

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1311

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2008

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1311.

This bill, as amended, revises the law regulating the practice of acupuncture. It provides for the licensure of acupuncturists, rather than certification, as is currently the case.

With respect to the scope of practice, the bill permits consumers to access directly the services of acupuncturists, and eliminates the requirement that acupuncture only be performed with a referral or diagnosis from a licensed physician. Notwithstanding the bill's allowance for direct access, it additionally stipulates that an acupuncturist shall advise each patient as to the importance of consulting with a licensed physician regarding the patient's condition. Further, with respect to personal injury protection coverage provided under private passenger automobile insurance, a referral from a licensed physician shall be necessary in order for any acupuncture treatment to be reimbursable under such coverage.

The definition of acupuncture is revised to clarify that acupuncture means the practice of Oriental medicine based on traditional Oriental medical theories that can be utilized for the treatment of diseases or dysfunctions of the body. Furthermore, the bill specifies that acupuncturists may utilize adjunctive therapies, which include, but are not limited to: Oriental dietary therapy; lifestyle and behavioral education; laser stimulation in accordance with relevant federal law; cupping; thermal methods; magnets; gua-sha; and percutaneous and transcutaneous electrical nerve stimulation. The Acupuncture Examining Board shall approve these adjunctive therapies. The bill also authorizes an acupuncturist to perform or prescribe the use of tuina, shiatsu or other forms of Oriental massage when engaging in the practice of acupuncture.

The bill requires the State Board of Medical Examiners, after consultation with the Acupuncture Examining Board, to establish standards governing the practice of acupuncture regarding mandatory medical malpractice liability insurance coverage, which an acupuncturist shall maintain at appropriate amounts as set forth in regulation.

While current law permits a physician and surgeon or dentist to practice acupuncture, the bill specifies that any such licensed professional shall be in good standing in order to do so. Additionally, the physician and surgeon or dentist shall have completed, as part of his course of professional training, a minimum of 300 hours of acupuncture training, which includes not less than 150 hours of clinical training.

In addition to the acupuncture license, the bill further allows the Acupuncture Examining Board to establish specialized certification criteria for the use of herbology in the practice of acupuncture. However, there is an exemption from any new herbology certification requirements for persons certified on or before the bill's effective date to practice acupuncture who employ herbology in their practice, and for any person who is enrolled and graduates, or has graduated, from an accredited school for acupuncture on or before the effective date.

The bill also eliminates tutorial programs, in which an acupuncturist may supervise students in acupuncture.

Finally, the bill makes it a crime of the third degree for any person to knowingly practice acupuncture without a license or while that license is suspended, revoked, or otherwise limited. This is similar to the existing criminal statute, section 14 of P.L.1989, c.300 (C.2C:21-20), which makes it a crime of the third degree to knowingly practice medicine and surgery or podiatry without a license or while that license is suspended, revoked, or otherwise limited. A crime of the third degree is punishable by a term of imprisonment of three to 5 years, a fine of up to \$15,000, or both.

This bill, as amended, is identical to the provisions of the Assembly Committee Substitute for Assembly Bill No. 1408, as amended and reported by the committee.

The committee amendments to the bill:

- mandate that acupuncturists maintain medical malpractice liability insurance coverage, at appropriate amounts as set forth in regulation;

- require that the Acupuncture Examination Board shall approve the utilization of any adjunctive therapies;

- remove a provision that permitted the creation of a title or description by the State Board of Medical Examiners, after consultation with the Acupuncture Examination Board, to indicate that a physician and surgeon also practices acupuncture;

- expressly indicate that a physician and surgeon or dentist practicing acupuncture shall be subject to oversight by their respective licensing authorities, and not subject to oversight by the Acupuncture Examining Board;

- provide that a referral from a licensed physician shall be necessary in order for acupuncture treatment to be reimbursable as medical expense benefits under the personal injury protection coverage provided by private passenger automobile insurance; and

- modify the title of the bill, as well as the title of P.L.1983, c.7, the

underlying law certifying acupuncturists, to properly reflect the object of the bill and the law, as updated, to license acupuncturists, as well as supplement and amend various parts of the statutory law.