

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1262 (Delegate Shank)
Health and Government Operations

Physicians - Practice of Medicine - Expert Witness Testimony

This bill expands the definition of “the practice of medicine” to mean to engage, with or without compensation, in testifying or offering an opinion as a medical expert witness regarding medical diagnosis, healing, treatment, or surgery, in the course of a legal proceeding.

Fiscal Summary

State Effect: Board of Physicians’ special fund revenues could increase by a minimal amount, beginning in FY 2005. The civil/criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: The civil/criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine: (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education; (2) the appropriateness of the expert testimony on the particular subject; and (3) whether a sufficient factual basis exists to support the expert testimony.

A person may not practice, attempt to practice, or offer to practice medicine in the State unless licensed by the Board of Physicians. A person who violates these provisions is guilty of a misdemeanor and on conviction subject to a fine of up to \$5,000 and/or imprisonment for up to five years. In addition, a person who practices medicine without a license is subject to a civil fine of up to \$50,000. The board must pay any penalty collected into the Board of Physicians Fund.

Background: The American Medical Association has adopted the following policy regarding expert witness testimony by a physician: (1) the giving of medico-legal testimony by a physician expert witness is considered the practice of medicine; and (2) all medico-legal expert witness testimony given by a physician should be subject to peer review.

State Fiscal Effect: Board of Physicians' special fund revenues could increase if out-of-state physicians seek licensure here to serve as expert witnesses in legal proceedings in the State. Initial licensure fees are currently set at \$260. In addition, the board could levy fines of up to \$50,000 against an individual who practices medicine without a license. Any increase is expected to be negligible.

Of the licensure fees collected, the Comptroller must distribute: (1) 14% of the fees to the Office of Student Financial Assistance; and (2) the remainder of the fees to the Board of Physicians Fund.

Additional Information

Prior Introductions: None.

Cross File: SB 896 (Senator Mooney, *et al.*) – Judicial Proceedings.

Information Source(s): American Medical Association, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene (Board of Physicians), Department of Legislative Services

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