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I N  S E N A T E

May 21, 2014

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law and the education law, in relation to the care and treatment of injured employees by licensed or certified acupuncturists

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The workers' compensation law is amended by adding a new section 13-p to read as follows:

S 13-P. CARE AND TREATMENT OF INJURED EMPLOYEES BY LICENSED OR CERTIFIED ACUPUNCTURISTS. 1. FOR PURPOSES OF THIS SECTION, THE TERM "ACUPUNCTURIST" SHALL MEAN A PERSON WHO IS DULY LICENSED AND REGISTERED AS A LICENSED ACUPUNCTURIST PURSUANT TO ARTICLE ONE HUNDRED SIXTY OF THE EDUCATION LAW, OR WHO IS A CERTIFIED ACUPUNCTURIST PURSUANT TO SUBDIVISION THREE OF SECTION EIGHTY-TWO HUNDRED SIXTEEN OF THE EDUCATION LAW; AND

2. (A) AN INJURED EMPLOYEE, INJURED UNDER CIRCUMSTANCES WHICH MAKE SUCH AN INJURY COMPENSABLE UNDER THIS ARTICLE, MAY LAWFULLY BE TREATED BY AN ACUPUNCTURIST AUTHORIZED BY THE CHAIR TO RENDER ACUPUNCTURE CARE PURSUANT TO THIS SECTION. SUCH SERVICES SHALL BE WITHIN THE SCOPE OF THE PROFESSION OF ACUPUNCTURE AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHTY-TWO HUNDRED ELEVEN OF THE EDUCATION LAW.

(B) MEDICAL BUREAUS, MEDICAL CENTERS JOINTLY OPERATED BY LABOR AND MANAGEMENT REPRESENTATIVES, HOSPITALS AND HEALTH MAINTENANCE ORGANIZATIONS, AUTHORIZED TO PROVIDE MEDICAL CARE, MAY PROVIDE ACUPUNCTURE SERVICES WHEN REQUIRED, PROVIDED SUCH CARE IS RENDERED BY AN ACUPUNCTURIST AS REQUIRED BY THIS SECTION.

(C) AN ACUPUNCTURIST RENDERING SERVICE PURSUANT TO THIS SECTION SHALL MAINTAIN RECORDS OF THE PATIENT'S CONDITION AND ACUPUNCTURE TREATMENT, AND SUCH RECORDS OR REPORTS SHALL BE SUBMITTED TO THE CHAIR ON SUCH FORMS AND AT SUCH TIMES AS THE CHAIR MAY REQUIRE.

3. (A) AN ACUPUNCTURIST WHO IS DESIROUS OF BEING AUTHORIZED TO RENDER ACUPUNCTURE SERVICES UNDER THIS SECTION SHALL FILE AN APPLICATION FOR AUTHORIZATION UNDER THIS SECTION WITH THE ACUPUNCTURE PRACTICE COMMIT-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TEE. THE APPLICANT SHALL AGREE TO REFRAIN FROM SUBSEQUENTLY TREATING FOR REMUNERATION, AS A PRIVATE PATIENT, ANY PERSON SEEKING ACUPUNCTURE SERVICES, IN CONNECTION WITH, OR AS A RESULT OF, ANY INJURY COMPENSABLE UNDER THIS CHAPTER, IF HE OR SHE HAS BEEN REMOVED FROM THE LIST OF ACUPUNCTURISTS AUTHORIZED TO RENDER SERVICES UNDER THIS CHAPTER. THIS AGREEMENT SHALL RUN TO THE BENEFIT OF THE INJURED PERSON SO TREATED, AND SHALL BE AVAILABLE AS A DEFENSE IN ANY ACTION BY SUCH ACUPUNCTURIST FOR PAYMENT FOR TREATMENT RENDERED BY SUCH ACUPUNCTURIST AFTER BEING REMOVED FROM THE LIST OF ACUPUNCTURISTS AUTHORIZED TO RENDER ACUPUNCTURE SERVICES UNDER THIS SECTION. THE ACUPUNCTURE PRACTICE COMMITTEE IF IT DEEMS SUCH ACUPUNCTURIST DULY QUALIFIED SHALL RECOMMEND TO THE CHAIR THAT SUCH PERSON BE AUTHORIZED TO RENDER ACUPUNCTURE SERVICES UNDER THIS SECTION. SUCH RECOMMENDATIONS SHALL BE ONLY ADVISORY TO THE CHAIR AND SHALL NOT BE BINDING OR CONCLUSIVE.

