



MEDICAL SOCIETY OF VIRGINIA Cap Agreement Q&A

What does the cap agreement mean for Virginia's physicians?

Q: What does the agreement between the MSV and the VTLA entail?

A: Today, Virginia's total cap on medical malpractice damages is \$2 million. Under the agreement, on July 1, 2012, the cap will increase by \$50,000 each year for 20 years until June 30, 2032. There will be no legislative efforts by MSV or VTLA to eliminate the total cap, amend the cap to apply only to non-economic (pain and suffering) damages, or create a second cap within the total cap.

There is no prohibition or restriction on either association from pursuing legislation on other tort reforms, such as early disclosure programs.

Q: Won't the agreed upon increase in the cap lead to higher professional medical liability insurance premiums for physicians and affect access to care?

A: This agreement preserves patients' access to care for years to come by establishing long-term stability and predictability in Virginia's medical liability marketplace.

It is expected to have a nominal impact on professional medical liability insurance premiums. Actuarial analysis contracted by MSV indicates that an annual increase in the cap of \$50,000 would result in projected annual premium increases of 0.3 to 0.4 percent. Feedback from major professional medical liability insurance carriers is consistent with this analysis, with some even speculating that there may well be no increases attributable to the cap in the first few years of the agreement.

Q: Now that there is an agreement, will MSV continue to work on medical liability reform?

A: As the agreement between MSV and VTLA preserves potential avenues for tort reform, MSV's Medical Liability Advisory Group will continue to explore opportunities for effective medical liability reform, such as the pilot programs included within the Patient Protection and Affordable Care Act.

Q: Why isn't the Virginia Hospital and Healthcare Association (VHHA) part of the agreement?

A: Although the stakeholder group was originally established to solely address the medical malpractice cap, VHHA believed the agreement should have included a legislative remedy for *Johnson v. Riverside*. VHHA has stated that it believes the agreement is reasonable and good for physicians and hospitals.

The framework for the stakeholder discussions provided for two separate and distinct issues: the cap and *Johnson v. Riverside*. An effort to merge the two issues would have thwarted the agreement on the cap, according to stakeholder discussions.

Q: What is *Johnson v. Riverside*?

A: In *Johnson v. Riverside*, the Virginia Supreme Court concluded that incident reports and other documents that contain only factual information about an incident are not privileged and, therefore, can be admitted as evidence at trial. Previously, many circuit courts in Virginia agreed that plaintiffs' attorneys could not discover and admit hospital incident reports at trial because they were privileged quality assurance documents.

Since Dec. 2008, MSV has been a partner in facilitated discussions on *Johnson v. Riverside*, along with VHHA and VTLA, separate from discussions regarding the cap. MSV wants to find a solution that strikes a balance between the legitimate need of patients to have access to certain information and the need for providers to protect information in a way that will lead to improved quality and safety by allowing for free and open exchange of information between providers. It is essential to the productive resumption of these talks that credible and sufficient evidence of any damage caused by the *Riverside* decision be obtained. MSV recently reiterated its commitment to continuing these discussions in the established forum.