S T A T E O F N E W Y O R K

5512--A

2009-2010 Regular Sessions

I N S E N A T E

May 13, 2009

Introduced by Sens. OPPENHEIMER, FOLEY, NOZZOLIO -- 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 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:

Section 1. Paragraph (a) of subdivision 1 of section 8211 of the education law, as added by chapter 772 of the laws of 1990, is amended to read as follows:

(a) "Profession of acupuncture" is the treating, by means of mechanical, thermal or electrical stimulation effected by the insertion of needles or by the application of heat, pressure or electrical stimulation at a point or combination of points on the surface of the body predetermined on the basis of the theory of the physiological interrelationship of body organs with an associated point or combination of points for diseases, disorders and dysfunctions of the body for the purpose of achieving a therapeutic or prophylactic effect. THE PROFESSION OF ACUPUNCTURE INCLUDES RECOMMENDATION OF TRADITIONAL REMEDIES AND SUPPLEMENTS INCLUDING, BUT NOT LIMITED TO, THE RECOMMENDATION OF DIET, HERBS AND NATURAL PRODUCTS, AND THEIR PREPARATION IN ACCORDANCE WITH TRADITIONAL AND MODERN PRACTICES OF MODERN EAST ASIAN OR ORIENTAL (CHINESE, KOREAN OR JAPANESE) MEDICAL THEORY. ANY ACUPUNCTURIST WHOSE PRACTICE INCLUDES THE RECOMMENDATION OF CUSTOM-MADE REMEDIES OR HERBAL FORMULATIONS SHALL BE SUBJECT TO THE REQUIREMENT IMPOSED BY THE

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

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PROVISIONS OF SUBDIVISION EIGHT-A OF SECTION EIGHTY-TWO HUNDRED FOURTEEN OF THIS ARTICLE.

S 2. Subdivision 1 of section 8213 of the education law, as added by chapter 772 of the laws of 1990, is amended to read as follows:

(1)(A) There is hereby established within the department a state board for acupuncture. [The] ON AND BEFORE SEPTEMBER THIRTIETH, TWO THOUSAND ELEVEN, THE board shall consist of not less than eleven members to be appointed by the board of regents on the 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 [chapter] TITLE, four of whom shall be licensed acupuncturists, four of whom shall be licensed physicians certified to use acupuncture and three of whom shall be public members representing the consumer and community. [Of the acupuncturists first appointed to the board, one may be a registered specialist's assistant-acupuncture provided that the term of such registered specialist's assistant-acupuncture shall not be more than four years.] Of the members first appointed, three shall be appointed for a one year term, three shall be appointed for a two year term and three shall be appointed for a three year term, and two shall be appointed for a four year term. Thereafter all members shall serve for five year terms. In the event that more than eleven members are appointed, a majority of the additional members shall be licensed acupuncturists. The members of the board shall select one of themselves as chairman to serve for a one year term.

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

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

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

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

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

(8) ANY PERSON WHO IS AN ACUPUNCTURIST LICENSED TO PRACTICE ACUPUNCTURE IN ANOTHER STATE OR COUNTRY MAY PRACTICE ACUPUNCTURE IN THIS STATE WITHOUT A LICENSE IF HE OR SHE IS CONDUCTING A TEACHING CLINICAL DEMON-

STRATION IN THIS STATE IN CONNECTION WITH A PROGRAM OF BASIC CLINICAL EDUCATION, GRADUATE EDUCATION, OR POST-GRADUATE EDUCATION IN AN APPROVED SCHOOL OF ACUPUNCTURE OR IN ITS AFFILIATED CLINICAL FACILITY OR HEALTH CARE AGENCY, OR BEFORE A GROUP OF LICENSED ACUPUNCTURISTS WHO ARE MEMBERS OF A PROFESSIONAL SOCIETY.

