

Senate Bill No. 1410

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 19, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 1410, 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, and requires the board to adopt by resolution the passing score for each examination or each part of an examination. Existing law requires an applicant to obtain a passing score on Step 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 Step III of the United States Medical Licensing Examination more than 4 times. 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. The bill would further require the board to act by passing a resolution every time it adopts a passing score for an entire examination or for each part of an examination that is required for certification, subject to specified requirements and in conformity with the court's holding in *Marquez v. Medical Board of California* (2010) 182 Cal.App.4th 548.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Under Section 2177 of the Business and Professions Code, an applicant who is seeking a physician's and surgeon's certificate in California must obtain a passing score on Step III of the United States Medical Licensing Examination (USMLE) within not more than four attempts in order to be eligible for a certificate. The examination has three steps. However, only Step III has a limit on the number of times that an applicant may attempt to pass the step.

(b) The USMLE is administered by the Federation of State Medical Boards (FSMB), a national nonprofit entity. Periodically, the FSMB recommends passing scores to the various state medical boards. It is left to the discretion of each state board to determine whether to adopt the recommended score. Historically, the Medical Board of California (MBC) has not had a formal procedure regarding adoption of the FSMB recommended passing score.

(c) When an applicant registers for the USMLE, he or she has an eligibility period of three months in which to take the examination. Multiple examination dates are available within the three-month period. The lack of a formal adoption process within the MBC, combined with a three-month window to take the examination after registration, has created some confusion as the MBC may increase the accepted passing score at any time without public record, input, or notification to applicants who have already registered for the examination.

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

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

(f) Twenty-seven states in the United States and two territories have more lenient policies regarding the USMLE, which may

include having no cap or allowing for more attempts than California. Those states and territories include AL, AZ, CO, CT, DE, FL, GU, HI, IA, IL, KS, MA, MI, MN, MS, MT, NM, NV, NJ, NY, NC, ND, OH, OK, PA, TN, VA, VI, and WY. In fact, AZ, CO, CT, DE, GU, HI, IA, KS, MA, MI, MN, MS, MT, NJ, NY, NC, ND, OH, PA, TN, VI, VA, and WY have no limit on the number of times an applicant may take the examination.

(g) Lastly, even though Assembly Bill 1796 was signed by the Governor, he expressed concerns with the measure. The Governor issued a signing message stating that Assembly Bill 1796 failed to provide the appropriate exceptions to the requirement that physicians and surgeons applying for licensure pass Step III of the USMLE within four attempts, and that Assembly Bill 1796 may have unintended consequences. The Governor requested that the MBC address his concerns. Subsequently, the MBC requested that language be added to Section 2177 of the Business and Professions Code that would cross-reference Section 2135.5 of the Business and Professions Code to exempt from the four-attempt limitation an applicant who holds an unlimited and restricted license as a physician and surgeon in another state and who has held that license continuously for a minimum of four years prior to the date of application. This amendment was added by Chapter 588 of the Statutes of 2007 (SB 1048), which was an omnibus bill for the Senate Committee on Business and Professions.

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

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

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

2177. (a) A passing score is required for an entire examination or for each part of an examination, as established by resolution of the board.

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

(c) An applicant shall have obtained a passing score on Step III of the United States Medical Licensing Examination in order to be eligible for a physician's and surgeon's certificate.

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

2177.5. Notwithstanding subdivision (a) of Section 2177, the board shall accept as a passing score on an examination or part of an examination 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.

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

2177.7. (a) Pursuant to Sections 2177 and 2184, the board shall adopt a resolution every time the board adopts a passing score for an entire examination or for each part of an examination that is required for certification under this article.

(b) The resolution required pursuant to subdivision (a) shall be adopted or readopted at a public meeting of the board, and subject to public input and an affirmative vote of a majority of board members present at the meeting constituting at least a quorum.

(c) The board shall not delegate to any other entity, whether by contract or resolution, the responsibility to adopt the passing score described in this section. If the board adopts the recommended passing score of another entity as its passing score for an examination or any part of an examination and that entity subsequently changes that recommended passing score, the board's passing score shall not be changed unless the board readopts that recommended passing score, or adopts some other score, by resolution pursuant to this section.

(d) The passing score to be adopted pursuant to this section shall be stated as a numerical score and shall not be stated as a percentage of correct answers.

SEC. 5. (a) It is the intent of the Legislature in enacting Section 4 of this act that the Medical Board of California comply with the

court's holding in *Marquez v. Medical Board of California* (2010) 182 Cal.App.4th 548.

(b) Sections 2177 and 2184 of the Business and Professions Code unambiguously require the Medical Board of California to establish a passing score for Step III of the United States Medical Licensing Examination and to do so by resolution.

(c) The board shall adopt a passing score by means of a formal, memorialized public vote. This single, unambiguous statutory requirement is intended to keep the board accountable to the Legislature, the medical professions, medical license applicants, and the public, and to prevent the board from delegating this responsibility to anyone else.

Approved _____, 2010

Governor