

Introduced by Senator CedilloFebruary 19, 2010

An act to amend Section 2177 of, and to add Sections 2177.5 and 2177.7 to, the Business and Professions Code, relating to medicine, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1410, as introduced, Cedillo. Medicine: licensure examinations.

Existing law, the Medical Practice Act, requires the Medical Board of California to issue a physician's and surgeon's certificate to a qualified applicant. Under the act, an applicant for a physician's and surgeon's certificate is required to include specified information with his or her application and to obtain a passing score on an entire examination or on each part of an examination. Existing law authorizes applicants to take the written examinations conducted or accepted by the board in separate parts. Existing law requires an applicant to obtain a passing score on Part III of the United States Medical Licensing Examination within not more than 4 attempts of taking that part of the examination.

This bill would delete the prohibition on taking Part III of the United States Medical Licensing Examination more than 4 times, and would make that change retroactive to January 1, 2007. The bill would also require the board to accept as a passing score from an applicant the passing score that was adopted by the board and in effect on the date the applicant registered for that examination or part of the examination, and would make that requirement retroactive to January 1, 2007. The bill would further require the board to adopt a formal process for determining whether to adopt recommended passing scores from the Federation of State Medical Boards.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares all of the
 2 following:
 3 (a) Under Section 2177 of the Business and Professions Code,
 4 an applicant who is seeking a physician’s and surgeon’s certificate
 5 in California must obtain a passing score on Part III of the United
 6 States Medical Licensing Examination (USMLE) within not more
 7 than four attempts in order to be eligible for a certificate. The
 8 examination has three parts. However, only Part III has a limit on
 9 the number of times that an applicant may attempt to pass the part.
 10 (b) The USMLE is administered by the Federation of State
 11 Medical Boards (FSMB), a national nonprofit entity. Periodically,
 12 the FSMB recommends passing scores to the various state medical
 13 boards. It is left to the discretion of each state board to determine
 14 whether to adopt the recommended score. Historically, the Medical
 15 Board of California (MBC) has not had a formal procedure
 16 regarding adoption of the FSMB recommended passing score.
 17 (c) When an applicant registers for the USMLE, he or she has
 18 an eligibility period of three months in which to take the
 19 examination. Multiple examination dates are available within the
 20 three-month period. The lack of a formal adoption process within
 21 the MBC combined with a three-month window to take the
 22 examination after registration has created some confusion as the
 23 MBC may increase the accepted passing score at any time without
 24 public record, input, or notification to applicants that have already
 25 registered for the examination. In fact, there is an instance where
 26 an applicant registered for the USMLE under one passing score
 27 and found out after her examination date that the accepted passing
 28 score had been increased without her knowledge. This applicant
 29 would have passed the examination under the criteria in place
 30 when she registered for the examination but because the passing
 31 score was increased between the time she registered and sat for
 32 the examination, she did not pass.

1 (d) Furthermore, prior to the enactment of Chapter 843 of the
2 Statutes of 2006 (AB 1796), California did not limit the number
3 of times an applicant may take any part of the USMLE. Under the
4 new law, which places an arbitrary limit of attempts on Part III of
5 the examination, highly qualified and much needed physicians and
6 surgeons are being denied a license to practice medicine in
7 California. Their only option is to move to another state, become
8 licensed and practice there, and return four years later.

9 (e) Failing to pass the USMLE under an arbitrary cap on the
10 number of attempts does not translate into a lack of competency
11 in providing high-quality medical care. Furthermore, existing law
12 does not take into consideration learning disabilities, a history of
13 poor performance on standardized tests, hardships, or other
14 variables that may impede the ability of an individual to pass the
15 examination, essentially discriminating against certain applicants.

