supreme Court and the other branches of Pennsylvania government, among other measures, to require that medical malpractice cases be filed in the counties where the alleged malpractice cause of action arose and that cases be filed with a certificate of merit from a physician stating that there is a reasonable probability that a medical malpractice defendant deviated from the accepted standard of medical care.

The proportion that medical malpractice filings take up in the FJD's civil inventory also has fallen to its lowest level in the last 10 years. Medical malpractice filings made up 9 percent of the court's major jury filings in 2010 in comparison to making up 29 percent of the court's major jury filings in 2002.

Of the 34 cases that went to a jury verdict in 2010, 76 percent of the cases resulted in defense verdicts and 24 percent of the cases resulted in plaintiff verdicts, ranging from a low of just under \$175,000 to a high of \$5.17 million, according to FJD statistics.

Philadelphia Common Pleas Judge William J. Manfredi, supervising judge of the civil section of the court's trial division, said during the Philadelphia Bar Association's medical-legal committee meeting Wednesday that the FJD's medical malpractice statistics are "not something that would support claims of some parties that there's a medical malpractice crisis in Philadelphia."

Verdicts make up only 4.5 percent of the resolution of cases, Manfredi said.

The most important part of resolving cases is to give a date certain for trial, Manfredi said.

The fact that the proportion of verdicts in favor of plaintiffs has dropped so much might reflect the impact of the country's economic malaise on the attitude of juries, so that they only want to award verdicts in the most meritorious cases, said Philadelphia Common Pleas Judge Howland W. Abramson, one of the Day Forward team leaders.

Abramson also said during the meeting that the decline might reflect the impact of the country's economic conditions on the plaintiffs bar, resulting in greater selectiveness in what cases they are taking.

Judge Lisa M. Rau, another judge who sits in the civil section, said during the meeting that the small number of plaintiff's verdicts might reflect that those who bring the best cases are able to achieve stronger settlements before trial.

Doctors are entitled to go to trial if they believe there has been no medical error, Rau said.

John Mirabella, a plaintiffs attorney with Duffy & Partners in Philadelphia and co-chair of the medical-legal committee, said "the statistics reflect a continued downward trend in medical malpractice filings, which was the intended effect of the judicial and legislative reforms enacted in the early 2000s. Unfortunately, there's no reason to think that patient safety has improved, only that claims are down."

Only four Philadelphia plaintiffs verdicts were above \$1 million in 2010.

Those cases include:

- A jury awarded \$5.17 million, including \$4.13 million in wrongful death damages and \$1.03 million in survival damages, for the death of a 72-year-old woman because of multiple organ failure and decreased intestinal blood flow after undergoing an elective cardiac catheterization. The plaintiffs in *Gelb v. Jeanes Hospital* had an agreement with the defendants' insurer, HPIX, that a plaintiff verdict would result in HPIX paying \$750,000 and MCARE paying \$1 million. Because of the agreement, the plaintiffs will recover \$1.75 million.
- A jury awarded \$3 million, including \$2 million in damages for pain and suffering, in *Vonner v. Mmeje* in the case of a premature baby who died less than two hours after being born to a woman with a weakened cervix that put her at risk of having a premature birth.
- A jury awarded \$1 million, including \$250,000 for pain and suffering, \$75,000 for loss of consortium, and \$675,000 for future economic damages, in the case of *Seving v. Chollak* on its finding that the plaintiff developed a foot drop because of a nerve injury that occurred after her total hip replacement.
- A jury awarded \$1 million, including \$982,494 in wrongful death damages and \$24,000 in survival damages, in *Cryor v. Falcone* to a plaintiff who argued that he had a history of aneurysms and hypertension, his symptoms of double vision and droopiness in his left eye indicated he was at risk of another aneurysm, and his symptoms were not addressed adequately before he became unresponsive and died from a cranial hemorrhage seven hours after arriving at Graduate Hospital.

Manfredi noted a number of other changes in the civil branch over the last couple of years as well as pending proposals that could affect medical malpractice cases.

The number of judges in the civil branch has fallen down to a complement of 24 in comparison to when there were as many as 36 judges during the era when the court was working through a backlog of cases, Manfredi said. Ninety-eight percent of cases are resolved within 24 to 36 months even though there have been fewer judges, Manfredi said. He said he expects that following this year's primary elections that five judges will be added to the civil branch.

The court is going to start providing notices to judges pro tem, or lawyers who volunteer to preside over settlement conferences, when the cases they mediated settle before trial, Manfredi said. Even though JPTs sometimes feel that their time is not productive if settlements are not reached during conferences, that work does result in cases settling, he said.

Manfredi noted that there is a proposed discovery rule that would prevent expert witnesses from being subjected to discovery.

There also is a proposal to change venue rules to allow plaintiffs to sue doctors, who practice out-of-state as well as in Pennsylvania, in Pennsylvania even if the cause of action arose in another state, Manfredi said. •



ADMINISTRATIVE OFFICE of PENNSYLVANIA COURTS

News for Immediate Release
May 7, 2012

Medical Malpractice Data Levels Off as Court Rules Yield Results

HARRISBURG—Chief Justice of Pennsylvania Ronald D. Castille today announced a leveling off in the number of medical malpractice case filings statewide after a six-year decline.

Although the figures released today for 2011 show a slight increase in the total number of lawsuits filed, there remains a 44.1 percent overall decline in filings for the latest reporting period from the statistical “base years” of 2000-2002. (See [Table 1](#)) In Philadelphia, the judicial district with the largest caseload, the decline exceeded 65 percent during the same period.

