

3306

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

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

AN ACT to amend the education law and the social services law, in relation to the licensing of acupuncturists and the practice of the profession of acupuncture, and establishing acupuncturists as mandatory reporters of suspected cases of child abuse and maltreatment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 1 of section 8211 of the
2 education law, as added by chapter 772 of the laws of 1990, is amended
3 to read as follows:
4 (a) "Profession of acupuncture" is the treating, by means of mechan-
5 ical, thermal or electrical stimulation effected by the insertion of
6 needles or by the application of heat, pressure or electrical stimu-
7 lation at a point or combination of points on the surface of the body
8 predetermined on the basis of the theory of the physiological interre-
9 lationship of body organs with an associated point or combination of
10 points for diseases, disorders and dysfunctions of the body for the
11 purpose of achieving a therapeutic or prophylactic effect. THE PROFES-
12 SION OF ACUPUNCTURE INCLUDES RECOMMENDATION OF TRADITIONAL REMEDIES AND
13 SUPPLEMENTS INCLUDING, BUT NOT LIMITED TO, THE RECOMMENDATION OF DIET,
14 HERBS AND NATURAL PRODUCTS, AND THEIR PREPARATION IN ACCORDANCE WITH
15 TRADITIONAL AND MODERN PRACTICES OF MODERN EAST ASIAN OR ORIENTAL
16 (CHINESE, KOREAN OR JAPANESE) MEDICAL THEORY. ANY ACUPUNCTURIST WHOSE
17 PRACTICE INCLUDES THE RECOMMENDATION OF CUSTOM-MADE REMEDIES OR HERBAL
18 FORMULATIONS SHALL BE SUBJECT TO THE REQUIREMENT IMPOSED BY THE
19 PROVISIONS OF SUBDIVISION EIGHT-A OF SECTION EIGHTY-TWO HUNDRED FOURTEEN
20 OF THIS ARTICLE.
21 S 2. Subdivision 1 of section 8213 of the education law, as added by
22 chapter 772 of the laws of 1990, is amended to read as follows:

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

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1 (1)(A) There is hereby established within the department a state board
2 for acupuncture. [The] ON AND BEFORE SEPTEMBER THIRTIETH, TWO THOUSAND
3 FOURTEEN, THE board shall consist of not less than eleven members to be
4 appointed by the board of regents on the recommendation of the commis-
5 sioner for the purpose of assisting the board of regents and the depart-
6 ment on matters of professional licensing and professional conduct in
7 accordance with section sixty-five hundred eight of this [chapter]
8 TITLE, four of whom shall be licensed acupuncturists, four of whom shall
9 be licensed physicians certified to use acupuncture and three of whom
10 shall be public members representing the consumer and community. [Of the
11 acupuncturists first appointed to the board, one may be a registered
12 specialist's assistant-acupuncture provided that the term of such regis-
13 tered specialist's assistant-acupuncture shall not be more than four
14 years.] Of the members first appointed, three shall be appointed for a
15 one year term, three shall be appointed for a two year term and three
16 shall be appointed for a three year term, and two shall be appointed for
17 a four year term. Thereafter all members shall serve for five year
18 terms. In the event that more than eleven members are appointed, a
19 majority of the additional members shall be licensed acupuncturists. The
20 members of the board shall select one of themselves as chairman to serve
21 for a one year term.

22 (B) ON AND AFTER OCTOBER FIRST, TWO THOUSAND FOURTEEN, THE BOARD SHALL
23 CONSIST OF NOT LESS THAN TWELVE MEMBERS APPOINTED AS SPECIFIED IN PARA-
24 GRAPH (A) OF THIS SUBDIVISION, EXCEPT THAT AT LEAST SIX OF SUCH MEMBERS
25 SHALL BE LICENSED ACUPUNCTURISTS, THREE OF SUCH MEMBERS SHALL BE
26 LICENSED PHYSICIANS CERTIFIED TO USE ACUPUNCTURE AND THREE OF WHOM SHALL
27 BE PUBLIC MEMBERS REPRESENTING THE CONSUMER AND COMMUNITY. NO MEMBER WHO
28 IS A LICENSED PHYSICIAN CERTIFIED TO USE ACUPUNCTURE AND WHO IS SERVING
29 ON THE BOARD ON THE EFFECTIVE DATE OF THIS PARAGRAPH SHALL BE REQUIRED
30 TO VACATE HIS OR HER POSITION AS A MEMBER OF THE BOARD AS A RESULT OF
31 THE REDUCTION IN SUCH PHYSICIAN MEMBERS FROM FOUR TO THREE AS SPECIFIED
32 IN THIS PARAGRAPH, BUT SUCH CHANGE IN COMPOSITION SHALL BE MADE UPON THE
33 EXPIRATION OF TERMS OF OFFICE, OR VACANCIES IN OFFICE, OCCURRING ON AND
34 AFTER SUCH DATE.

