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HOUSE BILL NO. 2403

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 8.01-20.1, 8.01-50.1, and 16.1-83.1 of the Code of Virginia, relating to expert witness certifications.

 Patron—Athey

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-20.1, 8.01-50.1, and 16.1-83.1 of the Code of Virginia are amended and reenacted as follows:

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

Every motion for judgment, counter claim, or third party claim in a medical malpractice action, at the time the plaintiff requests service of process upon a defendant, 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. *In the case of multiple defendants, the plaintiff shall obtain a separate certification that each defendant deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. Such certifications may be obtained from the same expert witness if the witness is qualified to make the necessary certification.* 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 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 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. *Upon receipt of the certification form from the plaintiff, any defendant may request in writing that the court conduct an in camera review, either through a hearing or through the exchange of written information, of the basis of the plaintiff's certification.* 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, *or if the court determines after an in camera review that the plaintiff's certification is not consistent with this section,* the court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

§ 8.01-50.1. Certification of expert witness opinion at time of service of process.

Every motion for judgment, counter claim, or third party claim in any action pursuant to § 8.01-50 for wrongful death against a health care provider, at the time the plaintiff requests service of process upon a defendant, 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. *In the case of multiple defendants, the plaintiff shall obtain a separate certification that each defendant deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. Such certifications may be obtained from the same expert witness if the witness is qualified to make the necessary certification.* This certification is not necessary if the plaintiff, in good faith, alleges in his wrongful death action a medical malpractice 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.

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60 expert's opinions. Should the certifying expert be identified as an expert expected to testify at trial, the
61 opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules of Supreme Court of
62 Virginia with the exception of the expert's status as a certifying expert.

63 Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of
64 such request, provide the defendant with a certification form which affirms that the plaintiff had
65 obtained the necessary certifying expert opinion at the time service was requested or affirms that the
66 plaintiff did not need to obtain a certifying expert opinion. *Upon receipt of the certification form from*
67 *the plaintiff, any defendant may request in writing that the court conduct an in camera review, either*
68 *through a hearing or through the exchange of written information, of the basis of the plaintiff's*
69 *certification.* If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff
70 requested service of process on a defendant, *or if the court determines after an in camera review that*
71 *the plaintiff's certification is not consistent with this section,* the court shall impose sanctions according
72 to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

73 § 16.1-83.1. Certification of expert witness opinion at time of service of process.

74 Every warrant in debt, counter claim, or third party claim in a medical malpractice action, at the time
75 the plaintiff requests service of process upon a defendant, shall be deemed a certification that the
76 plaintiff has obtained from an expert whom the plaintiff reasonably believes would qualify as an expert
77 witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that,
78 based upon a reasonable understanding of the facts, the defendant for whom service of process has been
79 requested deviated from the applicable standard of care and the deviation was a proximate cause of the
80 injuries claimed. *In the case of multiple defendants, the plaintiff shall obtain a separate certification that*
81 *each defendant deviated from the applicable standard of care and the deviation was a proximate cause*
82 *of the injuries claimed. Such certifications may be obtained from the same expert witness if the witness*
83 *is qualified to make the necessary certification.* This certification is not necessary if the plaintiff, in
84 good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony
85 is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common
86 knowledge and experience.

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

92 Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of
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100 *the plaintiff's certification is not consistent with this section,* the court shall impose sanctions according
101 to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.