STATE OF NEW YORK

5127--A

2019-2020 Regular Sessions

IN SENATE

April 10, 2019

Introduced by Sens. MAY, RIVERA, SEWARD, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 **of the practice of athletic training**. [~~As used in this article~~

~~"athletic trainer" means any person who is duly certified 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.~~] **1. Definition. The practice of the profession of athletic training is performed by athletic trainers who are defined as health care professionals, and is defined as:**

(a) The prevention, recognition, examination, evaluation, assessment, management, treatment and rehabilitation of athletic injuries that occur

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

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in active individuals. Athletic training involves the recognition, evaluation, and assistance in the management of sport-related illnesses and medical conditions, pursuant to the athletic trainer's education, experience, and competencies.

(b) The work of athletic training is performed under the supervision of a physician pursuant to a standard written protocol for athletic training services. Supervision 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.

(c) The practice of athletic training may include use of various clinically appropriate therapeutic modalites and techniques.

(d) The scope of work described [~~herein shall not be construed as authorizing the reconditioning of neurologic injuries, conditions or disease~~] in this section shall not be construed as authorizing the management and treatment of acute, subacute, or chronic neurological pathologies and comorbidities or neurological disease processes with the exception of initial evaluation and triage of emergent neurological conditions such as potential concussions, spinal cord injuries or nerve injuries resulting from participation in an athletic endeavor, while training, or engaged in performing arts, public protection, emergency services, or military service, or during adaptive athletics. Once the individual has been cleared by a supervising physician, after sustaining such an injury, the athletic trainer shall work with the individual pursuant to standard written protocol to manage, monitor and treat such injuries for participation in rehabilitation for an athletic endeavor, while training, engaging in performing arts, public protection, emergency services, military services or during adaptive athletics. Athletic trainers shall work with individuals pursuant to standard written protocol to manage, monitor and treat such injuries for participation in rehabilitation for an athletic endeavor, while training, engaging in performing arts, public protection, emergency services, military services or during adaptive athletics.

(e) Athletic training includes education and instruction to coaches, athletes, active individuals, parents, medical personnel and communities in the area of care and prevention of athletic injuries, sports-related illnesses and medical conditions.

2. Boundaries of professional practice. Any individual whose license or authority to practice derives from the provisions of this article shall be prohibited from prescribing any medication or controlled substance or performing surgery, suturing, or any invasive procedures, in which human tissue is cut, altered, or otherwise pierced by mechanical or other means, including needles, except that nothing in this section shall be construed to prohibit the use of an epinephrine auto-injector device pursuant to section three thousand-c of the public health law.

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

§ 8352. [~~Definition of practice of~~] Definitions related to athletic training. [~~The practice of the profession of athletic training is defined as the application of principles, methods and procedures for managing athletic injuries, which shall include the preconditioning, conditioning and reconditioning of an individual who has suffered an athletic injury through the use of appropriate preventative and supportive devices, under the supervision of a physician and recognizing illness and referring to the appropriate medical professional with~~

~~implementation of treatment pursuant to physician's orders. Athletic training includes instruction to coaches, athletes, parents, medical personnel and communities in the area of care and prevention of athletic injuries.~~

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

As used in this article, the following terms shall have the following meanings:

1. "emergent" shall mean a serious, unexpected and often dangerous situation requiring immediate action.

2. "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 for athletic training services developed in consultation with the supervising physician.

3. "sport-related illnesses and medical conditions" shall mean any disease, disorder, sickness or affliction that arises from or is a manifestation of a physically active individual's participation in an exercise, a sport, a game, a recreational activity or other activity, or any other condition, that may require immediate intervention by an athletic trainer, acting with the consent and under the direction of a physician.

4. "standard written protocol" shall mean a written agreement or other document developed in conjunction with the supervising physician, which identifies and is signed by the supervising physician and the licensed athletic trainer, and describes the manner and frequency in which the licensed athletic trainer regularly communicates with the supervising physician and includes standard operating procedures, developed in agreement with the supervising physician and licensed athletic trainer, that the licensed athletic trainer follows when not directly supervised onsite by the supervising physician.

5. "active individual" shall mean one who engages in activities that require a high degree of physical exertion, that involve training and where injury occurs during such training or athletic endeavor, including but not limited to athletic individuals, performing artists and individuals involved in public protection, emergency services, or military service, or individuals involved in adaptive athletics.

6. "athletic injury" shall mean any injury sustained as a result of participation in an exercise, a sport, a game, a recreational activity or any other activity that requires a level of strength, flexibility or agility that is comparable to the level of strength, flexibility or agility required for an exercise, a sport, a game or a recreational activity.

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

§ 8353. Use of the title "[~~certified~~] licensed athletic trainer". Only a person [~~certified~~] licensed or otherwise authorized under this article shall practice athletic training or use the title "[~~certified~~] licensed athletic trainer" or the abbreviation "AT" in connection with his or her name or with any trade name in the conduct of his or her profession.