35 S 3. Subdivision 8 of section 8214 of the education law, as added by
36 chapter 772 of the laws of 1990, is amended and a new subdivision 8-a is
37 added to read as follows:

38 (8) Registration: if a license is granted, register triennially with
39 the department, including present home and business address and such
40 other pertinent information as the department requires[.]; AND

41 (8-A) SPECIAL REQUIREMENT FOR RECOMMENDATION OF CUSTOM-MADE REMEDIES
42 OR HERBAL FORMULATIONS: ON AND AFTER OCTOBER FIRST, TWO THOUSAND FOUR-
43 TEEN, AN APPLICANT WHOSE PROFESSIONAL CONDUCT IN CONNECTION WITH THE
44 PRACTICE OF ACUPUNCTURE SHALL INCLUDE THE RECOMMENDATION OF CUSTOM-MADE
45 REMEDIES OR HERBAL FORMULATIONS MUST SUBMIT EVIDENCE OF SUCCESSFUL
46 PASSAGE OF THE HERBAL EXAMINATION MODULE OF A NATIONAL PROFESSIONAL
47 ORGANIZATION IN THE FIELD OF ACUPUNCTURE RECOGNIZED FOR THIS PURPOSE BY
48 THE COMMISSIONER.

49 S 4. Section 8216 of the education law is amended by adding a new
50 subdivision 8 to read as follows:

51 (8) ANY PERSON WHO IS AN ACUPUNCTURIST LICENSED TO PRACTICE ACUPUNC-
52 TURE IN ANOTHER STATE OR COUNTRY MAY PRACTICE ACUPUNCTURE IN THIS STATE
53 WITHOUT A LICENSE IF HE OR SHE IS CONDUCTING A TEACHING CLINICAL DEMON-
54 STRATION IN THIS STATE IN CONNECTION WITH A PROGRAM OF BASIC CLINICAL
55 EDUCATION, GRADUATE EDUCATION, OR POST-GRADUATE EDUCATION IN AN APPROVED
56 SCHOOL OF ACUPUNCTURE OR IN ITS AFFILIATED CLINICAL FACILITY OR HEALTH

1 CARE AGENCY, OR BEFORE A GROUP OF LICENSED ACUPUNCTURISTS WHO ARE
2 MEMBERS OF A PROFESSIONAL SOCIETY.

3 S 5. The education law is amended by adding a new section 8217 to read
4 as follows:

5 S 8217. MANDATORY CONTINUING EDUCATION. 1. (A) EACH LICENSED ACUPUNC-
6 TURIST REQUIRED UNDER ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER TO
7 REGISTER TRIENNIALLY WITH THE DEPARTMENT TO PRACTICE IN THE STATE SHALL
8 COMPLY WITH PROVISIONS OF THE MANDATORY CONTINUING EDUCATION REQUIRE-
9 MENTS PRESCRIBED IN SUBDIVISION TWO OF THIS SECTION EXCEPT AS SET FORTH
10 IN PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION. ACUPUNCTURISTS WHO DO NOT
11 SATISFY THE MANDATORY CONTINUING EDUCATION REQUIREMENTS SHALL NOT PRAC-
12 TICE UNTIL THEY HAVE MET SUCH REQUIREMENTS, EXCEPT THAT AN ACUPUNCTURIST
13 MAY PRACTICE WITHOUT HAVING MET SUCH REQUIREMENTS IF HE OR SHE IS ISSUED
14 A CONDITIONAL REGISTRATION CERTIFICATE AS SPECIFIED IN SUBDIVISION THREE
15 OF THIS SECTION.

16 (B) ACUPUNCTURISTS SHALL BE EXEMPT FROM THE MANDATORY CONTINUING
17 EDUCATION REQUIREMENT FOR THE TRIENNIAL REGISTRATION PERIOD DURING WHICH
18 THEY ARE FIRST LICENSED. IN ACCORD WITH THE INTENT OF THIS SECTION,
19 ADJUSTMENT TO THE MANDATORY CONTINUING EDUCATION REQUIREMENT MAY BE
20 GRANTED BY THE DEPARTMENT FOR REASONS OF HEALTH CERTIFIED BY AN APPRO-
21 PRIATE HEALTH CARE PROFESSIONAL, FOR EXTENDED ACTIVE DUTY WITH THE ARMED
22 FORCES OF THE UNITED STATES, OR FOR OTHER GOOD CAUSE ACCEPTABLE TO THE
23 DEPARTMENT WHICH MAY PREVENT COMPLIANCE.

