STATE OF NEW YORK

4150--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 10, 2023

Introduced by M. of A. O'DONNELL, LUPARDO, McDONALD, CLARK -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to modernizing the chiropractic scope of practice; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 6551 of the education law, as added by chapter 987 of the laws of 1971, paragraphs a and b of subdivision 2 as amended by chapter 450 of the laws of 1983, and subdivision 3 as amended by chapter 683 of the laws of 1991, is amended to read as follows:

§ 6551. Definition of practice of chiropractic. 1. The practice of the profession of chiropractic is defined as [~~detecting and correcting by manual or mechanical means structural imbalance, distortion, or subluxations in the human body for the purpose of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column. 2.~~] **the examination, evaluation, detection, diagnosis of the human body and/or treatment or correction of: subluxations in the vertebral column or other articular segments by manual or mechanical means, neuromusculoskeletal conditions, structural imbalance, distortion, and/or dysfunction of the human body and the effects thereof; including restoring nervous system integrity, structural balance and/or function; as it may relate to any human disease, pain, injury, deformity or physical condition.**

2. a. The practice of chiropractic includes, but is not limited to, physical and functional examination of patients, health assessment, work capability assessment, handicap eligibility assessment, school and other sports assessment, school attendance assessment, spinal health assess-

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

LBD08995-05-3

ment, analysis, or to give consultation, advice, recommendations and counseling regarding anatomy, physiology, neurology, general health matters, wellness and health optimization by any means of communication, the use of x-ray and diagnostic imaging studies using ionizing and non-ionizing imaging methods, adjustment, mobilization, manipulation, traction, and decompression, and other procedures consisting of but not limited to, heat, cold, light, air, water, sound, electricity, massage, manual therapies, therapeutic exercise with or without assistive devices and clinical laboratory testing methods approved by the department as being appropriate to the practice of chiropractic.

b. Chiropractic examination, diagnostic and treatment methods may also include electrodiagnostic testing and manipulation under anesthesia when appropriate education standards have been met and as approved by the department as being appropriate to the practice of chiropractic.

c. The practice of the profession of chiropractic allows a licensed chiropractor who has successfully completed a registered doctoral, post-doctoral or continuing education certification program of a higher education credential by an accrediting agency, which contains courses of study in wellness care methods, nutrition, and dietary advice satisfactory to the department; use of wellness care methods and the ability to engage in nutritional counseling and dietary advice, including the dispensing of food concentrates, food extracts, nutraceuticals, vitamins, minerals, and other nutritional supplements approved by the department as being appropriate to, and as a part of, the practice of chiropractic, as the above relates to the definition of the practice of chiropractic in subdivision one of this section.

3. a. A license to practice as a chiropractor shall permit a chiropractic practitioner in their professional discretion the ability to take, order and use x-ray and diagnostic imaging studies but shall not permit the holder thereof to use [~~radio-therapy, fluoroscopy, or any form of ionizing radiation except X-ray which shall be used for the detection of structural imbalance, distortion, or subluxations in the human body~~] ionizing radiation sources for the purposes of radiotherapy.

b. The requirements and limitations with respect to the use of [~~X-ray~~] diagnostic imaging studies by chiropractors shall be enforced by the state commissioner of health and [~~he~~] the commissioner is authorized to promulgate rules and regulations after conferring with the [~~board~~] department to carry out the purposes of this subdivision.

c. Chiropractors shall retain for a period of three years all [~~X-ray films~~] diagnostic images taken in the course of their practice, together with the records pertaining thereto, and shall make such [~~films~~] images and records available to the state commissioner of health or his or her representative on demand.

[~~3.~~] 4. Chiropractors may use diagnostic clinical laboratory methods involving chemical or biological means which particular tests and services shall be approved by the department as appropriate to the practice of chiropractic.

5. A license to practice chiropractic shall not permit the holder thereof to treat for any infectious diseases such as pneumonia, any communicable diseases listed in the sanitary code of the state of New York, any of the cardio-vascular-renal or cardio-pulmonary diseases, any surgical condition [~~of the abdomen such as acute appendicitis, or diabetes~~], or any benign or malignant neoplasms; to operate; to reduce fractures [~~or dislocations~~]; to prescribe, administer, dispense or use in [~~his~~] practice drugs or medicines[~~; or to use diagnostic or therapeutic methods involving chemical or biological means except diagnostic~~

