

AMENDED IN SENATE JULY 2, 1998
AMENDED IN SENATE JUNE 11, 1998
AMENDED IN ASSEMBLY MAY 19, 1998
AMENDED IN ASSEMBLY APRIL 28, 1998
AMENDED IN ASSEMBLY MARCH 26, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2721

Introduced by Assembly Member Miller

February 23, 1998

An act to amend Section 4955 of, ~~and to add Sections 731; 4950, 4950.1, 4950.2, 4950.3, and 4950.4 to, and 4950 to, and to repeal and add Section 4961 of,~~ the Business and Professions Code, relating to consumer affairs, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2721, as amended, Miller. Healing arts licensees: unprofessional conduct: acupuncture licensees.

(1) Existing law provides for the regulation of various enumerated healing arts professionals and specifies certain acts as constituting unprofessional conduct.

This bill would specifically provide that any person who is licensed, certified, registered, or otherwise regulated under those provisions and who engages in, or who aids or abets in, a violation of certain prostitution related crimes occurring in the work premises of, or the work area under the direct

professional supervision or control of, that person is guilty of unprofessional conduct, and subject to disciplinary action against his or her license. The bill would also provide for the imposition of a civil penalty that may be assessed and recovered in a civil action brought by any district attorney and, upon recovery, to be paid to the treasurer of the county in which the judgment was entered.

(2) The Acupuncture Licensure Act provides for the licensing and regulation of any person who practices acupuncture or holds himself or herself out as practicing or engaging in the practice of acupuncture ~~and provides for the imposition of fees in connection with that licensure.~~ The Acupuncture Committee of the Division of Licensing of the Medical Board of California is responsible for administering the act. ~~Licensing fees are deposited in the Acupuncture Fund, which is continuously appropriated to carry out the provisions of the act.~~

~~This bill would require the licensing of any person desiring to operate a place of practice for acupuncture, as specified, and would require the payment of new licensing fees. This bill would also require all places of practice and all instruments, apparatus, and apparel used in connection with the practice of acupuncture or other associated techniques to be kept clean and sanitary pursuant to standards established by the board, and would provide for inspections by the committee.~~

~~The bill would also provide that unprofessional conduct includes the revocation, suspension, or other discipline, restriction, or limitation imposed by another state or an agency of the federal government on a license or certificate to practice acupuncture on grounds that would have been grounds for disciplinary action in California.~~

~~Because the bill would result in an increase of revenue to the Acupuncture Fund, it would thereby make an appropriation.~~

The Acupuncture Licensing Act requires an acupuncturist to post his or her license in a conspicuous location in his or her place of practice at all times, and requires a duplicate license to be posted for each additional location.

This bill would additionally require registration with the Acupuncture Committee of all places of practice of a licensee



within 30 days of licensure and of all changes in location of places of practice within 30 days of the change. The bill would make related changes.

Vote: majority. Appropriation: *yes no*. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 731 is added to the Business and
2 Professions Code, to read:

3 731. (a) Any person licensed, certified, registered, or
4 otherwise subject to regulation pursuant to this division
5 who engages in, or who aids or abets in, a violation of
6 Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or
7 (b) of Section 647 of, the Penal Code occurring in the
8 work premises of, or work area under the direct
9 professional supervision or control of, that person, shall be
10 guilty of unprofessional conduct. The license,
11 certification, or registration of that person shall be subject
12 to denial, suspension, or revocation by the appropriate
13 regulatory entity under this division.

14 (b) In addition to any penalty provided under any
15 other provision of law, a violation of subdivision (a) shall
16 subject the person to a civil penalty in an amount not to
17 exceed two thousand five hundred dollars (\$2,500) for the
18 first offense, and not to exceed five thousand dollars
19 (\$5,000) for each subsequent offense, which may be
20 assessed and recovered in a civil action brought by any
21 district attorney. If the action is brought by a district
22 attorney, the penalty recovered shall be paid to the
23 treasurer of the county in which the judgment was
24 entered.

25 SEC. 2. Section 4950 is added to the Business and
26 Professions Code, to read:

27 4950. (a) As used in this chapter, “place of practice”
28 means any office or other location used for the practice
29 of acupuncture or where the use of oriental massage,
30 acupressure, breathing techniques, exercise, or nutrition,
31 including the incorporation of drugless substances and
32 herbs as dietary supplements to promote health, are



1 performed or prescribed in connection with the practice
2 of acupuncture.

3 (b) All places of practice shall be licensed by the
4 committee.

5 (c) This section shall not apply to any of the following:

6 (1) Facilities licensed by the State Department of
7 Health Services.

