

## **BILL ANALYSIS**

Senate Research Center

S.B. 1172  
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### **DIGEST AND PURPOSE**

Currently, Texas does not have a law to address potentially false testimony by out-of-state medical experts in Texas' medical malpractice cases. If the expert is not licensed in Texas, the Board of Medical Examiners (board) is without jurisdiction to address the issue. As proposed, S.B. 1172 provides that an out-of state medical expert who reviews medical liability litigation or provides testimony or an opinion at a deposition or trial is considered to be engaged in the practice of medicine in this state and subject to regulation by the board. This bill also requires the out-of-state expert to obtain a medical expert witness certificate and pay an appropriate fee. In addition, the bill also establishes a process whereby an out-of state medical expert may have his or her certificate revoked by the board for a certain period of time.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Medical Examiners in SECTION 2 (Section 153.014, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 151, Subchapter B, Occupations Code, by adding Section 151.057, as follows:

Sec. 151.057. APPLICATION TO OUT-OF-STATE MEDICAL EXPERT WITNESSES. Provides that a person who is licensed to practice medicine in another state and who performs reviews of medical liability litigation or provides testimony or an opinion at a deposition or a trial with regard to a medical liability suit in this state is considered to be engaged in the practice of medicine in this state for purposes of performing the review or providing the testimony or opinion and is subject to regulation by the Texas State Board of Medical Examiners (board).

SECTION 2. Amends Chapter 153, Subchapter A, Occupations Code, by adding Section 153.014, as follows:

Sec. 153.014. ISSUANCE OF CERTIFICATE FOR MEDICAL EXPERT WITNESS.  
(a) Requires a medical expert who performs reviews of medical liability litigation or provides testimony or an opinion at a deposition or a trial with regard to a medical liability suit in this state to obtain a medical expert witness certificate issued by the board. Prohibits a medical expert who fails to obtain a certificate under this section from serving as a medical expert witness in any capacity in this state.

(b) Requires the board to issue a medical expert witness certificate to a medical expert who pays an application fee of \$100, has not had a previous certificate revoked by the board, and meets any other requirements determined by the board.

(c) Provides that the issuance of a medical expert witness certificate to a medical expert under this section does not authorize the medical expert to practice clinical medicine or to examine, evaluate, treat, or prescribe any treatment for a patient in this state.

(d) Requires the board to adopt rules for expediting the issuance of a medical expert witness certificate under this section.

(e) Authorizes the board to revoke a medical expert witness certificate issued under this section on a finding by the board that grounds exist to revoke the certificate. Requires the board, in deciding whether to revoke the certificate, to take into consideration any sanctions recommended by a state specialty society under Section 154.059, including a recommendation that a medical expert witness certificate be revoked.

(f) Provides that in this section, "medical expert" means a person who is licensed to practice medicine in this state or in another state.

SECTION 3. Amends Chapter 154, Subchapter B, Occupations Code, by adding Section 154.059, as follows:

**Sec. 154.059. RULES REGARDING MEDICAL EXPERT TESTIMONY**

**COMPLAINT INVESTIGATION; DISPOSITION.** (a) Authorizes a physician who believes that medical expert testimony offered in medical liability litigation by a medical expert is false or egregious or deviates from the accepted standard of care or practice to file a complaint with the board with regard to the medical expert testimony.

(b) Requires the board to refer a complaint regarding medical expert testimony under Subsection (a) to a state specialty society that represents physicians in the same specialty as the physician who is making the complaint. Requires the state specialty society to refer the complaint to its peer review committee for a peer review determination on the medical expert testimony.

(c) Requires the peer review committee to render a determination regarding the medical expert testimony, not later than 90 days after receipt of the materials containing the medical expert testimony that is the basis of the complaint and all other relevant materials concerning the medical circumstances of the medical liability litigation.

(d) Requires the peer review committee to report its determination with regard to the medical expert testimony to the state specialty society in a particular form.

(e) Requires the state specialty society to submit certain items to the board, not later than seven days after the peer review committee renders a final determination and recommendation under Subsection (c).

(f) Provides that a determination by a peer review committee of a state specialty society is not subject to appeal.

(g) Requires the board to report the determination and recommendation to the medical expert whose testimony is complained of and to the physician who made the complaint, not later than 10 days after the board receives the determination and recommendation of the peer review committee of a state specialty society under Subsection (d).

(h) Provides that in this section "medical expert" means a person who is licensed to practice medicine in this state or in another state.

SECTION 4. Effective date: September 1, 2003.