

A 4404-B Gianaris!!!!!!!!!!!! Same as [S 3334-A](#) MAZIARZ
General Business Law
TITLE....Provides for the registration and regulation of natural and
complementary practitioners
02/10/05 referred to economic development
03/16/05 amend and recommit to economic development
03/16/05 print number 4404a
06/20/05 amend (t) and recommit to economic development
06/20/05 print number 4404b
01/04/06 referred to economic development
04/28/06 reference changed to higher education

S3334-A MAZIARZ Same as [A 4404-B](#) Gianaris
ON FILE: 01/04/06 General Business Law
TITLE....Provides for the regulation of natural and
complementary practitioners
03/15/05 REFERRED TO CONSUMER PROTECTION
06/17/05 AMEND (T) AND RECOMMIT TO
CONSUMER PROTECTION
06/17/05 PRINT NUMBER 3334A
01/04/06 REFERRED TO CONSUMER PROTECTION

GIANARIS, BENEDETTO, CAHILL, DESTITO, BOYLAND; M-S: Cook, Eddington, Latimer, Lifton, Lupardo, Weisenberg
Add Art 28-E SS490 - 498, Gen Bus L
Provides for the registration and regulation of natural and complementary practitioners.

STATE OF NEW YORK

4404--B

2005-2006 Regular Sessions

IN ASSEMBLY

February 10, 2005

Introduced by M. of A. GIANARIS, BENEDETTO, CAHILL, DESTITO, BOYLAND -- Multi-Sponsored by -- M. of A. COOK, EDDINGTON, LATIMER, LIFTON, LUPARDO, WEISENBERG -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to natural and complementary practitioners

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

1 Section 1. The general business law is amended by adding a new article
2 28-E to read as follows:

3 ARTICLE 28-E

4 FREEDOM OF ACCESS TO NATURAL AND
5 COMPLEMENTARY PRACTICES

6 Section 490. Legislative intent.

7 491. Definitions.

8 492. Prohibited practices.

9 493. Disclosure requirements.

10 494. Cease and desist.

11 495. Consumer education; complaints.

12 496. Judicial review.

13 497. Exemptions.

14 498. Severability.

15 § 490. Legislative intent. Based upon a comprehensive report by the
16 National Institute of Medicine and other studies, including a study
17 published by the New England Journal of Medicine, it is evident that
18 millions of New Yorkers are receiving a substantial volume of services
19 from natural and complementary practitioners. Such studies further indi-
20 cate that individuals using natural and complementary services cut

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

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1 across a wide variety of age, ethnic, socioeconomic and other demograph-
2 ic categories.

3 The legislature intends, by enactment of this article, to allow access
4 in this state to natural and complementary practitioners, to more fully
5 inform the general public about natural and complementary practices, and
6 to provide enhanced consumer protections for individuals receiving such
7 services.

8 The legislature hereby recognizes and acknowledges the value of
9 natural and complementary practices.

10 § 491. Definitions. As used in this article:

11 1. "Consumer" means any person seeking to receive or who has received
12 services from a natural and complementary practitioner.

13 2. "Department" means the department of state.

14 3. (a) "Natural and complementary practices" means the broad domain of
15 methods, practices and techniques to promote and maintain natural well-
16 being that have not been proven to be deleterious including but not
17 limited to:

18 (i) Aroma therapy, which balances the energy of the body through
19 olfactory stimulus;

20 (ii) Ayurveda, which restores energetic balance and harmony to one's
21 body and life through a range of preventative recommendations such as
22 soap, shampoos, moisturizers, teas, spices, fragrance, incense, music,
23 meditation and exercise;

24 (iii) Healing touch, which balances the energy of the body through
25 light fingertip touch;

26 (iv) Homeopathy, which balances the body's energy (called the vital
27 force) by using highly dilute remedies selected according to the law of
28 similars;

29 (v) Movement education practices, which use coached movement, skilled
30 touch, and dialogue to enhance the body's vitality;

31 (vi) Naturopathy, which balances, stimulates, and maintains the body
32 energy by use of assessment, education, discussion and natural modaliti-
33 ties;

34 (vii) Polarity, which balances the body's energy by assessing and
35 balancing the elemental energy expressions of ether, air, fire, water
36 and earth;

37 (viii) Reflexology, which is an energy based practice that helps the
38 body balance itself through accessing points on the feet and hands using
39 reflex maps that correspond to the body's systems;

40 (ix) Structural integration, which stabilizes the body's energy field
41 by balancing the body in the field of gravity; and

42 (x) The Trager Approach which balances the body's energy through
43 gentle directed movement.

