

No. _____

In the
Supreme Court of the United States

CHRISTINA BROWN,
Petitioner,

v.

AMAZON HEADQUARTERS, LLC,
A/K/A AMAZON.COM, INC.;
AMAZON LOGISTICS, INC.,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For the Fourth Circuit Court

APPENDIX

Christina Brown
Pro se Petitioner
Administrator of the Estate of Poushawn Brown
5740 North Carlin Springs Road
Arlington Virginia 22203
(703)570 6161
Justiceforpoushawnbrown@gmail.com

TABLE OF CONTENTS

Order of the United States Court of Appeals for the Fourth Circuit Opinion (February 2,2024)	App. A1
Opinion of the United States District Court for the Eastern District of Virginia (August 4, 2023)	App. A3
Removal Order From Circuit Court of Fairfax County, (February 21, 2023)	App. A14
Order of the United States Court of Appeals for the Fourth Circuit Denying Rehearing En Banc (March 5,2024)	App. A15
Statutes	App. A16

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1921

CHRISTINA BROWN,
Plaintiff - Appellant,
v.

AMAZON HEADQUARTERS, LLC, a/k/a
Amazon.com, Inc.; AMAZON LOGISTICS, INC.,
Defendants - Appellees.

Appeal from the United States District Court for the
Eastern District of Virginia, at Alexandria. Michael
Stefan Nachmanoff, District Judge. (1:23-cv-00189-
MSN-WEF)

Submitted: January 30, 2024
Decided: February 2, 2024

Before KING, AGEE, and THACKER, Circuit
Judges.

Affirmed by unpublished per curiam opinion.

Christina Brown, Appellant Pro Se. Alexander Paul
Berg, Gilda Bethany Ingle, LITTLER MENDELSON
PC, Tysons Corner, Virginia, for Appellees.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Christina Brown appeals the district court's order (a) denying Brown's motions to remand and for leave to amend her complaint; and (b) granting Defendants' motion to dismiss Brown's wrongful death action against Defendants. We have reviewed the record and discern no reversible error.

Accordingly, we affirm the district court's order.

Brown v. Amazon Headquarters, LLC, No. 1:23-cv-00189-MSN-WEF (E.D. Va. Aug. 4, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

Case No. 1:23-cv-00189 (MSN/WEF)

CHRISTINA BROWN,
Plaintiff,

v.

AMAZON HEADQUARTERS LLC AKA
AMAZON.COM, INC., and AMAZON LOGISTICS,
INC.,
Defendants.

MEMORANDUM ORDER AND OPINION

This matter comes before the Court on Plaintiff's Motion to Remand (Dkt. No. 6), Defendant's Motion to Dismiss (Dkt. No. 10), and Plaintiff's Motion to Amend (Dkt. No. 26). For the reasons set forth below, the Court will grant Defendant's Motion to Dismiss, deny Plaintiff's Motion to Remand, and deny Plaintiff's Motion to Amend.

I. BACKGROUND

Plaintiff Christina Brown's sister, Poushawn Brown, was an Amazon Warehouse employee from 2018 to 2021. Dkt No. 1-1 ("Compl.") at 4. Christina Brown¹ alleges that the negligence of Defendants

¹ For purposes of clarity, the Court refers to Plaintiff Christina Brown as "Brown" and to her sister, Poushawn Brown, as "Poushawn."

Amazon Headquarters LLC AKA Amazon, Inc. and Amazon Logistics, Inc.² (collectively, “Amazon”) led to her sister’s COVID-19 illness and subsequent death in January 2021. *Id.* Brown seeks damages for pain and suffering, funeral expenses, and exemplary damages. *Id.* at 5.

