AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL No. 628

Introduced by Senator Yee

February 18, 2011

An act to amend Sections 4935, 4955, 4955.1, 4955.2, 4956, 4960.2, 4961, 4965, 4966, 4967, and 4969 of, to add ~~Section~~ *Sections 4936 and* 4964.5 to, and to add Article 3 (commencing with Section 4950) to Chapter 12 of Division 2 of, the Business and Professions Code, relating to acupuncture.

LEGISLATIVE COUNSEL'S DIGEST

SB 628, as amended, Yee. Acupuncture: regulation.

Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board and makes it responsible for enforcing and administering the act, including licensing persons who meet specified licensure requirements. Under the act, licensees are titled "acupuncturists," and are authorized to perform designated activities pursuant to their license. The unlawful practice of acupuncture *and any other violation of the act* is a crime.

This bill would, commencing May 1, 2012, require the board to issue a certificate to practice as a traditional Chinese Medicine traumatologist to an applicant who meets certain training and clinical experience requirements and pays a specified fee. The bill would limit the submittal

of applications to the period between January 1, 2012, and December 15, 2012, and would prohibit the board from issuing a certificate after December 15, 2012. The bill would require the board to establish the Traumatology Committee within the board with specified duties, including determination of certification standards and evaluation of whether an applicant meets those standards. The bill would set forth procedures for the renewal of an unexpired or expired certificate to perform traditional Chinese Medicine traumatology and would establish specified fees in that regard. The bill would make it a crime to use the title of "certified traditional Chinese Medicine traumatologist" without meeting these certification requirements and to fraudulently buy or sell a certificate for traditional Chinese Medicine traumatology, thereby imposing a state-mandated local program.

The bill would authorize a person with a current and valid license to practice acupuncture to use the title of Doctor of Acupuncture only if he or she has met certain educational requirements, thereby imposing a state-mandated local program.

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:

SECTION 1. 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 to hold himself or herself out as practicing or engaging in the practice of acupuncture, or to hold himself or herself out as a certified traditional Chinese Medicine traumatologist or use the title of "certified traditional Chinese Medicine traumatologist" without meeting the requirements of this chapter.

(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 a certificate for traditional Chinese Medicine traumatology, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of 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 holds himself or herself out as 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,” “Traditional Chinese Medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine, or by representing that he or she is trained, experienced, or an expert in the field of traditional Chinese Medicine traumatology.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 2. Section 4936 is added to the Business and Professions Code, to read:

4936. Notwithstanding any other provision of law, a person with a current and valid license to practice acupuncture under this chapter may use the title Doctor of Acupuncture only if he or

she who has received a Doctorate of Acupuncture and Oriental Medicine Degree, a Doctorate of Acupuncture Degree, or a Doctorate of Oriental Medicine.

~~SEC. 2.~~

SEC. 3. Article 3 (commencing with Section 4950) is added to Chapter 12 of Division 2 of the Business and Professions Code, to read:

Article 3. Traumatologists

4950. (a) On or before March 1, 2012, the board shall establish a Traumatology Committee within the board.

(b) The committee shall consist of six members composed of two representatives each from the clinical settings of traumatology and the California Orthopaedic Association and one representative each from the Medical Board of California and the California Medical Association.

(c) (1) Subject to subdivision (d), the committee shall meet and confer to determine the certification standards, including the level of experience and training needed for an individual to qualify for traditional Chinese Medicine traumatology certification.

(2) The committee shall advise the board in developing the application form for certification.

(d) Commencing May 1, 2012, until December 15, 2012, the board shall issue a certificate for certified traditional Chinese Medicine traumatology to any person who makes an application and meets all of the following requirements, as determined by the committee pursuant to subdivision (e):

(1) Is at least 18 years of age.

(2) Furnishes satisfactory evidence of training and clinical experience that meets the standards established by the committee and confirmed by the board.

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

(e) The committee shall evaluate whether an applicant meets the certification standards, including the level of experience and training to sufficiently qualify for the traumatology certification.

(f) An applicant for traditional Chinese Medicine traumatology certification shall, commencing January 1, 2012, until December 15, 2012, file an application for a certificate for traditional Chinese

Medicine traumatology in this state. On and after December 15, 2012, the board shall not issue an initial certificate to any applicant. On and after December 15, 2012, the board may issue only a renewal of a certificate under this section. An individual who is not qualified to receive a certificate under this section, or who fails to apply for certification under this section by December 15, 2012, shall not hold himself or herself out as a certified traditional Chinese Medicine traumatologist pursuant to this section.

(g) A certified traditional Chinese Medicine traumatologist, when engaging in manipulation techniques to realign the musculoskeletal and ligamentous relationships, shall be supervised by a physician and surgeon who has completed an orthopaedic residency program. The extent of the relationship between a traditional Chinese Medicine traumatologist and orthopedic surgeon regarding those manipulation techniques shall be determined by the advisory committee after the qualifications necessary for certification are defined by the committee and adopted by the board.

(h) An applicant for certification as a traditional Chinese Medicine traumatologist shall pay an application fee in the amount of two hundred dollars ($200) when submitting his or her application to the board.

(i) A certified traditional Chinese Medicine traumatologist shall renew his or her certificate every five years.

(j) An expired certificate may be renewed at any time within three years after its expiration. The holder of the certificate shall pay all accrued and unpaid renewal fees, plus a delinquency fee.

(1) The annual renewal fee shall be one hundred dollars ($100).

(2) The delinquency fee shall be twenty-five dollars ($25).

(3) The fee for a duplicate or replacement engraved wall certificate shall be fifteen dollars ($15).

(4) The fee for a duplicate or replacement renewal receipt/pocket certificate shall be ten dollars ($10).

