AB-3142 Acupuncture Licensure Act: Acupuncture Board. (2017-2018)

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Assembly Bill No. 3142

CHAPTER 596

An act to amend Sections 4927.5, 4928, 4934, 4935, 4938, 4955, and 4961 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3142, Low. Acupuncture Licensure Act: Acupuncture Board.

Existing law establishes the Acupuncture Board, which consists of 7 members, to administer and enforce laws in the Acupuncture Licensure Act until January 1, 2019. The Acupuncture Licensure Act authorizes the board, until January 1, 2019, to appoint an executive officer. Existing law specifies that, for purposes of the act, an “approved educational and training program” is a school or college that meets specified conditions and requirements, including, among others, being granted candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine, as provided.

This bill would extend the operation of the board and the authority to appoint an executive officer to January 1, 2023. The bill would require an approved educational and training program to be granted preaccreditation status, rather than candidacy status, by the Accreditation Commission for Acupuncture and Oriental Medicine.

Existing law makes it a misdemeanor for a person who does not hold a current and valid acupuncturist’s license to hold himself or herself out as practicing or engaging in the practice of acupuncture and describes what constitutes a person holding himself or herself out as engaging in the practice of acupuncture to include, among other things, representing that the person is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

This bill would instead make it a misdemeanor for a person who does not hold a current and valid acupuncturist’s license to advertise or otherwise represent that he or she is practicing or engaging in the practice of acupuncture and would describe what constitutes advertising or representing that a person is practicing or engaging in the practice of acupuncture to include, among other things, representing that the person is trained, experienced, an expert, or otherwise qualified to practice in the field of acupuncture, Asian medicine, oriental medicine, or any other complementary or integrative medicine that involves acupuncture and is associated with an Asian subgroup. Because the bill would expand the scope of a crime, the bill would impose a state-mandated local program.

Existing law provides that unprofessional conduct includes the knowing failure to protect patients by failing to follow infection control guidelines, as specified, and requires the board to consult, as necessary, with the Medical Board of California and certain other healing arts boards to encourage appropriate consistency in implementing that provision.

This bill would instead require the board to consult, as necessary, with any healing arts board, as specified.

The bill would make other technical changes.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4927.5 of the Business and Professions Code is amended to read:

4927.5. (a) For purposes of this chapter, “approved educational and training program” means a school or college offering education and training in the practice of an acupuncturist that meets all of the following requirements:

(1) Offers curriculum that includes at least 3,000 hours of which at least 2,050 hours are didactic and laboratory training, and at least 950 hours are supervised clinical instruction. Has submitted that curriculum to the board, and has received board approval of the curriculum. Any school or college offering education and training in the practice of acupuncture that was approved by the board prior to January 1, 2017, has not had its approval revoked, and has not changed its curriculum since receiving board approval, is deemed to have had its curriculum approved by the board for the purposes of this section.

(2) Has received full institutional approval under Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code.

(3) Meets any of the following:

(A) Is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine.

(B) Has been granted preaccreditation status by the Accreditation Commission for Acupuncture and Oriental Medicine.

(C) Has submitted a letter of intent to pursue accreditation to the Accreditation Commission for Acupuncture and Oriental Medicine within 30 days of receiving full institutional approval pursuant to paragraph (2), and is granted preaccreditation status within three years of the date that letter was submitted.

(b) Within 30 days after receiving curriculum pursuant to paragraph (1), the board shall review the curriculum, determine whether the curriculum satisfies the requirements established by the board, and notify the school or college, the Accreditation Commission for Acupuncture and Oriental Medicine, and the Bureau for Private and Postsecondary Education of whether the board has approved the curriculum.

SEC. 2. Section 4928 of the Business and Professions Code is amended to read:

4928. (a) The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 3. Section 4934 of the Business and Professions Code is amended to read:

4934. (a) The board, by and with the approval of the director, may appoint an executive officer who is exempt from the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(b) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 4. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to advertise or otherwise represent that he or she is practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person advertises or otherwise represents that he or she is practicing or engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, an expert, or otherwise qualified to practice in the field of acupuncture, Asian medicine, oriental medicine, or any other complementary or integrative medicine that involves acupuncture and is associated with an Asian subgroup, including Chinese medicine, Japanese medicine, or Korean medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if the person is either of the following:

(1) Engaged in a course or tutorial program in acupuncture, as provided in this chapter.

(2) A graduate of an approved educational and training program and participating in a postgraduate review course that does not exceed one year in duration at an approved educational and training program.

SEC. 5. Section 4938 of the Business and Professions Code is amended to read:

4938. (a) The board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

(1) Is at least 18 years of age.

(2) Furnishes satisfactory evidence of completion of one of the following:

(A) (i) An approved educational and training program.

(ii) If an applicant began an educational and training program at a school or college that submitted a letter of intent to pursue accreditation to, or attained candidacy status from, the Accreditation Commission for Acupuncture and Oriental Medicine, but the commission subsequently denied the school or college candidacy status or accreditation, respectively, the board may review and evaluate the educational training and clinical experience to determine whether to waive the requirements set forth in this subdivision with respect to that applicant.

(B) Satisfactory completion of a tutorial program in the practice of an acupuncturist that is approved by the board.

(C) In the case of an applicant who has completed education and training outside the United States, documented educational training and clinical experience that meets the standards established pursuant to Sections 4939 and 4941.

(3) Passes a written examination administered by the board that tests the applicant’s ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Professional Examination Services of the Department of Consumer Affairs.

(4) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(5) Completes a clinical internship training program approved by the board. The clinical internship training program shall not exceed nine months in duration and shall be located in a clinic in this state that is an approved educational and training program. The length of the clinical internship shall depend upon the grades received in the examination and the clinical training already satisfactorily completed by the individual prior to taking the examination. The purpose of the clinical internship training program shall be to ensure a minimum level of clinical competence.

(b) Each applicant who qualifies for a license shall pay, as a condition precedent to its issuance and in addition to other fees required, the initial licensure fee.

SEC. 6. Section 4955 of the Business and Professions Code is amended to read:

4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist who is guilty of unprofessional conduct.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Using or possessing any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or alcoholic beverage to an extent or in a manner dangerous to the acupuncturist, or to any other person, or to the public, and to an extent that the use impairs the acupuncturist's ability to engage in the practice of acupuncture with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(c) False or misleading advertising.

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with healing arts boards within this division, including, but not limited to, the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

(i) Any action or conduct that would have warranted the denial of the acupuncture license.

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

(k) The abandonment of a patient by the licensee without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

(l) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which the licensee is licensed as an individual to practice acupuncture.

SEC. 7. Section 4961 of the Business and Professions Code is amended to read:

4961. (a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, the licensee's place of practice, or, if the licensee has more than one place of practice, all of the places of practice. If the licensee has no place of practice, the licensee shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure.

(b) An acupuncturist licensee shall post his or her wall license in a conspicuous location in his or her place of practice at all times. If an acupuncturist licensee has more than one place of practice, he or she shall obtain from the board a duplicate wall license for each additional location and post the duplicate wall license at each location.

(c) Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure. An applicant for renewal of licensure shall specify in the application whether or not there has been a change in the location of the licensee's place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address.

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