~~services performed by clinical laboratories which services shall be approved by the board as appropriate to the practice of chiropractic; or to utilize electrical devices except those devices approved by the board as being appropriate to the practice of chiropractic. Nothing herein shall be construed to prohibit a licensed chiropractor who has successfully completed a registered doctoral program in chiropractic, which contains courses of study in nutrition satisfactory to the department, from using nutritional counseling, including the dispensing of food concentrates, food extracts, vitamins, minerals, and other nutritional supplements approved by the board as being appropriate to, and as a part of, his or her practice of chiropractic. Nothing herein shall be construed to prohibit an individual who is not subject to regulation in this state as a licensed chiropractor from engaging in nutritional counseling.~~] or controlled substances or to administer or use anesthetics. Chiropractors may use topical analgesic substances and anesthetic balms, salves or emollients or advise on over the counter substances.

§ 2. Section 6552 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

§ 6552. Practice of chiropractic and use of title "chiropractor", "doctor of chiropractic" or "chiropractic physician". Only a person licensed [~~or exempt~~] or otherwise authorized under this article [~~shall~~] to practice chiropractic [~~or~~] may use the title "chiropractor", "doctor of chiropractic" or "chiropractic physician".

§ 3. Section 6553 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

§ 6553. State board for chiropractic. A state board for chiropractic shall be appointed by the board of regents on 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 title. The board shall be composed of not less than [~~seven~~] eight members, including [~~at least four~~] seven licensed chiropractors[~~, one licensed physician who is a doctor of medicine, one licensed physician who is a doctor of osteopathy, and one educator who holds a doctorate or equivalent degree in either anatomy, physiology, pathology, chemistry or microbiology~~] in this state for at least five years and one public member. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner.

§ 4. Section 6554 of the education law, as added by chapter 987 of the laws of 1971, subdivision 3 as amended by chapter 994 of the laws of 1971, subdivision 6 as amended by chapter 669 of the laws of 2022, and subdivision 8 as amended by chapter 62 of the laws of 1989, is amended to read as follows:

§ 6554. Requirements for a professional license. To qualify for a license as a chiropractor, an applicant shall fulfill the following requirements:

(1) Application: file an application with the department;

(2) Education: have received an education, including [~~two~~] three years or ninety semester hours of credit or equivalent trimester or quarter hours of credit of preprofessional college study and completion of a [~~four-year resident program in chiropractic,~~] program of chiropractic education of not less than four academic years, or the equivalent thereof in accordance with the commissioner's regulations;

(3) Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations[~~:~~];

(4) Examination: pass examinations satisfactory to the board and in accordance with the commissioner's regulations[~~, in clinical chiropractic analysis, the practice of chiropractic, X-ray as it relates to chiropractic analysis, and examinations satisfactory to the department in anatomy, physiology, pathology, chemistry, microbiology, diagnosis, and the use and effect of X-ray~~] for the practice of chiropractic;

(5) Age: be at least twenty-one years of age;

(6) Citizenship or immigration status: be a United States citizen or a noncitizen lawfully admitted for permanent residence in the United States;

(7) Character: be of good moral character as determined by the department; and

(8) Fees: pay a fee of one hundred seventy-five dollars to the department for [~~admission to a department conducted examination and for~~] an initial license upon completion and passage of a department approved examination, a fee of eighty-five dollars for each reexamination, a fee of one hundred fifteen dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of one hundred fifty-five dollars for each triennial registration period.

§ 5. Section 6555 of the education law, as amended by chapter 537 of the laws of 1983, is amended to read as follows:

§ 6555. Exempt persons. [~~Nothing in this article shall be construed to affect or prevent a student enrolled in a college of chiropractic in this state from engaging in all phases of clinical practice under supervision of a licensed chiropractor or physician in a curriculum registered by the department.~~] The following persons under the following limitations may practice chiropractic within the state without a license:

1. A student enrolled in any accredited college of chiropractic engaging in all phases of clinical practice under supervision of a licensed chiropractor or physician in a curriculum registered by the department; or

2. A student who is performing a clinical externship or preceptorship in a chiropractic office or clinic setting and who is enrolled in a chiropractic school which meets the standards satisfactory to the department, provided such practice is under the direct supervision of a licensed chiropractor for a maximum period of twelve months; or

3. Any chiropractor authorized to practice chiropractic while travelling from another state or country in which he or she is licensed, to provide chiropractic services during any emergency services associated with any rescue, recovery or humanitarian relief effort provided such practice is limited to the organized emergency services; or

