VERMONT MEDICAL SOCIETY
RESOLUTION

Adopted on October 15, 2005

Establishing Pre-trial Screening Panels for Medical Liability Claims

Whereas, For the past twenty years, the State of Maine has required pre-trial screening panel review of all medical liability claims, and the purpose of the screening panels is to encourage the early resolution of claims that have merit and the withdrawal of those that do not; and

Whereas, the Maine Bureau of Insurance found that the panels have been successful in promoting quicker recovery for those who receive awards and promoting earlier dismissal of claims that conclude with no award; and

Whereas, The State of New Hampshire has recently enacted legislation that was based on Maine’s successful law requiring pretrial screening panels in medical malpractice lawsuits in the hope of controlling rising insurance costs for doctors; and

Whereas, Each panel consists of three members: a retired judge or someone experienced in conducting hearings, an attorney, and a health care professional who preferably practices in the medical area at issue; and

Whereas, Each party has a chance to present its claims and defenses at panel hearings, and the panel admits evidence which “is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs;” and

Whereas, The panel must decide, by a preponderance of the evidence, whether the defendant’s conduct deviated from the applicable standard of care, whether such conduct proximately caused the plaintiff’s injury, and whether the patient’s negligence, if any, equaled or exceeded that of the defendant; and

Whereas, The findings of the panel and any disclosures made at the panel hearing are confidential and cannot be used later in subsequent litigation, unless the panel’s decision is unanimously in favor of either the plaintiff or the defendant; and

Whereas, The parties may agree in writing to submit claims to a binding decision of the screening panel and if either party elects to go forward to trial, the unanimous findings may be admitted against that party; and

Whereas, In Maine, the malpractice premium insurance rates are 40 to 50 percent less than the rates for physicians in New Hampshire, and the insurance premiums are 30 percent less than rates for an OB/GYN in Vermont; and

Whereas, In 1992, Vermont enacted legislation providing for the mandatory arbitration in medical malpractice cases only upon the effective date of a universal health care system enacted by the state’s general assembly; and
Whereas, Ensuring that all Vermonters have health insurance coverage and eliminating frivolous lawsuits are completely separate issues, and there is no reason why Vermont should link the implementation of pre-trial screening panels of all medical liability claims with the effective date of a universal health care system; therefore, be it

Resolved, That the Vermont Medical Society urges the Vermont General Assembly to enact legislation establishing pre-trial screening panel review of all medical liability claims modeled on the legislation enacted in Maine and New Hampshire; and be it further

Resolved, That the Vermont Medical Society urges the Vermont General Assembly to implement such a pretrial screening panel system immediately upon passage of the legislation.