

STATE OF NEW YORK

5438

2019-2020 Regular Sessions

IN ASSEMBLY

February 12, 2019

Introduced by M. of A. BRONSON -- read once and referred 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:

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

3 § 13-q. Care and treatment of injured employees by licensed or certi-
4 fied acupuncturists. 1. For purposes of this section, the term "acupunc-
5 turist" shall mean a person who is duly licensed and registered as a
6 licensed acupuncturist pursuant to article one hundred sixty of the
7 education law, or who is a certified acupuncturist pursuant to subdivi-
8 sion three of section eighty-two hundred sixteen of the education law;
9 and

10 2. (a) An injured employee, injured under circumstances which make
11 such an injury compensable under this article, may lawfully be treated
12 by an acupuncturist authorized by the chair to render acupuncture care
13 pursuant to this section. Such services shall be within the scope of the
14 profession of acupuncture as defined in subdivision one of section
15 eighty-two hundred eleven of the education law. Acupuncturists author-
16 ized by the chair to provide treatment pursuant to this section, shall
17 not be authorized to perform independent medical examinations.

18 (b) Medical bureaus, medical centers jointly operated by labor and
19 management representatives, hospitals and health maintenance organiza-
20 tions, authorized to provide medical care, may provide acupuncture
21 services when required, provided such care is rendered by an acupunctu-
22 rist as required by this section.

23 (c) An acupuncturist rendering service pursuant to this section shall
24 maintain records of the patient's condition and acupuncture treatment,

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

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1 and such records or reports shall be submitted to the chair on such
2 forms and at such times as the chair may require.

3 3. (a) An acupuncturist who is desirous of being authorized to render
4 acupuncture services under this section shall file an application for
5 authorization under this section with the acupuncture practice commit-
6 tee. The applicant shall agree to refrain from subsequently treating for
7 remuneration, as a private patient, any person seeking acupuncture
8 services, in connection with, or as a result of, any injury compensable
9 under this chapter, if he or she has been removed from the list of
10 acupuncturists authorized to render services under this chapter. This
11 agreement shall run to the benefit of the injured person so treated, and
12 shall be available as a defense in any action by such acupuncturist for
13 payment for treatment rendered by such acupuncturist after being removed
14 from the list of acupuncturists authorized to render acupuncture
15 services under this section. The acupuncture practice committee if it
16 deems such acupuncturist duly qualified shall recommend to the chair
17 that such person be authorized to render acupuncture services under this
18 section. Such recommendations shall be only advisory to the chair and
19 shall not be binding or conclusive.

20 (b) The chair may prepare and establish a schedule for the state or
21 schedules limited to defined localities of charges and fees for acupunc-
22 ture treatment and care, to be determined in accordance with and be
23 subject to change pursuant to rules promulgated by the chair. Before
24 preparing such schedule for the state or schedules for limited locali-
25 ties the chair shall request the acupuncture practice committee to
26 submit to such chair a report on the amount of remuneration deemed by
27 such committee to be fair and adequate for the types of acupuncture
28 services to be rendered under this chapter, but consideration shall be
29 given to the view of other interested parties. The amounts payable by
30 the employer for such treatment and services shall be the fees and
31 charges established by such schedule.

32 (c) In determining the schedule or schedules as provided in paragraph
33 (b) of this subdivision, the chair shall make a distinction between
34 treatment rendered by a duly licensed and registered acupuncturist
35 subject to the provisions of article one hundred sixty of the education
36 law and a certified acupuncturist subject to the provisions of section
37 eighty-two hundred sixteen of the education law, and the chair shall
38 prepare and establish a schedule or schedules reflecting fees and charg-
39 es appropriate to the nature and scope of the treatment rendered by each
40 type of practitioner, giving due consideration to all relevant factors
41 including, but not limited to, the level of acupuncture education of the
42 practitioner, the type of treatment rendered, whether the acupuncture
43 treatment is being provided as the principal treatment or as an adjunct
44 treatment, and the billing practices entailed, including whether the
45 practitioner submits one comprehensive bill or bills separately for the
46 acupuncture treatment, office visits and other items.

