

LD0623428

HOUSE BILL NO. 1354

Offered January 25, 1994

A *BILL to amend and reenact § 8.01-399 of the Code of Virginia, relating to physician/patient privilege.*

Patrons—Reynolds, Almand, Davies, Forbes, Howell, Johnson and Murphy; Senators: Cross, Norment and Trumbo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-399 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-399. Communications between physicians and patients.

A. ~~Except at the request or with the consent of the patient, no duly licensed practitioner of any branch of the healing arts~~ *No health care provider as defined in § 8.01-581.1 shall be required to testify in any civil action, respecting any information which he may have acquired in attending, examining or treating the patient in a professional capacity.*

B. Notwithstanding subsection A, when the physical or mental condition of the patient is at issue in a civil action, facts communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment shall be disclosed but only in discovery pursuant to the Rules of Court or, through testimony at the trial of the action *or upon agreement of counsel.* ~~In addition, disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice. However, no disclosure of facts communicated to, or otherwise learned by, such practitioner shall occur if the court determines, upon the request of the patient, that such facts are not relevant to the subject matter involved in the pending action or do not appear to be reasonably calculated to lead to the discovery of admissible evidence. In the event an agreement cannot be reached by counsel for the parties, counsel for the defendant may move the court for and the court may enter, for good cause shown, a discovery order authorizing the health care providers who have treated the plaintiff to discuss the facts and opinions of the treatment in the presence of counsel for all parties.~~

C. This section shall not (i) be construed to repeal or otherwise affect the provisions of § 65.2-607 relating to privileged communications between ~~physicians and surgeons~~ *health care providers* and employees under the Workers' Compensation Act or (ii) apply to information communicated to any such ~~practitioner~~ *health care provider* in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug.

D. ~~Neither a lawyer, nor anyone acting on the lawyer's behalf, shall obtain, in connection with pending or threatened litigation, information from a practitioner of any branch of the healing arts without the consent of the patient except through discovery pursuant to the Rules of the Court as herein provided.~~

E. ~~A clinical psychologist duly licensed under the provisions of § 54.1-2940 shall be considered a practitioner of a branch of the healing arts within the meaning of this section.~~

F. Nothing herein shall prevent a ~~duly licensed practitioner of the healing arts~~ *health care provider* from disclosing any information which he may have acquired in attending, examining or treating a patient in a professional capacity where such disclosure is necessary in connection with the care of the patient, the protection or enforcement of the ~~practitioner's~~ *health care provider's* legal rights ~~of the health care provider or his principal or both,~~ including such rights with respect to ~~medical malpractice~~ *professional liability* actions, or the operations of a health care facility or health maintenance organization or in order to comply with state or federal law.

INTRODUCED

HB1354