4. A chiropractor who is not a resident of this state who is legally qualified to practice in his or her state and who is travelling from another state for the purpose of providing chiropractic services for a specific purpose or event of limited duration; or

5. Any chiropractor who is licensed in another state or country and who is meeting or communicating with a chiropractor licensed in this state, for purposes of consultation, provided such practice is limited to such consultation; or

6. Any chiropractor who is licensed in another state or country, who is visiting a chiropractic school or teaching facility in this state to receive chiropractic instruction for a period not to exceed six months or to conduct chiropractic instruction, provided such practice is limited to such instruction and is under the general supervision of a licensed chiropractor; or

7. Any chiropractor who is authorized by a foreign government to practice in relation to its diplomatic, consular or maritime staffs, provided such practice is limited to such staffs; or

8. Any commissioned chiropractic officer who is serving in the United States armed forces or public health service or any chiropractor who is employed in the United States Veterans Administration, provided such practice is limited to such service or employment.

§ 6. Section 6556 of the education law is REPEALED and a new section 6556 is added to read as follows:

§ 6556. Limited permits. Permits limited as to eligibility, practice and duration, shall be issued by the department to eligible applicants, as follows:

1. Eligibility: The following persons shall be eligible for a limited permit:

a. A person who fulfills all requirements for a license as a chiropractor except those relating to the examination and citizenship or permanent residence in the United States;

b. A licensed foreign chiropractor who meets guidelines developed in accordance with the commissioner's regulations;

c. A licensed foreign chiropractor or a foreign intern who is in this country on a non-immigration visa for the continuation of chiropractic study who meets guidelines developed in accordance with the commissioner's regulations;

d. Any graduate of a chiropractic school which meets standards satisfactory to the department, provided such practice is under the general supervision of a licensed chiropractor for a maximum period of twelve months from date of graduation.

2. Limit of practice. A permittee shall be authorized to practice chiropractic only under the supervision of a licensed chiropractor and only in a licensed chiropractic office or clinical setting.

3. Duration. A limited permit shall be valid for one year. A limited permit may be renewed annually at the discretion of the department.

4. Fees. The fee for each limited permit and for each renewal shall be one hundred five dollars.

§ 7. The education law is amended by adding a new section 6557 to read as follows:

§ 6557. Special provisions. 1. Non-liability of licensed chiropractors for first aid or emergency treatment. Notwithstanding any inconsistent provision of any general, special or local law, any licensed chiropractor 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 chiropractic 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 chiropractor. Nothing in this section shall be deemed or construed to relieve a licensed chiropractor from liability for damages for injuries or death caused by an act or omission on the part of a chiropractor while rendering professional services in the normal and ordinary course of his or her practice.

2. This article shall not be construed to affect or prevent the following:

a. The furnishing of any assistance in an emergency;

b. The chiropractor from being a primary portal of entry healthcare provider.

3. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person, partnership, corporation, firm, society, or other entity on account of the communication of information in the possession of such person or entity, or on account of any recommendation or evaluation, regarding the qualifications, fitness, or professional conduct or practices of a chiropractor, to any governmental agency, chiropractic society, a hospital as defined in article twenty-eight of the public health law, a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law, or a health maintenance organization organized under article forty-four of the public health law or article forty-three of the insurance law, including a committee of an individual practice association or medical group acting pursuant to a contract with a health maintenance organization. The foregoing shall not apply to information which is untrue and communicated with malicious intent.

§ 8. The education law is amended by adding a new section 6558 to read as follows:

§ 6558. Definition of chiropractic clinical assistant. 1. A chiropractic clinical assistant is defined as a person certified in accordance with this article who works under the supervision of a licensed chiropractor performing such patient duties as are assigned by the supervising chiropractor. A chiropractic clinical assistant may only provide patient services on the orders and instructions of a supervising chiropractor. Supervision of a chiropractic clinical assistant by a licensed chiropractor shall be on-site supervision, but not necessarily direct personal supervision. The number of chiropractic clinical assistants supervised by one licensed chiropractor shall not exceed the ratio of four chiropractic clinical assistants to one licensed chiropractor as shall be determined by the commissioner's regulations ensuring that there be adequate supervision in the best interest of public health and safety. Nothing in this section shall prohibit a hospital or other public health law article twenty-eight facility from employing chiropractic clinical assistants, provided they work under the supervision of a chiropractor, physician, nurse practitioner or other medical provider designated by the hospital or public health law article twenty-eight facility and not beyond the scope of practice of a chiropractic clinical assistant.

