

**TESTIMONY OF ASSISTANT ATTORNEY GENERAL
ROYETTE V. RUSSELL, ESQ.
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HEALTH, HOSPITALS AND HUMAN SERVICES
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Good morning, Chairman Ray Fonseca, Committee on Health, Hospitals and Human Services members, other Senators, Legislative staff, and the listening and viewing audiences. I am Royette Russell, an Assistant Attorney General whose duties include the defense of medical malpractice actions filed against certain providers in the territory. On behalf of Attorney General Gordon Rhea, it is an honor and privilege to appear before you this morning.

The Department of Justice appreciates the opportunity to comment on Bill No. 36-0048, as amended, and offers the following testimony in partial support of the bill. The Department urges the Legislature to adopt a Proposed Amendment in the Nature of a Substitute. This is, in part, a result of several meetings with stakeholders such as individual physicians, the Department of Health, and the Virgin Islands Medical Society.

This revised document narrows the scope of the original bill. It addresses the qualifications of the membership of the Medical Malpractice Action Review Committee; increases the time for the Medical Malpractice Action Review

Committee to review proposed complaints; includes the requirement of an Affidavit of Merit prior to filing a claim for Medical Malpractice; establishes the standard of care in medical malpractice cases and the burden of proof; adds qualifications for Experts; includes a requirement for a bond; and makes a minor amendment to 33 V.I.C. sec. 3042 regarding the operation of the Expert Fund.

First, the amendment proposes the addition of a member of the public to the Medical Malpractice Action Review Committee. Including a member of the public on this committee ensures that the membership reflects not only professional expertise but also the broader community's perspective. A public member strengthens transparency, promotes confidence in the review process, and helps ensure that decisions are not made solely within the professional circles being evaluated. This balanced composition improves fairness, reduces perceptions of bias, and reinforces that the medical review system serves patients, providers, and the community alike.

The amendment also seeks to enlarge the amount of time allowed from 90 to 180 days to allow the Committee to review Notices of Intent prior to filing a medical malpractice action. These revisions were vetted by the relevant stakeholders and approved for adoption.

The amendment proposes that an Affidavit of Merit accompany all medical malpractice complaints. Currently, thirty states including the District of Columbia, have this statutory requirement. The rationale behind affidavit-of-merit or requirement in medical malpractice cases is straightforward: legislatures created these requirements to filter out weak or frivolous claims early, protect access to healthcare, and stabilize malpractice insurance markets. Courts across the country consistently cite the same core justifications.

This requirement represents a fair, balanced, and long overdue addition to the statute. It strengthens our healthcare system, protects our courts, and ensures that malpractice cases filed in this Territory are grounded in legitimate medical evidence.

To be clear, this reform is not designed to shield negligent providers or prevent injured patients from seeking justice. Medical negligence does occur, and when it does, patients deserve full and fair access to the courts. The Affidavit of Merit requirement does not raise the bar for meritorious claims—it simply ensures that every claim begins with a qualified medical expert confirming that the case has a legitimate medical basis. Strong cases will continue to move forward exactly as they do today. This amendment targets only those lawsuits filed without medical evidence, without expert support, and without any indication that negligence occurred. In short, the Affidavit of Merit protects the integrity of the legal system

without chilling valid malpractice claims or limiting the rights of truly injured patients.

The Affidavit of Merit is simple. Before a malpractice lawsuit is filed, a qualified medical expert must review the facts and confirm that the claim has a medical basis. This is not a barrier to justice. It is a safeguard—one that most jurisdictions across the United States already utilize. It is time for the Virgin Islands to join them. Without an Affidavit of Merit, an attorney can file a malpractice lawsuit based solely on:

- a client’s belief that something “went wrong;”
- incomplete medical records;
- speculation; or,
- assumptions about causation.

An Affidavit of Merit strengthens responsible legal practice because it requires attorneys to ground malpractice claims in real medical evidence before filing. This ensures that the legal process begins with accuracy, professionalism, and ethical diligence. By requiring an attorney to obtain a qualified medical expert’s review before filing a malpractice claim, an Affidavit of Merit guarantees:

- the claim has a legitimate medical foundation;
- the attorney understands the medical issues; and,
- the lawsuit is based on evidence rather than guesswork.

