

1 VERMONT MEDICAL SOCIETY  
2 RESOLUTION

3  
4 *Adopted on October 15, 2005*

5  
6 Establishing Pre-trial Screening Panels for Medical Liability Claims  
7

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

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

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

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

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

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

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

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

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

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37 Whereas, In 1992, Vermont enacted legislation providing for the mandatory arbitration in  
38 medical malpractice cases only upon the effective date of a universal health care system enacted  
39 by the state's general assembly; and

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2 Whereas, Ensuring that all Vermonters have health insurance coverage and eliminating  
3 frivolous lawsuits are completely separate issues, and there is no reason why Vermont should  
4 link the implementation of pre-trial screening panels of all medical liability claims with the  
5 effective date of a universal health care system; therefore, be it  
6

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

11  
12 **Resolved, That the Vermont Medical Society urges the Vermont General Assembly to**  
13 **implement such a pretrial screening panel system immediately upon passage of the**  
14 **legislation.**