

By: Janek

S.B. No. 1172

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain medical expert witnesses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 151, Occupations Code, is amended by adding Section 151.057 to read as follows:

Sec. 151.057. APPLICATION TO OUT-OF-STATE MEDICAL EXPERT WITNESSES. 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 board.

SECTION 2. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.014 to read as follows:

Sec. 153.014. ISSUANCE OF CERTIFICATE FOR MEDICAL EXPERT WITNESS. (a) 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 must obtain a medical expert witness certificate issued by the board. A medical expert who fails to obtain a certificate under this section may not serve as a medical expert witness in any capacity in this state.

(b) The board shall issue a medical expert witness

1 certificate to a medical expert who:

2 (1) pays an application fee of \$100;

3 (2) has not had a previous certificate revoked by the  
4 board; and

5 (3) meets any other requirements determined by the  
6 board.

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

11 (d) The board shall adopt rules for expediting the issuance  
12 of a medical expert witness certificate under this section.

13 (e) The board may revoke a medical expert witness  
14 certificate issued under this section on a finding by the board that  
15 grounds exist to revoke the certificate. In deciding whether to  
16 revoke the certificate, the board shall take into consideration any  
17 sanctions recommended by a state specialty society under Section  
18 154.059, including a recommendation that a medical expert witness  
19 certificate be revoked.

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

22 SECTION 3. Subchapter B, Chapter 154, Occupations Code, is  
23 amended by adding Section 154.059 to read as follows:

24 Sec. 154.059. RULES REGARDING MEDICAL EXPERT TESTIMONY  
25 COMPLAINT INVESTIGATION; DISPOSITION. (a) A physician who  
26 believes that medical expert testimony offered in medical liability  
27 litigation by a medical expert is false or egregious or deviates

1 from the accepted standard of care or practice may file a complaint  
2 with the board with regard to the medical expert testimony.

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

9 (c) Not later than 90 days after receipt of the materials  
10 containing the medical expert testimony that is the basis of the  
11 complaint and all other relevant materials concerning the medical  
12 circumstances of the medical liability litigation, the peer review  
13 committee shall render a determination regarding the medical expert  
14 testimony.

15 (d) The peer review committee shall:

16 (1) report its determination with regard to the  
17 medical expert testimony to the state specialty society in a form  
18 substantially similar to the following:

19 (A) the testimony is acceptable and meets  
20 reasonable practice standards;

21 (B) the testimony is acceptable if the following  
22 issues can be clarified: \_\_\_\_\_;

23 (C) the testimony requires clarification and  
24 reconsideration;

25 (D) the testimony does not conform to accepted  
26 standards of care or practice in the specialty of  
27 \_\_\_\_\_; or

1                   (E) the testimony is false, egregious, or totally  
2 without basis; and

3                   (2) report its recommendation with regard to the  
4 complaint made under Subsection (a) to the state specialty society  
5 in a form substantially similar to the following:

6                   (A) the complaint regarding the medical expert  
7 testimony is not valid;

8                   (B) the complaint regarding the medical expert  
9 testimony cannot be resolved until the following materials are  
10 provided to the peer review committee: \_\_\_\_\_;

11 or

12                   (C) the complaint is valid and the medical expert  
13 testimony is not in conformity with the established standards and  
14 practices of \_\_\_\_\_ specialty, and the  
15 committee recommends revocation of the medical expert certificate  
16 held by the medical expert for five years.

17                   (e) Not later than seven days after the peer review  
18 committee renders a final determination and recommendation under  
19 Subsection (c), the state specialty society shall submit to the  
20 board:

21                   (1) the final report and recommendations of the  
22 committee regarding the medical expert testimony and the complaint  
23 in the manner required under Subsection (d); and

24                   (2) the materials containing the medical expert  
25 testimony that is the basis of the complaint and all other relevant  
26 materials concerning the medical circumstances of the medical  
27 liability litigation and any applicable comments described in

1 Subsection (d)(1)(B), (C), (D), or (E).

2 (f) A determination by a peer review committee of a state  
3 specialty society is not subject to appeal.

4 (g) Not later than 10 days after the board receives the  
5 determination and recommendation of the peer review committee of a  
6 state specialty society under Subsection (d), the board shall  
7 report the determination and recommendation to the medical expert  
8 whose testimony is complained of and to the physician who made the  
9 complaint.

10 (h) In this section, "medical expert" means a person who is  
11 licensed to practice medicine in this state or in another state.

12 SECTION 4. This Act takes effect September 1, 2003.