

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 218

Introduced by Senator Yee

February 11, 2013

An act to amend Sections 4935, 4955, 4955.1, 4955.2, 4956, 4960.2, 4961, 4965, 4966, 4967, and 4969 of, to add Section 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 healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Yee. Healing arts.

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, as specified, is a crime.

This bill would, commencing May 1, 2014, require the board to issue a certificate to practice as a traditional Chinese medicine traumatologist to an applicant who meets certain education, training, and clinical experience requirements and pays a specified fee. This bill would require the board to establish the California Traditional Chinese Medicine Traumatology Committee to provide advice and carry out specified duties, including investigation and evaluation of whether an applicant meets those education, training, and clinical experience requirements.

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.

This bill would make it an unfair business practice to use the title of “certified traditional Chinese medicine traumatologist” without meeting these certification requirements and would authorize the board to suspend or revoke a certificate for unprofessional conduct, certain fraudulent acts, or specified crimes committed by the certificate holder. The bill would also 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 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:

1 SECTION 1. Section 4935 of the Business and Professions
2 Code is amended to read:
3 4935. (a) (1) It is a misdemeanor, punishable by a fine of not
4 less than one hundred dollars (\$100) and not more than two
5 thousand five hundred dollars (\$2,500), or by imprisonment in a
6 county jail not exceeding one year, or by both that fine and
7 imprisonment, for any person who does not hold a current and
8 valid license to practice acupuncture under this chapter, to hold
9 himself or herself out as practicing or engaging in the practice of
10 acupuncture, or to hold himself or herself out as a certified
11 traditional Chinese medicine traumatologist or use the title of
12 “certified traditional Chinese medicine traumatologist” without
13 meeting the requirements of this chapter.
14 (2) It is a misdemeanor, punishable by a fine of not less than
15 one hundred dollars (\$100) and not more than two thousand five
16 hundred dollars (\$2,500), or by imprisonment in a county jail not
17 exceeding one year, or by both that fine and imprisonment, for

1 any person to fraudulently buy, sell, or obtain a license to practice
2 acupuncture or a certificate for traditional Chinese medicine
3 traumatology, or to violate the provisions of this chapter.

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

13 (c) A person holds himself or herself out as engaging in the
14 practice of acupuncture by the use of any title or description of
15 services incorporating the words “acupuncture,” “acupuncturist,”
16 “certified acupuncturist,” “licensed acupuncturist,” “Asian
17 medicine,” “oriental medicine,” “traditional Chinese medicine,”
18 or any combination of those words, phrases, or abbreviations of
19 those words or phrases, by representing that he or she is trained,
20 experienced, or an expert in the field of acupuncture, Asian
21 medicine, or Chinese medicine, or by representing that he or she
22 is trained, experienced, or an expert in the field of traditional
23 Chinese medicine traumatology.

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

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

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

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

35

36 Article 3. California Traditional Chinese Medicine
37 Traumatologist

38

39 4950. As used in this article:

1 (a) “California certified traditional Chinese medicine
2 traumatologist” means a person who has been certified by the
3 California Traditional Chinese Medicine Traumatology Committee
4 to perform traditional Chinese medicine traumatology.

5 (b) “Committee” means, notwithstanding Section 4925, the
6 California Traditional Chinese Medicine Traumatology Committee.

7 (c) “Traditional Chinese medicine traumatology” includes a
8 range of treatments to address both acute and chronic
9 musculoskeletal conditions through stimulation of acupressure
10 points. Techniques include, but are not limited to, brushing,
11 kneading, rolling, pressing, rubbing, pushing, holding, and lifting
12 the areas between each of the joints to open the body’s defensive
13 chi and stimulate the energy movement in the meridians.

14 4950.1. (a) On or before March 1, 2014, the board shall
15 establish the California Traditional Chinese Medicine
16 Traumatology Committee within the board. The committee shall
17 consist of the following five members appointed by the board:

18 (1) One representative from the California Medical Association.

19 (2) One representative from the California Orthopaedic
20 Association.

21 (3) One representative from the Medical Board of California.

22 (4) Two representatives from a traditional Chinese medicine
23 traumatology clinical setting. These representatives shall be
24 selected by professional societies, associations, or other entities,
25 whose memberships are comprised solely of practitioners of
26 traditional Chinese medicine traumatology. To qualify as a
27 professional society or association, an entity shall have a dues
28 paying membership in the state of at least 30 individuals for the
29 last three years and shall have bylaws that require its members to
30 comply with a code of ethics.

31 (b) The board, in implementing this article, shall give specific
32 consideration to the recommendations of the committee.

33 (c) (1) Pursuant to Section 4950.2, the committee shall meet
34 and confer to determine an applicant’s qualifications, as prescribed
35 in Section 4950.2, including the level of experience and training
36 needed to qualify for California traditional Chinese medicine
37 traumatology certification.