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

S 8217. MANDATORY CONTINUING EDUCATION. 1. (A) EACH LICENSED ACUPUNCTURIST REQUIRED UNDER ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER TO REGISTER TRIENNIALLY WITH THE DEPARTMENT TO PRACTICE IN THE STATE SHALL COMPLY WITH 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. ACUPUNCTURISTS WHO DO NOT SATISFY THE MANDATORY CONTINUING EDUCATION REQUIREMENTS SHALL NOT PRACTICE UNTIL THEY HAVE MET SUCH REQUIREMENTS, AS THEY HAVE BEEN ISSUED A REGISTRATION CERTIFICATE, EXCEPT THAT AN ACUPUNCTURIST MAY PRACTICE WITHOUT HAVING MET SUCH REQUIREMENTS IF HE OR SHE IS ISSUED A CONDITIONAL REGISTRATION CERTIFICATE AS SPECIFIED IN SUBDIVISION THREE OF THIS SECTION.

(B) ACUPUNCTURISTS SHALL BE EXEMPT FROM THE MANDATORY CONTINUING EDUCATION REQUIREMENT FOR THE TRIENNIAL REGISTRATION PERIOD DURING WHICH THEY ARE FIRST LICENSED. IN ACCORD 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 ACUPUNCTURIST 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 ACUPUNCTURE 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 SHALL COMPLETE A MINIMUM OF THIRTY-SIX HOURS OF ACCEPTABLE FORMAL CONTINUING EDUCATION, AS SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION, PROVIDED THAT NO MORE THAN EIGHTEEN HOURS OF SUCH CONTINUING EDUCATION SHALL CONSIST OF SELF-STUDY COURSES. ANY ACUPUNCTURIST WHOSE FIRST REGISTRATION DATE FOLLOWING THE EFFECTIVE DATE OF THIS SECTION OCCURS LESS THAN THREE YEARS FROM SUCH EFFECTIVE DATE, BUT ON OR AFTER OCTOBER FIRST, TWO THOUSAND ELEVEN, SHALL COMPLETE CONTINUING EDUCATION HOURS ON A PRORATED BASIS AT THE RATE OF ONE HOUR PER MONTH FOR THE PERIOD BEGINNING OCTOBER FIRST, TWO THOUSAND ELEVEN UP TO THE FIRST REGISTRATION DATE THEREAFTER, BUT NO ACUPUNCTURIST SHALL IN ANY EVENT BE REQUIRED TO COMPLETE LESS THAN SIX HOURS OF CONTINUING EDUCATION. 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. THE MANDATORY CONTINUING EDUCATION FEE SHALL BE THIRTY DOLLARS, 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 SIXTY-SEVEN HUNDRED THIRTY-FOUR OF THIS TITLE.

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 ACUPUNCTURE WITHOUT SUCH REGISTRATION, MAY BE SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION SIXTY-FIVE HUNDRED TEN OF THIS TITLE.

4. (A) AS USED IN SUBDIVISION TWO OF THIS SECTION, "ACCEPTABLE FORMAL CONTINUING EDUCATION" SHALL MEAN FORMAL COURSES OF LEARNING WHICH CONTRIBUTE TO PROFESSIONAL PRACTICE IN ACUPUNCTURE AND WHICH MEET THE STANDARDS PRESCRIBED BY REGULATIONS OF THE COMMISSIONER. 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 COURSES IN SPECIFIC SUBJECTS. TO FULFILL THIS MANDATORY CONTINUING EDUCATION REQUIREMENT, COURSES SHALL BE TAKEN FROM A SPONSOR APPROVED BY THE DEPARTMENT, PURSUANT TO THE REGULATIONS OF THE COMMISSIONER OR OTHERWISE QUALIFY PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

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

5. ACUPUNCTURISTS 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.

S 6. Paragraph a of subdivision 3 of section 6507 of the education law, as amended by chapter 356 of the laws of 2006, 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, ACUPUNCTURIST, 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, or dental hygienist shall, in addi-

tion 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 of mental retardation and developmental disabilities or the local adult protective services unit. Each applicant shall provide the department with documentation 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;

S 7. Paragraph (a) of subdivision 1 of section 413 of the social services law, as separately amended by chapters 323 and 366 of the laws of 2008, 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; ACUPUNCTURIST; resident; intern; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; 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; social services worker; 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 defined in subdivision four of section four hundred twelve-a of this title 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; peace officer; police officer; district attorney or assistant

district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

S 8. This act shall take effect October 1, 2011; provided, however, that effective immediately, the state education department is authorized to take such steps in advance of such effective date, including the addition, amendment and/or repeal of any rule or regulation as may be necessary, to ensure the timely implementation of the provisions of this act on such effective date.