

## MCARE Act Takes a Hit in Pa. Supreme Court Decision

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In a move that would weaken a 2002 law that stemmed the dramatic increase in professional liability insurance premiums for Pennsylvania physicians and health care systems, the Pennsylvania Supreme Court recently struck down a bar on certain medical malpractice cases.

[In a 4-3 decision](#), the court ruled Thursday that a "statute of repose" - which barred any medical malpractice claims arising more than seven years after the alleged incident - violated the Pennsylvania Constitution. The statute was included in the Medical Care Availability and Reduction of Error (MCARE) Act, a set of reforms to medical malpractice actions passed in 2002 that were designed to make the medical professional liability insurance market in Pennsylvania more stable and affordable for physicians.

In Thursday's court ruling, the issue the justices dealt with was whether the statute violated rights guaranteed in the Pennsylvania Constitution, which provides, "[a]ll courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law."

Ultimately, a four-justice majority agreed it did, holding that the statute was not "substantially related" to the goals of controlling the rising costs of medical malpractice insurance premiums.

The three-justice dissent disagreed strongly with this conclusion, arguing that the majority was "flout[ing] the General Assembly's policymaking authority" by striking down the law. After reviewing other instances in which the Pennsylvania General Assembly had modified legal rights via statute, the dissenting group of justices asserted that the statute of repose should be upheld given its rational and non-arbitrary connection to a clear economic need. This argument did not carry the day, however, and the statute is no longer good law.

The decision comes amidst other attacks on the protections for health care workers provided by the MCARE Act. In June, Barley Snyder partner [Kathy Kravitz](#), the chair of the firm's [Health Law Industry Group](#), [testified in front of the Pennsylvania Legislative Budget and Finance Committee](#) as the group investigated a proposal from the Supreme Court's Civil Rules Committee to repeal the special venue provisions applicable to medical malpractice actions. Passed in the wake of the 2002 law, the venue rules require medical malpractice cases be filed in the Pennsylvania county where the alleged negligence occurred. Kravitz strongly advocated against the repeal arguing that the conditions it guards against still exist. The Legislative Budget and Finance Committee has still not released its findings from those hearings and the Supreme Court has not taken action on the proposal.

- Read the [full Pennsylvania Supreme Court majority opinion](#).

While the statute of repose has not been an oft-cited component of the MCARE Act since its passage, it still could affect how physicians and health systems should monitor potential claims. If you have any questions

about this court decision, please [contact me](#) or any member of the [Barley Snyder Health Law Industry Group](#).

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