

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 414

An Act to amend and reenact §§ 8.01-52.1 and 8.01-581.20:1 of the Code of Virginia, relating to the admissibility of expressions of sympathy.

[H 2057]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-52.1 and 8.01-581.20:1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-52.1. Admissibility of expressions of sympathy.

In any wrongful death action brought pursuant to § 8.01-50 against a health care provider, or in any arbitration or medical malpractice review panel proceeding related to such wrongful death action, the portion of statements, writings, affirmations, benevolent conduct, or benevolent gestures expressing sympathy, *commiseration, condolence, compassion, or a general sense of benevolence, which together with apologies that* are made by a health care provider or an agent of a health care provider to a relative of the patient, or a representative of the patient about the death of the patient as a result of the unanticipated outcome of health care, shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault that is part of or in addition to any of the above shall not be made inadmissible by this section.

For purposes of this section, unless the context otherwise requires:

"Health care" has the same definition as provided in § 8.01-581.1.

"Health care provider" has the same definition as provided in § 8.01-581.1.

"Relative" means a decedent's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister, or spouse's parents. In addition, "relative" includes any person who had a family-type relationship with the decedent.

"Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

"Unanticipated outcome" means the outcome of the delivery of health care that differs from an expected result.

§ 8.01-581.20:1. Admissibility of expressions of sympathy.

In any civil action brought by an alleged victim of an unanticipated outcome of health care, or in any arbitration or medical malpractice review panel proceeding related to such civil action, the portion of statements, writings, affirmations, benevolent conduct, or benevolent gestures expressing sympathy, *commiseration, condolence, compassion, or a general sense of benevolence, which together with apologies that* are made by a health care provider or an agent of a health care provider to the patient, a relative of the patient, or a representative of the patient, shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault that is part of or in addition to any of the above shall not be made inadmissible by this section.

For purposes of this section, unless the context otherwise requires:

"Health care" has the same definition as provided in § 8.01-581.1.

"Health care provider" has the same definition as provided in § 8.01-581.1.

"Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister, or spouse's parents. In addition, "relative" includes any person who has a family-type relationship with the patient.

"Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

"Unanticipated outcome" means the outcome of the delivery of health care that differs from an expected result.