38 (2) The committee shall advise the board on any other issues
39 pursuant to this article.

1 4950.2. (a) *The committee shall investigate all of the*
2 *documentation provided by the applicant and verify its authenticity*
3 *to evaluate whether an applicant meets the certification standards,*
4 *including the level of education, experience, and training to*
5 *sufficiently qualify for the traumatology certification, and shall*
6 *report its findings and determination to the board.*

7 (b) Commencing May 1, 2014, the board shall issue a certificate
8 for certified traditional Chinese medicine traumatology to any
9 person who makes an application to the board and meets all of the
10 following requirements:

11 (1) Is at least 18 years of age.

12 (2) Is not subject to denial pursuant to Division 1.5 (commencing
13 with Section 475).

14 (3) Furnishes satisfactory evidence of education, training, and
15 clinical experience that meets one of the following standards:

16 (A) Passed an examination and received a certificate in
17 traditional Chinese medicine traumatology for completing a
18 curriculum in the subject. The curriculum for all applicants shall
19 provide for adequate instruction in the following subjects:

20 (i) Human anatomy and physiology.

21 (ii) Pathology.

22 (iii) Western diagnosis on traumatological injury.

23 (iv) Clinical management and medical ethics.

24 (v) Basic theory of traditional Chinese medicine.

25 (vi) Comparison of traditional Chinese medicine and western
26 medicine.

27 (vii) Meridian and acupoints.

28 (viii) Basic traditional Chinese medicine diagnosis.

29 (ix) Basic theory of traditional Chinese medicine traumatology.

30 (x) Traditional Chinese medicine diagnosis on traumatology.

31 (xi) Hands on Skills of Traditional Chinese Medicine
32 Traumatology I.

33 (xii) Hands on Skills of Traditional Chinese Medicine
34 Traumatology II.

35 (xiii) Chinese herbs and formulas for traumatology.

36 (xiv) Traditional Chinese medicine traumatology case study.

37 (xv) One thousand hours in a clinical internship on traditional
38 Chinese medicine traumatology.

39 (B) ~~Apprenticed~~ *In the case of an applicant who completed an*
40 *apprenticeship as a traditional Chinese medicine traumatologist*

1 for 10 years prior to January 1, 2014, *furnishes satisfactory*
2 *evidence of completing education, training, and at least 10 years*
3 *clinical experience in traditional Chinese medicine traumatology.*

4 (C) In the case of an applicant who has completed education
5 and training outside of the United States or Canada, furnishes
6 satisfactory evidence of completing education, training, and at
7 least 10 years clinical experience in traditional Chinese medicine
8 traumatology.

9 ~~(b) The committee shall investigate all of the documentation~~
10 ~~provided by the applicant and verify its authenticity to evaluate~~
11 ~~whether an applicant meets the certification standards, including~~
12 ~~the level of education, experience, and training to sufficiently~~
13 ~~qualify for the traumatology certification and shall report its~~
14 ~~findings and determination to the board.~~

15 4950.3. (a) An applicant for traditional Chinese medicine
16 traumatology certification shall file an application for that
17 certificate with the board.

18 (b) When submitting his or her application to the board, the
19 applicant shall pay an application fee in a reasonable amount
20 determined by the board, not to exceed two hundred dollars (\$200),
21 for the regulatory cost to the board of processing the application.

22 (c) A certified traditional Chinese medicine traumatologist shall
23 renew his or her certificate every five years.

24 (d) An expired certificate may be renewed at any time within
25 three years after its expiration. The holder of the certificate shall
26 pay all accrued and unpaid renewal fees, plus a delinquency fee,
27 according to the following:

28 (1) An annual renewal fee of one hundred dollars (\$100).

29 (2) A delinquency fee of twenty-five dollars (\$25).

30 (3) A fee for a duplicate or replacement engraved wall certificate
31 of fifteen dollars (\$15).

32 (4) A fee for a duplicate or replacement renewal receipt/pocket
33 certificate of ten dollars (\$10).

34 (e) Moneys received under this section shall be deposited in the
35 Acupuncture Fund for the purposes of carrying out this article.

36 4950.4. It is an unfair business practice for any person to hold
37 himself or herself out as a certified traditional Chinese medicine
38 traumatologist or *to* use the title of “certified traditional Chinese
39 medicine traumatologist” without meeting the requirements of this
40 article.

1 4950.5. (a) A California certified traditional Chinese medicine
2 traumatologist shall not practice medicine, as provided in Section
3 2052.

4 (b) A California certified traditional Chinese medicine
5 traumatologist shall not practice within the scope of activities
6 regulated by the State Board of Chiropractic Examiners.