The base years are the period just prior to two significant rule changes made by the Supreme Court. The first change required attorneys to obtain from a medical professional a certificate of merit that establishes that the medical procedures in a case fall outside acceptable professional standards. A second change required medical malpractice actions to be brought only in the county where the cause of action takes place—a move aimed at eliminating so-called “venue shopping.”

The figures also show that 2011 had the fewest number of jury verdicts in comparison to earlier years. (See [Table 2](#)) The same data also shows more than 70 percent of the jury verdicts were for the defense. The number of non-jury verdicts for 2011 remained in single digits for a sixth consecutive year. (See [Table 3](#))

“What we’re seeing is essentially a leveling off in what had been a growing decline in numbers that is not surprising,” Chief Justice of Pennsylvania Ronald D. Castille said. “Although the numbers are likely to show slight changes in the years ahead, the pattern suggests a solid footing for the systematic tracking and rule changes initiated and instituted a decade ago by the Supreme Court to address concern over medical malpractice litigation.”



Pa. medical malpractice reform credited for lower caseload

May 21, 2012 7:34 AM

By Amaris Elliott-Engel The Legal Intelligencer

A lighter medical malpractice caseload in Pennsylvania has become the "new normal" as reforms initiated by the state Supreme Court reach their 10th anniversary, attorneys and jurists say.

Laura Feldman, president of the Philadelphia Trial Lawyers Association, used the term "new normal" to describe the impact of the changes, which have seen reductions in the number of case filings.

Not only the number of filings, but also the number of plaintiff verdicts, have continued to drop in the 10th year since the state Supreme Court began requiring that such cases be brought in the venue only where the cause of action arose and that a certificate of merit be obtained from a medical professional to certify the lawsuit before complaints are filed.

Those experts must agree there is a "reasonable probability" that a medical malpractice defendant deviated from the accepted standard of medical care.

The number of medical malpractice filings fell from 2,904 in 2002, before the changes went into effect, to 1,528 in 2011, according to statistics provided by the Administrative Office of Pennsylvania Courts.

Pennsylvania Chief Justice Ronald D. Castille said the 47 percent decrease in medical malpractice filings between 2002 and 2011 shows that many of the filings before the changes were made may not have been meritorious lawsuits and may just have been filed to obtain settlements.

Although the court does not have data on this particular point, Justice Castille said that anecdotally he attributes some of the drop in filings to the fact that physicians have a new

responsibility put on them to state that a malpractice case should go forward against one of their fellow doctors.

"It kind of shifts the gatekeeping to experts," he said. "I thought it would be fairly easy to get experts to testify to anything. That doesn't seem to be the case."

The Supreme Court has been asked to make further changes, such as capping damages including on pain and suffering, Justice Castille said, but further rule changes are not on the court's radar.

"Clearly because the cases have become much more expensive to prosecute, people are setting standards. If they aren't worth" a lot in damages, then plaintiffs attorneys will not take the cases, Ms. Feldman said.

It used to be that some plaintiffs' attorneys thought, if a case was a weak case, they might be OK if they could file in Philadelphia County, Ms. Feldman said.

The rule changes have led to fewer "casual malpractice lawyers" pursuing these types of cases, Ms. Feldman said.

"Essentially, the people who have done this work and are experienced in the work are filing the cases in this point in time," she said.

Daniel J. Rovner, a defense attorney with Post & Post in Berwyn, Montgomery County, and co-chair of the Philadelphia Bar Association's medical-legal committee, said the reforms have been helpful but "there is still room for tort reform."

Despite the 10-year downward trend, there was a small uptick in the number of medical malpractice filings in Pennsylvania between 2010 and 2011. There were 1,528 filings in 2011 and 1,491 filings in 2010; 2010, meanwhile, had the lowest number of filings since the rule changes.

The highest number of filings since the Administrative Office of Pennsylvania Courts began keeping track was 2,904 filings in 2002.

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News for Immediate Release

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Medical malpractice case statistics show steady in number of lawsuits statewide

HARRISBURG —Medical malpractice lawsuits in Pennsylvania have steadied and leveled off over the last 10 years, according to statistics released today in the judiciary’s new [data dashboards](#).

The data shows 1,546 med mal filings in Pennsylvania’s civil courts in 2013. That figure was slightly more than the 1,510 filings in 2012. The latest filings represent a 43.4 percent decline from the “base years” of 2000-2002. In Philadelphia, the state’s judicial district with the largest caseload, the decline has been by slightly more than 68 percent during the same period.

“These numbers reinforce the value of court rules in balancing new requirements for filing medical malpractice claims with the need for access and fairness in the state court system,” Chief Justice of Pennsylvania Ronald D. Castille said. “There has been real improvement in what was, just a few years ago, one of the Commonwealth’s more vexing challenges.”

The base years are the period just prior to two significant rule changes made by the Supreme Court of Pennsylvania. The first change required attorneys to obtain — from an appropriate medical professional well-versed in the area of alleged malpractice — a “certificate of merit” that establishes that the medical procedures in a case fall outside acceptable standards. A second change required medical malpractice actions to be brought only in the county where the cause of action takes place — a move aimed at eliminating so-called “venue shopping.”

In comparison to earlier years, 2013 had fewer jury verdicts. For the second time in the last three years, there was the fewest number of jury verdicts in the decade of comprehensive statistics gathering. Slightly more than 77 percent of the jury verdicts in 2013 were for the defense. Two of the five nonjury verdicts in 2013 were for the defense.

For a more complete look at Pennsylvania’s medical malpractice case information, as well as other statistics, visit: www.pacourts.us.

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Media contact: [Art Heinz](#), 717-231-3317, www.pacourts.us

