

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 8.01-581.20 of the Code of Virginia, relating to presumption of*
3 *knowledge of statewide standard of care; malpractice.*

4
5 Approved

[H 584]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 8.01-581.20 of the Code of Virginia is amended and reenacted as follows:**

8 § 8.01-581.20. Standard of care in proceeding before medical malpractice review panel; expert
9 testimony; determination of standard in action for damages.

10 A. In any proceeding before a medical malpractice review panel or in any action against a physician,
11 clinical psychologist, podiatrist, dentist, nurse, hospital or other health care provider to recover damages
12 alleged to have been caused by medical malpractice where the acts or omissions so complained of are
13 alleged to have occurred in this Commonwealth, the standard of care by which the acts or omissions are
14 to be judged shall be that degree of skill and diligence practiced by a reasonably prudent practitioner in
15 the field of practice or specialty in this Commonwealth and the testimony of an expert witness,
16 otherwise qualified, as to such standard of care, shall be admitted; provided, however, that the standard
17 of care in the locality or in similar localities in which the alleged act or omission occurred shall be
18 applied if any party shall prove by a preponderance of the evidence that the health care services and
19 health care facilities available in the locality and the customary practices in such locality or similar
20 localities give rise to a standard of care which is more appropriate than a statewide standard. Any
21 physician *or nurse* who is licensed to practice in Virginia shall be presumed to know the statewide
22 standard of care in the specialty or field of medicine in which he is qualified and certified. This
23 presumption shall also apply to any physician who is licensed in some other state of the United States
24 and meets the educational and examination requirements for licensure in Virginia. *This presumption*
25 *shall also apply to any nurse licensed by a state participating in the Nurse Licensure Compact.* An
26 expert witness who is familiar with the statewide standard of care shall not have his testimony excluded
27 on the ground that he does not practice in this Commonwealth. A witness shall be qualified to testify as
28 an expert on the standard of care if he demonstrates expert knowledge of the standards of the
29 defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has
30 had active clinical practice in either the defendant's specialty or a related field of medicine within one
31 year of the date of the alleged act or omission forming the basis of the action.

32 B. In any action for damages resulting from medical malpractice, any issue as to the standard of care
33 to be applied shall be determined by the jury, or the court trying the case without a jury.

34 C. In any action described in this section, each party may designate, identify or call to testify at trial
35 no more than two expert witnesses per medical discipline on any issue presented. The court may permit
36 a party, for good cause shown, to designate, identify, or call to testify at trial additional expert
37 witnesses. The number of treating health care providers who may serve as expert witnesses pursuant to
38 § 8.01-399 shall not be limited pursuant to this subsection, except for good cause shown. If the court
39 permits a party to designate, identify, or call additional experts, the court may order that party to pay all
40 costs incurred in the discovery of such additional experts. For good cause shown, pursuant to the Rules
41 of Supreme Court of Virginia, the court may limit the number of expert witnesses other than those
42 identified in this subsection whom a party may designate, identify, or call to testify at trial.