7 SEC. 3. Section 4955 of the Business and Professions Code is
8 amended to read:

9 4955. The board may deny, suspend, or revoke, or impose
10 probationary conditions upon, the license of any acupuncturist or
11 the certificate of any traditional Chinese medicine traumatologist
12 if he or she is guilty of unprofessional conduct. As used in this
13 section, "licensee" includes a certified traditional Chinese medicine
14 traumatologist.

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

17 (a) Using or possessing any controlled substance as defined in
18 Division 10 (commencing with Section 11000) of the Health and
19 Safety Code, or dangerous drug or alcoholic beverage to an extent
20 or in a manner dangerous to himself or herself, or to any other
21 person, or to the public, and to an extent that the use impairs his
22 or her ability to engage in the practice of acupuncture or
23 traumatology with safety to the public.

24 (b) Conviction of a crime substantially related to the
25 qualifications, functions, or duties of an acupuncturist or certified
26 traditional Chinese medicine traumatologist, the record of
27 conviction being conclusive evidence thereof.

28 (c) False or misleading advertising.

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

32 (e) Except for good cause, the knowing failure to protect patients
33 by failing to follow infection control guidelines of the board,
34 thereby risking transmission of bloodborne infectious diseases
35 from licensee to patient, from patient to patient, and from patient
36 to licensee. In administering this subdivision, the board shall
37 consider referencing the standards, regulations, and guidelines of
38 the State Department of Public Health developed pursuant to
39 Section 1250.11 of the Health and Safety Code and the standards,
40 regulations, and guidelines pursuant to the California Occupational

1 Safety and Health Act of 1973 (Part 1 (commencing with Section
2 6300) of Division 5 of the Labor Code) for preventing the
3 transmission of HIV, hepatitis B, and other bloodborne pathogens
4 in health care settings. As necessary, the board shall consult with
5 the Medical Board of California, the California Board of Podiatric
6 Medicine, the Dental Board of California, the Board of Registered
7 Nursing, and the Board of Vocational Nursing and Psychiatric
8 Technicians, to encourage appropriate consistency in the
9 implementation of this subdivision.

10 The board shall seek to ensure that licensees are informed of the
11 responsibility of licensees and others to follow infection control
12 guidelines, and of the most recent scientifically recognized
13 safeguards for minimizing the risk of transmission of bloodborne
14 infectious diseases.

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

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

21 (h) Disciplinary action taken by any public agency for any act
22 substantially related to the qualifications, functions, or duties of
23 an acupuncturist, certified traditional Chinese medicine
24 traumatologist, or any professional health care licensee.

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

27 (j) The violation of any law or local ordinance on a licensee's
28 business premises by a licensee's employee or a person who is
29 working under the licensee's professional license or business
30 permit, that is substantially related to the qualifications, functions,
31 or duties of the licensee. These violations shall subject the licensee
32 who employed the individuals, or under whose acupuncturist
33 license or traumatology certificate the employee is working, to
34 disciplinary action.

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

39 (l) The failure to notify the board of the use of any false,
40 assumed, or fictitious name other than the name under which he

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

3 SEC. 4. Section 4955.1 of the Business and Professions Code
4 is amended to read:

5 4955.1. The board may deny, suspend, revoke, or impose
6 probationary conditions upon the license of any acupuncturist or
7 *certificate of any* certified traditional Chinese medicine
8 traumatologist if he or she is guilty of committing a fraudulent act,
9 including, but not limited to, the following:

10 (a) Securing a license by fraud or deceit.

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

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

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

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

20 SEC. 5. Section 4955.2 of the Business and Professions Code
21 is amended to read:

22 4955.2. The board may deny, suspend, revoke, or impose
23 probationary conditions upon the license of any acupuncturist or
24 certified traditional Chinese medicine traumatologist if he or she
25 is guilty of committing any one of the following:

26 (a) Gross negligence.

27 (b) Repeated negligent acts.

28 (c) Incompetence.

29 SEC. 6. Section 4956 of the Business and Professions Code is
30 amended to read:

31 4956. A plea or verdict of guilty or a conviction following a
32 plea of nolo contendere made to a charge that is substantially
33 related to the qualifications, functions, or duties of an acupuncturist
34 or certified traditional Chinese medicine traumatologist is deemed
35 to be a conviction within the meaning of this chapter.

36 The board may order a license or certificate suspended or
37 revoked, or may deny a license or certificate, or may impose
38 probationary conditions upon a license or certificate, when the
39 time for appeal has elapsed, or the judgment of conviction has
40 been affirmed on appeal, or when an order granting probation is

1 made suspending the imposition of sentence irrespective of a
2 subsequent order under Section 1203.4 of the Penal Code allowing
3 the person to withdraw his or her pleas of guilty and to enter a plea
4 of not guilty, or setting aside the verdict of guilty, or dismissing
5 the accusation, complaint, information, or indictment.

