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AB-1264 Acupuncture. (2023-2024)

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Assembly Bill No. 1264

CHAPTER 682

An act to amend Sections 4927, 4927.5, 4928, 4934, 4938, and 4961 of, to amend, renumber, and add Section 4928.1 of, and to add Section 4961.1 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1264, Berman. Acupuncture.

Existing law, the Acupuncture Licensure Act, provides for the licensure and regulation of the practice of acupuncture. The act defines various terms for those purposes, including "approved educational and training program," which references the Accreditation Commission for Acupuncture and Oriental Medicine.

This bill would define additional terms under the act, including supervising acupuncturist, acupuncture assistant, and basic supportive acupuncture service. The bill would update the reference to the above-described commission, as specified, and would make conforming changes.

Existing law requires the Acupuncture Board, consisting of 7 members, to enforce and administer the act, and repeals this provision on January 1, 2024. Under existing law, that repeal renders the board subject to review by the appropriate policy committees of the Legislature. Existing law makes the protection of the public the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Existing law authorizes the board, by and with the approval of the Director of Consumer Affairs, to appoint an executive officer who is exempt from the State Civil Service Act, and repeals this provision on January 1, 2024.

This bill would reorganize and make other nonsubstantive changes to these provisions. The bill would repeal these provisions on January 1, 2028. The bill would additionally authorize the board, or its designee, upon complaint, to inspect specified premises, places of practice, or clinics. The bill would require specified records to be open to inspection by the board, or its designee, during an investigation initiated in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action or issuance of a citation and fine by the board. The bill would require a copy of the above-described records to be provided to the board immediately upon request.

Existing law requires an acupuncturist to obtain and post a wall license at each place of practice. Existing law establishes that an acupuncturist is responsible for the acupuncture, Asian massage services, or any other specified practice rendered pursuant to the license of the acupuncturist in each place of practice maintained by the acupuncturist.

This bill would delete the requirement that the acupuncturist be responsible for Asian massage services in the provision described above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 4927 of the Business and Professions Code is amended to read:

4927. As used in this chapter, unless the context otherwise requires:

- (a) "Board" means the Acupuncture Board.
- (b) "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.
- (c) "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which is in effect and is not suspended or revoked.
- (d) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control for the treatment of certain diseases or dysfunctions of the body, and includes the techniques of electroacupuncture, cupping, and moxibustion.
- (e) (1) "Supervising acupuncturist" means a person who meets the following conditions:
 - (A) Is licensed to practice acupuncture in this state and that license is current, valid, and has not been suspended or revoked or otherwise subject to formal disciplinary action, unless approved by the board.
 - (B) Has practiced as a licensed acupuncturist in this state for at least five years.(2) Is in compliance with subdivision (j) of Section 4955.
- (f) (1) "Acupuncture assistant" means a person who, without a license, may perform basic supportive acupuncture procedures under the supervision and order of an acupuncturist.
 - (2) The supervising acupuncturist shall be physically present and available in the place of practice during the performance of any ordered basic supportive acupuncture procedures.
 - (3) The supervising acupuncturist engaging the services of an acupuncture assistant shall be responsible for the training and overall competency of the acupuncture assistant, including the ability to perform any specific basic supportive acupuncture service.
 - (4) The supervising acupuncturist shall ensure the acupuncture assistant meets the following:
 - (A) Is enrolled in an approved educational and training program and has completed at least a minimum of 700 hours of clinical practice or has completed an approved educational and training program.
 - (B) Holds a certificate in Clean Needle Technique issued by the Council of Colleges of Acupuncture and Herbal Medicine, or its successor entity, or has completed an approved educational and training program's Clean Needle Technique course using the Council of Colleges of Acupuncture and Herbal Medicine Clean Needle Technique, 7th edition, revised 1/2016.
- (g) (1) "Basic supportive acupuncture service" means any of the following:
 - (A) Needle removal.
 - (B) Cupping.
 - (C) Moxibustion.
 - (D) Gua sha.
 - (E) Any other service listed under subdivision (b) of Section 4937.(2) "Basic supportive acupuncture service" does not include diagnosis, point location, needle insertion, electrical stimulation, rendering advice to patients, or any other procedure requiring a similar degree of judgment or skill.

SEC. 2. 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 Herbal Medicine, or its successor entity.

(B) Has been granted preaccreditation status by the Accreditation Commission for Acupuncture and Herbal Medicine, or its successor entity.