44 (b) Natural and complementary practices shall not include:

45 (i) conducting surgery or any other procedure on another person that
46 punctures the skin or harmfully invades the body;

47 (ii) administering or prescribing x-ray radiation to another person;

48 (iii) prescribing or administering any prescription drug or controlled
49 substance to another person;

50 (iv) setting fractures;

51 (v) manipulating or adjusting the spine;

52 (vi) prescribing, providing, adapting or fitting lenses for the
53 correction of vision;

54 (vii) engaging in applying a scientific system of activity to the
55 muscular structure of the human body by means of stroking, kneading,
56 tapping and vibrating with the hands or vibrators for the purpose of

1 improving musculature and circulation, provided, however, that this
2 subparagraph shall not be interpreted to prohibit a natural and comple-
3 mentary practitioner from using touch and/or dialogue for balancing the
4 body's energy, movement re-education and awareness of the body's move-
5 ment, education of the body, balancing the body's energy through the use
6 of meridians and movement of chi(vital force), mobilizing the body's
7 energy; balancing the body's energy by accessing reflex points on the
8 hands and feet, balancing the energy of mind and body, using aroma to
9 balance the body through olfactory stimulus, or using soap, fragrance,
10 incense, exercise, or meditation to balance and harmonize the body; or
11 (viii) treating lacerations or abrasions through electrotherapy.

12 4. "Natural and complementary practitioner" means any person eighteen
13 years of age or older who provides natural and complementary services.

14 5. "Secretary" means the secretary of state.

15 § 492. Prohibited practices. 1. No natural and complementary practi-
16 tioner shall recommend the discontinuance of any prescription drug or
17 controlled substance prescribed by an appropriately licensed health care
18 provider.

19 2. No natural and complementary practitioner shall hold himself or
20 herself out as a licensed health care professional, or so state, indi-
21 cate, advertise or imply to a consumer or to a prospective consumer.

22 3. No natural and complementary practitioner shall willfully diagnose
23 and treat a physical or mental condition of any person so as to directly
24 cause or create great bodily harm, serious physical or mental illness,
25 or death.

26 4. No natural and complementary practitioner shall hold out, state,
27 indicate or imply to a consumer or a prospective consumer that he or she
28 is a physician.

29 § 493. Disclosure requirements. 1. Every natural and complementary
30 practitioner shall, prior to providing any services authorized under
31 this article:

32 (a) disclose to the consumer, in a written statement using plain
33 language, the following information:

34 (i) that he or she is not a licensed physician;

35 (ii) that the treatment is complementary to conventional medical care;

36 (iii) the nature of the services to be provided;

37 (iv) the theory of treatment upon which the services are based;

38 (v) that the services to be provided are not licensed by the state;

39 (vi) the toll free number to call the department to report any
40 complaints; and

41 (vii) his or her educational, training, experience and/or other quali-
42 fications regarding the services to be provided; and

43 (b) obtain a written acknowledgment from the consumer stating that he
44 or she has been provided with the information described in paragraph (a)
45 of this subdivision. The consumer shall be provided with a copy of the
46 written acknowledgement, which shall be maintained by the complementary
47 and alternative practitioner for three years.

48 2. The information required pursuant to subdivision one of this
49 section shall be provided in a language that the consumer understands.

50 3. Nothing in this article shall be construed to limit the right of
51 any person to seek relief for negligence or any other civil remedy
52 against a person providing services subject to the provisions of this
53 article.

54 4. Every natural and complementary practitioner who advertises natural
55 and complementary practices shall disclose in every such advertisement
56 that he or she is not a licensed health care provider.

1 § 494. Cease and desist. 1. After an investigation has been conducted
2 pursuant to section four hundred ninety-five of this article, the secre-
3 tary may require any natural and complementary practitioner to cease and
4 desist practice upon proof that the registrant:

5 (a) engaged in any of the practices in paragraph (b) of subdivision
6 three of section four hundred ninety-one of this article;

7 (b) engaged in activities prohibited pursuant to section four hundred
8 ninety-two of this article;

9 (c) failed to comply with the disclosure requirements under section
10 four hundred ninety-three of this article; or

11 (d) caused physical or financial harm to a consumer intentionally,
12 recklessly, or through incompetence or gross negligence.

13 2. The secretary shall, before issuing any order directing the cessa-
14 tion of practice, send notification of any such action to the person
15 deemed to have been engaged in such prohibited activities or to have
16 caused such harm. Such notice shall be provided at least twenty business
17 days prior to the date set for the hearing, notify the person deemed to
18 have been engaged in such prohibited activities or who allegedly caused
19 harm of any charges made, and shall afford the person an opportunity to
20 be heard in person or by counsel in reference thereto. The notice shall
21 state that if the person can demonstrate compliance with whatever statu-
22 tory requirement such person is alleged to have violated, then the hear-
23 ing shall be cancelled, the charges dismissed, and the record expunged.
24 Such written notice shall be served upon the person deemed to have been
25 engaged in such prohibited activities or to have caused such harm in
26 person or by certified mail. The hearing shall be at such time and place
27 as the secretary shall prescribe. Written notice of the final determi-
28 nation of the hearing shall be provided by the secretary in person or by
29 certified mail.