6 SEC. 7. Section 4960.2 of the Business and Professions Code
7 is amended to read:

8 4960.2. The board in all cases of revocation shall certify the
9 fact of the revocation, under the seal of the board, to the business
10 licensing entity of the cities or counties in which the license of the
11 acupuncturist or the certificate of the traditional Chinese medicine
12 traumatologist has been revoked. The record of the revocation
13 made by the county or city clerk shall be sufficient evidence of
14 the revocation, and of the regularity of all proceedings of the board
15 in the matter of the revocation.

16 SEC. 8. Section 4961 of the Business and Professions Code is
17 amended to read:

18 4961. (a) Every person who is now or hereafter licensed to
19 practice acupuncture or certified to practice traditional Chinese
20 medicine traumatology in this state shall register, on forms
21 prescribed by the board, his or her place of practice, or, if he or
22 she has more than one place of practice, all of the places of practice.
23 If the licensee or certificate holder has no place of practice, he or
24 she shall notify the board of that fact. A person licensed or certified
25 by the board shall register within 30 days after the date of his or
26 her licensure or certification.

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

34 (c) Any licensee or certificate holder that changes the location
35 of his or her place of practice shall register each change within 30
36 days of making that change. If a licensee or certificate holder fails
37 to notify the board of any change in the address of a place of
38 practice within the time prescribed by this section, the board may
39 deny renewal of licensure or certification. An applicant for renewal
40 of licensure or certification shall specify in his or her application

1 whether or not there has been a change in the location of his or
2 her place of practice and, if so, the date of that change. The board
3 may accept that statement as evidence of the change of address.

4 SEC. 9. Section 4964.5 is added to the Business and Professions
5 Code, immediately following Section 4964, to read:

6 4964.5. The provisions of this article apply to both licensed
7 acupuncturists and certified traditional Chinese medicine
8 traumatologists.

9 SEC. 10. Section 4965 of the Business and Professions Code
10 is amended to read:

11 4965. (a) (1) A license to practice acupuncture issued pursuant
12 to this chapter shall expire on the last day of the birth month of
13 the licensee during the second year of a two-year term, if not
14 renewed.

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

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

20 (b) A certificate for traditional Chinese medicine traumatology
21 issued pursuant to this chapter shall expire five years after the date
22 of issuance, if not renewed. To renew an unexpired certificate, the
23 holder shall apply for renewal on a form provided by the board
24 and pay the renewal fee set forth in Section 4950.3.

25 SEC. 11. Section 4966 of the Business and Professions Code
26 is amended to read:

27 4966. (a) Except as provided in Section 4969, a license to
28 practice acupuncture that has expired may be renewed at any time
29 within three years after its expiration by filing an application for
30 renewal on a form provided by the board, paying all accrued and
31 unpaid renewal fees, and providing proof of completing continuing
32 education requirements. If the license is not renewed prior to its
33 expiration, the acupuncturist, as a condition precedent to renewal,
34 shall also pay the prescribed delinquency fee.

35 (b) Except as provided in Section 4969, a certificate for
36 traditional Chinese medicine traumatology that has expired may
37 be renewed at any time within three years after its expiration by
38 filing an application for renewal on a form provided by the board,
39 and paying all accrued and unpaid renewal fees. If the certificate
40 is not renewed prior to its expiration, the traditional Chinese

1 medicine traumatologist, as a condition precedent to renewal, shall
2 also pay a delinquency fee, set in accordance with Section 163.5.

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

10 SEC. 12. Section 4967 of the Business and Professions Code
11 is amended to read:

12 4967. A person who fails to renew his or her license or
13 certificate within three years after its expiration may not renew it,
14 and it may not be restored, reissued, or reinstated thereafter, but
15 that person may apply for and obtain a new license or certificate
16 if he or she meets all of the following requirements:

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

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

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

29 (d) The board may provide for the waiver or refund of all or
30 any part of an examination fee in those cases in which a license
31 to practice acupuncture is issued without an examination pursuant
32 to this section.

33 SEC. 13. Section 4969 of the Business and Professions Code
34 is amended to read:

35 4969. (a) A suspended license or certificate is subject to
36 expiration and shall be renewed as provided in this article, but the
37 renewal does not entitle the acupuncturist or certified traditional
38 Chinese medicine traumatologist, while the license or certificate
39 remains suspended, and until it is reinstated, to engage in the
40 practice of acupuncture or traditional Chinese medicine

1 traumatology, or in any other activity or conduct in violation of
2 the order or judgment by which the license or certificate was
3 suspended.

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

12 SEC. 14. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.