

AMENDED IN ASSEMBLY APRIL 17, 2006

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2260

Introduced by Assembly Member Negrete McLeod

February 22, 2006

An act to amend Sections 2111, 2113, 2168, 2168.1, 2168.2, and 2168.5 of, and to add Section 2220.7 to, the Business and Professions Code, relating to physicians and surgeons, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2260, as amended, Negrete McLeod. Approvals and certificates of registration: special faculty permits.

(1) Existing law, the Medical Practice Act, prohibits the practice of medicine without a physician's and surgeon's certificate issued by the Medical Board of California through its Division of Licensing. The act, however, authorizes a foreign physician who seeks postgraduate study in an approved medical school to apply to the division for approval to participate in the school's professional activities. Under the act, a foreign physician may apply to the division for 2 extensions of the approval granted to him or her. The act also authorizes a person who does not immediately qualify for a physician's and surgeon's certificate and has been offered a medical school faculty position to apply to the division for a certificate of registration to engage in the practice of medicine. Under the act, a certificate of registration may be renewed for a total period of 5 years, and renewal may be denied if the registrant is a graduate of a foreign medical school, as specified. The

act directs the deposit of all revenue collected by the board into the Contingent Fund of the Medical Board of California, where funds other than penalty revenue are continuously appropriated.

This bill would revise the renewal provisions for approvals granted to foreign physicians, limiting the duration of those approvals to 3 years, and would also revise the renewal provisions for certificates of registration, allowing 2 renewals and an additional extension, at the division's discretion, upon a showing of continued progress towards licensure and issuance of a certificate by the Educational Commission for Foreign Medical Graduates for graduates of foreign medical schools, other than those located in Canada. The bill would require additional information on the applications for approval and for certificates of registration. The bill would require a foreign physician and a registrant to provide identifying information to their patients and would prohibit a registrant from billing individually or receiving compensation for the medical services he or she provides and would prohibit the medical school from charging patients for those provided by a foreign physician. The bill would require the division to notify the medical school and the foreign physician or registrant of a complaint, would authorize the division to terminate its approval of an appointment or a registration for any act that would be grounds for discipline if done by a licensee, and would authorize the foreign physician or registrant to appeal the termination. The bill would authorize the division to charge application and renewal fees for the approval and the certificate of registration. By increasing that part of the revenue in the Contingent Fund of the Medical Board that is continuously appropriated, the bill would make an appropriation.

(2) Under existing law, any person ~~that~~ *who* meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit ~~which~~ *that* authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions. Existing law *defines "academically eminent" as holding a full-time, full professor appointment in a tenure track position, or its equivalent, at a medical school approved by the Division of Licensing, or being offered such a position, and* ~~the Division of Licensing~~ *division* to exercise its discretion in determining whether an applicant qualifies as academically eminent. Existing law also establishes procedures for application for, and renewal of, the permit, and the grounds for denial

or discipline. Existing law requires the Medical Board of California to report to the Legislature, by December 31, 2002, on the implementation and status of the special faculty permit program.

This bill would modify the eligibility requirements by ~~requiring that the person be~~ *changing the definition of* academically eminent ~~and to also include an applicant who is~~ clearly outstanding in a specific field of medicine or surgery ~~and who has been~~ offered by the dean of a medical school in this state, a full-time academic appointment, ~~which there is~~ *as a full or associate professor, and a great need exists* to fill *that position*. The bill would authorize the division to exercise its discretion in determining whether an applicant meets these requirements. The bill would also require the division to establish a review committee, with a specified composition, to review and make recommendations to the division regarding the applicants applying pursuant to these provisions. The bill would prohibit a medical school from appointing the holder of a special faculty permit to certain positions without authorization from the division. The bill would require the board to report to the Legislature, by December 31, 2011, on the status of the special faculty permit program.

(3) Under existing law, the board through its Division of Medical Quality may take disciplinary action against a physician and surgeon for violating the Medical Practice Act. The act also makes a violation of its regulatory provisions a crime.

This bill would prohibit a physician and surgeon from including certain provisions in an agreement to settle a civil dispute arising from his or her practice that interferes with communications, as specified, between the board and another party to the dispute. The bill would make the violation of this requirement subject to disciplinary action by the board and because it would also be punishable as a crime, the bill would impose a state-mandated local program.