24 (C) A LICENSED ACUPUNCTURIST NOT ENGAGED IN PRACTICE AS DETERMINED BY
25 THE DEPARTMENT, SHALL BE EXEMPT FROM THE MANDATORY CONTINUING EDUCATION
26 REQUIREMENT UPON THE FILING OF A STATEMENT WITH THE DEPARTMENT DECLARING
27 SUCH STATUS. ANY LICENSEE WHO RETURNS TO THE PRACTICE OF ACUPUNCTURE
28 DURING THE TRIENNIAL REGISTRATION PERIOD SHALL NOTIFY THE DEPARTMENT
29 PRIOR TO REENTERING THE PROFESSION AND SHALL MEET SUCH MANDATORY EDUCA-
30 TION REQUIREMENTS AS SHALL BE PRESCRIBED BY REGULATIONS OF THE COMMIS-
31 SIONER.

32 2. DURING EACH TRIENNIAL REGISTRATION PERIOD AN APPLICANT FOR REGIS-
33 TRATION SHALL COMPLETE A MINIMUM OF THIRTY-SIX HOURS OF ACCEPTABLE
34 FORMAL CONTINUING EDUCATION, AS SPECIFIED IN SUBDIVISION FOUR OF THIS
35 SECTION, PROVIDED THAT NO MORE THAN EIGHTEEN HOURS OF SUCH CONTINUING
36 EDUCATION SHALL CONSIST OF SELF-STUDY COURSES. ANY ACUPUNCTURIST WHOSE
37 FIRST REGISTRATION DATE FOLLOWING THE EFFECTIVE DATE OF THIS SECTION
38 OCCURS LESS THAN THREE YEARS FROM SUCH EFFECTIVE DATE, BUT ON OR AFTER
39 OCTOBER FIRST, TWO THOUSAND FOURTEEN, SHALL COMPLETE CONTINUING EDUCA-
40 TION HOURS ON A PRORATED BASIS AT THE RATE OF ONE HOUR PER MONTH FOR THE
41 PERIOD BEGINNING OCTOBER FIRST, TWO THOUSAND FOURTEEN UP TO THE FIRST
42 REGISTRATION DATE THEREAFTER, BUT NO ACUPUNCTURIST SHALL IN ANY EVENT BE
43 REQUIRED TO COMPLETE LESS THAN SIX HOURS OF CONTINUING EDUCATION. A
44 LICENSEE WHO HAS NOT SATISFIED THE MANDATORY CONTINUING EDUCATION
45 REQUIREMENTS SHALL NOT BE ISSUED A TRIENNIAL REGISTRATION CERTIFICATE BY
46 THE DEPARTMENT AND SHALL NOT PRACTICE UNLESS AND UNTIL A CONDITIONAL
47 REGISTRATION CERTIFICATE IS ISSUED AS PROVIDED FOR IN SUBDIVISION THREE
48 OF THIS SECTION. CONTINUING EDUCATION HOURS TAKEN DURING ONE TRIENNIUM
49 MAY NOT BE TRANSFERRED TO A SUBSEQUENT TRIENNIUM. THE MANDATORY CONTIN-
50 UING EDUCATION FEE SHALL BE THIRTY DOLLARS, SHALL BE PAYABLE ON OR
51 BEFORE THE FIRST DAY OF EACH TRIENNIAL REGISTRATION PERIOD, AND SHALL BE
52 PAID IN ADDITION TO THE TRIENNIAL REGISTRATION FEE REQUIRED BY SECTION
53 SIXTY-SEVEN HUNDRED THIRTY-FOUR OF THIS TITLE.