(B) THE CHAIR SHALL PREPARE AND ESTABLISH A SCHEDULE FOR THE STATE OR SCHEDULES LIMITED TO DEFINED LOCALITIES OF CHARGES AND FEES FOR ACUPUNCTURE TREATMENT AND CARE, TO BE DETERMINED IN ACCORDANCE WITH AND BE SUBJECT TO CHANGE PURSUANT TO RULES PROMULGATED BY THE CHAIR. BEFORE PREPARING SUCH SCHEDULE FOR THE STATE OR SCHEDULES FOR LIMITED LOCALITIES THE CHAIR SHALL REQUEST THE ACUPUNCTURE PRACTICE COMMITTEE TO SUBMIT TO SUCH CHAIR A REPORT ON THE AMOUNT OF REMUNERATION DEEMED BY SUCH COMMITTEE TO BE FAIR AND ADEQUATE FOR THE TYPES OF ACUPUNCTURE SERVICES TO BE RENDERED UNDER THIS CHAPTER, BUT CONSIDERATION SHALL BE GIVEN TO THE VIEW OF OTHER INTERESTED PARTIES. THE AMOUNTS PAYABLE BY THE EMPLOYER FOR SUCH TREATMENT AND SERVICES SHALL BE THE FEES AND CHARGES ESTABLISHED BY SUCH SCHEDULE.

(C) IN DETERMINING THE SCHEDULE OR SCHEDULES AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE CHAIR SHALL MAKE A DISTINCTION BETWEEN TREATMENT RENDERED BY A DULY LICENSED AND REGISTERED ACUPUNCTURIST SUBJECT TO THE PROVISIONS OF ARTICLE ONE HUNDRED SIXTY OF THE EDUCATION LAW AND A CERTIFIED ACUPUNCTURIST SUBJECT TO THE PROVISIONS OF SECTION EIGHTY-TWO HUNDRED SIXTEEN OF THE EDUCATION LAW, AND THE CHAIR SHALL PREPARE AND ESTABLISH A SCHEDULE OR SCHEDULES REFLECTING FEES AND CHARGES APPROPRIATE TO THE NATURE AND SCOPE OF THE TREATMENT RENDERED BY EACH TYPE OF PRACTITIONER, GIVING DUE CONSIDERATION TO ALL RELEVANT FACTORS INCLUDING, BUT NOT LIMITED TO, THE LEVEL OF EDUCATION OF THE PRACTITIONER, THE TYPE OF TREATMENT RENDERED, WHETHER THE ACUPUNCTURE TREATMENT IS BEING PROVIDED AS THE PRINCIPAL TREATMENT OR AS AN ADJUNCT TREATMENT, AND THE BILLING PRACTICES ENTAILED, INCLUDING WHETHER THE PRACTITIONER SUBMITS ONE COMPREHENSIVE BILL OR BILLS SEPARATELY FOR THE ACUPUNCTURE TREATMENT, OFFICE VISITS AND OTHER ITEMS.