(4) 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: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 2111 of the Business and Professions
2 Code is amended to read:

3 2111. (a) Physicians who are not citizens but who meet the
4 requirements of subdivision (b), are legally admitted to the
5 United States, and who seek postgraduate study in an approved
6 medical school may, after receipt of an appointment from the
7 dean of the California medical school and application to and
8 approval by the Division of Licensing, be permitted to participate
9 in the professional activities of the department or division in the
10 medical school to which they are appointed. The physician shall
11 be under the direction of the head of the department to which he
12 or she is appointed, supervised by the staff of the medical
13 school's medical center, and known for these purposes as a
14 "visiting fellow." The visiting fellow shall wear a visible name
15 tag containing the title "visiting fellow" when he or she provides
16 clinical services.

17 (b) (1) Application for approval shall be made on a form
18 prescribed by the division and shall be accompanied by a fee
19 fixed by the division in an amount necessary to recover the actual
20 application processing costs of the program. The application shall
21 show that the person does not immediately qualify for a
22 physician's and surgeon's certificate under this chapter and that
23 the person has completed at least three years of postgraduate
24 basic residency requirements. The application shall include a
25 written statement of the recruitment procedures followed by the
26 medical school before offering the appointment to the applicant.

27 (2) Approval shall be granted only for appointment to one
28 medical school, and no physician shall be granted more than one
29 approval for the same period of time.

30 (3) Approval may be granted for a maximum of three years
31 and shall be renewed annually. The medical school shall submit
32 a request for renewal on a form prescribed by the division, which
33 shall be accompanied by a renewal fee fixed by the division in a
34 amount necessary to recover the actual application processing
35 costs of the program.

36 (c) Except to the extent authorized by this section, the visiting
37 fellow may not engage in the practice of medicine. Neither the
38 visiting fellow nor the medical school may assess any charge for

1 the medical services provided by the visiting fellow, and the
2 visiting fellow may not receive any other compensation therefor.

3 (d) The time spent under appointment in a medical school
4 pursuant to this section may not be used to meet the requirements
5 for licensure under Section 2102.

6 (e) The division shall notify both the visiting fellow and the
7 dean of the appointing medical school of any complaint made
8 about the visiting fellow.

9 The division may terminate its approval of an appointment for
10 any act that would be grounds for discipline if done by a licensee.
11 The division shall provide both the visiting fellow and the dean
12 of the medical school with a written notice of termination
13 including the basis for that termination. The visiting fellow may,
14 within 30 days after the date of the notice of termination, file a
15 written appeal to the division. The appeal shall include any
16 documentation the visiting fellow wishes to present to the
17 division.

18 (f) Nothing in this section shall preclude any United States
19 citizen who has received his or her medical degree from a
20 medical school located in a foreign country and recognized by
21 the division from participating in any program established
22 pursuant to this section.

23 SEC. 2. Section 2113 of the Business and Professions Code is
24 amended to read:

25 2113. (a) Any person who does not immediately qualify for
26 a physician's and surgeon's certificate under this chapter and
27 who is offered by the dean of an approved medical school in this
28 state a full-time faculty position may, after application to and
29 approval by the Division of Licensing, be granted a certificate of
30 registration to engage in the practice of medicine only to the
31 extent that the practice is incident to and a necessary part of his
32 or her duties as approved by the division in connection with the
33 faculty position. A certificate of registration does not authorize a
34 registrant to admit patients to a nursing or a skilled or assisted
35 living facility unless that ~~living~~ facility is formally affiliated with
36 the sponsoring medical school. A clinical fellowship shall not be
37 submitted as a faculty service appointment.

38 (b) Application for a certificate *of registration* shall be made
39 on a form prescribed by the division and shall be accompanied by
40 a registration fee fixed by the division in a amount necessary to

1 ~~cover~~ *recover* the actual application processing costs of the
2 program. To qualify for the certificate, an applicant shall submit
3 all of the following:

4 (1) Documentary evidence satisfactory to the division that the
5 applicant is a United States citizen or is legally admitted to the
6 United States.

7 (2) If the applicant is a graduate of a medical school other than
8 in the United States or Canada, documentary evidence
9 satisfactory to the division that he or she has been licensed to
10 practice medicine and surgery for not less than four years in
11 another state or country whose requirements for licensure are
12 satisfactory to the division, or has been engaged in the practice of
13 medicine in the United States for at least four years in approved
14 facilities, or has completed a combination of that licensure and
15 training.

16 (3) If the applicant is a graduate of an approved medical
17 school in the United States or Canada, documentary evidence
18 that he or she has completed a resident course of professional
19 instruction as required in Section 2089.

