

2011 SESSION

INTRODUCED

11103320D

SENATE BILL NO. 1330

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact § 8.01-20.1 of the Code of Virginia, relating to medical malpractice actions.*

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-20.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-20.1. Certification of expert witness opinion at time of service of process.

Every ~~motion for judgment~~ *complaint*, counter claim, or third party claim in a medical malpractice action, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert witness whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

The certifying expert shall not be required to be an expert witness expected to testify at trial nor shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the nature of the certifying expert's opinions. Should the certifying expert be identified as an expert expected to testify at trial, the opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

Upon written request of any defendant, the plaintiff shall, within ~~10 business~~ 21 days after receipt of such request, provide the defendant with a certification form that affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert witness opinion. *This certification form is not necessary if the complaint, counter claim, or third party claim contains the affirmation as described herein.* If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant as required under this section, the court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

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