(C) Has submitted a letter of intent to pursue accreditation to the Accreditation Commission for Acupuncture and Herbal Medicine, or its successor entity 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 Herbal Medicine, or its successor entity, and the Bureau for Private and Postsecondary Education of whether the board has approved the curriculum.

SEC. 3. 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 until January 1, 2028, and as of that date is repealed.

SEC. 4. Section 4928.1 of the Business and Professions Code is amended and renumbered to read:

4928.2. Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 5. Section 4928.1 is added to the Business and Professions Code, to read:

4928.1. Notwithstanding any other law, the repeal of Section 4928 renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 6. 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 until January 1, 2028, and as of that date is repealed.

SEC. 7. 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 Herbal

Medicine, or its successor entity, 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. 8. Section 4961 of the Business and Professions Code is amended to read:

4961. (a) (1) Every person who is licensed to practice acupuncture in this state shall register, on forms prescribed by the board that may include an application for an initial license or for renewal of a license, each place of practice and apply to the board to obtain a wall license for each place of practice.

(2) A wall license shall be renewed biennially, coinciding with the license renewal date. A licensee with a wall license issued before January 1, 2021, shall not be required to apply for a new wall license until the licensee's next license renewal date.

(3) If the licensee has no place of practice, the licensee shall notify the board of that fact on a form prescribed by the board. A wall license is not required to be posted when a licensee performs acupuncture treatments outside of the licensee's place of practice. However, the licensee shall carry a pocket license during treatments outside of the licensee's place of practice and make the pocket license available upon request.

(4) A licensee shall register each place of practice within 30 days after the date of the licensee being licensed by the board or the establishment of a new place of practice, whichever occurs first.

(b) (1) An acupuncturist licensee shall post a wall license issued by the board to the licensee in a conspicuous location in each place of practice at all times.

(2) If an acupuncturist licensee has more than one place of practice, the licensee shall obtain from the board a separate wall license for each additional location and post the assigned wall license at each location.

(c) A licensed acupuncturist shall not display any acupuncture wall license that is not currently active and valid.

(d) (1) If a licensee changes the location of a place of practice, the licensee shall apply for the change of location within 30 days of changing the licensee's place of practice on forms prescribed by the board.

(2) If a licensee fails to apply for a new wall license with the board due to a change of location within the time prescribed by this subdivision, the board may deny renewal of the license.

(e) (1) A wall license is nontransferable.

(2) Any change to the registered location in connection with the wall license, such as moving, requires a new wall license, and the former wall license shall be returned to the board with a request for cancellation.

(3) The licensee shall apply to the board to obtain a new wall license using the forms prescribed by the board for the new wall license or change of location.

(f) (1) An acupuncturist shall be responsible for the acupuncture or any other practice specified under Section 4937 rendered pursuant to the license of the acupuncturist in each place of practice maintained by the acupuncturist.

(2) An acupuncturist maintaining more than one place of practice shall ensure that each place of practice is in compliance with the standards of practice requirements of this chapter.

(g) As used in this section:

(1) "Place of practice" means an acupuncture office where any act of acupuncture is practiced and includes a place of practice in which the applicant holds a proprietary interest of any nature whatsoever or in which the licensee holds any right to participate in the management or control thereof.

(2) "Wall license" means an official document that is issued by the board upon application for a place of practice and has a unique identification number that is specific to the location provided by the licensee in the application.

SEC. 9. Section 4961.1 is added to the Business and Professions Code, to read:

4961.1. (a) The board, or its designee, may, upon complaint, inspect any of the following:

(1) Any premise in which acupuncture services, as defined in Section 4937, are provided or reasonably suspected of being provided.

(2) Any place of practice registered with the board for which a wall license has been issued pursuant to Section 4961.

(3) Any clinic owned and operated by a school with an approved educational and training program, as defined in Section 4927.5.

(4) Any premise in which acupuncture services, as defined in Section 4937, are provided under a tutorial program, as defined in Section 4940.

(b) All records required by law to be kept by an acupuncturist subject to this chapter, including, but not limited to, records pertaining to the provision of services to patients, shall be open to inspection by the board, or its designee, during an investigation initiated in response to a complaint that a licensee has violated any law or regulation that constitutes grounds for disciplinary action or issuance of a citation and fine by the board. A copy of all those records shall be provided to the board immediately upon request.

(c) Nothing in this section shall be construed to grant the board jurisdiction over the practice of medicine.