4. NO CLAIM FOR ACUPUNCTURE SERVICES SHALL BE VALID AND ENFORCEABLE AS AGAINST THE EMPLOYER OR EMPLOYEES UNLESS WITHIN FORTY-EIGHT HOURS FOLLOWING THE FIRST TREATMENT THE ACUPUNCTURIST GIVING SUCH CARE OR TREATMENT FURNISHES TO THE EMPLOYER AND DIRECTLY TO THE CHAIR A PRELIMINARY NOTICE OF SUCH INJURY AND TREATMENT, AND WITHIN FIFTEEN DAYS THEREAFTER A MORE COMPLETE REPORT AND SUBSEQUENT THERETO PROGRESS REPORTS AS REQUESTED IN WRITING BY THE CHAIR, BOARD, EMPLOYER OR INSURANCE CARRIER, AT INTERVALS OF NOT LESS THAN THREE WEEKS APART OR AT LESS FREQUENT INTERVALS IF REQUESTED ON FORMS PRESCRIBED BY THE CHAIR. THE BOARD MAY EXCUSE THE FAILURE TO GIVE SUCH NOTICES WITHIN THE DESIGNATED PERIODS WHEN IT FINDS IT TO BE IN THE INTEREST OF JUSTICE TO DO SO.

5. FEES FOR ACUPUNCTURE SERVICES SHALL BE PAYABLE ONLY TO A DULY LICENSED OR CERTIFIED ACUPUNCTURIST PURSUANT TO ARTICLE ONE HUNDRED SIXTY OF THE EDUCATION LAW, OR TO THE AGENT, EXECUTOR OR ADMINISTRATOR OF THE ESTATE OF SUCH ACUPUNCTURIST. NO ACUPUNCTURIST RENDERING TREAT-

MENT TO A COMPENSATION CLAIMANT SHALL COLLECT OR RECEIVE A FEE FROM SUCH CLAIMANT WITHIN THIS STATE, BUT SHALL HAVE RECOURSE FOR PAYMENT OF SERVICES RENDERED ONLY TO THE EMPLOYER UNDER THE PROVISIONS OF THIS SECTION.

6. WHENEVER HIS OR HER ATTENDANCE AT A HEARING IS REQUIRED, THE ACUPUNCTURIST OF THE INJURED EMPLOYEE SHALL BE ENTITLED TO RECEIVE A FEE FROM THE EMPLOYER IN AN AMOUNT TO BE FIXED BY THE BOARD, IN ADDITION TO ANY FEE PAYABLE UNDER SECTION EIGHT THOUSAND ONE OF THE CIVIL PRACTICE LAW AND RULES.

7. (A) UNLESS WITHIN THIRTY DAYS AFTER A BILL HAS BEEN RENDERED TO THE EMPLOYER BY THE ACUPUNCTURIST WHO HAS TREATED AN INJURED EMPLOYEE, SUCH EMPLOYER SHALL HAVE NOTIFIED THE CHAIR AND SUCH ACUPUNCTURIST IN WRITING THAT SUCH EMPLOYER DEMANDS AN IMPARTIAL EXAMINATION OF THE FAIRNESS OF THE AMOUNT CLAIMED BY SUCH ACUPUNCTURIST FOR HIS OR HER SERVICES, THE RIGHT TO SUCH AN IMPARTIAL EXAMINATION SHALL BE DEEMED TO BE WAIVED AND THE AMOUNT CLAIMED BY SUCH ACUPUNCTURIST SHALL BE DEEMED TO BE THE FAIR VALUE OF THE SERVICES RENDERED. IF THE PARTIES FAIL TO AGREE AS TO THE ACUPUNCTURE CARE RENDERED UNDER THIS CHAPTER TO A CLAIMANT, SUCH VALUE SHALL BE DECIDED BY THE ACUPUNCTURE PRACTICE COMMITTEE AND THE MAJORITY DECISION OF SUCH COMMITTEE SHALL BE CONCLUSIVE UPON THE PARTIES AS TO THE VALUE OF THE SERVICES RENDERED. THE BOARD MAY MAKE AN AWARD FOR ANY SUCH BILL OR PART THEREOF WHICH REMAINS UNPAID IN THE SAME MANNER AS AN AWARD FOR BILLS RENDERED UNDER SUBDIVISIONS ONE AND THREE OF SECTION THIRTEEN-G OF THIS ARTICLE, AND SUCH AWARD MAY BE COLLECTED IN LIKE MANNER AS AN AWARD OF COMPENSATION. THE CHAIR SHALL ASSESS THE SUM OF FIFTY DOLLARS AGAINST THE EMPLOYER FOR EACH SUCH AWARD MADE BY THE BOARD, WHICH SUM SHALL BE PAID INTO THE STATE TREASURY.

