

LD0515198

HOUSE BILL NO. 871

Offered January 25, 1994

A BILL to amend and reenact §§ 8.01-581.2, 8.01-581.2:1, 8.01-581.3, 8.01-581.3:1 and 8.01-581.4:1 of the Code of Virginia, relating to medical malpractice review panels.

Patrons—Davies; Senator: Holland, C.A.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-581.2, 8.01-581.2:1, 8.01-581.3, 8.01-581.3:1 and 8.01-581.4:1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-581.2. Request for review by medical malpractice review panel; rescission of request; determination on request.

A. At any time within thirty days from the filing of the responsive pleading in any action brought for malpractice against a health care provider, the plaintiff or defendant may request a review by a medical malpractice review panel established as provided in § 8.01-581.3. The request shall be forwarded by the clerk of the circuit court in which the action is pending to the Clerk of the Supreme Court of Virginia. Upon receipt of such request, the Supreme Court shall select the panel members as provided in § 8.01-581.3:1. Proceedings on the action based on the alleged malpractice shall be stayed if a panel is requested during the period of review by the medical review panel.

B. A party may rescind a request for review by a medical malpractice review panel at any time prior to the panel decision, in which event the judge shall dismiss the panel.

C. Any health care provider named as a defendant shall have the right to request a panel and, in that event, shall give notice of its request to the other health care providers named in the motion for judgment as well as to the plaintiff and his counsel of record. When a request for a medical review panel is made by any party, a single panel shall be designated and all health care providers against whom a claim is asserted shall be subject to the jurisdiction of such panel. The provisions of this subsection shall not prohibit the addition of parties pursuant to § 8.01-581.2:1.

§ 8.01-581.2:1. Additional parties.

The judge of the circuit court hearing the case appointed to the panel pursuant to § 8.01-581.3 may grant leave to amend the request for a review panel to add additional parties or causes of action in furtherance of the ends of justice except where (i) the request for leave to amend is made less than ten days before the date set for the review panel to convene or for the hearing or (ii) the judge finds that the request for leave to amend is without merit. If leave to amend is granted, the judge may, upon motion of either party, stay the review panel proceedings or continue the trial, extend the time for completion of discovery, filing of pleadings and other procedural limitations periods, or enter such other orders as are appropriate to avoid prejudice to the parties and to avoid unnecessary delay and duplication in the proceedings.

The statute of limitations as to any party added shall be tolled from the date of the request until completion of the panel proceedings. Leave to add additional parties to the review panel proceeding shall not be granted if the judge finds that the applicable statute of limitations has expired with respect to the new or additional parties or causes of action.

§ 8.01-581.3. Composition, selection, etc., of panel.

The medical review panel shall consist of (i) two impartial attorneys and two impartial health care providers, licensed and actively practicing their professions in the Commonwealth and (ii) the judge of a circuit court in which the action was filed, ~~who~~ or if the action was filed in a federal court in the Commonwealth, a judge of the circuit court of the jurisdiction in which a defendant resides or has his principal place of business. The judge shall preside over the panel. ~~The judge but~~ shall have no vote. The medical review panel shall be selected by the Supreme Court from a list of health care providers submitted by the Board of Medicine and a list of attorneys submitted by the Virginia State Bar. In the selection of the health care provider members, the Court shall give due regard to the nature of the claim and the nature of the practice of the health care provider.

§ 8.01-581.3:1. Completion of discovery; hearing date; notification to parties and panel members; oath of panel members.

At the time that the panel is designated, the Supreme Court shall advise the clerk of the circuit court in which the matter was filed of the names of the panel members.

Except for good cause shown, the date for completion of discovery shall not be set beyond 120 days from the date on which the panel was requested. Within the period set for the taking of discovery and

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60 upon consultation with the panel members, the judge shall notify the parties of the date set for a hearing
61 by the review panel, if any, or the date on which the panel will convene. Such date shall not be set
62 sooner than ten days after the date for completion of discovery. Upon completion of discovery, the clerk
63 of the ~~circuit~~ court *in which the action is pending* shall notify the parties of the name, address and
64 professional practice of each panel member and shall also notify the panel members, in writing, of their
65 appointment.

66 The written notification to the panel members shall include the definitions of "impartial attorney" and
67 "impartial health care provider" as contained in § 8.01-581.1 and a copy of the oath to which the panel
68 members will be required to subscribe when the panel convenes. The oath shall be as follows:

69 "I do solemnly swear (or affirm) that I have no past or present relationship with the parties nor am I
70 aware of anything that would prevent me from being impartial in my deliberations. I further swear (or
71 affirm) that I will render an opinion faithfully and fairly on the basis of the evidence presented, applying
72 any professional expertise I may have, giving due regard to the nature of the claim and the nature of the
73 practice of the health care provider." A panel member who, for any reason, could not take the oath of
74 impartiality shall promptly notify the judge presiding over the panel, in writing, of such inability. The
75 judge shall notify the Supreme Court, which shall then select and notify another panel member in place
76 of and practicing the same profession as the disqualified member.

77 § 8.01-581.4:1. Assembly of record.

78 Upon conclusion of deliberations and rendering of an opinion by the panel, all documentary evidence
79 submitted to the panel, a transcript of the ore tenus hearing, if any, and a copy of the written opinion of
80 the panel shall be filed in the office of the clerk. The record shall be maintained until the action is
81 completed ~~in the circuit court~~. Upon completion of the action, the clerk of the trial court shall include a
82 copy of the panel record along with the record of the case.