AB 1848 (Atkins) – Physicians and Surgeons: Expert Witness Testimony

Introduced February 22, 2012, Amended April 18, 2012

According to the author, "The intent of this bill is to fix the problem of deceptive or fraudulent testimony provided by medical expert witnesses - in particular, those that are licensed from out of the state. In California, because medical expert witness testimony is considered the practice of medicine, the Medical Board of California (MBC) has jurisdiction over California licensees who provide expert witness testimony. Thus, in the event that a CA licensed physician provides fraudulent or deceptive medical expert witness testimony, the MBC has the authority to investigate and discipline that licensee. Unfortunately, however, in the case of a licensee from other than California, the MBC has no recourse in deterring such behavior nor preventing additional opportunities for the out of state licensee from continuing to be a medical expert witness in other cases."

In 2004, the California Attorney General issued a formal opinion concluding that "when a physician testifies as an expert in a civil proceeding regarding the applicable standard of medical care and whether the defendant has breached that standard, the physician may not, on the basis of his or her testimony, be held liable in a subsequent tort action brought by the adverse party, but may be subject to professional discipline by the Medical Board of California if the testimony constitutes unprofessional conduct."

Under current law, the MBC can discipline its licensees for unprofessional conduct, which would include providing expert witness testimony that is fraudulent or meets the definition of unprofessional conduct. Because physicians who are licensed in other states do not fall under MBC's authority, the MBC cannot impose disciplinary action against out-of-state physicians who provide false expert witness testimony.

This bill establishes a mandatory process for physicians licensed in other states to register with, and obtain authorization from, the MBC prior to providing expert witness testimony in court and gives the MBC 20 days within which to process requests for registration.

AMENDED IN ASSEMBLY APRIL 18, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1848

Introduced by Assembly Member Atkins

February 22, 2012

An act to add Section 2076.6 to the Business and Professions Code, relating to healing arts~~, and making an appropriation therefor~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, Atkins. Physicians and surgeons: expert witness testimony.

Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons in the state by the Medical Board of California under the Department of Consumer Affairs. Existing law provides exceptions from those licensing requirements to permit physicians and surgeons who are licensed in another state to practice medicine in California in specified circumstances.

This bill would require a physician and surgeon who is licensed in another state to file ~~an application~~ *a request for authorization* and *a* fee with the board and receive ~~approval~~ *authorization*, as specified, prior to ~~offering~~ *providing* expert witness testimony related to the practice of medicine in any legal proceeding in the state. A physician and surgeon so ~~approved~~ *authorized* would be subject to discipline by the board.

This bill would ~~make an appropriation because the application fees would~~ *require the filing fee for a request for authorization to* be deposited into the Contingent Fund of the Medical Board of California~~, a continuously appropriated fund~~ *to be used, upon appropriation by the*

Legislature, for developing the authorization process and processing requests.

Vote: majority. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2076.6 is added to the Business and Professions Code, to read:

2076.6. (a) A physician and surgeon who holds an active and valid license to practice medicine in another state shall file a written ~~application~~ *request for authorization* with the board, using a form that the board shall create, and receive the approval of the board prior to providing expert witness testimony, under oath, relating to the practice of medicine in any legal proceeding in the state. ~~The application shall contain:~~ *Prior to providing that testimony, the person shall do all of the following:*

(1) Obtain authorization from the board to provide expert witness testimony after submitting to the board a copy of his or her valid license or certificate from each state in which the person holds licensure or certification and a photographic identification issued by one of those states in which the person holds licensure or certification. The board shall notify the person, within 20 calendar days of receiving a request for authorization, whether the board has approved or denied that request. If the person requests authorization to testify within 20 calendar days of the board's receipt of the person's request for authorization, the board shall make reasonable efforts to notify the person whether that request is approved or denied within that shorter time period.

(2) Satisfy the following requirements:

(A) The person has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(B) The person has the appropriate education and experience to provide expert witness testimony, as determined by the board.

(C) The person shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(3) Submit to the board, on a form prescribed by the board, a request for authorization to provide expert witness testimony.

(4) Submit a statement declaring whether the person has previously held or applied for a California medical license and whether that license or application was ever suspended, revoked, or denied.

~~(1) The applicant's legal name, mailing address, and telephone number.~~

~~(2) The names of all jurisdictions where the applicant holds, has held, or has applied for, a license to practice medicine, the current status of each license or application, and the name of any jurisdictions in which a license or application has been suspended, revoked, or denied.~~

~~(3) A statement declaring whether the applicant has previously held or applied for a California medical license and whether that license or application was ever suspended, revoked, or denied.~~

~~(4) A~~

(5) Submit a list of any felonies or misdemeanors of which the ~~applicant~~ *person* has been convicted in any jurisdiction.

~~(5) A~~

(6) Submit a statement indicating whether the ~~applicant~~ *person* has previously applied for, or held, an expert witness ~~certificate~~ *registration* and whether any previous expert witness ~~certificate~~ *registration* has been revoked by the board, or a similar board, committee, medical society, or administrative body in any other jurisdiction.

(7) Submit any additional information required by the board.

(b) The ~~application~~ *request* shall be accompanied by a fee in an amount set by the board *by regulation* sufficient to cover the reasonable costs of processing the ~~application~~ *request*. All fees collected under this section shall be deposited in the Contingent Fund of the Medical Board of California *and shall be available, upon appropriation by the Legislature, to cover the cost of developing the authorization process and processing the requests for authorization*.

(c) If the board fails to approve or deny the ~~application~~ *request* within ~~10~~ *20* business days after receipt of the ~~application~~ *request* and payment of the ~~application~~ *filing* fee, the ~~application~~ *request* shall be deemed approved. The board shall issue an expert witness

~~certificate~~ *registration* to all approved ~~applicants~~ *requesters*. The ~~certificate~~ *registration* shall be valid for two years from issuance.

(d) An expert witness ~~certificate~~ *registration* does not authorize the holder to practice medicine, as described in Section 2052. An expert witness ~~certificate~~ *registration* shall be treated as a license in any disciplinary action and the holder of the ~~certificate~~ *registration* shall be subject to discipline by the board.

(e) A physician and surgeon who is authorized under this section to provide expert testimony relating to the practice of medicine shall be deemed to consent to the jurisdiction, and regulatory and disciplinary powers, of the board and shall be subject to the provisions of Section 2234.

(f) An expert witness ~~certificate~~ *registration* issued pursuant to this section shall be disclosed upon request to a member of the public and shall be posted on the board's Internet Web site.

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