20 (4) Written certification by the head of the department in
21 which the applicant is to be appointed of all of the following:

22 (A) The applicant will be under his or her direction.

23 (B) The applicant will not be permitted to practice medicine
24 unless incident to and a necessary part of his or her duties as
25 approved by the division in subdivision (a).

26 (C) The applicant will be accountable to the medical school's
27 department chair or division chief for the ~~speciality~~ *specialty* in
28 which the applicant will practice.

29 (D) The applicant will be proctored in the same manner as
30 other new faculty members, including, as appropriate, review by
31 the medical staff of the school's medical center.

32 (E) The applicant will not be appointed to a supervisory
33 position at the level of a medical school department chair or
34 division chief.

35 (5) Demonstration by the dean of the medical school that the
36 applicant has the requisite qualifications to assume the position to
37 which he or she is to be appointed and that shall include a written
38 statement of the recruitment procedures followed by the medical
39 school before offering the faculty position to the applicant.

1 (c) A certificate of registration shall be issued only for a
2 faculty position at one approved medical school, and no person
3 shall be issued more than one certificate of registration for the
4 same period of time.

5 (d) (1) A certificate of registration is valid for one year from
6 its date of issuance and may be renewed twice.

7 A request for renewal shall be submitted on a form prescribed
8 by the division and shall be accompanied by a renewal fee fixed
9 by the division in an amount necessary to recover the actual
10 application processing costs of the program.

11 (2) The dean of the medical school may request renewal of the
12 registration by submitting a plan at the beginning of the third
13 year of the registrant's appointment demonstrating the
14 registrant's continued progress toward licensure and, if the
15 registrant is a graduate of a medical school other than in the
16 United States or Canada, that the registrant has been issued a
17 certificate by the Educational Commission for Foreign Medical
18 Graduates. The division may, in its discretion, extend the
19 registration for a two-year period to facilitate the registrant's
20 completion of the licensure process.

21 (e) If the registrant is a graduate of a medical school other than
22 in the United States or Canada, he or she shall meet the
23 requirements of Section 2102 or 2135, as appropriate, in order to
24 obtain a physician's and surgeon's certificate. Notwithstanding
25 any other provision of law, the division may accept clinical
26 practice in an appointment pursuant to this section as qualifying
27 time to meet the postgraduate training requirements in Section
28 2102, and may, in its discretion, waive the examination and the
29 Educational Commission for Foreign Medical Graduates
30 certification requirements specified in Section 2102 in the event
31 the registrant applies for a physician's and surgeon's certificate.
32 As a condition to waiving any examination or the Educational
33 Commission for Foreign Medical Graduates certification
34 requirement, the division in its discretion, may require an
35 applicant to pass the clinical competency examination referred to
36 in subdivision (d) of Section 2135. The division shall not waive
37 any examination for an applicant who has not completed at least
38 one year in the faculty position.

39 (f) Except to the extent authorized by this section, the
40 registrant shall not engage in the practice of medicine, bill

1 individually for medical services provided by the registrant, or
2 receive compensation therefor, unless he or she is issued a
3 physician's and surgeon's certificate.

4 (g) When providing clinical services, the registrant shall wear
5 a visible name tag containing the title "visiting professor" or
6 "visiting faculty member," as appropriate, and the institution at
7 which the services are provided shall obtain a signed statement
8 from each patient to whom the registrant provides services
9 acknowledging that the patient understands that the services are
10 provided by a person who does not hold a physician's and
11 surgeon's certificate but who is qualified to participate in a
12 special program as a visiting professor or faculty member.

13 (h) The division shall notify both the registrant and the dean of
14 the medical school of a complaint made about the registrant. The
15 division may terminate a registration for any act that would be
16 grounds for discipline if done by a licensee. The division shall
17 provide both the registrant and the dean of the medical school
18 with written notice of the termination and the basis for that
19 termination. The registrant may, within 30 days after the date of
20 the notice of termination, file a written appeal to the division.
21 The appeal shall include any documentation the registrant wishes
22 to present to the division.

23 SEC. 3. Section 2168 of the Business and Professions Code is
24 amended to read:

25 2168. (a) A special faculty permit authorizes the holder to
26 practice medicine only within the medical school itself and any
27 affiliated institution in which the permitholder is providing
28 instruction as part of the medical school's educational program
29 and for which the medical school has assumed direct
30 responsibility. The holder of a special faculty permit shall not
31 engage in the practice of medicine except as provided above.

