

STATE OF NEW YORK

5127

2019-2020 Regular Sessions

IN SENATE

April 10, 2019

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the licensure of athletic trainers; and to amend the social services law, in relation to adding athletic trainers to the list of persons and officials required to report cases of suspected child abuse or maltreatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 8351 of the education law, as amended by chapter 658 of the laws of 1993, is amended to read as follows:

§ 8351. [~~Definition.~~] Definitions. As used in this article:

1. "athletic trainer" means any person who is duly [~~certified~~] licensed in accordance with this article to perform athletic training under the supervision of a physician [~~and limits his or her practice to secondary schools, institutions of postsecondary education, professional athletic organizations, or a person who, under the supervision of a physician, carries out comparable functions on orthopedic athletic injuries, excluding spinal cord injuries, in a health care organization. Supervision of an athletic trainer by a physician shall be continuous but shall not be construed as requiring the physical presence of the supervising physician at the time and place where such services are performed.~~]

~~The scope of work described herein shall not be construed as authorizing the reconditioning of neurologic injuries, conditions or disease].~~

2. "emergent" means a serious, unexpected and often dangerous situation requiring immediate action.

3. "supervision" shall mean by a physician and shall be continuous but shall not be construed as requiring the physical presence of the supervising physician at the time and place where such services are performed, and shall further include use of standard written protocols

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

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1 for athletic training services developed in consultation with the super-
2 vising physician.

3 § 2. Section 8352 of the education law, as amended by chapter 658 of
4 the laws of 1993, is amended to read as follows:

5 § 8352. Definition of practice of athletic training. [~~The practice of~~
6 ~~the profession of athletic training is defined as the application of~~
7 ~~principles, methods and procedures for managing athletic injuries, which~~
8 ~~shall include the preconditioning, conditioning and reconditioning of an~~
9 ~~individual who has suffered an athletic injury through the use of appro-~~
10 ~~priate preventative and supportive devices, under the supervision of a~~
11 ~~physician and recognizing illness and referring to the appropriate~~
12 ~~medical professional with implementation of treatment pursuant to physi-~~
13 ~~cian's orders.~~]

14 1. The practice of the profession of athletic training
15 is performed by athletic trainers. It includes the prevention, recogni-
16 tion, examination, evaluation, assessment, management, treatment and
17 rehabilitation of neuromusculoskeletal injuries that occur in active
18 individuals and the work is performed under the supervision of a physi-
19 cian pursuant to a standard written protocol. Athletic training involves
20 the recognition, evaluation, and assistance in the management of sport-
21 related illnesses and medical conditions, pursuant to the athletic
22 trainer's education, experience, and competencies. The practice of
23 athletic training may include use of various clinically appropriate
24 therapeutic modalities and techniques pursuant to the athletic trainer's
25 education and training as determined by the department. Supervision by
26 a physician shall be continuous but shall not be construed as requiring
27 the physical presence of the supervising physician at the time and place
28 where such services are performed.

29 2. The scope of work described in this section shall not be construed
30 as authorizing the management and treatment of acute, subacute, or
31 chronic neurological pathologies and comorbidities or neurological
32 disease processes with the exception of initial evaluation and triage of
33 emergent neurological conditions such as potential concussions, spinal
34 cord injuries or nerve injuries resulting from participation in an
35 athletic endeavor, while training, engaging in performing arts, public
36 protection or emergency services, or during adaptive athletics. Further,
37 athletic trainers shall work with individuals pursuant to standard writ-
38 ten protocol to manage, monitor and treat such injuries after an indi-
39 vidual has been cleared by a supervising physician to begin rehabili-
40 tation for participation in an athletic endeavor, while training,
41 engaging in performing arts, public protection or emergency services, or
42 during adaptive athletics. Athletic training includes instruction to
43 coaches, athletes, active individuals, parents, medical personnel and
44 communities in the area of care and prevention of [athletic] neuromuscu-
45 loskeletal injuries. Supervision by a physician shall include standard
46 written protocols for athletic training services.

