



**36TH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HEALTH, HOSPITALS & HUMAN SERVICES**

The Honorable Senator Ray Fonseca
Chair

Testimony Presented By
The Honorable Justa Encarnacion, RN, BSN, MBA/HCM
Commissioner of Health

On

Bill 36-0048

Proposed Amendment in the Nature of a Substitute to Bill No. 36-0048

1 Good day, Honorable Ray Fonseca, Chair of the Committee on Health, Hospitals and Human
2 Services; Honorable Hubert L. Frederick, Vice Chair; Committee members, and all non-
3 committee members, and of course the viewing and listening audience. I am Justa Encarnacion,
4 Commissioner of Health for the Virgin Islands Department of Health. Joining me today are Dr.
5 Nicole Craigwell-Syms, Assistant Commissioner; Mackiesh Taylor-Jones, Chief Legal Counsel
6 and Raphael Joseph, Director of Risk Management.

7
8 Thank you for the opportunity to present the Department of Health's testimony regarding Bill
9 No. 36-0048, as amended. The Department offers the following testimony in support of the
10 Proposed Amendment in the Nature of a Substitute. The proposed amendment seeks to
11 strengthen the Territory's medical malpractice framework by improving the claims-review
12 process, promoting the timely resolution of meritorious claims, ensuring appropriate evidentiary
13 support before litigation, and reducing unnecessary legal and administrative costs. The
14 Department believes these reforms can help balance patients' access to legitimate claims with
15 appropriate protections for healthcare professionals, while promoting accountability, efficiency,
16 and a more stable healthcare environment in the Territory.

17 We support the amendment to address several important procedural aspects of the Virgin Islands
18 Medical Malpractice Act, including:

- 19 • The establishment of an Affidavit of Merit requirement;
- 20 • The time allowed for the Medical Malpractice Action Review Committee (MMARC) to
21 obtain expert opinions; and
- 22 • The qualifications required by medical experts who provide opinions on malpractice
23 matters.

24 These issues directly affect access to justice, the efficient handling of malpractice claims, and
25 fair evaluation of healthcare professionals. Under the Virgin Islands Medical Malpractice Act,
26 claims must first be reviewed by the Medical Malpractice Action Review Committee, which
27 seeks an independent expert opinion before litigation may proceed. If an opinion is not received
28 within 90 days of filing, the claimant may proceed to Superior Court. While intended to promote
29 informed review and discourage unfounded claims, the process continues to face challenges in
30 securing qualified experts, obtaining timely opinions, and establishing clear reviewer standards.

1. Affidavit of Merit Requirement

Recommendation

The Department supports consideration of an explicit **Affidavit of Merit** requirement as part of the pre-filing review process. The affidavit should be executed by a qualified healthcare professional and should affirm that:

- The expert has reviewed the relevant medical records and available documentation;
- There is a reasonable basis to conclude that the applicable standard of care may have been breached;
- The alleged breach represents a deviation from accepted professional practice; and
- The deviation was a substantial contributing factor in the patient's injury or damages.

Rationale

An Affidavit of Merit serves as an important screening mechanism that can strengthen the integrity of the medical malpractice review process. Specifically, it can:

- Discourage frivolous or unsupported claims;
- Ensure that allegations are grounded in competent professional review;
- Reduce unnecessary litigation expenses for both patients and healthcare providers; and
- Promote the earlier resolution of claims that demonstrate potential merit.

While MMARC currently requires expert review, the law does not expressly require a sworn expert affidavit establishing a factual basis for the claim. Adding this requirement would enhance the review process while preserving access to the courts for legitimate claims.

2. Time Period for MMARC Review and Receipt of Expert Opinions

Current Framework

Under existing law, a claimant may proceed to court if the Committee has not received an expert opinion within ninety (90) days of the filing of the proposed complaint.

Challenges

In practice, obtaining expert opinions within this timeframe can be difficult due to several factors, including:

- Limited availability of certain medical specialists within the Territory;
- Reliance upon off-island expert reviewers;
- Increasingly complex medical and clinical issues;
- Delays in obtaining complete medical records from involved parties; and
- Administrative challenges associated with coordinating independent expert reviews.

Recommendation

The Department recommends extending the review period from ninety (90) to one hundred eighty (180) days and allowing the period to be tolled when essential medical records have not been provided, ensuring experts have sufficient information and time to conduct a thorough and informed expert opinion.

Benefits

These modifications would:

- Improve the quality and reliability of expert assessments;
- Reduce the likelihood of rushed or incomplete opinions;
- Promote fairness for both patients and healthcare providers; and
- Support overall judicial efficiency.

3. Qualifications for Medical Experts

Recommendation

The Department further recommends that the Legislature establish clear statutory standards governing the qualifications of experts who participate in medical malpractice proceedings.

Proposed Minimum Standards

At a minimum, a qualified expert should:

- Hold an active, unrestricted professional license in the relevant field;
- Practice in the same profession as the defendant healthcare provider;
- Possess recent clinical experience, preferably within the preceding five years;
- Be familiar with the applicable standard of care at the time of the alleged incident; and
- Where appropriate, practice within the same or substantially similar specialty.

1 Additionally, experts should be free from material financial or professional conflicts that could
2 compromise their objectivity.

3 **Specialty Considerations**

4 The Department believes expert reviewers should have knowledge and experience substantially
5 similar to the healthcare professional whose conduct is under review. For example:

- 6 • Claims involving a nephrologist should generally be evaluated by a nephrologist;
- 7 • Claims involving a general surgeon should generally be evaluated by a general surgeon;
- 8 and
- 9 • Claims involving nursing care should generally be evaluated by a registered nurse with
10 relevant clinical experience.

11 The legislation may provide limited exceptions when a similarly situated expert is not reasonably
12 available.

13 **Benefits**

14 Establishing clear expert qualification standards would:

- 15 • Enhance the reliability and credibility of expert opinions;
- 16 • Reduce disputes concerning expert competency;
- 17 • Promote consistency throughout the litigation process; and
- 18 • Strengthen public confidence in the Medical Malpractice Action Review Committee.

19
20 The Virgin Islands Medical Malpractice Act serves an important public purpose by balancing
21 patients' access to meaningful remedies for negligent care with protections for healthcare
22 professionals against unsupported claims that may increase costs and affect recruitment and
23 retention.

24 The Department believes that an Affidavit of Merit requirement, a clear timeline for obtaining
25 expert opinions, and defined expert qualification standards would strengthen the medical
26 malpractice review process and promote fairness, consistency, efficiency, and public confidence.

27 The Department of Health appreciates the Legislature's consideration of these amendments and
28 appreciates the Legislature's attention to these important issues and stands ready to assist in any
29 further review of the proposed legislation. We stand ready to answer your questions.