



VIRGIN ISLANDS  
BAR ASSOCIATION

## Legislation & Law Reform Committee

September 19, 2026

The Honorable Novelle E. Francis, Jr.  
36th Legislature of the Virgin Islands  
c/o Ms. Shawna K. Richards, Chief of Staff  
Via email: [srichards@legvi.org](mailto:srichards@legvi.org)

**Re: Comments of the VI Bar Association Legislation and Law Reform Committee on Bill No. 36-0048 (Medical Malpractice) and the Anticipated Amendment in the Nature of a Substitute**

DISCLAIMER: The comments issued by the Committee are reviewed by the Virgin Islands Bar Association ("VIBA") Board of Governors, and do not necessarily represent the views of VIBA, and are provided for informational purposes only to assist the V.I. Legislature.

Dear Senator Francis:

On behalf of the Legislation and Law Reform Committee of the Virgin Islands Bar Association, thank you for the opportunity to comment on Bill No. 36-0048 and the forthcoming Amendment in the Nature of a Substitute. The Committee recognizes the need to update the Territory's medical malpractice statute and supports a measured approach to addressing frivolous claims that does not unduly burden legitimate ones. We understand the Amendment will focus on three areas and offer the following preliminary comments on each.

### **1. Affidavit of Merit**

The Committee recommends that any affidavit-of-merit requirement clearly specify: (a) who may execute the affidavit (a licensed physician or other qualified health care provider practicing in the same or a substantially similar specialty as the defendant); (b) the timing for filing (either with the complaint or within a defined, reasonably short period thereafter, with a good-cause extension mechanism); and (c) the consequence of non-compliance. The Committee suggests dismissal without prejudice, rather than with prejudice, for a first failure to comply, to avoid claims being permanently barred on a technicality where the underlying claim may have merit.

## **2. Time Period for the Medical Malpractice Action Review Committee (“MMARC”) to Receive the Expert Opinion**

The Committee recommends a defined and reasonable period (for example, 60 to 90 days from the filing of the claim before MMARC) for submission of the expert opinion, with a tolling provision for good cause shown. The Committee further recommends that the bill specify the consequence of MMARC's failure to act within the period, for example, that the claimant may proceed to file suit if MMARC does not issue a determination within the statutory period, so that the review process does not become a de facto bar to otherwise timely claims.

## **3. Qualifications for Experts**

The Committee recommends that expert-qualification standards require that a testifying expert practice, or have practiced within a reasonably recent period, in the same or a substantially similar specialty as the defendant health care provider, and hold an active and unrestricted license in a U.S. jurisdiction. Given the limited pool of specialists practicing in the Territory, the Committee cautions against qualification standards so narrow that they effectively foreclose access to qualified experts, and recommends the bill clarify which party bears the burden of establishing an expert's qualification and at what stage that showing must be made.

The Committee looks forward to reviewing the final Amendment in the Nature of a Substitute once available and welcomes the opportunity to work with your office on specific statutory language. The Committee will not be present to testify before the Committee on Health, Hospitals and Human Services on September 22, 2026.

Please do not hesitate to contact me with any questions.

Respectfully,

/s/ Semaj I. Johnson

Semaj I. Johnson, Esq.  
Chair, Legislation and Law Reform Committee  
Virgin Islands Bar Association