

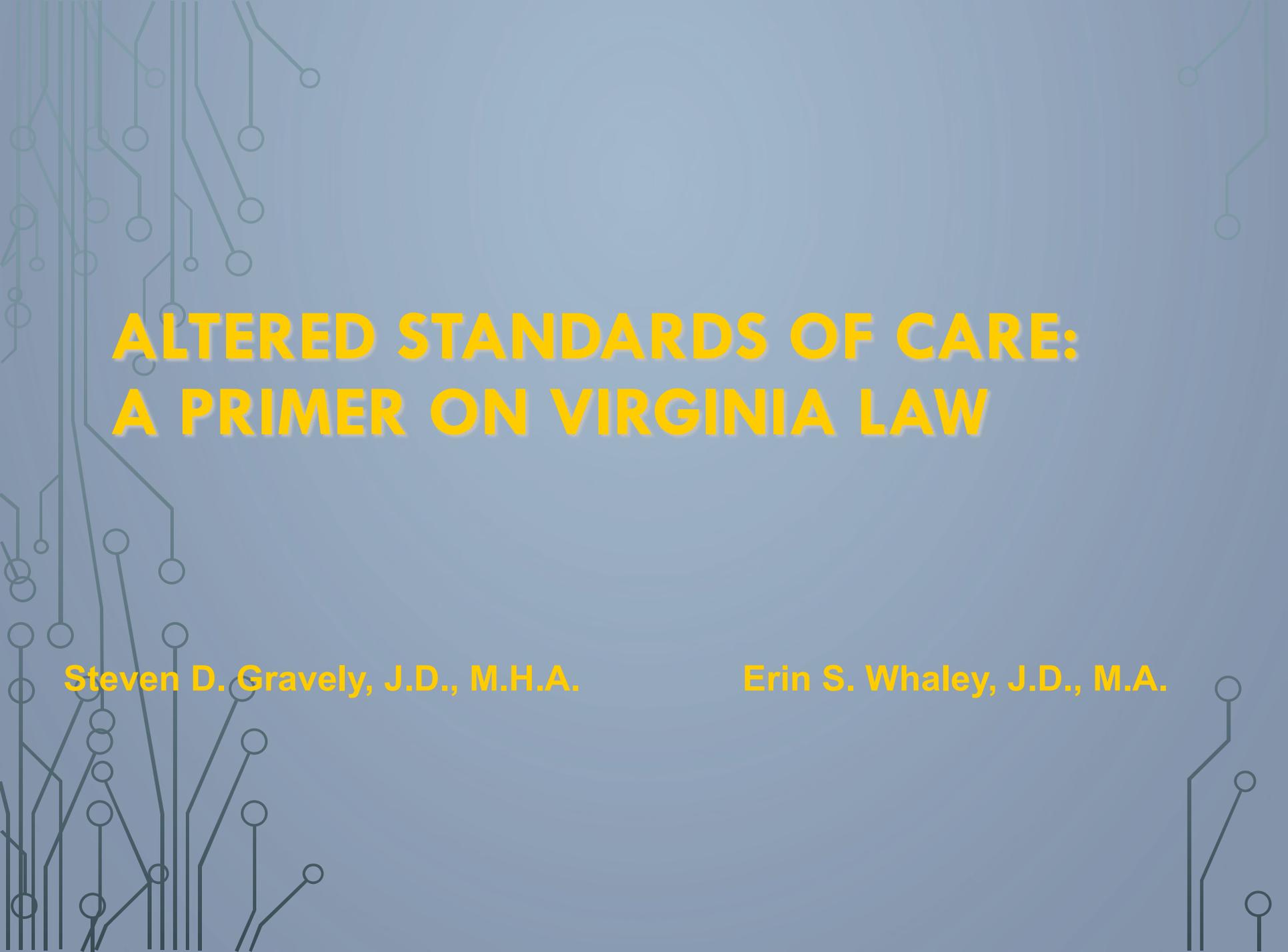


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ALTERED STANDARDS OF CARE: A PRIMER ON VIRGINIA LAW

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WHAT IS THE STANDARD OF CARE IN VIRGINIA?

- Statutory Definition

- A practitioner must use “[T]hat degree of skill and diligence practiced by a reasonably prudent practitioner in the field or specialty in this Commonwealth.” CITE

- Jury Instructions

- A practitioner must use “the degree of skill and diligence in the care and treatment of his patient that a reasonably prudent doctor in the same field of practice or specialty in this State would have used *under the circumstances of this case.*”

WHAT IS AN “ALTERED” STANDARD OF CARE?

- No accepted definition
- Hospitals and health care practitioners will probably not be able to render the customary level of care during an emergency/disaster situation
- Components of AHRQ definition
 - Allocation of scarce resources
 - Greatest good for the greatest number

POTENTIAL EXAMPLES



1918
Influenza Outbreak



2005
Post Hurricane Katrina

- Ventilators
- Anti-virals
- Blood products

- Operating rooms
- Housing patients

APPLICATION OF CURRENT VA LAW

- There is no case law dealing with altered standards of care
- Discrepancy between jury instructions and statute
 - Qualifying clause in jury instructions requires jury to account for unique circumstances
 - These unique circumstances will be important to consider in altered standard of care cases
 - How individual courts will apply in specific cases is not clear

PRELIMINARY CONCLUSIONS

- Because a jury will be instructed to consider circumstances, documentation of emergency or disaster circumstances is crucial
- Because there is a discrepancy between the statute and jury instructions, a legislative initiative to amend the existing standard of care statute may be warranted

OTHER WAYS TO ADDRESS CONCERNS

- Title 44 Emergency Declaration
- Board of Health Emergency Regulations

TITLE 44 GENERALLY

- Commonwealth of Virginia Emergency Services and Disaster Law
- Gives Governor the authority to declare a state of emergency
- Governor has ability to promulgate rules and regulations allocating scarce medical resources during a state of emergency

TITLE 44

- Governor may be able to implement an altered standard of care in an emergency declaration to allocate scarce medical resources
- Two types of possible declarations
 - Generic: Hospitals would then be required to devise content of altered standards
 - Specific: Governor would announce the content of the altered standards

TITLE 44 – SPECIFIC

• Pros DECLARATIONS

- Definitively establishes an altered standard of care
 - Cloaks healthcare providers complying with altered standard with a shield of immunity
 - Ensures that health care providers across affected areas are all providing the same care to similar patients
- Cons:
 - The content of the declaration is unknown until issued in the midst of an emergency

EMERGENCY REGULATIONS ISSUED BY BOARD OF HEALTH

- Board of Health has ability to issue emergency regulations
- Regulations do not become effective until approved by Governor and filed with Registrar of Regulations
- Authority for and legal effect of an emergency regulation re: altered standards are not definitive

ADDITIONAL ISSUES

- **Scope of Practice**
 - Personnel providing services outside of their normal scope of duties
- **Reimbursement**
 - Can only be reimbursed for procedures performed by physicians
 - Documentation of services rendered
- **Determining content of an altered standard of care**