47 4. No claim for acupuncture services shall be valid and enforceable as
48 against the employer or employees unless within forty-eight hours
49 following the first treatment the acupuncturist giving such care or
50 treatment furnishes to the employer and directly to the chair a prelimi-
51 nary notice of such injury and treatment, and within fifteen days there-
52 after a more complete report and subsequent thereto progress reports as
53 requested in writing by the chair, board, employer or insurance carrier,
54 at intervals of not less than three weeks apart or at less frequent
55 intervals if requested on forms prescribed by the chair. The board may

1 excuse the failure to give such notices within the designated periods
2 when it finds it to be in the interest of justice to do so.

3 5. Fees for acupuncture services shall be payable only to a duly
4 licensed or certified acupuncturist pursuant to article one hundred
5 sixty of the education law, or to the agent, executor or administrator
6 of the estate of such acupuncturist. No acupuncturist rendering treat-
7 ment to a compensation claimant shall collect or receive a fee from such
8 claimant within this state, but shall have recourse for payment of
9 services rendered only to the employer under the provisions of this
10 section.

11 6. Whenever his or her attendance at a hearing is required, the
12 acupuncturist of the injured employee shall be entitled to receive a fee
13 from the employer in an amount to be fixed by the board, in addition to
14 any fee payable under section eight thousand one of the civil practice
15 law and rules.

16 7. (a) Unless within thirty days after a bill has been rendered to the
17 employer by the acupuncturist who has treated an injured employee, such
18 employer shall have notified the chair and such acupuncturist in writing
19 that such employer demands an impartial examination of the fairness of
20 the amount claimed by such acupuncturist for his or her services, the
21 right to such an impartial examination shall be deemed to be waived and
22 the amount claimed by such acupuncturist shall be deemed to be the fair
23 value of the services rendered. If the parties fail to agree as to the
24 acupuncture care rendered under this chapter to a claimant, such value
25 shall be decided by the acupuncture practice committee and the majority
26 decision of such committee shall be conclusive upon the parties as to
27 the value of the services rendered. The board may make an award for any
28 such bill or part thereof which remains unpaid in the same manner as an
29 award for bills rendered under subdivisions one and three of section
30 thirteen-g of this article, and such award may be collected in like
31 manner as an award of compensation. The chair shall assess the sum of
32 fifty dollars against the employer for each such award made by the
33 board, which sum shall be paid into the state treasury.

34 (b) Where an acupuncturist's bill has been determined to be due and
35 owing in accordance with the provisions of this section, the board may
36 impose a penalty of not more than one and one-half percent interest per
37 month payable to the acupuncturist in accordance with the rules and
38 regulations promulgated by the board.

39 (c) The parties to such proceeding shall each pay to the chair a sum
40 equal to five per centum of the amount payable under the decision of
41 such committee or a minimum of five dollars, whichever is greater. The
42 sums so collected shall be transferred to the state treasury to reim-
43 burse it on account of the expense of administering this section.

44 8. Within the limits prescribed by the education law for acupuncture
45 services, the report or testimony of an authorized acupuncturist
46 concerning the condition of an injured employee and treatment thereof
47 shall be deemed competent evidence and the professional opinion of the
48 acupuncturist as to causal relation and as to required treatment shall
49 be deemed competent but shall not be controlling. Nothing in this
50 section shall be deemed to deprive any employer or insurance carrier of
51 any right to a medical examination or presentation of medical testimony
52 now conferred by law.

53 9. The chair shall promulgate rules governing the procedure to be
54 followed by those rendering acupuncture services under this section,
55 which rules so far as practicable shall conform to the rules presently
56 in effect with reference to medical care furnished to claimants in work-

1 ers' compensation. In connection with the promulgation of such rules the
2 chair may consult the acupuncture practice committee and may take into
3 consideration the view of other interested parties.

4 10. The chair shall appoint for and with jurisdiction in the entire
5 state of New York a single acupuncture practice committee composed of
6 two licensed acupuncturists, and one duly licensed physician of the
7 state of New York. Each member of such committee shall receive compen-
8 sation either on an annual basis or on a per diem basis to be fixed by
9 the chair within amounts appropriated therefor. One of such licensed
10 acupuncturists shall be designated by the chair as a chair of such
11 acupuncture practice committee. No member of such committee shall render
12 acupuncture services under this section nor be an employer or accept or
13 participate in any fee from any insurance company authorized to write
14 workers' compensation insurance in this state or from any self-insurer,
15 whether such employment or fee relates to a workers' compensation claim
16 or otherwise. The attorney general, upon request, shall advise and
17 assist such committee.