47 [~~The scope of work described herein shall not be construed as author-~~
48 ~~izing the reconditioning of neurologic injuries, conditions or disease.~~]

49 § 3. Section 8353 of the education law, as added by chapter 798 of the
50 laws of 1992, is amended to read as follows:

51 § 8353. Use of the title "[~~certified~~] athletic trainer". Only a
52 person [~~certified~~] licensed or otherwise authorized under this article
53 shall practice athletic training or use the title "[~~certified~~] athletic
54 trainer" or the abbreviation "AT".

55 § 4. Section 8354 of the education law, as added by chapter 798 of the
laws of 1992, is amended to read as follows:

§ 8354. State committee for athletic trainers. A state committee for athletic trainers shall be appointed by the board of regents, upon the recommendation of the commissioner and shall assist on matters of ~~[certification]~~ professional licensing and professional conduct in accordance with section six thousand five hundred eight of this title. The committee shall consist of ~~[five]~~ seven members ~~[who]~~, five of whom are athletic trainers ~~[certified]~~ licensed in this state, one practicing physician who is licensed in this state to practice as an orthopedic surgeon, a primary care/family practice physician, a sports medicine practitioner, or a neurologist, and one public member that is a consumer of the profession. The committee shall assist the state board for medicine in athletic training matters. Nominations and terms of office of the members of the state committee for athletic trainers shall conform to the corresponding provisions relating thereto for state boards under article one hundred thirty of this chapter. ~~[Notwithstanding the foregoing, the members of the first committee need not be certified prior to their appointment to the committee.]~~

§ 5. Section 8355 of the education law, as added by chapter 798 of the laws of 1992, is amended to read as follows:

§ 8355. Requirements and procedure for professional ~~[certification]~~ licensure. ~~[For certification as a certified]~~ To qualify for a license as an athletic trainer under this article, an applicant shall fulfill the following requirements:

1. Application: file an application with the department;
2. Education: have received an education including a bachelor's, its equivalent or higher degree in accordance with the commissioner's regulations, provided however, as of December thirty-first, two thousand twenty-six, applicants must have received a master's degree, its equivalent or higher in accordance with the commissioner's regulations;
3. Experience: have experience in accordance with the commissioner's regulations;
4. Examination: pass an examination in accordance with the commissioner's regulations;
5. Age: be at least twenty-one years of age; ~~[and]~~
6. Fees: pay a fee for an initial ~~[certificate]~~ license of one hundred dollars to the department; and a fee of fifty dollars for each triennial registration period~~[-]; and~~
7. Character: be of good moral character as determined by the department.

§ 6. Section 8356 of the education law, as amended by chapter 658 of the laws of 1993, is amended to read as follows:

§ 8356. ~~[Special provisions. A person shall be certified without examination provided that, within three years from the effective date of regulations implementing the provisions of this article, the individual:~~

~~1. files an application and pays the appropriate fees to the department; and~~

~~2. meets the requirements of subdivisions two and five of section eight thousand three hundred fifty-five of this article and who in addition:~~

~~(a) has been actively engaged in the profession of athletic training for a minimum of four years during the seven years immediately preceding the effective date of this article; or~~

~~(b) is certified by a United States certifying body acceptable to the department.]~~ Exempt persons. 1. Nothing contained in this article shall prohibit:

1 (a) the practice of athletic training that is an integral part of a
2 program of study by students enrolled in an athletic training program
3 approved by the department or the substantial equivalent as determined
4 by the department. Students enrolled in an approved athletic training
5 program shall be identified as "athletic training students" and shall
6 only practice athletic training under the direction and immediate super-
7 vision of an athletic trainer currently licensed under this article. An
8 athletic training student shall not hold himself or herself out as a
9 licensed athletic trainer; or