(B) WHERE AN ACUPUNCTURIST'S BILL HAS BEEN DETERMINED TO BE DUE AND OWING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE BOARD MAY IMPOSE A PENALTY OF NOT MORE THAN ONE AND ONE-HALF PERCENT INTEREST PER MONTH PAYABLE TO THE ACUPUNCTURIST IN ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE BOARD.

(C) THE PARTIES TO SUCH PROCEEDING SHALL EACH PAY TO THE CHAIR A SUM EQUAL TO FIVE PER CENTUM OF THE AMOUNT PAYABLE UNDER THE DECISION OF SUCH COMMITTEE OR A MINIMUM OF FIVE DOLLARS, WHICHEVER IS GREATER. THE SUMS SO COLLECTED SHALL BE TRANSFERRED TO THE STATE TREASURY TO REIMBURSE IT ON ACCOUNT OF THE EXPENSE OF ADMINISTERING THIS SECTION.

8. WITHIN THE LIMITS PRESCRIBED BY THE EDUCATION LAW FOR ACUPUNCTURE SERVICES, THE REPORT OR TESTIMONY OF AN AUTHORIZED ACUPUNCTURIST CONCERNING THE CONDITION OF AN INJURED EMPLOYEE AND TREATMENT THEREOF SHALL BE DEEMED COMPETENT EVIDENCE AND THE PROFESSIONAL OPINION OF THE ACUPUNCTURIST AS TO CAUSAL RELATION AND AS TO REQUIRED TREATMENT SHALL BE DEEMED COMPETENT BUT SHALL NOT BE CONTROLLING. NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE ANY EMPLOYER OR INSURANCE CARRIER OF ANY RIGHT TO A MEDICAL EXAMINATION OR PRESENTATION OF MEDICAL TESTIMONY NOW CONFERRED BY LAW.

9. THE CHAIR SHALL PROMULGATE RULES GOVERNING THE PROCEDURE TO BE FOLLOWED BY THOSE RENDERING ACUPUNCTURE SERVICES UNDER THIS SECTION, WHICH RULES SO FAR AS PRACTICABLE SHALL CONFORM TO THE RULES PRESENTLY IN EFFECT WITH REFERENCE TO MEDICAL CARE FURNISHED TO CLAIMANTS IN WORKERS' COMPENSATION. IN CONNECTION WITH THE PROMULGATION OF SUCH RULES THE CHAIR MAY CONSULT THE ACUPUNCTURE PRACTICE COMMITTEE AND MAY TAKE INTO CONSIDERATION THE VIEW OF OTHER INTERESTED PARTIES.

10. THE CHAIR SHALL APPOINT FOR AND WITH JURISDICTION IN THE ENTIRE STATE OF NEW YORK A SINGLE ACUPUNCTURE PRACTICE COMMITTEE COMPOSED OF TWO LICENSED ACUPUNCTURISTS, AND ONE DULY LICENSED PHYSICIAN OF THE

STATE OF NEW YORK. EACH MEMBER OF SUCH COMMITTEE SHALL RECEIVE COMPENSATION EITHER ON AN ANNUAL BASIS OR ON A PER DIEM BASIS TO BE FIXED BY THE CHAIR WITHIN AMOUNTS APPROPRIATED THEREFOR. ONE OF SUCH LICENSED ACUPUNCTURISTS SHALL BE DESIGNATED BY THE CHAIR AS A CHAIR OF SUCH ACUPUNCTURE PRACTICE COMMITTEE. NO MEMBER OF SUCH COMMITTEE SHALL RENDER ACUPUNCTURE SERVICES UNDER THIS SECTION NOR BE AN EMPLOYER OR ACCEPT OR PARTICIPATE IN ANY FEE FROM ANY INSURANCE COMPANY AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE OR FROM ANY SELF-INSURER, WHETHER SUCH EMPLOYMENT OR FEE RELATES TO A WORKERS' COMPENSATION CLAIM OR OTHERWISE. THE ATTORNEY GENERAL, UPON REQUEST, SHALL ADVISE AND ASSIST SUCH COMMITTEE.