54 3. THE DEPARTMENT, IN ITS DISCRETION, MAY ISSUE A CONDITIONAL REGIS-
55 TRATION TO A LICENSEE WHO FAILS TO MEET THE CONTINUING EDUCATION
56 REQUIREMENTS ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION BUT WHO

1 AGREES TO MAKE UP ANY DEFICIENCIES AND COMPLETE ANY ADDITIONAL EDUCATION
2 WHICH THE DEPARTMENT MAY REQUIRE. THE FEE FOR SUCH A CONDITIONAL REGIS-
3 TRATION SHALL BE THE SAME AS, AND IN ADDITION TO, THE FEE FOR THE TRIEN-
4 NIAL REGISTRATION. THE DURATION OF SUCH CONDITIONAL REGISTRATION SHALL
5 BE DETERMINED BY THE DEPARTMENT BUT SHALL NOT EXCEED ONE YEAR. ANY
6 LICENSEE WHO IS NOTIFIED OF THE DENIAL OF REGISTRATION FOR FAILURE TO
7 SUBMIT EVIDENCE, SATISFACTORY TO THE DEPARTMENT, OF REQUIRED CONTINUING
8 EDUCATION AND WHO PRACTICES ACUPUNCTURE WITHOUT SUCH REGISTRATION, MAY
9 BE SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION SIXTY-FIVE
10 HUNDRED TEN OF THIS TITLE.

11 4. (A) AS USED IN SUBDIVISION TWO OF THIS SECTION, "ACCEPTABLE FORMAL
12 CONTINUING EDUCATION" SHALL MEAN FORMAL COURSES OF LEARNING WHICH
13 CONTRIBUTE TO PROFESSIONAL PRACTICE IN ACUPUNCTURE AND WHICH MEET THE
14 STANDARDS PRESCRIBED BY REGULATIONS OF THE COMMISSIONER. THE DEPARTMENT
15 MAY, IN ITS DISCRETION AND AS NEEDED TO CONTRIBUTE TO THE HEALTH AND
16 WELFARE OF THE PUBLIC, REQUIRE THE COMPLETION OF CONTINUING EDUCATION
17 COURSES IN SPECIFIC SUBJECTS. TO FULFILL THIS MANDATORY CONTINUING
18 EDUCATION REQUIREMENT, COURSES SHALL BE TAKEN FROM A SPONSOR APPROVED BY
19 THE DEPARTMENT, PURSUANT TO THE REGULATIONS OF THE COMMISSIONER OR
20 OTHERWISE QUALIFY PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

21 (B) ANY ACUPUNCTURIST WHO (I) IS A PROFESSOR, ASSISTANT PROFESSOR,
22 ADJUNCT PROFESSOR OR INSTRUCTOR AT AN INSTITUTION OF HIGHER EDUCATION
23 LOCATED IN THIS STATE OR (II) IS SPONSORED BY AN APPROVED INSTITUTION OR
24 ASSOCIATION AND WHO SERVES AS AN INSTRUCTOR IN A COURSE OF CONTINUING
25 EDUCATION WHICH IS APPROVED AS SPECIFIED IN THE STANDARDS ESTABLISHED BY
26 THE COMMISSIONER, MAY RECEIVE CONTINUING EDUCATION CREDIT FOR COURSES IN
27 WHICH HE OR SHE SERVES AS THE INSTRUCTOR. FOR EVERY TWELVE HOURS OF
28 IN-CLASS INSTRUCTION, SUCH ACUPUNCTURIST SHALL RECEIVE ONE HOUR OF
29 CONTINUING EDUCATION CREDIT, UP TO A MAXIMUM OF EIGHTEEN HOURS, FOR ANY
30 TRIENNIAL PERIOD. EVIDENCE OF SUCH INSTRUCTION SHALL BE SUBMITTED, AND
31 CREDIT APPROVED, AS SPECIFIED BY THE COMMISSIONER.

32 5. ACUPUNCTURISTS SHALL MAINTAIN ADEQUATE DOCUMENTATION OF COMPLETION
33 OF ACCEPTABLE FORMAL CONTINUING EDUCATION AND SHALL PROVIDE SUCH
34 DOCUMENTATION AT THE REQUEST OF THE DEPARTMENT. FAILURE TO PROVIDE SUCH
35 DOCUMENTATION UPON THE REQUEST OF THE DEPARTMENT SHALL BE AN ACT OF
36 MISCONDUCT SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION
37 SIXTY-FIVE HUNDRED TEN OF THIS TITLE.