10 (b) the practice of athletic training by any person who is appropri-
11 ately authorized and in good standing to practice athletic training in
12 another state from acting as an athletic trainer without a New York
13 state license solely for the following purposes:

14 (1) clinical education, practice demonstrations or clinical research
15 that is within the practice of athletic training in connection with a
16 program of basic clinical education, graduate education, or post-gradu-
17 ate education in an approved school of athletic training, or in a clin-
18 ical facility, or a health care agency, or for the purposes of continu-
19 ing education not to exceed a duration of thirty days in any calendar
20 year, and any athletic trainer who is licensed in another state or coun-
21 try, who is visiting an athletic training program, conducting clinical
22 education or clinical research shall be under the supervision of an
23 athletic trainer licensed in the state and such practice shall be limit-
24 ed to such instruction or research; or

25 (2) assisting in the care of athletes in a specific sanctioned athlet-
26 ic event.

27 2. Any person practicing athletic training in this state pursuant to
28 this subdivision shall be subject to personal and subject matter juris-
29 isdiction and the disciplinary and regulatory authority of the board of
30 regents as if he or she is a licensee and as if the exemption pursuant
31 to this subdivision is a license. Such individuals shall consent to the
32 appointment of the secretary of state or other public official accepta-
33 ble to the department, in such athletic trainers' states of licensure as
34 the athletic trainers' agents upon whom process may be served in any
35 actions or proceedings by the department against such athletic trainers.
36 Such individuals shall comply with the provisions of this article, the
37 rules of the board of regents and the regulations of the commissioner
38 relating to professional misconduct, disciplinary proceedings and penal-
39 ties for professional misconduct.

40 3. (a) Any athletic trainer who is licensed and in good standing in
41 another state or territory, and who has a written agreement to provide
42 athletic training services to athletes and team personnel of a United
43 States sports team recognized by the United States Olympic Committee or
44 an out-of-state secondary school, an institution of postsecondary educa-
45 tion, a professional athletic organization sports team, or a performing
46 arts troupe, may provide athletic training services to such athletes and
47 team personnel at a discrete sanctioned team sporting event or perform-
48 ance in this state as defined by the commissioner in regulations,
49 provided such services are provided only to such athletes and team
50 personnel at the discrete sanctioned team sporting event or performance.
51 Any such athletic training services shall be provided only five days
52 before through three days after each discrete sanctioned team sporting
53 event or traveling performance.

54 (b) Any person practicing as an athletic trainer in this state pursu-
55 ant to this subdivision shall be subject to the personal and subject
56 matter jurisdiction and disciplinary and regulatory authority of the

1 board of regents as if he or she is a licensee and as if the exemption
2 pursuant to this subdivision is a license. Such individual shall comply
3 with applicable provisions of the rules of the board of regents, and the
4 regulations of the commissioner, relating to professional misconduct,
5 disciplinary proceedings and penalties for professional misconduct.

6 § 7. The education law is amended by adding two new sections 8356-a
7 and 8356-b to read as follows:

8 § 8356-a. Mandatory continuing education. 1. (a) Each licensed athlet-
9 ic trainer required under this article to register triennially with the
10 department to practice in the state shall comply with the provisions of
11 the mandatory continuing education requirements prescribed in subdivi-
12 sion two of this section except as set forth in paragraphs (b) and (c)
13 of this subdivision. Licensed athletic trainers who do not satisfy the
14 mandatory continuing education requirements shall not practice until
15 they have met such requirements, and they have been issued a registra-
16 tion certificate, except that a licensed athletic trainer may practice
17 without having met such requirements if he or she is issued a condi-
18 tional registration certificate pursuant to subdivision three of this
19 section.

20 (b) Each licensed athletic trainer shall be exempt from the mandatory
21 continuing education requirement for the triennial registration period
22 during which he or she is first licensed. In accordance with the intent
23 of this section, adjustment to the mandatory continuing education
24 requirement may be granted by the department for reasons of health
25 certified by an appropriate health care professional, for extended
26 active duty with the armed forces of the United States, or for other
27 good cause acceptable to the department which may prevent compliance.

