

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 501

Introduced by Assembly Member Emmerson

February 24, 2009

An act to amend Sections 2054 and 2435 of, and to add Section 2088 to, the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Emmerson. Physicians and surgeons.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law makes it a misdemeanor for a person who is not licensed as a physician and surgeon *under the act* to use certain words, letters, and phrases or any other terms that imply that he or she is authorized to practice medicine as a physician and surgeon.

~~This bill would authorize a graduate of an approved medical school who is enrolled in a postgraduate training program approved by the board to use certain words, letters, or phrases while under instruction and under the supervision of a licensed physician and surgeon at the training program. The bill would also authorize a graduate of an approved medical school who does not have a valid certificate as a physician and surgeon issued by the board and who is not otherwise authorized to practice medicine in this state to use the initials "M.D." subject to specified conditions.~~

This bill would authorize certain persons who are not licensed as physicians and surgeons under the act to use the words "doctor" or

“physician,” the letters or prefix “Dr.,” or the initials “M.D.,” as specified.

Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes a licensee who demonstrates that he or she is unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician.

This bill would authorize an applicant for a license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license fee and signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board. By requiring that the agreement be signed under penalty of perjury, the bill would expand the scope of a crime, thereby imposing a state-mandated local program. The bill would authorize the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license.

Under existing law, licensees of the board are required to pay licensure fees, including an initial licensing fee of \$790 and a biennial renewal fee of \$790. Existing law authorizes the board to increase those fees in certain circumstances and states the intent of the Legislature that, in setting these fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board equal to 2 months’ operating expenditures.

This bill would require those fees to be fixed by the board at a maximum of \$790, while retaining the authority of the board to raise those fees in certain circumstances. The bill would state the intent of the Legislature that, in setting those fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board in an amount not less than 2 nor more than 4 months’ operating expenditures. The bill would also require the Bureau of State Audits to commence a review of the board’s financial status by January 1, 2012, and to report its findings and recommendations to the Joint Legislative Audit Committee by June 1, 2012, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 2054 of the Business and Professions
2 Code is amended to read:

3 2054. (a) Any person who uses in any sign, business card, or
4 letterhead, or, in an advertisement, the words “doctor” or
5 “physician,” the letters or prefix “Dr.,” the initials “M.D.,” or any
6 other terms or letters indicating or implying that he or she is a
7 physician and surgeon, physician, surgeon, or practitioner under
8 the terms of this or any other law, or that he or she is entitled to
9 practice hereunder, or who represents or holds himself or herself
10 out as a physician and surgeon, physician, surgeon, or practitioner
11 under the terms of this or any other law, without having at the time
12 of so doing a valid, unrevoked, and unsuspended certificate as a
13 physician and surgeon under this chapter, is guilty of a
14 misdemeanor.

15 (b) A holder of a valid, unrevoked, and unsuspended certificate
16 to practice podiatric medicine may use the phrases “doctor of
17 podiatric medicine,” “doctor of podiatry,” and “podiatric doctor,”
18 or the initials “D.P.M.,” and shall not be in violation of subdivision
19 (a).

20 ~~(c) A graduate of an approved medical school who is enrolled~~
21 ~~in a postgraduate training program approved by the board may use~~
22 ~~the words “doctor” or “physician,” the letters or prefix “Dr.,” or~~
23 ~~the initials “M.D.” while under instruction and under the~~
24 ~~supervision of a licensed physician and surgeon at that postgraduate~~
25 ~~training program, and shall not be in violation of subdivision (a):~~

26 ~~(d) Except as provided in subdivision (c), a graduate of an~~
27 ~~approved medical school who does not have a valid, unrevoked,~~
28 ~~and unsuspended certificate as a physician and surgeon issued~~
29 ~~under this chapter and who is not otherwise authorized to practice~~
30 ~~medicine under this chapter may use the initials “M.D.” without~~

1 ~~violating subdivision (a), provided he or she does not do either of~~
2 ~~the following:~~

3 ~~(1) Imply that he or she is a physician and surgeon, physician,~~
4 ~~surgeon, or practitioner under the terms of this chapter, or that he~~
5 ~~or she is entitled to practice medicine in this state.~~

6 ~~(2) Represent or hold himself or herself out as a physician and~~
7 ~~surgeon, physician, surgeon, or practitioner under the terms of this~~
8 ~~chapter.~~

9 *(c) Notwithstanding subdivision (a), any of the following persons*
10 *may use the words “doctor” or “physician,” the letters or prefix*
11 *“Dr.,” or the initials “M.D.”:*

12 *(1) A graduate of a medical school approved or recognized by*
13 *the board while enrolled in a postgraduate training program*
14 *approved by the board.*

15 *(2) A graduate of a medical school who does not have a*
16 *certificate as a physician and surgeon under this chapter if he or*
17 *she meets all of the following requirements:*

18 *(A) If issued a license to practice medicine in another*
19 *jurisdiction, has not had that license revoked or suspended by any*
20 *jurisdiction.*

21 *(B) Does not otherwise hold himself or herself out as a physician*
22 *and surgeon entitled to practice medicine in this state except to*
23 *the extent authorized by this chapter.*

24 *(C) Does not engage in any of the acts prohibited by Section*
25 *2060.*

26 *(3) A person authorized to practice medicine under Section*
27 *2111 or 2113 subject to the limitations set forth in those sections.*

28 SEC. 2. Section 2088 is added to the Business and Professions
29 Code, to read:

30 2088. (a) An applicant for a physician’s and surgeon’s license
31 who is otherwise eligible for that license but is unable to practice
32 some aspects of medicine safely due to a disability may receive a
33 limited license if he or she does both of the following:

34 (1) Pays the initial license fee.