This is the essence of responsible legal practice.

This requirement will deter frivolous lawsuits. Too often, claims are filed without any medical support, sometimes simply searching for a theory through discovery. An Affidavit of Merit ensures that only medically supported claims enter the court system and discourages fishing expeditions. It protects both patients and providers from litigation based on speculation rather than evidence.

Second, an Affidavit of Merit will help protect judicial resources. Medical malpractice cases can be complex matters due to the technical nature of the subject matter. Without early expert review, courts can spend years managing cases that ultimately have little or no medical foundation. An Affidavit of Merit screens out unsupported claims at the outset, reducing unnecessary motions, hearings, and discovery disputes.

Third, this requirement reduces costs for hospitals, providers, and the government. Defending meritless claims drains public resources and can lead to increased malpractice insurance premiums. It forces healthcare institutions—already stretched thin—to divert time and money away from patient care. Early screening prevents years of litigation over cases that should never have been filed.

Fourth, adopting an Affidavit of Merit aligns the Virgin Islands with national best practices. More than two-thirds of U.S. jurisdictions already require some form

of expert attestation or Affidavit of Merit. This reform modernizes our statute and demonstrates our commitment to a stable, high-quality healthcare environment.

Fifth, this requirement improves the quality of malpractice cases filed. Early expert involvement clarifies liability and causation issues from the beginning. It strengthens legitimate claims and filters out unsupported ones. It leads to more focused discovery, more realistic settlement discussions, and fewer surprise expert opinions.

Sixth, this reform supports healthcare stability and provider retention. Our territory already faces challenges recruiting and retaining qualified physicians. Exposure to frivolous litigation contributes to burnout, defensive medicine, and rising insurance costs. An Affidavit of Merit reassures providers that the legal system will not permit baseless claims to proceed unchecked.

Finally, this requirement promotes responsible legal practice. It ensures that attorneys consult qualified medical experts before filing suit. It encourages professionalism, reduces sanctionable conduct, and ensures that plaintiffs receive accurate guidance before entering litigation. Responsible legal practice includes advising clients accurately about:

- whether negligence likely occurred;
- whether causation can be proven;
- whether the claim is viable; and,

- whether litigation is appropriate.

An Affidavit of Merit ensures that attorneys provide this guidance based on expert medical review, not assumptions. Plaintiffs benefit from early clarity, realistic expectations, and informed decision-making.

To make sure that only qualified, practicing medical professionals provide expert testimony in malpractice cases, this amendment requires that any expert testifying about the standard of care or causation must be:

- licensed in a U.S. state or territory;
- board-certified in the relevant specialty;
- actively engaged in at least 50% clinical practice; and,
- currently treating patients in the same field of medicine during the year before the alleged injury.

An Affidavit of Merit creates a more predictable, fair, and evidence-based malpractice environment. That stability directly strengthens the Virgin Islands healthcare system by protecting providers, reducing unnecessary costs, and improving the Territory's ability to recruit and retain qualified physicians.

Honorable Senators, this reform is not about limiting access to justice. It is about ensuring that justice begins with truth, evidence, and medical expertise. An

Affidavit of Merit protects patients, protects providers, and protects the integrity of our courts.

Importantly, this amendment does not limit meritorious malpractice claims or shield negligent providers. When negligence occurs, patients will still have full access to justice and qualified experts who meet these reasonable criteria. The goal is simply to ensure that expert testimony comes from professionals who are current, competent, and clinically engaged, so courts receive reliable, specialty-specific medical opinions.

This reform strengthens the fairness and accuracy of malpractice litigation, improves the quality of expert evidence presented to judges and juries, and aligns the Virgin Islands with widely accepted national standards for expert competency. Further, it protects both patients and providers, and enhances the integrity of the territory's judicial system.

For these reasons, I respectfully urge the Legislature to amend the Virgin Islands medical malpractice statute and adopt an Affidavit of Merit requirement. It is a balanced, proven safeguard that strengthens our healthcare system and enhances public confidence in the justice system.

I would like to thank this Committee for allowing the Department of Justice to testify on Bill No. 36-0048. This concludes my formal remarks, but I welcome any questions you may have.