28 (c) A licensed athletic trainer not engaged in practice, as determined
29 by the department, shall be exempt from the mandatory continuing educa-
30 tion requirement upon the filing of a statement with the department
31 declaring such status. Any licensee who returns to the practice of
32 athletic training during the triennial registration period shall notify
33 the department prior to reentering the profession and shall meet such
34 mandatory education requirements as shall be prescribed by regulations
35 of the commissioner.

36 2. During each triennial registration period, an applicant for regis-
37 tration as a licensed athletic trainer shall complete a minimum of
38 forty-five hours of acceptable formal continuing education, as specified
39 in subdivision four of this section. Any licensed athletic trainer whose
40 first registration date following the effective date of this section
41 occurs less than three years from such effective date, but on or after
42 January first, two thousand twenty, shall complete continuing education
43 hours on a prorated basis at the rate of one hour per month for the
44 period beginning January first, two thousand twenty and then fifteen
45 hours per year until his or her first registration date thereafter. A
46 licensee who has not satisfied the mandatory continuing education
47 requirements shall not be issued a triennial registration certificate by
48 the department and shall not practice unless and until a conditional
49 registration certificate is issued as provided for in subdivision three
50 of this section. Continuing education hours taken during one triennium
51 may not be transferred to a subsequent triennium.

52 3. The department, in its discretion, may issue a conditional regis-
53 tration to a licensee who fails to meet the continuing education
54 requirements established in subdivision two of this section but who
55 agrees to make up any deficiencies and complete any additional education
56 which the department may require. The fee for such a conditional regis-

1 tration shall be the same as, and in addition to, the fee for the trien-
2 ennial registration. The duration of such conditional registration shall
3 be determined by the department but shall not exceed one year. Any
4 licensee who is notified of the denial of registration for failure to
5 submit evidence, satisfactory to the department, of required continuing
6 education and who practices without such registration may be subject to
7 disciplinary proceedings pursuant to section sixty-five hundred ten of
8 this title.

9 4. As used in subdivision two of this section, "acceptable formal
10 education" shall mean formal courses of learning which contribute to
11 professional practice in athletic training and which meet the standards
12 prescribed by regulations of the commissioner. Such formal courses of
13 learning shall include, but not be limited to, collegiate level credit
14 and non-credit courses, professional development programs and technical
15 sessions offered by national, state and local professional associations,
16 and any other organized educational and technical programs acceptable to
17 the department. The department may, in its discretion and as needed to
18 contribute to the health and welfare of the public, require the
19 completion of continuing education courses in specific subjects to
20 fulfill this mandatory continuing education requirement. Continuing
21 education courses must be taken from a provider approved by the depart-
22 ment, based upon an application and fee pursuant to the regulations of
23 the commissioner.

24 5. A licensed athletic trainer shall maintain adequate documentation
25 of completion of acceptable formal continuing education and shall
26 provide such documentation at the request of the department. Failure to
27 provide such documentation upon the request of the department shall be
28 an act of misconduct subject to disciplinary proceedings pursuant to
29 section sixty-five hundred ten of this title.

30 6. The mandatory continuing education fee shall be payable on or
31 before the first day of each triennial registration period, and shall be
32 paid in addition to the triennial registration fee required by section
33 eighty-three hundred fifty-five of this article.

34 § 8356-b. Special provisions. Any person who is certified as an
35 athletic trainer by the department on the effective date of this section
36 shall have one year from the effective date to apply for and qualify for
37 licensure as an athletic trainer without meeting any additional require-
38 ments.