2. A certified chiropractic clinical assistant may only provide clinical services on the orders and instructions of a supervising chiropractor.

3. The scope of services for a certified chiropractic clinical assistant shall include assisting a chiropractor with providing certain clinical procedures common and customary to the chiropractic setting which include, but are not limited to, the following: collecting general health data, such as the taking of an oral history, vital signs or neurological, physiological or anatomical measurements; performing objective data collection tests common and customary to the chiropractic setting including, but not limited to dynamic or static surface EMG, thermography, heart rate variability; applying thermal, light, air, water, sound, electrical and mechanical modalities; and monitoring prescribed rehabilitative activities.

4. A certified chiropractic clinical assistant must be adequately trained in the proper operation of any device or equipment and know-

ledgeable of anatomy and the appropriate safety procedures and contraindications with respect to the clinical services he or she is directed to provide.

5. Nothing in this section shall be construed to allow a certified chiropractic clinical assistant to provide a chiropractic adjustment; manipulation; joint mobilization; perform radiological tests (X-rays); nutritional instruction; and counseling or other therapeutic service or procedure which requires individual licensure in New York state.

6. Registration as a certified chiropractic clinical assistant is not required for individuals who perform administrative activities of a non-clinical nature.

§ 9. The education law is amended by adding a new section 6559 to read as follows:

§ 6559. Duties of chiropractic clinical assistant and the use of title "chiropractic clinical assistant." Only a person certified or otherwise authorized under this article shall participate in the practice of chiropractic as a chiropractic clinical assistant and only a person certified under this section shall use the title "chiropractic clinical assistant."

§ 10. The education law is amended by adding a new section 6560 to read as follows:

§ 6560. Requirements for certification as a chiropractic clinical assistant.

1. Application: file an application with the department;

2. Education: have received an education and training in a chiropractic clinical assistant program in accordance with the commissioner's regulations and department of education; including but not limited to a minimum of twenty-four hours of didactic study;

3. Experience: have experience satisfactory to the department for chiropractic in accordance with the commissioner's regulations;

4. Examination: pass an examination satisfactory to the department and in accordance with the commissioner's regulations;

5. Age: be at least eighteen years of age;

6. Character: be of good moral character as determined by the department;

7. Registration: all certified chiropractic clinical assistants shall register triennially with the education department in accordance with the regulations of the commissioner;

8. Fees: pay a fee for an initial certificate of fifty dollars, and a fee of fifty dollars for each subsequent triennial registration period.

9. A certified chiropractic clinical assistant shall conduct themselves within the boundaries of proper ethical behavior and shall adhere to acceptable standards of conduct regardless of whether a supervising chiropractor or person in a position of authority may order, impart or condone behavior or conduct which is improper.

10. "Improper conduct", under the meaning of this section, shall include conduct delineated under the chiropractic practice act, regulations, and such other New York state laws that may apply.

11. The department may refuse to issue, refuse to renew, or may suspend, revoke, censure, reprimand, restrict, or limit the registration of, or fine any person pursuant to the laws of New York state or the procedures set forth herein, upon one or more of the grounds for discipline set forth in this article.

§ 11. The education law is amended by adding a new section 6561 to read as follows:

§ 6561. Exemptions. 1. This article shall not be construed to affect or prevent a chiropractic clinical assistant student from engaging in clinical assisting under the supervision of a licensed chiropractor as part of a program conducted in an approved program for chiropractic clinical assistants or in a clinical facility or health care agency affiliated with the program for chiropractic clinical assistants.

2. Supervision of a chiropractic clinical assistant student by a licensed chiropractor shall be on-site supervision and direct supervision.

§ 12. The education law is amended by adding a new section 6562 to read as follows:

§ 6562. Limited permits. 1. The department shall issue a limited permit to an applicant who meets all requirements for admission to the certification examination.

2. All practice under a limited permit shall be under the supervision of a licensed chiropractor or other licensed medical provider in a public hospital, an incorporated hospital or clinic, a licensed proprietary hospital, a licensed nursing home, a public health agency, a recognized public or non-public school setting, the office of a licensed chiropractor, or in the civil service of the state or political subdivision thereof.

3. Limited permits shall be for six months and the department may for justifiable cause renew a limited permit provided that no applicant shall practice under any limited permit for more than a total of one year.

4. Supervision of a permittee by a licensed chiropractor shall be on-site supervision and not necessarily direct personal supervision.

5. The fee for each limited permit and for each renewal shall be fifty dollars.

§ 13. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.