35 (2) Signs an agreement on a form prescribed by the board, signed
36 under penalty of perjury, in which the applicant agrees to limit his
37 or her practice in the manner prescribed by the reviewing physician
38 and agreed to by the board.

39 (b) The board may require the applicant described in subdivision

40 (a) to obtain an independent clinical evaluation of his or her ability

1 to practice medicine safely as a condition of receiving a limited
2 license under this section.

3 SEC. 3. Section 2435 of the Business and Professions Code is
4 amended to read:

5 2435. The following fees apply to the licensure of physicians
6 and surgeons:

7 (a) Each applicant for a certificate based upon a national board
8 diplomate certificate, each applicant for a certificate based on
9 reciprocity, and each applicant for a certificate based upon written
10 examination, shall pay a nonrefundable application and processing
11 fee, as set forth in subdivision (b), at the time the application is
12 filed.

13 (b) The application and processing fee shall be fixed by the
14 board by May 1 of each year, to become effective on July 1 of that
15 year. The fee shall be fixed at an amount necessary to recover the
16 actual costs of the licensing program as projected for the fiscal
17 year commencing on the date the fees become effective.

18 (c) Each applicant who qualifies for a certificate, as a condition
19 precedent to its issuance, in addition to other fees required herein,
20 shall pay an initial license fee, if any, in an amount fixed by the
21 board consistent with this section. The initial license fee shall not
22 exceed seven hundred ninety dollars (\$790). An applicant enrolled
23 in an approved postgraduate training program shall be required to
24 pay only 50 percent of the initial license fee.

25 (d) The biennial renewal fee shall be fixed by the board
26 consistent with this section and shall not exceed seven hundred
27 ninety dollars (\$790).

28 (e) Notwithstanding subdivisions (c) and (d), and to ensure that
29 subdivision (k) of Section 125.3 is revenue neutral with regard to
30 the board, the board may, by regulation, increase the amount of
31 the initial license fee and the biennial renewal fee by an amount
32 required to recover both of the following:

33 (1) The average amount received by the board during the three
34 fiscal years immediately preceding July 1, 2006, as reimbursement
35 for the reasonable costs of investigation and enforcement
36 proceedings pursuant to Section 125.3.

37 (2) Any increase in the amount of investigation and enforcement
38 costs incurred by the board after January 1, 2006, that exceeds the
39 average costs expended for investigation and enforcement costs
40 during the three fiscal years immediately preceding July 1, 2006.

1 When calculating the amount of costs for services for which the
2 board paid an hourly rate, the board shall use the average number
3 of hours for which the board paid for those costs over these prior
4 three fiscal years, multiplied by the hourly rate paid by the board
5 for those costs as of July 1, 2005. Beginning January 1, 2009, the
6 board shall instead use the average number of hours for which it
7 paid for those costs over the three-year period of fiscal years
8 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate
9 paid by the board for those costs as of July 1, 2005. In calculating
10 the increase in the amount of investigation and enforcement costs,
11 the board shall include only those costs for which it was eligible
12 to obtain reimbursement under Section 125.3 and shall not include
13 probation monitoring costs and disciplinary costs, including those
14 associated with the citation and fine process and those required to
15 implement subdivision (b) of Section 12529 of the Government
16 Code.

17 (f) Notwithstanding Section 163.5, the delinquency fee shall be
18 10 percent of the biennial renewal fee.

19 (g) The duplicate certificate and endorsement fees shall each
20 be fifty dollars (\$50), and the certification and letter of good
21 standing fees shall each be ten dollars (\$10).

22 (h) It is the intent of the Legislature that, in setting fees pursuant
23 to this section, the board shall seek to maintain a reserve in the
24 Contingent Fund of the Medical Board of California in an amount
25 not less than two nor more than four months' operating
26 expenditures.

27 (i) Not later than January 1, 2012, the Bureau of State Audits
28 (BSA) shall commence a review of the board's financial status,
29 including, but not limited to, its projections related to expenses,
30 revenues, and reserves, and the impact of the loan from the
31 Contingent Fund of the Medical Board of California to the General
32 Fund made pursuant to the Budget Act of 2008. The BSA shall,
33 on the basis of the review, report its findings and recommendations
34 to the Joint Legislative Audit Committee by June 1, 2012. This
35 review shall be funded from the existing resources of the board
36 during the 2011–12 fiscal year.

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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