18 11. The acupuncture practice committee shall investigate, hear and
19 make findings with respect to all charges as to professional or other
20 misconduct of any authorized acupuncturists as provided in this section
21 under rules and procedures to be prescribed by the chair and shall
22 report evidence of such misconduct, with their findings and recommenda-
23 tions with respect thereto, to the chair. The findings, decision and
24 recommendation of such acupuncture practice committee shall be advisory
25 to the chair only, and shall not be binding or conclusive upon him or
26 her. The chair shall remove from the list of acupuncturists authorized
27 to render acupuncture services under this chapter the name of any
28 acupuncturist who he or she shall find after reasonable investigation is
29 disqualified because such acupuncturist:

30 (a) has been guilty of professional or other misconduct or incompeten-
31 cy in connection with the rendering of acupuncture services,

32 (b) has exceeded the limits of his or her professional competence in
33 rendering acupuncture services under the law, or has made false state-
34 ments regarding qualifications in the application for authorization,

35 (c) has failed to submit timely, full and truthful acupuncture evalu-
36 ation and treatment reports of all findings to the employer and directly
37 to the chair of the board within the time limits provided in this
38 section,

39 (d) has rendered acupuncture services under this chapter for a fee
40 less than that fixed in the fee schedule,

41 (e) has solicited or has employed another to solicit for himself or
42 herself or for another professional treatment, examination or care of an
43 injured employee with any claim under this chapter,

44 (f) has refused to appear before or answer upon request of the chair,
45 board, acupuncture practice committee or any duly authorized officer of
46 the state, any legal question or produce any relevant book or paper
47 concerning conduct under an authorization granted under law, or

48 (g) has directly or indirectly requested, received or participated in
49 the division, transference, assignment, rebating, splitting or refunding
50 of a fee for, or has directly or indirectly requested, received or prof-
51 ited by means of a credit or otherwise valuable consideration as a
52 commission, discount or gratuity in connection with the treatment of a
53 workers' compensation claimant.

54 12. Any person who violates or attempts to violate, and any person who
55 aids another to violate or attempts to induce him or her to violate the

1 provisions of paragraph (g) of subdivision eleven of this section shall
2 be guilty of a misdemeanor.

3 13. Nothing in this section shall be construed as limiting in any
4 respect the power or duty of the chair to investigate instances of
5 misconduct, either before or after investigation by the acupuncture
6 practice committee, or to temporarily suspend the authorization of any
7 acupuncturist believed to be guilty of such misconduct. The provisions
8 of subdivision one of section thirteen-d of this article which are not
9 inconsistent with the provisions of this section shall be applicable as
10 if fully set forth in this section.

11 14. Nothing contained in this section shall prohibit acupuncturists
12 who practice as partners, in groups or as a professional corporation
13 from pooling fees and moneys received, either by the partnership,
14 professional corporation or group or by the individual members thereof,
15 for professional services furnished by any individual professional
16 member, or employee of such partnership, corporation or group, nor shall
17 the professionals constituting the partnerships, corporations, or groups
18 be prohibited from sharing, dividing or apportioning the fees and moneys
19 received by them or by the partnership, corporation or group in accord-
20 ance with a partnership or other agreement.

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

23 (1) There is hereby established within the department a state board
24 for acupuncture. The board shall consist of not less than eleven members
25 to be appointed by the board of regents on the recommendation of the
26 commissioner for the purpose of assisting the board of regents and the
27 department on matters of professional licensing and professional conduct
28 in accordance with section sixty-five hundred eight of this [~~chapter~~]
29 title, four of whom shall be licensed acupuncturists, four of whom shall
30 be licensed physicians certified to use acupuncture and three of whom
31 shall be public members representing the consumer and community. Of the
32 acupuncturists first appointed to the board, one may be a registered
33 specialist's assistant-acupuncture provided that the term of such regis-
34 tered specialist's assistant-acupuncture shall not be more than four
35 years. Of the members first appointed, three shall be appointed for a
36 one year term, three shall be appointed for a two year term and three
37 shall be appointed for a three year term, and two shall be appointed for
38 a four year term. Thereafter all members shall serve for five year
39 terms. In the event that more than eleven members are appointed, a
40 majority of the additional members shall be licensed acupuncturists. The
41 members of the board shall select one of themselves as [~~chairman~~] chair-
42 person to serve for a one year term.

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

46 "Chairman" or "chair" means the [~~chairman~~] chairperson of the [~~work-~~
47 ~~men's~~] workers' compensation board of the state of New York;

48 § 4. This act shall take effect immediately.