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## SENATE BILL NO. 918

Offered January 23, 1995

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

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Patron—Holland, C.A.

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Referred to the 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 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. 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.

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 and employees under the Workers' Compensation Act or (ii) apply to information communicated to any such practitioner 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, *other than medical malpractice actions in which the patient has put his or her physical or mental condition at issue*, 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 in subsection B .

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 from disclosing any information which he may have acquired in attending, examining or treating a patient in a professional capacity where such disclosure (i) is necessary in connection with the care of the patient, the protection or enforcement of the practitioner's legal rights ~~including such rights with respect to medical malpractice actions~~, or the operations of a health care facility or health maintenance organization or in order to comply with state or federal law or (ii) *relates to pending or threatened litigation alleging medical malpractice* .

INTRODUCED

SB918