30 § 495. Consumer education; complaints. 1. The secretary, upon
31 complaint of a consumer who has suffered physical or financial harm or
32 who alleges that a practitioner has engaged in a prohibited practice,
33 shall have the power to make and conduct such investigations as are
34 deemed necessary to effectuate the purposes of this article.

35 2. The secretary shall:

36 (a) develop procedures for promptly investigating all complaints
37 regarding violations of this article;

38 (b) develop procedures for assisting consumers in resolving disputes
39 with those persons who are practicing pursuant to this article and medi-
40 ating on behalf of consumers when needed;

41 (c) establish a mechanism for consumers to register a complaint
42 including but not limited to a web based system, a toll-free number or
43 other appropriate mechanism as determined by the secretary; and

44 (d) develop and distribute educational materials concerning complemen-
45 tary and alternative practices, the complaint process and the rights of
46 consumers to choose such services.

47 3. Where, after preliminary investigation of a complaint by a consum-
48 er, there is reasonable cause to believe that the practitioner has
49 engaged in practices prohibited by paragraph (b) of subdivision three of
50 section four hundred ninety-one or by section four hundred ninety-two of
51 this article, the complaint may be referred to the department of educa-
52 tion by the secretary.

53 § 496. Judicial review. Any actions taken by the secretary pursuant to
54 a hearing in accordance with section four hundred ninety-four of this
55 article shall be subject to review by the supreme court in the manner
56 provided in article seventy-eight of the civil practice law and rules.

1 § 497. Exemptions. 1. Notwithstanding any other provision of law, no
2 person registered as a natural and complementary practitioner in accord-
3 ance with this article shall be held to be in violation of any provision
4 of title eight of the education law unless such person engages in any of
5 the practices listed in paragraph (b) of subdivision three of section
6 four hundred ninety-one of this article or such person engages in activ-
7 ities prohibited pursuant to section four hundred ninety-two of this
8 article.

9 2. Nothing contained in this article shall be construed to apply to
10 the practice, conduct, activities, services, educational standards or
11 experience standards, or use of any title pertaining to any person
12 licensed, registered, certified, or otherwise authorized or credentialed
13 pursuant to title eight of the education law.

14 3. Nothing contained in this article shall be construed to apply to
15 the conduct, activities or services of any member of the clergy or
16 Christian Science practitioner, in the provision of pastoral counseling
17 services within the context of his or her ministerial charge or obli-
18 gations or to instruction in yoga, pilates or reiki.

19 § 498. Severability. If any section or provision of this article shall
20 be adjudged by any court of competent jurisdiction to be invalid or
21 inapplicable to any person or situation, such judgment shall not affect,
22 impair or invalidate any other section or provision of this article or
23 the applicability of such section or provision to other persons or other
24 situations.

25 § 2. This act shall take effect September 1, 2005, provided that any
26 actions, rules and regulations necessary to implement the provisions of
27 this act on its effective date are authorized and directed to be
28 completed on or before such date.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A4404B

SPONSOR: Gianaris| | | | | | | | | | | | | | | | | | | | | |

TITLE OF BILL: An act to amend the general business law, in relation to natural and complementary practitioners

PURPOSE: To allow consumers access to natural and complementary services.

SUMMARY OF PROVISIONS: Section 1 of this bill amends the general business law by creating a new article 28-E "Freedom of Access to Natural and Complementary Practices." This article defines natural and complementary practices, establishes prohibited practices, creates disclosure requirements, establishes registration requirements and fees, and creates conditions for revocation or suspension by the Secretary of State. In addition, the article creates exemptions, judicial review and separability.

JUSTIFICATION: This legislation would expand access to natural and complementary care while strengthening consumer protections. Recent studies have shown that over 66% of citizens in the country today use natural and complementary practices. Based upon numerous studies, including a comprehensive report by the National Institute of Medicine and a study published by the New England Journal of Medicine, it is evident that millions of New Yorkers are presently receiving a substantial volume of services from natural and complementary practitioners. These studies further indicate that individuals using natural and complementary services cut across a wide variety of age, ethnic, socioeconomic and other demographic categories. This legislation also provides consumers with the right to be supplied with straightforward information, in writing, about the natural and complementary practitioner and the type of treatment they will receive. The bill makes it clear that natural and complementary practitioners are not authorized to perform certain services. Other states, including California, Rhode Island, and Minnesota recently passed similar legislation to guarantee consumers the freedom to access natural and complementary practices.

LEGISLATIVE HISTORY: S. 6693 of 2004; Referred to Senate Committee on Consumer Protection.

FISCAL IMPLICATIONS: The legislation imposes an initial registration fee of one hundred and fifty dollars and a renewal fee of one hundred dollars to offset the costs of the new program within the Department of State.

EFFECTIVE DATE: This act shall take effect on the September 1, 2006.