Poushawn worked as a delivery driver and package sorter before becoming a “Safety Champion” in Amazon Warehouse’s COVID-19 safety department in June 2020. *Id.* As a Safety Champion, Poushawn “was instructed by management to perform COVID-19 tests on other Amazon employees,” but did not receive training from a medical professional on how to properly perform the tests. *Id.* Poushawn was not given protective measures—such as an N-93 mask, plexiglass barriers, gloves, or a face shield—to use during these tests. *Id.* Poushawn eventually informed her management that she was experiencing COVID 19 symptoms, but she was still required to come into work. *Id.* Poushawn died as a result of the illness on January 8, 2021. *Id.*

On December 30, 2022, Brown filed her Complaint in Fairfax County Circuit Court. Compl. at 3–4. Amazon filed a Notice of Removal to this Court on February 10, 2023. (Dkt. No. 1). On February 27, 2023, Brown filed a Motion to Remand the case to the Fairfax County Circuit Court, (Dkt. No. 6), to which Amazon timely filed an opposition (Dkt. No. 17).

On March 3, 2023, Amazon filed a Motion to Dismiss. *See* Dkt. Nos. 10, 11. Brown filed an

² Brown has named Amazon Headquarters LLC aka Amazon.com, Inc. as one of the defendants. Defendants state that “Amazon Headquarters LLC” is a non-existent entity.

opposition to the motion to dismiss, (Dkt. No. 20), and Amazon filed a reply (Dkt. No. 24).³

On April 20, 2023, Brown filed a Motion to Amend her Complaint, seeking to add to her complaint a Certificate of Qualification from the Prince William County Circuit Court stating that she is Poushawn's legal representative. *See* (Dkt. No. 26). Amazon has opposed the motion to amend. (Dkt. No. 29). The Court is satisfied that oral argument would not aid in the decisional process. Accordingly, this matter is ripe for resolution.

II. LEGAL STANDARDS

When faced with both a motion to remand and a motion to dismiss, a court first assesses the motion to remand and then, if the court determines it has subject matter jurisdiction over the action, proceeds to consider the motion to dismiss. *Burrell v. Bayer Corp.*, 918 F.3d 372, 379–80 (4th Cir. 2019).

Generally, a defendant may remove an action from state court to federal court if the case could have originally been brought in federal court. 28 U.S.C. § 1441(a). Original jurisdiction exists where a claim arises under federal law, *see* 28 U.S.C. § 1331, or where the amount in controversy exceeds \$75,000 and is between citizens of different states, *see* 28 U.S.C. § 1332. “The party seeking removal bears the

³ Brown filed a reply to Amazon's reply, (Dkt. No. 25), which Amazon has moved to strike Brown's sur-reply on grounds that she did not seek leave of Court to make such a filing as is required by Local Rule 7(F)(1), (Dkt. No. 27). Here, Brown indeed failed to comply with the Local Rules. Nevertheless, the Court will accept Brown's filing, as Brown is proceeding *pro se* and the filing does not prejudice Amazon. Indeed, nothing in Brown's sur-reply changes the analysis below.

burden of demonstrating that removal jurisdiction is proper.” *In re Blackwater Sec. Consulting, LLC*, 460 F.3d 576, 583 (4th Cir. 2006).

If federal jurisdiction is established, the court proceeds to consider the motions to dismiss. Under Federal Rule of Civil Procedure 12(b)(1), a court may dismiss a claim if it lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). A plaintiff bears the burden of proving that the Court has subject matter jurisdiction. *See Evans v B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999) (holding that exclusive-remedies statutes deny district courts appropriate subject matter jurisdiction).

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a claim the complaint fails “to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion under Rule 12(b)(6), a complaint must contain facts sufficient to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). A plaintiff must make more than bald accusations or mere speculation; “naked assertions devoid of further factual enhancement” and “a formulaic recitation of the elements of a cause of action” are insufficient under Rule 12(b)(6). *Twombly*, 550 U.S. at 555; *see Painter’s Mill Grille, LLC v. Brown*, 716 F.3d 342, 350 (4th Cir. 2013). When considering a motion under Rule 12(b)(6), the Court “must accept as true all of the factual allegations contained in the complaint” and must “draw all reasonable inferences in favor of the plaintiff.” *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citations omitted).

A complaint by a pro se plaintiff should be liberally construed. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). But the Court's "task is not to discern the unexpressed intent of the plaintiff." *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006). Nor does the liberal pleading standard "excuse a clear failure in the pleadings to allege a federally cognizable claim." *Laber v. U.S. Dep't of Defense*, No. 3:21-cv-502, 2021 WL 5893293, at *2 (E.D. Va. Dec. 13, 2021) (citing *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990)).

