

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 19, 2010

SENATE BILL

No. 1410

Introduced by Senator Cedillo

February 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 amended, 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, ~~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 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.~~

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

Vote: $\frac{2}{3}$ -majority. 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 Step 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 steps. However, only Step III has a limit on
9 the number of times that an applicant may attempt to pass the step.

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 who have already
25 registered for the examination.

26 (d) Furthermore, prior to the enactment of Chapter 843 of the
27 Statutes of 2006 (AB 1796), California did not limit the number

1 of times an applicant may take any part of the USMLE. Under the
2 new law, which places an arbitrary limit of attempts on Step III of
3 the examination, highly qualified and much needed physicians and
4 surgeons are being denied a license to practice medicine in
5 California. Their only option is to move to another state, become
6 licensed and practice there, and return four years later.

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

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

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

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

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

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

15 2177. (a) A passing score is required for an entire examination
16 or for each part of an examination, as established by resolution of
17 the board.

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

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

23 ~~(d) The changes made to subdivision (c) by the act adding this~~
24 ~~subdivision shall apply retroactively to January 1, 2007.~~

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

27 2177.5. ~~(a)~~ Notwithstanding subdivision (a) of Section 2177,
28 the board shall accept as a passing score on an examination or part
29 of an examination from an applicant the passing score that was
30 adopted by the board and in effect on the date the applicant
31 registered for that examination or part of the examination.

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

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

35 2177.7. (a) Pursuant to Sections 2177 and 2184, the board
36 shall adopt a resolution every time the board adopts a passing score
37 for an entire examination or for each part of an examination that
38 is required for certification under this article.

39 (b) The resolution required pursuant to subdivision (a) shall be
40 adopted or readopted at a public meeting of the board, and subject

1 to public input and an affirmative vote of a majority of board
2 members present at the meeting constituting at least a quorum.

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

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

15 SEC. 5. (a) It is the intent of the Legislature in enacting Section
16 4 of this act that the Medical Board of California comply with the
17 court's holding in *Marquez v. Medical Board of California* (2010)
18 182 Cal.App.4th 548.

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

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

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

33 ~~In order to allow for the licensure of competent physicians and~~
34 ~~surgeons at the earliest possible time, it is necessary that this act~~
35 ~~take effect immediately.~~

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