11. THE ACUPUNCTURE PRACTICE COMMITTEE SHALL INVESTIGATE, HEAR AND MAKE FINDINGS WITH RESPECT TO ALL CHARGES AS TO PROFESSIONAL OR OTHER MISCONDUCT OF ANY AUTHORIZED ACUPUNCTURISTS AS PROVIDED IN THIS SECTION UNDER RULES AND PROCEDURES TO BE PRESCRIBED BY THE CHAIR AND SHALL REPORT EVIDENCE OF SUCH MISCONDUCT, WITH THEIR FINDINGS AND RECOMMENDATIONS WITH RESPECT THERETO, TO THE CHAIR. THE FINDINGS, DECISION AND RECOMMENDATION OF SUCH ACUPUNCTURE PRACTICE COMMITTEE SHALL BE ADVISORY TO THE CHAIR ONLY, AND SHALL NOT BE BINDING OR CONCLUSIVE UPON HIM OR HER. THE CHAIR SHALL REMOVE FROM THE LIST OF ACUPUNCTURISTS AUTHORIZED TO RENDER ACUPUNCTURE SERVICES UNDER THIS CHAPTER THE NAME OF ANY ACUPUNCTURIST WHO HE OR SHE SHALL FIND AFTER REASONABLE INVESTIGATION IS DISQUALIFIED BECAUSE SUCH ACUPUNCTURIST:

(A) HAS BEEN GUILTY OF PROFESSIONAL OR OTHER MISCONDUCT OR INCOMPETENCY IN CONNECTION WITH THE RENDERING OF ACUPUNCTURE SERVICES,

(B) HAS EXCEEDED THE LIMITS OF HIS OR HER PROFESSIONAL COMPETENCE IN RENDERING ACUPUNCTURE SERVICES UNDER THE LAW, OR HAS MADE FALSE STATEMENTS REGARDING QUALIFICATIONS IN THE APPLICATION FOR AUTHORIZATION,

(C) HAS FAILED TO SUBMIT TIMELY, FULL AND TRUTHFUL ACUPUNCTURE EVALUATION AND TREATMENT REPORTS OF ALL FINDINGS TO THE EMPLOYER AND DIRECTLY TO THE CHAIR OF THE BOARD WITHIN THE TIME LIMITS PROVIDED IN THIS SECTION,

(D) HAS RENDERED ACUPUNCTURE SERVICES UNDER THIS CHAPTER FOR A FEE LESS THAN THAT FIXED IN THE FEE SCHEDULE,

(E) HAS SOLICITED OR HAS EMPLOYED ANOTHER TO SOLICIT FOR HIMSELF OR HERSELF OR FOR ANOTHER PROFESSIONAL TREATMENT, EXAMINATION OR CARE OF AN INJURED EMPLOYEE WITH ANY CLAIM UNDER THIS CHAPTER,

(F) HAS REFUSED TO APPEAR BEFORE OR ANSWER UPON REQUEST OF THE CHAIR, BOARD, ACUPUNCTURE PRACTICE COMMITTEE OR ANY DULY AUTHORIZED OFFICER OF THE STATE, ANY LEGAL QUESTION OR PRODUCE ANY RELEVANT BOOK OR PAPER CONCERNING CONDUCT UNDER AN AUTHORIZATION GRANTED UNDER LAW, OR

(G) HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PARTICIPATED IN THE DIVISION, TRANSFERENCE, ASSIGNMENT, REBATING, SPLITTING OR REFUNDING OF A FEE FOR, OR HAS DIRECTLY OR INDIRECTLY REQUESTED, RECEIVED OR PROFITED BY MEANS OF A CREDIT OR OTHERWISE VALUABLE CONSIDERATION AS A COMMISSION, DISCOUNT OR GRATUITY IN CONNECTION WITH THE TREATMENT OF A WORKERS' COMPENSATION CLAIMANT.