III. ANALYSIS

A. MOTION TO REMAND

In her motion to remand, Brown contends that she first served Amazon on January 11, 2023 and again on January 20, 2023. Because Amazon did not file a responsive pleading in the state court proceeding within 21 days of service, Brown appears to argue that Amazon was in default in state court at the time the notice of removal was filed and that, as a result, the notice of removal is in some way defective or improper. See Mot. to Remand at 1 (arguing that under "Rule 3:8," "[a] defendant must file pleadings in response within 21 days" and when defense counsel filed its notice of removal, Amazon "was already in default."). But "[a]n entry of default or default judgment in state court does not prevent removal of an action to federal court."⁴ *Wasmuth v.*

⁴ The Court notes that on February 12, 2023, Brown apparently filed for a Motion for Default Judgment in Fairfax County Circuit Court as to "Amazon Headquarters, LLC." See Ex. A. So, as of the date of the removal (February 10, 2023), there is

Das, No. 1:11CV1013, 2013 WL 3461686, at *6 (M.D.N.C. July 9, 2013), report and recommendation adopted, 2013 WL 4519020 (Aug. 26, 2013), *aff'd*, 562 F. App'x 177 (4th Cir. 2014); *see also Hawes v. Cart Prods., Inc.*, 386 F. Supp. 2d 681, 686 (D.S.C. 2005) (“the weight of authority establishes that a defendant has the ability to remove a case to federal court where an entry of default or default judgment has previously been entered in state court”). Amazon’s failure to file a responsive pleading in state court does not prevent its removal of the action to federal court.

The Court also finds that Amazon’s notice of removal was timely. In general, defendants must file their notice of removal of a civil action “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based[.]” 28 U.S.C. § 1446(b)(1). Amazon’s notice of removal, filed on February 10, 2023, was timely filed regardless of whether Amazon was served on January 11, 2023 (30 days) or January 20, 2023 (21 days).

Brown also appears to argue that state court is the proper forum because Amazon has a “second Headquarters” in Arlington, Virginia. (Dkt. No. 6 at 2). As discussed above, a defendant may remove an action from state court to federal court if the case could have originally been brought in federal court. 28 U.S.C. § 1441(a). Original jurisdiction exists where the amount in controversy exceeds \$75,000 and is between citizens of different states. *See* 28

no evidence that Brown had made any such filing, let alone that any entry of default or default judgment had been entered against any of the Amazon entities identified in this action.

U.S.C. § 1332. Here, Brown seeks more than \$75,000 in her Complaint and there appears to be complete diversity, as Brown alleges she is a Virginia citizen and Amazon is a Washington citizen for purposes of diversity. *See* (Dkt. No. 1-1 ¶ 6). A corporation is deemed a citizen “of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business” 28 U.S.C. § 1332(c)(1); *Cent. W. Va. Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 102 (4th Cir. 2011). A corporation’s principal place of business is “where a corporation’s officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). To determine the principal place of business, courts consider where the corporation maintains its headquarters and the extent to which the headquarters functions as a “nerve center” for the corporation. *Id.* Defendant Amazon.com, Inc. has established that it is incorporated in Delaware and that its headquarters, which functions as the company’s “nerve center,” is in Washington state. *See* (Dkt. No. 17 at 7).

The Court finds Amazon’s removal to be proper, and Brown’s Motion to Remand is denied.

B. MOTION TO DISMISS

1. The Virginia Workers’ Compensation Act

Because the Virginia Workers’ Compensation Act (“the Act”) provides the exclusive remedy for employee injury, including death, arising out of workplace conditions, the Court does not have subject matter jurisdiction over Brown’s wrongful

death claim. The Act “*exclude[s] all other rights and remedies* of such employee, h[er] personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service, or death.” Va. Code § 65.2-307(A) (emphasis added). In exchange for granting workers the right to assert no-fault liability against their employers, the Act specified that workers—and their personal representatives—no longer had the right to sue their employers in tort for negligence. *See Lopez v. Intercept Youth Servs., Inc.*, 861 S.E.2d 392, 394 (Va. 2021). The Act sets up an alternative forum for employees and their personal representatives to seek relief in the manner Brown seeks to here: the Virginia Workers’ Compensation Commission. Va. Code § 65.2-200 *et Seq.*; *see also Wiener v. AXA Equitable Life Insurance Company*, 58 F.4th 774, 783 (4th Cir. 2023) (noting that the Act “created an administrative forum for [injured] workers’ compensation claims” in the Workers’ Compensation Commission).

