



Proposal to Amend Virginia Code Section 2.2-3705.5

Lynne Fleming
Associate University Counsel
University of Virginia

November 18, 2014





The Issue

- Virginia Code §8.01-581.17 excludes records containing privileged patient safety, quality improvement, credentialing communications and information from discovery in litigation.
- We are proposing an amendment that would align FOIA with Virginia Code §8.01-581.17.



The Proposed Amendment

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

“The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

* * *

19. Records of certain health care committees and entities to the extent they reveal information that may be withheld from discovery as privileged communications pursuant to Section 8.01-581.17.”



The Discovery Privilege Under Virginia Code §8.01-581.17

“... the analysis, findings, conclusions, recommendations, and the deliberative process of any medical staff committee... or other entity specified in § [8.01-581.16](#), as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities shall be privileged in their entirety under this section.” (Virginia Code §8.01-581.17(B))



Virginia Supreme Court Opinion

- The Virginia Supreme Court has addressed the importance and purpose of the litigation discovery privilege in *HCA v. Levin*, 260 Va. 215, 221(2001):
“...The statute...encourages physicians to participate candidly in the peer review of other physicians, with the expectation that the information submitted will remain confidential and shielded from public disclosure.”



VA Supreme Court Continues to Uphold the Privilege

- Subsequent to the *Levin* case, the Virginia Supreme Court has considered and upheld the privilege:

“...It is the deliberative process and the conclusions reached through that process that the General Assembly sought to protect.” *Riverside v. Johnson*, 272 Va. 518, 522 (2006)



Importance of Clarifying FOIA

- To expressly state within FOIA what the current law is, thereby avoiding unnecessary hearings about what the law already provides.
- Government-operated health care entities will be afforded the same protections as all private entities.
- Will save valuable state resources and personnel time.



QUESTIONS?