8 (2) Licensed clinics as defined in Section 1204 of the
9 Health and Safety Code.

10 (3) Licensed health facilities as defined in Section 1250
11 of the Health and Safety Code.

12 (4) Licensed community care facilities as defined in
13 Section 1502 of the Health and Safety Code.

14 (5) The home of a nonambulatory patient when a
15 physician or registered nurse has provided a written note
16 that the patient is unable to visit an acupuncture place of
17 practice.

18 ~~SEC. 3. Section 4950.1 is added to the Business and
19 Professions Code, to read:~~

20 ~~4950.1. (a) Any person desiring to operate a place of
21 practice shall make an application to the committee for
22 a license accompanied by the fee prescribed by this
23 chapter. The application shall be required whether the
24 person is operating a new place of practice or obtaining
25 ownership of an existing place of practice. The applicant,
26 if an individual, or each officer, director, and partner, if
27 the applicant is other than an individual, shall not have
28 committed acts or crimes that are grounds for denial of
29 licensure pursuant to Section 480.~~

30 ~~(b) Every license application for a place of practice
31 shall identify the name of the responsible licensee
32 manager who is to be responsible for, and act on behalf
33 of, the registered place of practice. The responsible
34 licensee manager shall not have committed acts or crimes
35 that are grounds for denial of licensure pursuant to
36 Section 480.~~

37 ~~Substitution of the responsible licensee manager may
38 be accomplished by application to the committee if the
39 following conditions are met:~~



1 ~~(1) The person substituted shall not have committed~~
2 ~~acts or crimes that are grounds for denial of licensure~~
3 ~~pursuant to Section 480.~~

4 ~~(2) No circumvention of the law is contemplated by~~
5 ~~the substitution.~~

6 ~~(e) A license issued pursuant to this section shall~~
7 ~~authorize the operation of the place of practice only at the~~
8 ~~location for which the license is issued. Operation of the~~
9 ~~place of practice at any other location shall be unlawful~~
10 ~~unless a license for the new location has been obtained.~~

11 ~~(d) An application for renewal of the place of practice~~
12 ~~license shall be made annually. The board may, as part of~~
13 ~~the renewal process, make necessary inquiries of the~~
14 ~~applicant and conduct an investigation in order to~~
15 ~~determine if cause for disciplinary action exists.~~

16 ~~SEC. 4. Section 4950.2 is added to the Business and~~
17 ~~Professions Code, to read:~~

18 ~~4950.2. The committee shall withhold, suspend, or~~
19 ~~revoke the license of a place of practice under any of the~~
20 ~~following circumstances:~~

21 ~~(a) When the licensee manager set forth in the~~
22 ~~application submitted in accordance with Section 4950.1~~
23 ~~ceases to become responsible for management of the~~
24 ~~registered premises and no substitution of the responsible~~
25 ~~licensee manager has been made by application as~~
26 ~~provided for in that section.~~

27 ~~(b) When the licensee manager's license to practice~~
28 ~~acupuncture has been revoked or suspended under~~
29 ~~proceedings conducted in accordance with Chapter 5~~
30 ~~(commencing with Section 11500) of Part 1 of Division 3~~
31 ~~of Title 2 of the Government Code.~~

32 ~~(c) When it has been adjudicated in an administrative~~
33 ~~hearing that the licensee manager has failed to keep the~~
34 ~~premises and equipment in a clean and sanitary~~
35 ~~condition, in violation of Section 4950.3.~~

36 ~~SEC. 5. Section 4950.3 is added to the Business and~~
37 ~~Professions Code, to read:~~

38 ~~4950.3. A place of practice and all equipment,~~
39 ~~instruments, apparatus, apparel, and supplies used in~~
40 ~~connection with the practice of acupuncture and~~



1 ~~associated techniques shall be kept clean and sanitary at~~
2 ~~all times, and shall conform to the minimum standards~~
3 ~~established by the board.~~

4 ~~SEC. 6. Section 4950.4 is added to the Business and~~
5 ~~Professions Code, to read:~~

6 ~~4950.4. A place of practice, including the equipment,~~
7 ~~instruments, apparatus, apparel, and supplies located at~~
8 ~~a place of practice or otherwise in the possession of an~~
9 ~~acupuncturist for purposes of that practice, shall be open~~
10 ~~to inspection by the committee, or its authorized~~
11 ~~representatives, during an inspection as part of a regular~~
12 ~~inspection program by the committee, or during an~~
13 ~~investigation initiated in response to a complaint that a~~
14 ~~licensee has violated any law or regulation that~~
15 ~~constitutes grounds for disciplinary action by the~~
16 ~~committee.~~