32 (b) Time spent in a faculty position under a special faculty
33 permit shall not be counted toward the postgraduate training
34 required for licensure and shall not qualify the holder of the
35 permit for waiver of any written examination required for
36 licensure.

37 (c) The medical school shall not appoint the holder of a special
38 faculty permit to a position as a division chief or head of a
39 department without express written authorization from the
40 division.

1 SEC. 4. Section 2168.1 of the Business and Professions Code
2 is amended to read:

3 2168.1. (a) Any person who meets all of the following
4 eligibility requirements may apply for a special faculty permit:

5 ~~(1) Is academically eminent and is clearly outstanding in a~~
6 ~~specific field of medicine or surgery and has been offered by the~~
7 ~~dean of a medical school in this state a full-time academic~~
8 ~~appointment, which there is a great need to fill. For purposes of~~

9 *(1) Is academically eminent. For purposes of this article,*
10 *“academically eminent” means the applicant holds meets either*
11 *of the following criteria:*

12 *(A) He or she holds or has been offered a full-time*
13 *appointment at the level of full professor in a tenure track*
14 *position, or its equivalent, at a California medical school*
15 *approved by the Division of Licensing.*

16 *(B) He or she is clearly outstanding in a specific field of*
17 *medicine or surgery and has been offered by the dean of a*
18 *medical school in this state, a full-time academic appointment at*
19 *the level of full professor or associate professor, and a great*
20 *need exists to fill that position.*

21 (2) Possesses a current valid license to practice medicine
22 issued by another state, country, or other jurisdiction.

23 (3) Is not subject to denial under Section 480 or any provision
24 of this chapter.

25 (4) Pays the fee prescribed for application for, and initial
26 licensure as, a physician and surgeon.

27 (5) Has not held a position under Section 2113 for a period of
28 two years or more preceding the date of the application. The
29 Division of Licensing may, in its discretion, waive this
30 requirement.

31 (b) The Division of Licensing shall exercise its discretion in
32 determining whether an applicant satisfies the requirements of
33 paragraph (1) of subdivision (a).

34 (c) (1) The division shall establish a review committee
35 comprised of two members of the division, one of whom shall be
36 a physician and surgeon and one of whom shall be a public
37 member, and one representative from each of the medical schools
38 in California. The committee shall review and make
39 recommendations to the division regarding the applicants
40 applying pursuant to this section, including those applicants that

1 a medical school proposes to appoint as a division chief or head
2 of a department *or* as nontenure track faculty.

3 (2) The representative of the medical school offering the
4 applicant an academic appointment shall not participate in any
5 vote on the recommendation to the division for that applicant.

6 SEC. 5. Section 2168.2 of the Business and Professions Code
7 is amended to read:

8 2168.2. An application for a special faculty permit shall be
9 made on a form prescribed by the Division of Licensing and shall
10 include any information that the Division of Licensing may
11 prescribe to establish an applicant's eligibility for a permit. This
12 information shall include, but is not limited to, the following:

13 (a) A statement from the dean of the medical school at which
14 the applicant will be employed describing the applicant's
15 qualifications and justifying the dean's determination that the
16 applicant satisfies the requirements of paragraph (1) of
17 subdivision (a) of Section 2168.1.

18 (b) A statement by the dean of the medical school listing every
19 affiliated institution in which the applicant will be providing
20 instruction as part of the medical school's educational program
21 and justifying any clinical activities at each of the institutions
22 listed by the dean.

23 SEC. 6. Section 2168.5 of the Business and Professions Code
24 is amended to read:

25 2168.5. The Medical Board of California shall report to the
26 Legislature by December 31, 2011, on the status of the special
27 faculty permit program.

28 SEC. 7. Section 2220.7 is added to the Business and
29 Professions Code, to read:

30 2220.7. (a) A physician and surgeon shall not include or
31 permit to be included any of the following provisions in an
32 agreement to settle a civil dispute arising from his or her practice,
33 whether the agreement is made before or after filing the action:

34 (1) A provision that prohibits another party to the dispute from
35 contacting or cooperating with the board.

36 (2) A provision that prohibits another party to the dispute from
37 filing a complaint with the board.

38 (3) A provision that requires another party to the dispute to
39 withdraw a complaint he or she has filed with the board.

1 (b) A provision described in subdivision (a) is void as against
2 public policy.

3 (c) A physician and surgeon who violates this section is
4 subject to disciplinary action by the board.

5 SEC. 8. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.

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