

**VIMS POSITION AND PROPOSED CHANGES TO THE MALPRACTICE LEGISLATION BILL
36-0048**

The physicians of the Virgin Island Medical Society voted and are in support of the following Proposed changes to the Malpractice Legislation:

- 1) A mandated requirement for the Department of Health to provide an annual report to the Medical Malpractice Action Review Committee detailing:
 - The amount of revenue collected from premiums broken down by categories (eg, Physicians and what specialties, NPs, PAs, dentists, etc.)
 - The funds immediately available for defending medical malpractice claims in the Territory, including funds for the expert opinions from both the revenues and the Medical Expert Fund.
 - The number of claims, the amount of the judgments and settlements, and the claims pending.
 - Number of expert witnesses contracted (specialty and contract cost.
- 2) The Department of Health to conduct a regular medical Malpractice risk assessment for the Territory and share these results with the Medical Malpractice Action Review Committee (MMARC) and the Virgin Islands Medical Society (VIMS). No rate change in provider malpractice insurance premiums or increase in liability payments without such assessments and agreement.
- 3) The MMARC member (preferably the physician or nurse as appropriate, depending on the claim) will serve as the representative of the MMARC and work with the Department of Health to select the expert witness. Suppose the expert witness and the committee determine that the claim lacks merit regarding medical negligence. In that case, a recommendation to dismiss will be made to the Court, where the final ruling will be made by the Court within the specified time of advising the plaintiff of the ruling (not more than 120 days from submission of the claim). If the plaintiff's attorneys wish to proceed and the Courts allow it, they must then move forward by requiring the plaintiff's attorney to provide the Court with an affidavit of merit.
- 4) Establish a mechanism for the Courts to expedite the dismissal of claims that are determined to be meritless (the rules and regulations can specify a timeframe that cannot be exceeded for the ruling).
- 5) Establish a mechanism that will provide immunity for Physicians providing assistance, support, or advice in their capacity as government employees at the time of the malpractice incident. We propose the adoption of the Sovereign immunity framework for Government-employed or affiliated Physicians/Providers. (I believe Sovereign immunity only applies to governments but you may be better informed. If I am correct we can indicate we agree with the proposed change in legislation that is in bill from Senator Francis so that we support his recommendation of immunity from liability

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protected by the Federal Health Care Quality Improvement Act and the federal Patient Safety Act and add this amendment that aligns with both these acts and also with prior precedence of the VI Code in reference to payment for those who do work on behalf of the VI health care system to allow persons and others who can do UR and QI as is needed by the health system.

6) **recommended: an addition to V.I. Code tit. 27, § 166e (2019) which reads, For said health care providers exclusively employed by the Government of the Virgin Islands on a full-time basis or participating in any peer review or patient safety as under Title 22 Virgin Islands Code Chapter 3 Section 60b, the premium shall be borne by the Government of the Virgin Islands.”**

7) Mandate that the Department of Justice notify providers who are defendants no less than 30 days before pending claims are being settled or a judgment paid, and the amounts.

8) Mandate that the Department of Health establish and maintain a network of current practicing physicians in multiple specialties (as suggested by AMA and AAFP) that can serve as expert witnesses (*"Any expert witness retained or designated in connection with this matter shall be an individual who spends no more than 20% of their professional time testifying as expert witnesses. This requirement ensures that all expert testimony is grounded in current, practical experience within the relevant field. Upon request, the party designating such expert shall provide reasonable documentation verifying the expert's compliance with this requirement."*) Note: Remember that an expert witness can also be from the legal profession, based on the present VI Code.

9) The physician(s) or attorney(s) serving on the MMARC will not be allowed to serve as an expert witness during their tenure on the MMARC.