Brown has brought a wrongful death action against Amazon. Wrongful death claims fall within the scope of the Act only if the injury leading to the employee’s death arises out of and in the course of employment. *Lopez*, 861 S.E.2d at 395. Brown argues that Poushawn had “no business” performing her COVID-19 testing responsibilities as a Safety Captain. Compl. at 5. Brown contends that Poushawn’s acts were therefore not part of her ordinary course of employment, so her illness and death are removed from the sorts of injury that fall within the Act’s scope. (Dkt. No. 20 at 2).

The Court recognizes that Poushawn’s duties as a Safety Captain were different from those she

originally performed at the Amazon Warehouse. But the fact that Poushawn's duties changed because of the COVID-19 pandemic—and that these new responsibilities allegedly caused Poushawn to contract COVID 19—does not render her death outside the scope of the Act. When an employee's duties result in exposure to contagious and potentially life-threatening illnesses, she can claim to have suffered a compensable injury capable of relief through a workers' compensation adjudication process. *See Frey v. Gunston Animal Hospital & Cincinnati Indemnity Co.*, 573 S.E.2d 307, 312 (Va. Ct. App. 2002) (holding that when an employee "has sustained actual exposures to life threatening infectious diseases in incidents that arose out of and occurred in the course of his employment, the [employee] has suffered compensable injuries under the act and may recover the expenses associated with reasonable medical testing and treatment") (quoting *Doe v. City of Stamford*, 699 A.2d 52, 54 (Conn. 1997)).

Indeed, the court in *Frey*, following the approach that the Supreme Court of Connecticut took in *Doe* assessing the applicability of a compensation scheme in Connecticut similar to that in Virginia, made clear that exposure to life-threatening illnesses constitutes a compensable injury when it occurs in the performance of one's employment duties. *See Doe*, 699 A.2d at 53 (describing a compensable injury under the state's workers' compensation scheme as one where a police officer was "engaged in the performance of police duties"). *Frey*, likewise, held that a veterinary assistant who sought treatment for rabies exposure could prove a compensable injury under the Act. *See*

Frey, 573 S.E.2d. Here, Poushawn's exposure to COVID-19 occurred in the context of her employment duties as a Safety Captain, a role which included the risk of exposure to a contagious and potentially life-threatening illness as part of the job. Because the exclusive mechanism to seek relief for Poushawn's injury and death is thus through the Act, this Court lacks subject matter jurisdiction over Brown's wrongful death claim.

C. MOTION TO AMEND

Brown has also moved to amend the Complaint to include that she has been named the Administrator of Poushawn Brown's estate. (Dkt. No. 20). Although the Court appreciates Brown's desire to have her Complaint properly reflect the sincerity of her commitment and duty to her sister, the Court may deny leave to amend a complaint when such amendment would be futile. *See Dozier v. Parker*, 2009 WL 1147916, at *3 (E.D. Va. Apr. 28, 2009) (citing *Ward Elecs. Serv., Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir.1987)), *aff'd*, 332 F. App'x 847 (4th Cir. 2009); *see also Ingram v. Buckingham Corr. Ctr.*, Civil Action No. 3:09CV831, 2011 WL 1792460, at *1 (E.D. Va. May 5, 2011) ("Leave to amend is appropriately denied where the amendment would be futile.") (citing *United States v. Pittman*, 209 F.3d 314, 317 (4th Cir. 2000)). Here, amending the Complaint as Brown proposes—bringing the action as Poushawn's personal representative—would be futile given the deficiencies outlined above. Accordingly, the Court will deny Brown's Motion to Amend.

