

# Florida Medical Association FACT SHEET

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## MEDICAL MALPRACTICE LITIGATION REFORM

SB by Senator

HB by Representative

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### **FMA Position**

Expert witness testimony not only plays a key role in the outcome of a medical malpractice case, it also impacts the way medicine is practiced in Florida. The FMA believes that all expert witness testimony should be fair and accurate. The only way to ensure that expert testimony given by out-of-state experts accurately reflects the actual standard of care is to hold all experts accountable for their testimony. To provide this accountability, the FMA supports legislation that would require out-of-state physicians to obtain an expert witness certificate to testify in Florida.

### **Background**

Current Florida law (Section 766.102(5), F.S.) provides that a person may not give expert testimony concerning the prevailing professional standard of care unless that person is a licensed health care provider and meets other criteria. The statute does not require that an expert hold a Florida license. Thus physicians who are licensed in states other than Florida are authorized and routinely provide expert testimony in medical malpractice cases in this state. Unfortunately, in many instances the testimony given does not accurately reflect the prevailing professional standard of care. These experts can generate large fees providing inaccurate testimony with the knowledge that they can do so with impunity. Trial judges do not have the knowledge to determine if expert testimony accurately reflects the standard of care and the Board of Medicine has no jurisdiction over out-of-state physicians. Clearly there needs to be a mechanism that would enable the state to hold expert witnesses accountable for the testimony they give in medical malpractice cases in Florida.

### **Discussion**

The proposed legislation seeks to enact the following changes related to expert witness testimony:

- The bill would require a physician who is licensed outside of the state and wishes to testify as an expert in a malpractice case in Florida to obtain an expert witness certificate from the Board of Medicine.
- The only requirement for getting the certificate is that the expert be a licensed physician in good standing in another state. The application fee cannot exceed \$50 and will only serve to offset administration costs. All other fees imposed on Florida physicians are waived.
- The Board has five days from the receipt of the application to grant or deny the certificate. If the Board does not act within five days, the certificate is deemed granted. This ensures that Board inaction will not delay the prosecution of a malpractice suit.

- Under this bill only physicians who hold a Florida license or an expert witness certificate would be allowed to testify as an expert in a medical malpractice case.
- It is important to note that this applies to all experts in a medical malpractice case, both for the plaintiff and the defendant.
- The certificate holder would be entitled to the full range of due process protections as a Florida licensed physician, including appellate review of any decision revoking the person's certificate.
- The bill also conclusively establishes that the Board of Medicine can discipline a physician for providing false, deceptive or misleading expert witness testimony related to the practice of medicine.

### **Conclusion**

The requirement that the expert be licensed in Florida or hold an expert witness certificate will ensure that unscrupulous foreign experts are subject to the same discipline that Florida licensees are subject to if they testify fraudulently.