§ 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 title eight** 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-eight, 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:**

(a) the practice of athletic training that is an integral part of a program of study by students enrolled in an athletic training program acceptable by the department or the substantial equivalent as determined

by the department. Students enrolled in an athletic training program determined as acceptable by the department shall be identified as "athletic training students" and shall only practice athletic training under the direction and supervision of an athletic trainer currently licensed under this article. An athletic training student shall not hold himself or herself out as a licensed athletic trainer; or

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

(1) clinical education, practice demonstrations or clinical research that is within the practice of athletic training in connection with a program of basic clinical education, graduate education, or post-graduate education in an approved school of athletic training, or in a clinical facility, or a health care agency, or for the purposes of continuing education not to exceed a duration of thirty days in any calendar year, and any athletic trainer who is licensed in another state or country, who is visiting an athletic training program, conducting clinical education or clinical research shall be under the supervision of an athletic trainer licensed in the state and such practice shall be limited to such instruction or research; or

(2) assisting in the care of athletes in a discrete sanctioned athletic event.

2. Any person practicing athletic training in this state pursuant to this subdivision shall be subject to personal and subject matter jurisdiction and the disciplinary and regulatory authority of the board of regents as if he or she is a licensee and as if the exemption pursuant to this subdivision is a license. Such individuals shall consent to the appointment of the secretary of state or other public official acceptable to the department, in such athletic trainers' states of licensure as the athletic trainers' agents upon whom process may be served in any actions or proceedings by the department against such athletic trainers. Such individuals shall comply with the provisions of this article, the rules of the board of regents and the regulations of the commissioner relating to professional misconduct, disciplinary proceedings and penalties for professional misconduct.

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

(b) Any person practicing as an athletic trainer in this state pursuant to this subdivision shall be subject to the personal and subject matter jurisdiction and disciplinary and regulatory authority of the board of regents as if he or she is a licensee and as if the exemption pursuant to this subdivision is a license. Such individual shall comply with applicable provisions of the rules of the board of regents, and the

regulations of the commissioner, relating to professional misconduct, disciplinary proceedings and penalties for professional misconduct.

4. This article shall not be construed to prohibit qualified members of other licensed or legally recognized professions from performing work incidental to the practice of their profession, except that such persons may not hold themselves out under the title athletic trainer or as performing athletic training.

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

§ 8356-a. Mandatory continuing education. 1. (a) Each licensed athletic trainer required under this article to register triennially with the department to practice in the state shall comply with the provisions of the mandatory continuing education requirements prescribed in subdivision two of this section except as set forth in paragraphs (b) and (c) of this subdivision. Licensed athletic trainers who do not satisfy the mandatory continuing education requirements shall not practice until they have met such requirements, and they have been issued a registration certificate, except that a licensed athletic trainer may practice without having met such requirements if he or she is issued a conditional registration certificate pursuant to subdivision three of this section.

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

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

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

3. The department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education requirements established in subdivision two of this section but who

agrees to make up any deficiencies and complete any additional education which the department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the department but shall not exceed one year. Any licensee who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of required continuing education and who practices without such registration may be subject to disciplinary proceedings pursuant to section sixty-five hundred ten of this title.

4. For purposes of this section:

(a) "acceptable learning activities" shall include, but not be limited to, formal courses of learning which contribute to professional practice in psychology and/or self-study activities; independent study; formal mentoring activities; publication in professional journals; or lectures, which meet the standards prescribed by regulations of the commissioner; and

(b) "formal courses of learning" shall include, but not be limited to, collegiate level credit and non-credit courses, professional development programs and technical sessions offered by national, state and local professional associations and any other organizations acceptable to the department, and any other organized educational and technical programs acceptable to the department. Formal courses shall be taken from a sponsor approved by the department, based upon an application and fee, pursuant to the regulations of the commissioner.

5. The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education credits in specific subjects to fulfill this mandatory continuing education requirement.

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

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

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

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

§ 8357. Non-liability of [~~certified~~] licensed athletic trainers for first aid or emergency treatment. Notwithstanding any inconsistent provision of any general, special or local law, any [~~certified~~] licensed athletic trainer who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside a hospital, doctor's office or any other place having proper and necessary athletic training equipment, to a person who is unconscious, ill or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by

reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such athletic trainer. Nothing in this section shall be deemed or construed to relieve a [~~certified~~] **licensed** athletic trainer from liability for damages for injuries or death caused by an act or omission on the part of an athletic 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 672 of the laws of 2019, 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 for people with developmental disabilities or the local adult protective services unit. Each applicant shall provide the department with documen-

tation 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;

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

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

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

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; **athletic trainer;** psychologist; registered nurse; social worker; emer-

gency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; employee of a publicly-funded emergency shelter for families with children; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home as designated by the department of health and authorized under section three hundred sixty-five-l of this chapter or such employees who provide home and community based services under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

§ 13. This act shall take effect two years after it shall have become a law, provided, however, that section 8356-a of the education law as added by section seven of this act shall take effect five years after this act shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.