IV. CONCLUSION

For the reasons stated above, the Court denies Plaintiff's Motion to Remand, grants Defendant's Motion to Dismiss, and denies Plaintiff's Motion to Amend. Accordingly, it is hereby

ORDERED that Plaintiff's Motion to Remand (Dkt. No. 6) is **DENIED**; it is further

ORDERED that Defendants' Motion to Dismiss (Dkt. No. 10) is **GRANTED**; it is further

ORDERED that Plaintiff's Motion to Amend (Dkt. No. 26) is **DENIED**; and it is further

ORDERED that Defendants' Motion to Strike (Dkt. No. 27) is **DENIED**.

It is **SO ORDERED**.

* * *

Should plaintiff wish to appeal this Memorandum Opinion & Order, plaintiff must file a written notice of appeal with the Clerk of this Court within thirty (30) days of the date of the entry of this Memorandum Opinion & Order. A written notice of appeal is a short statement stating a desire to appeal an order and identifying the date of the order plaintiff wants to appeal. Failure to file a notice of appeal within the stated period waives plaintiff's right to appeal this Memorandum Opinion & Order.

The Clerk is directed to forward copies of the Memorandum Opinion & Order to plaintiff *pro se*, and to close this civil action.

/s/

Hon. Michael S. Nachmanoff
United States District Judge
Alexandria, Virginia August 4, 2023

VIRGINIA:

**IN THE CIRCUIT COURT OF FAIRFAX
COUNTY**

Case No. CL-2022-0017556

Christina Brown
Plaintiff(s)

vs

Amazon Headquarters LLC
Defendant(s)

FINAL ORDER

It appearing to the Court by the Notice of Removal received by this Court that this case has been removed to the United States District Court for the Eastern District of Virginia, Alexandria Division.

It is ADJUDGED and ORDERED that this cause is hereby REMOVED and stricken from the active docket of this Court.

ENTERED this 21 day of February, 2023

/s/ Penney S. Azcarate
Circuit Court Judge

*Given the provision for mailing of copies and to assure the prompt disposition of the business of this Court, the Court is dispensing with signatures pursuant to Rule 1:13.

FILED: March 5, 2024

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**No. 23-1921
(1:23-cv-00189-MSN-WEF)**

CHRISTINA BROWN

Plaintiff - Appellant

v.

**AMAZON HEADQUARTERS, LLC, a/k/a
Amazon.com, Inc.; AMAZON LOGISTICS, INC.
Defendants – Appellees**

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

Code of Virginia**Title 65.2. Workers' Compensation Chapter 4.
Occupational Diseases****§ 65.2-402.1. Presumption as to death or
disability from infectious disease**

B. 1. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease that is covered by this title unless such presumptions are overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19 and signs and symptoms of COVID-19 that require medical treatment, as described in subdivision F 2.

2. COVID-19 causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) firefighter, as defined in § 65.2-102;(ii) law-enforcement officer, as defined in § 9.1-101;(iii) correctional officer, as defined in § 53.1-1;or (iv) regional jail officer shall be presumed to be an occupational disease, suffered in the line of duty, as applicable, that is covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, the COVID-19 virus shall be established by a positive diagnostic test for COVID-19, an incubation period

consistent with COVID-19, and signs and symptoms of COVID-19 that require medical treatment.

2. The presumptions described in subdivision B 1 shall not apply to any person offered by such person's employer a vaccine for the prevention of COVID-19 with an Emergency Use Authorization issued by the U.S. Food and Drug Administration, unless the person is immunized or the person's physician determines in writing that the immunization would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization shall disqualify the person from the presumptions described in subdivision B 1.

Code of Virginia

Title 65.2. Workers' Compensation Chapter 4. Occupational Diseases

§ 65.2-401. "Ordinary disease of life" coverage

An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease for purposes of this title if each of the following elements is established by clear and convincing evidence, (not a mere probability):

1. That the disease exists and arose out of and in the course of employment as provided in § 65.2- 400 with respect to occupational diseases and did not result from causes outside of the employment, and
2. That one of the following exists:

- a. It follows as an incident of occupational disease as defined in this title; or
- b. It is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home as defined in § 32.1-123, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or
- c. It is characteristic of the employment and was caused by conditions peculiar to such employment.