39 § 8. Section 8357 of the education law, as added by chapter 798 of the
40 laws of 1992, is amended to read as follows:

41 § 8357. Non-liability of [~~certified~~] **licensed** athletic trainers for
42 first aid or emergency treatment. Notwithstanding any inconsistent
43 provision of any general, special or local law, any [~~certified~~] **licensed**
44 athletic trainer who voluntarily and without the expectation of monetary
45 compensation renders first aid or emergency treatment at the scene of an
46 accident or other emergency, outside a hospital, doctor's office or any
47 other place having proper and necessary athletic training equipment, to
48 a person who is unconscious, ill or injured, shall not be liable for
49 damages for injuries alleged to have been sustained by such person or
50 for damages for the death of such person alleged to have occurred by
51 reason of an act or omission in the rendering of such first aid or emer-
52 gency treatment unless it is established that such injuries were or such
53 death was caused by gross negligence on the part of such athletic train-
54 er. Nothing in this section shall be deemed or construed to relieve a
55 [~~certified~~] **licensed** athletic trainer from liability for damages for
56 injuries or death caused by an act or omission on the part of an athlet-

ic trainer while rendering professional services in the normal and ordinary course of his or her practice.

§ 9. Section 8358 of the education law is renumbered section 8359 and a new section 8358 is added to read as follows:

§ 8358. Limited permits. The following requirements for a limited permit shall apply to all professions licensed or certified pursuant to this article:

1. The department may issue a limited permit to an applicant who meets all qualifications for licensure, except the examination, in accordance with regulations promulgated therefor.

2. Limited permits shall be for one year; such limited permits may not be renewed.

3. The fee for each limited permit and for each renewal shall be seventy dollars.

4. A limited permit holder shall practice only under the supervision of a physician as determined in accordance with the commissioner's regulations.

§ 10. Paragraph a of subdivision 3 of section 6507 of the education law, as amended by chapter 554 of the laws of 2013, is amended to read as follows:

a. Establish standards for preprofessional and professional education, experience and licensing examinations as required to implement the article for each profession. Notwithstanding any other provision of law, the commissioner shall establish standards requiring that all persons applying, on or after January first, nineteen hundred ninety-one, initially, or for the renewal of, a license, registration or limited permit to be a physician, chiropractor, dentist, registered nurse, podiatrist, optometrist, psychiatrist, psychologist, licensed master social worker, licensed clinical social worker, licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor, licensed psychoanalyst, dental hygienist, licensed behavior analyst, ~~or~~ certified behavior analyst assistant or athletic trainer shall, in addition to all the other licensure, certification or permit requirements, have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set out in sections four hundred thirteen through four hundred twenty of the social services law, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. Such coursework or training may also include information regarding the physical and behavioral indicators of the abuse of individuals with mental retardation and other developmental disabilities and voluntary reporting of abused or neglected adults to the office ~~of mental retardation and~~ for people with developmental disabilities or the local adult protective services unit. Each applicant shall provide the department with documentation showing that he or she has completed the required training. The department shall provide an exemption from the child abuse and maltreatment training requirements to any applicant who requests such an exemption and who shows, to the department's satisfaction, that there would be no need because of the nature of his or her practice for him or her to complete such training;

1 § 11. Section 6505-b of the education law, as amended by chapter 10 of
2 the laws of 2018, is amended to read as follows:

3 § 6505-b. Course work or training in infection control practices.
4 Every dentist, registered nurse, licensed practical nurse, podiatrist,
5 optometrist, athletic trainer and dental hygienist practicing in the
6 state shall, on or before July first, nineteen hundred ninety-four and
7 every four years thereafter, complete course work or training appropri-
8 ate to the professional's practice approved by the department regarding
9 infection control, which shall include sepsis, and barrier precautions,
10 including engineering and work practice controls, in accordance with
11 regulatory standards promulgated by the department, in consultation with
12 the department of health, which shall be consistent, as far as appropri-
13 ate, with such standards adopted by the department of health pursuant to
14 section two hundred thirty-nine of the public health law to prevent the
15 transmission of HIV, HBV, HCV and infections that could lead to sepsis
16 in the course of professional practice. Each such professional shall
17 document to the department at the time of registration commencing with
18 the first registration after July first, nineteen hundred ninety-four
19 that the professional has completed course work or training in accord-
20 ance with this section, provided, however that a professional subject to
21 the provisions of paragraph (f) of subdivision one of section twenty-
22 eight hundred five-k of the public health law shall not be required to
23 so document. The department shall provide an exemption from this
24 requirement to anyone who requests such an exemption and who (i) clearly
25 demonstrates to the department's satisfaction that there would be no
26 need for him or her to complete such course work or training because of
27 the nature of his or her practice or (ii) that he or she has completed
28 course work or training deemed by the department to be equivalent to the
29 course work or training approved by the department pursuant to this
30 section. The department shall consult with organizations representative
31 of professions, institutions and those with expertise in infection
32 control and HIV, HBV, HCV and infections that could lead to sepsis with
33 respect to the regulatory standards promulgated pursuant to this
34 section.

35 § 12. Paragraph (a) of subdivision 1 of section 413 of the social
36 services law, as amended by section 7 of part C of chapter 57 of the
37 laws of 2018, is amended to read as follows:

38 (a) The following persons and officials are required to report or
39 cause a report to be made in accordance with this title when they have
40 reasonable cause to suspect that a child coming before them in their
41 professional or official capacity is an abused or maltreated child, or
42 when they have reasonable cause to suspect that a child is an abused or
43 maltreated child where the parent, guardian, custodian or other person
44 legally responsible for such child comes before them in their profes-
45 sional or official capacity and states from personal knowledge facts,
46 conditions or circumstances which, if correct, would render the child an
47 abused or maltreated child: any physician; registered physician assist-
48 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
49 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
50 athletic trainer; psychologist; registered nurse; social worker; emer-
51 gency medical technician; licensed creative arts therapist; licensed
52 marriage and family therapist; licensed mental health counselor;
53 licensed psychoanalyst; licensed behavior analyst; certified behavior
54 analyst assistant; hospital personnel engaged in the admission, examina-
55 tion, care or treatment of persons; a Christian Science practitioner;
56 school official, which includes but is not limited to school teacher,

1 school guidance counselor, school psychologist, school social worker,
2 school nurse, school administrator or other school personnel required to
3 hold a teaching or administrative license or certificate; full or part-
4 time compensated school employee required to hold a temporary coaching
5 license or professional coaching certificate; social services worker;
6 employee of a publicly-funded emergency shelter for families with chil-
7 dren; director of a children's overnight camp, summer day camp or trav-
8 eling summer day camp, as such camps are defined in section thirteen
9 hundred ninety-two of the public health law; day care center worker;
10 school-age child care worker; provider of family or group family day
11 care; employee or volunteer in a residential care facility for children
12 that is licensed, certified or operated by the office of children and
13 family services; or any other child care or foster care worker; mental
14 health professional; substance abuse counselor; alcoholism counselor;
15 all persons credentialed by the office of alcoholism and substance abuse
16 services; employees, who are expected to have regular and substantial
17 contact with children, of a health home or health home care management
18 agency contracting with a health home as designated by the department of
19 health and authorized under section three hundred sixty-five-1 of this
20 chapter or such employees who provide home and community based services
21 under a demonstration program pursuant to section eleven hundred fifteen
22 of the federal social security act who are expected to have regular and
23 substantial contact with children; peace officer; police officer;
24 district attorney or assistant district attorney; investigator employed
25 in the office of a district attorney; or other law enforcement official.
26 § 13. This act shall take effect two years after it shall have become
27 a law, provided, however, that section 8356-a of the education law as
28 added by section seven of this act shall take effect five years after
29 this act shall have become a law. Effective immediately, the addition,
30 amendment and/or repeal of any rule or regulation necessary for the
31 implementation of this act on its effective date are authorized to be
32 made and completed on or before such date.