17 ~~SEC. 7.~~

18 ~~SEC. 3. Section 4955 of the Business and Professions~~
19 ~~Code is amended to read:~~

20 ~~4955. The committee may deny, suspend, or revoke,~~
21 ~~or impose probationary conditions upon, the license of~~
22 ~~any acupuncturist if he or she is guilty of unprofessional~~
23 ~~conduct that has endangered or is likely to endanger the~~
24 ~~health, safety, or welfare of the public.~~

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

- 27 ~~(a) Securing a license by fraud or deceit.~~
- 28 ~~(b) Committing a fraudulent or dishonest act as an~~
29 ~~acupuncturist resulting in substantial injury to another.~~
- 30 ~~(c) Using any controlled substance as defined in~~
31 ~~Division 10 (commencing with Section 11000) of the~~
32 ~~Health and Safety Code, or dangerous drug or alcoholic~~
33 ~~beverage to an extent or in a manner dangerous to~~
34 ~~himself or herself, or to any other person, or to the public,~~
35 ~~and to an extent that the use impairs his or her ability to~~
36 ~~engage in the practice of acupuncture with safety to the~~
37 ~~public.~~
- 38 ~~(d) Conviction of a crime substantially related to the~~
39 ~~qualifications, functions, or duties of an acupuncturist, the~~
40 ~~record of conviction being conclusive evidence thereof.~~



1 (e) Improper advertising.

2 (f) Violating or conspiring to violate the terms of this
3 chapter.

4 (g) Gross negligence.

5 (h) Repeated negligent acts.

6 (i) Incompetence.

7 (j) Except for good cause, the knowing failure to
8 protect patients by failing to follow infection control
9 guidelines of the committee, thereby risking transmission
10 of blood-borne infectious diseases from licensee to
11 patient, from patient to patient, and from patient to
12 licensee. In administering this subdivision, the committee
13 shall consider referencing the standards, regulations, and
14 guidelines of the State Department of Health Services
15 developed pursuant to Section 1250.11 of the Health and
16 Safety Code and the standards, regulations, and
17 guidelines pursuant to the California Occupational Safety
18 and Health Act of 1973 (Part 1 (commencing with Section
19 6300) of Division 5 of the Labor Code) for preventing the
20 transmission of HIV, hepatitis B, and other blood-borne
21 pathogens in health care settings. As necessary, the
22 committee shall consult with the Medical Board of
23 California, the California Board of Podiatric Medicine,
24 the Board of Dental Examiners of the State of California,
25 the Board of Registered Nursing, and the Board of
26 Vocational Nursing and Psychiatric Technicians, to
27 encourage appropriate consistency in the
28 implementation of this subdivision.

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

34 (k) The revocation, suspension, or other discipline,
35 restriction, or limitation imposed by another state upon
36 a license or certificate to practice acupuncture issued by
37 that state, or the revocation, suspension, or restriction of
38 the authority to practice acupuncture by an agency of the
39 federal government, on grounds that would have been



1 grounds for disciplinary action in California of a licensee
2 under this chapter.

3 *SEC. 4. Section 4961 of the Business and Professions*
4 *Code is repealed.*

5 ~~4961. An acupuncturist shall post his or her license in~~
6 ~~a conspicuous location in his or her place of practice at all~~
7 ~~times.~~

8 ~~If an acupuncturist has more than one place of practice,~~
9 ~~he or she shall obtain from the committee a duplicate~~
10 ~~license for each additional location and post the duplicate~~
11 ~~license at each location.~~

12 *SEC. 5. Section 4961 is added to the Business and*
13 *Professions Code, to read:*

14 *4961. (a) Every person who is now or hereafter*
15 *licensed to practice acupuncture in this state shall*
16 *register, on forms prescribed by the Acupuncture*
17 *Committee, his or her place of practice, or, if he or she has*
18 *more than one place of practice, all of the places of*
19 *practice. If the licensee has no place of practice, he or she*
20 *shall notify the committee of that fact. A person licensed*
21 *by the committee shall register within 30 days after the*
22 *date of his or her licensure.*

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

29 *(c) Any licensee that changes the location of his or her*
30 *place of practice shall register each change within 30 days*
31 *of making that change. In the event a licensee fails to*
32 *notify the committee of any change in the address of a*
33 *place of practice within the time prescribed by this*
34 *section, the committee may deny renewal of licensure.*
35 *An applicant for renewal of licensure shall specify in his*
36 *or her application whether or not there has been a change*
37 *in the location of his or her place of practice and, if so, the*



1 *date of that change. The committee may accept that*
2 *statement as evidence of the change of address.*

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