Code of Virginia

Title 65.2. Workers' Compensation Chapter 4.

Occupational Diseases

§ 65.2-400. "Occupational disease" defined

A. As used in this title, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment.

B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of the following circumstance:

- 2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

Code of Virginia

Title 54.1. Professions and Occupations

**Subtitle I. General Provisions Relating to
Regulatory Boards Chapter 1. General
Provisions**

**§ 54.1-111. Unlawful acts; prosecution;
proceedings in equity; civil penalty**

A. It is unlawful for any person, partnership, corporation, or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.
2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.
6. Materially misrepresenting facts in an application for licensure, certification, or registration.
7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.
8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.

Code of Virginia

Title 8.01. Civil Remedies and Procedure

Chapter 21.1. Medical Malpractice

**Article 1. Medical Malpractice Review Panels;
Arbitration of Malpractice Claims**

§ 8.01-581.1. Definitions As used in this chapter:

"Health care" means any act, professional services in nursing homes, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

"Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, a dentist, a pharmacist, a registered nurse or licensed practical nurse or a person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact, an advanced practice registered nurse, an optometrist, a podiatrist, a physician assistant, a chiropractor, a physical therapist, a physical therapy assistant, a clinical psychologist, a clinical social worker, a professional counselor, a licensed marriage and family therapist, a licensed dental hygienist, a health maintenance organization, or an emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through

prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services; or (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.

"Physician" means a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

Code of Virginia

Title 65.2. Workers' Compensation

Chapter 1. Definitions and General Provisions

§ 65.2-101. Definitions

"Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire company or volunteer emergency medical services agency electing to be included and maintaining coverage as an employer under this title. If the

employer is insured, it includes his insurer so far as applicable.

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. Such term shall not include any injury, disease or condition resulting from an employee's voluntary:

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or

2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.
Such term shall include any injury, disease or condition:

3. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123;(b) an employee of a health care provider as defined in § 8.01-581.1;(c) an employee of the Department of Health or a local department of health; (d) a member of a search and rescue organization; or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of §

65.2-402.1 otherwise subject to the provisions of this title; and

4. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle III. Professions and Occupations

Regulated by Boards within the Department of Health Professions

Chapter 29. Medicine and Other Healing Arts

Article 1. General Provisions

§ 54.1-2900. Definitions

"Consultation" means communicating data and information, exchanging clinical observations and assessments, accessing and assessing additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.

"Nurse practitioner" means an advanced practice registered nurse, other than an advanced practice registered nurse licensed by the Boards of Medicine and Nursing in the category of certified nurse midwife, certified registered nurse anesthetist, or clinical nurse specialist, who is jointly licensed by

the Boards of Medicine and Nursing pursuant to § 54.1-2957.

Practice of medicine or osteopathic medicine" means the prevention, diagnosis, and treatment of human physical or mental ailments, conditions, diseases, pain, or infirmities by any means or method.

Practice of respiratory care" means the (i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a practitioner of medicine or osteopathic medicine; (ii) transcription and implementation of the written or verbal orders of a practitioner of medicine or osteopathic medicine pertaining to the practice of respiratory care; (iii) observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general physical response exhibit abnormal characteristics; and (iv) implementation of respiratory care procedures, based on observed abnormalities, or appropriate reporting, referral, respiratory care protocols or changes in treatment pursuant to the written or verbal orders by a licensed practitioner of medicine or osteopathic medicine or the initiation of emergency procedures, pursuant to the board's regulations or as otherwise authorized by law. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate by the

Board in accordance with the written or verbal order of a practitioner of medicine or osteopathic medicine, and shall be performed under qualified medical direction.

Code of Virginia
Title 32.1. Health
Chapter 5.

Regulation of Medical Care Facilities and Services
Article

1. Hospital and Nursing Home Licensure and Inspection

"Substandard quality of care" means deficiencies in practices of patient care, preservation of patient rights, environmental sanitation, physical plant maintenance, or life safety which, if not corrected, will have a significant harmful effect on patient health and safety.