12. ANY PERSON WHO VIOLATES OR ATTEMPTS TO VIOLATE, AND ANY PERSON WHO AIDS ANOTHER TO VIOLATE OR ATTEMPTS TO INDUCE HIM OR HER TO VIOLATE THE PROVISIONS OF PARAGRAPH (G) OF SUBDIVISION ELEVEN OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

13. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING IN ANY RESPECT THE POWER OR DUTY OF THE CHAIR TO INVESTIGATE INSTANCES OF MISCONDUCT, EITHER BEFORE OR AFTER INVESTIGATION BY THE ACUPUNCTURE PRACTICE COMMITTEE, OR TO TEMPORARILY SUSPEND THE AUTHORIZATION OF ANY ACUPUNCTURIST BELIEVED TO BE GUILTY OF SUCH MISCONDUCT. THE PROVISIONS

OF SUBDIVISION ONE OF SECTION THIRTEEN-D OF THIS ARTICLE WHICH ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION SHALL BE APPLICABLE AS IF FULLY SET FORTH IN THIS SECTION.

14. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT ACUPUNCTURISTS WHO PRACTICE AS PARTNERS, IN GROUPS OR AS A PROFESSIONAL CORPORATION FROM POOLING FEES AND MONEYS RECEIVED, EITHER BY THE PARTNERSHIP, PROFESSIONAL CORPORATION OR GROUP OR BY THE INDIVIDUAL MEMBERS THEREOF, FOR PROFESSIONAL SERVICES FURNISHED BY ANY INDIVIDUAL PROFESSIONAL MEMBER, OR EMPLOYEE OF SUCH PARTNERSHIP, CORPORATION OR GROUP, NOR SHALL THE PROFESSIONALS CONSTITUTING THE PARTNERSHIPS, CORPORATIONS, OR GROUPS BE PROHIBITED FROM SHARING, DIVIDING OR APPORTIONING THE FEES AND MONEYS RECEIVED BY THEM OR BY THE PARTNERSHIP, CORPORATION OR GROUP IN ACCORDANCE WITH A PARTNERSHIP OR OTHER AGREEMENT.

S 2. Subdivision 1 of section 8213 of the education law, as added by chapter 772 of the laws of 1990, is amended to read as follows:

(1) There is hereby established within the department a state board for acupuncture. The board shall consist of not less than eleven members to be appointed by the board of regents on the recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this [chapter] TITLE, four of whom shall be licensed acupuncturists, four of whom shall be licensed physicians certified to use acupuncture and three of whom shall be public members representing the consumer and community. Of the acupuncturists first appointed to the board, one may be a registered specialist's assistant-acupuncture provided that the term of such registered specialist's assistant-acupuncture shall not be more than four years. Of the members first appointed, three shall be appointed for a one year term, three shall be appointed for a two year term and three shall be appointed for a three year term, and two shall be appointed for a four year term. Thereafter all members shall serve for five year terms. In the event that more than eleven members are appointed, a majority of the additional members shall be licensed acupuncturists. The members of the board shall select one of themselves as [chairman] CHAIRPERSON to serve for a one year term.

S 3. The second undesignated paragraph of subdivision 2 of section 2 of the workers' compensation law, as amended by chapter 113 of the laws of 1946, is amended to read as follows:

"Chairman" OR "CHAIR" means the [chairman] CHAIRPERSON of the [workmen's] WORKERS' compensation board of the state of New York;

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, that effective immediately, the addition, amendment and/or repeal of any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such effective date.