(k) Moneys received under this section shall be deposited in the Acupuncture Fund for purposes of this chapter.

(*l*) It is an unfair business practice for any person to hold himself or herself out as a certified traditional Chinese Medicine traumatologist or use the title of “certified traditional Chinese Medicine traumatologist” without meeting the requirements of this chapter.

~~SEC. 3.~~

SEC. 4. 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 or certificate of any traditional Chinese Medicine traumatologist if he or she 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, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture or traumatology with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese Medicine traumatologist, 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 Health Services 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 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, certified traditional Chinese Medicine traumatologist, or any professional health care licensee.

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

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

(k) The abandonment of a patient by the licensee or certified traditional Chinese Medicine traumatologist 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 he

or she is licensed as an individual to practice acupuncture or as an individual certified in traditional Chinese Medicine traumatology.

~~SEC. 4.~~

SEC. 5. Section 4955.1 of the Business and Professions Code is amended to read:

4955.1. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist or certified traditional Chinese Medicine traumatologist if he or she is guilty of committing a fraudulent act, including, but not limited to, any of the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist or certified traditional Chinese Medicine traumatologist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese Medicine traumatologist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

(e) Failing to maintain adequate and accurate records relating to the provision of services to his or her patients.

~~SEC. 5.~~

SEC. 6. Section 4955.2 of the Business and Professions Code is amended to read:

4955.2. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist or certified traditional Chinese Medicine traumatologist if he or she is guilty of committing any one of the following:

(a) Gross negligence.

(b) Repeated negligent acts.

(c) Incompetence.

~~SEC. 6.~~

SEC. 7. Section 4956 of the Business and Professions Code is amended to read:

4956. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge that is substantially related to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese Medicine traumatologist is deemed to be a conviction within the meaning of this chapter.

The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a

license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

~~SEC. 7.~~

SEC. 8. Section 4960.2 of the Business and Professions Code is amended to read:

4960.2. The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist or certificate of the traditional Chinese Medicine traumatologist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.

~~SEC. 8.~~

SEC. 9. 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 or certified in traditional Chinese Medicine traumatology in this state shall register, on forms prescribed by the board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee or certificate holder has no place of practice, he or she shall notify the board of that fact. A person licensed or certified by the board shall register within 30 days after the date of his or her licensure or certification.

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

(c) Any licensee or certificate holder 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 or certificate holder 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 or certification. An applicant for renewal of licensure or certification shall specify in his or her application whether or not there has been a change in the location of his or her 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. 9.~~

SEC. 10. Section 4964.5 is added to the Business and Professions Code, to read:

4964.5. The provisions of this article apply to both acupuncture and certified traditional Chinese Medicine traumatologists.

~~SEC. 10.~~

SEC. 11. Section 4965 of the Business and Professions Code is amended to read:

4965. (a) (1) A license to practice acupuncture issued pursuant to this chapter shall expire on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed.

(2) The board shall establish and administer a birth date renewal program for purposes of this subdivision.

(3) To renew an unexpired license, the holder shall apply for renewal on a form provided by the board and pay the renewal fee fixed by the board.

(b) A certificate for traditional Chinese Medicine traumatology issued pursuant to this chapter shall expire five years after the date of issuance, if not renewed. To renew an unexpired certificate, the holder shall apply for renewal on a form provided by the board and pay the renewal fee set forth in Section 4950.

~~SEC. 11.~~

SEC. 12. Section 4966 of the Business and Professions Code is amended to read:

4966. (a) Except as provided in Section 4969, a license to practice acupuncture that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form provided by the board, paying all accrued and unpaid renewal fees, and providing proof of completing continuing education requirements. If the license is not renewed prior to its

expiration, the acupuncturist, as a condition precedent to renewal, shall also pay the prescribed delinquency fee.

(b) Except as provided in Section 4969, a certificate for traditional Chinese Medicine traumatology that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form provided by the board, and paying all accrued and unpaid renewal fees. If the certificate is not renewed prior to its expiration, the traditional Chinese Medicine traumatologist, as a condition precedent to renewal, shall also pay a delinquency fee, to be set in accordance with Section 163.5.

(c) Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date the delinquency fee is paid, whichever occurs last. If so renewed, the license or certificate shall continue in effect through the expiration date provided in Section 4965, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

~~SEC. 12.~~

SEC. 13. Section 4967 of the Business and Professions Code is amended to read:

4967. A person who fails to renew his or her license or certificate within three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license or certificate if he or she meets all of the following requirements:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure or certification under Division 1.5 (commencing with Section 475).

(b) If an acupuncturist~~,~~ takes and passes the examination, if any, which would be required of him or her if an initial application for licensure was being made, or, if an acupuncturist or certified traditional Chinese Medicine traumatologist, otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as an acupuncturist or certified traditional Chinese Medicine traumatologist.

(c) Pays all of the fees that would be required if an initial application for licensure or certification was being made.

(d) The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license

to practice acupuncture is issued without an examination pursuant to this section.

~~SEC. 13.~~

SEC. 14. Section 4969 of the Business and Professions Code is amended to read:

4969. (a) A suspended license or certificate is subject to expiration and shall be renewed as provided in this article, but the renewal does not entitle the acupuncturist or certified traditional Chinese Medicine traumatologist, while the license or certificate remains suspended, and until it is reinstated, to engage in the practice of acupuncture or traditional Chinese Medicine traumatology, or in any other activity or conduct in violation of the order or judgment by which the license or certificate was suspended.

(b) A revoked license or certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the former licensee or certificate holder, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license or certificate was reinstated, plus the delinquency fee, if any, accrued at the time of its expiration.

~~SEC. 14.~~

SEC. 15. 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.

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