38 S 6. Paragraph a of subdivision 3 of section 6507 of the education
39 law, as amended by chapter 356 of the laws of 2006, is amended to read
40 as follows:

41 a. Establish standards for preprofessional and professional education,
42 experience and licensing examinations as required to implement the arti-
43 cle for each profession. Notwithstanding any other provision of law, the
44 commissioner shall establish standards requiring that all persons apply-
45 ing, on or after January first, nineteen hundred ninety-one, initially,
46 or for the renewal of, a license, registration or limited permit to be a
47 physician, chiropractor, dentist, registered nurse, podiatrist, ACUPUNC-
48 TURIST, optometrist, psychiatrist, psychologist, licensed master social
49 worker, licensed clinical social worker, licensed creative arts thera-
50 pist, licensed marriage and family therapist, licensed mental health
51 counselor, licensed psychoanalyst, or dental hygienist shall, in addi-
52 tion to all the other licensure, certification or permit requirements,
53 have completed two hours of coursework or training regarding the iden-
54 tification and reporting of child abuse and maltreatment. The coursework
55 or training shall be obtained from an institution or provider which has
56 been approved by the department to provide such coursework or training.

1 The coursework or training shall include information regarding the phys-
2 ical and behavioral indicators of child abuse and maltreatment and the
3 statutory reporting requirements set out in sections four hundred thir-
4 teen through four hundred twenty of the social services law, including
5 but not limited to, when and how a report must be made, what other
6 actions the reporter is mandated or authorized to take, the legal
7 protections afforded reporters, and the consequences for failing to
8 report. Such coursework or training may also include information regard-
9 ing the physical and behavioral indicators of the abuse of individuals
10 with mental retardation and other developmental disabilities and volun-
11 tary reporting of abused or neglected adults to the [office of mental
12 retardation and] FOR PEOPLE WITH developmental disabilities or the local
13 adult protective services unit. Each applicant shall provide the depart-
14 ment with documentation showing that he or she has completed the
15 required training. The department shall provide an exemption from the
16 child abuse and maltreatment training requirements to any applicant who
17 requests such an exemption and who shows, to the department's satisfac-
18 tion, that there would be no need because of the nature of his or her
19 practice for him or her to complete such training;

20 S 7. Paragraph (a) of subdivision 1 of section 413 of the social
21 services law, as amended by section 3 of part D of chapter 501 of the
22 laws of 2012, is amended to read as follows:

23 (a) The following persons and officials are required to report or
24 cause a report to be made in accordance with this title when they have
25 reasonable cause to suspect that a child coming before them in their
26 professional or official capacity is an abused or maltreated child, or
27 when they have reasonable cause to suspect that a child is an abused or
28 maltreated child where the parent, guardian, custodian or other person
29 legally responsible for such child comes before them in their profes-
30 sional or official capacity and states from personal knowledge facts,
31 conditions or circumstances which, if correct, would render the child an
32 abused or maltreated child: any physician; registered physician assist-
33 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
34 osteopath; optometrist; chiropractor; podiatrist; ACUPUNCTURIST; resi-
35 dent; intern; psychologist; registered nurse; social worker; emergency
36 medical technician; licensed creative arts therapist; licensed marriage
37 and family therapist; licensed mental health counselor; licensed psycho-
38 analyst; hospital personnel engaged in the admission, examination, care
39 or treatment of persons; a Christian Science practitioner; school offi-
40 cial, which includes but is not limited to school teacher, school guid-
41 ance counselor, school psychologist, school social worker, school nurse,
42 school administrator or other school personnel required to hold a teach-
43 ing or administrative license or certificate; social services worker;
44 director of a children's overnight camp, summer day camp or traveling
45 summer day camp, as such camps are defined in section thirteen hundred
46 ninety-two of the public health law; day care center worker; school-age
47 child care worker; provider of family or group family day care; or any
48 other child care or foster care worker; mental health professional;
49 substance abuse counselor; alcoholism counselor; all persons creden-
50 tialled by the office of alcoholism and substance abuse services; peace
51 officer; police officer; district attorney or assistant district attor-
52 ney; investigator employed in the office of a district attorney; or
53 other law enforcement official.

54 S 8. This act shall take effect October 1, 2014; provided, however,
55 that if section 3 of part D of chapter 501 of the laws of 2012 is not in
56 effect on such effective date, then the amendments made to paragraph (a)

1 of subdivision 1 of section 413 of the social services law by section
2 seven of this act shall take effect on the same date and same manner as
3 section 3 of part D of chapter 501 of the laws of 2012, as amended,
4 takes effect; provided, however, that effective immediately, the state
5 education department is authorized to take such steps in advance of such
6 effective date, including the addition, amendment and/or repeal of any
7 rule or regulation as may be necessary, to ensure the timely implementa-
8 tion of the provisions of this act on such effective date.