16 (f) Twenty-eight states in the United States and one territory
17 have more lenient policies regarding the USMLE, which may
18 include having no cap or allowing for more attempts than
19 California. Those states and the one territory include AL, AZ, CO,
20 CT, DE, FL, GU, HI, IA, IL, KS, MA, MI, MN, MS, MT, NM,
21 NV, NJ, NY, NC, ND, OH, OK, PA, TN, VA, VI, and WY. In
22 fact, AZ, CO, CT, DE, GU, HI, IA, KS, MA, MI, MN, MS, MT,
23 NJ, NY, NC, ND, OH, PA, TN, VI, VA, and WY have no limit
24 on the number of times an applicant may take the examination.

25 (g) Lastly, even though AB 1796 was signed by the Governor,
26 he expressed concerns with the measure. The Governor issued a
27 signing message stating that AB 1796 failed to provide the
28 appropriate exceptions to the requirement that physicians and
29 surgeons applying for licensure pass Part III of the USMLE within
30 four attempts, and that AB 1796 may have unintended
31 consequences. The Governor requested that the MBC address his
32 concerns. Subsequently, the MBC requested that language be added
33 to Section 2177 of the Business and Professions Code that would
34 cross-reference Section 2135.5 of the Business and Professions
35 Code to exempt from the four-attempt limitation an applicant who
36 holds an unlimited and restricted license as a physician and surgeon
37 in another state and who has held that license continuously for a
38 minimum of four years prior to the date of application. This
39 amendment was added by Chapter 588 of the Statutes of 2007 (SB

1 1048), which was an omnibus bill for the Senate Committee on
2 Business and Professions.

3 (h) The inclusion of those changes by SB 1048 has proven to
4 be an inadequate approach to addressing the need for flexibility
5 and consideration of other factors that may contribute to an
6 individual failing to pass Part III of the USMLE within four
7 attempts. It is now viewed by the Legislature as unreasonable to
8 require an individual to leave the state, go through all the steps
9 necessary to obtain licensure in another state, and then return to
10 California after four years to obtain a license to practice medicine.

11 (i) It is further unreasonable for the MBC to change the passing
12 score for an examination once an applicant has registered for that
13 examination without any formal procedure or notification to the
14 applicant.

15 SEC. 2. Section 2177 of the Business and Professions Code is
16 amended to read:

17 2177. (a) A passing score is required for an entire examination
18 or for each part of an examination, as established by resolution of
19 the ~~Division of Licensing~~ *board*.

20 (b) Applicants may elect to take the written examinations
21 conducted or accepted by the ~~division~~ *board* in separate parts.

22 (c) ~~(1)~~ An applicant shall have obtained a passing score on Part
23 III of the United States Medical Licensing Examination ~~within not~~
24 ~~more than four attempts~~ in order to be eligible for a physician's
25 and surgeon's certificate.

26 ~~(2) Notwithstanding paragraph (1), an applicant who obtains~~
27 ~~a passing score on Part III of the United States Medical Licensing~~
28 ~~Examination in more than four attempts and who meets the~~
29 ~~requirements of Section 2135.5 shall be eligible to be considered~~
30 ~~for issuance of a physician's and surgeon's certificate.~~

31 (d) *The changes made to subdivision (c) by the act adding this*
32 *subdivision shall apply retroactively to January 1, 2007.*

33 SEC. 3. Section 2177.5 is added to the Business and Professions
34 Code, to read:

35 2177.5. (a) Notwithstanding subdivision (a) of Section 2177,
36 the board shall accept as a passing score on an examination or part
37 of an examination from an applicant the passing score that was
38 adopted by the board and in effect on the date the applicant
39 registered for that examination or part of the examination.

40 (b) This section shall apply retroactively to January 1, 2007.

1 SEC. 4. Section 2177.7 is added to the Business and Professions
2 Code, to read:

3 2177.7. The board shall adopt a formal process for determining
4 whether to adopt recommended passing scores from the Federation
5 of State Medical Boards.

6 SEC. 5. This act is an urgency statute necessary for the
7 immediate preservation of the public peace, health, or safety within
8 the meaning of Article IV of the Constitution and shall go into
9 immediate effect. The facts constituting the necessity are:

10 In order to allow for the licensure of competent physicians and
11 surgeons at the earliest possible time, it is necessary that this act
12 take effect immediately.