

5512

2009-2010 Regular Sessions

I N S E N A T E

May 13, 2009

Introduced by Sen. OPPENHEIMER -- 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 MADE, INCLUDING, BUT NOT LIMITED TO, THE RECOMMENDATION
14 AND/OR PREPARATION OF HERBS, NATURAL PRODUCTS, AND DIET IN ACCORDANCE
15 WITH 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 OR PREPARATION OF CUSTOM-MADE REME-
18 DIES OR HERBAL FORMULATIONS SHALL BE SUBJECT TO THE REQUIREMENT IMPOSED
19 BY THE PROVISIONS OF SUBDIVISION EIGHT-A OF SECTION EIGHTY-TWO HUNDRED
20 FOURTEEN 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 DECEMBER THIRTY-FIRST, TWO THOUSAND
3 NINE, 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, four
8 of whom shall be licensed acupuncturists, four of whom shall be licensed
9 physicians certified to use acupuncture and three of whom shall be
10 public members representing the consumer and community. [Of the acupunc-
11 turists first appointed to the board, one may be a registered special-
12 ist's assistant-acupuncture provided that the term of such registered
13 specialist's assistant-acupuncture shall not be more than four years.]
14 Of the members first appointed, three shall be appointed for a one year
15 term, three shall be appointed for a two year term and three shall be
16 appointed for a three year term, and two shall be appointed for a four
17 year term. Thereafter all members shall serve for five year terms. In
18 the event that more than eleven members are appointed, a majority of the
19 additional members shall be licensed acupuncturists. The members of the
20 board shall select one of themselves as chairman to serve for a one year
21 term.

22 (B) ON AND AFTER JANUARY FIRST, TWO THOUSAND TEN, 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 COMMUNITY. NO MEMBER WHO IS
28 A LICENSED PHYSICIAN CERTIFIED TO USE ACUPUNCTURE AND WHO IS SERVING ON
29 THE BOARD ON THE EFFECTIVE DATE OF THIS PARAGRAPH SHALL BE REQUIRED TO
30 VACATE HIS OR HER POSITION AS A MEMBER OF THE BOARD AS A RESULT OF THE
31 REDUCTION IN SUCH PHYSICIAN MEMBERS FROM FOUR TO THREE AS SPECIFIED IN
32 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 AND/OR PREPARATION OF
42 CUSTOM-MADE REMEDIES OR HERBAL FORMULATIONS: ON AND AFTER JANUARY FIRST,
43 TWO THOUSAND TEN, AN APPLICANT WHOSE PROFESSIONAL CONDUCT IN CONNECTION
44 WITH THE PRACTICE OF ACUPUNCTURE SHALL INCLUDE THE RECOMMENDATION AND/OR
45 PREPARATION OF CUSTOM-MADE REMEDIES OR HERBAL FORMULATIONS MUST SUBMIT
46 EVIDENCE OF SUCCESSFUL PASSAGE OF THE HERBAL EXAMINATION MODULE OF A
47 NATIONAL PROFESSIONAL ORGANIZATION IN THE FIELD OF ACUPUNCTURE RECOG-
48 NIZED FOR THIS PURPOSE BY 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, AS THEY HAVE BEEN ISSUED A
13 REGISTRATION CERTIFICATE, EXCEPT THAT AN ACUPUNCTURIST MAY PRACTICE
14 WITHOUT HAVING MET SUCH REQUIREMENTS IF HE OR SHE IS ISSUED A CONDI-
15 TIONAL REGISTRATION CERTIFICATE AS SPECIFIED IN SUBDIVISION THREE OF
16 THIS SECTION.

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

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

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

51 3. THE DEPARTMENT, IN ITS DISCRETION, MAY ISSUE A CONDITIONAL REGIS-
52 TRATION TO A LICENSEE WHO FAILS TO MEET THE CONTINUING EDUCATION
53 REQUIREMENTS ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION BUT WHO
54 AGREES TO MAKE UP ANY DEFICIENCIES AND COMPLETE ANY ADDITIONAL EDUCATION
55 WHICH THE DEPARTMENT MAY REQUIRE. THE FEE FOR SUCH A CONDITIONAL REGIS-
56 TRATION SHALL BE THE SAME AS, AND IN ADDITION TO, THE FEE FOR THE TRIEN-

1 NIAL REGISTRATION. THE DURATION OF SUCH CONDITIONAL REGISTRATION SHALL
2 BE DETERMINED BY THE DEPARTMENT BUT SHALL NOT EXCEED ONE YEAR. ANY
3 LICENSEE WHO IS NOTIFIED OF THE DENIAL OF REGISTRATION FOR FAILURE TO
4 SUBMIT EVIDENCE, SATISFACTORY TO THE DEPARTMENT, OF REQUIRED CONTINUING
5 EDUCATION AND WHO PRACTICES ACUPUNCTURE WITHOUT SUCH REGISTRATION, MAY
6 BE SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION SIXTY-FIVE
7 HUNDRED TEN OF THIS CHAPTER.

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

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

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

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

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

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

17 S 7. Paragraph (a) of subdivision 1 of section 413 of the social
18 services law, as amended by chapter 366 of the laws of 2008, is amended
19 to read as follows:

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

50 S 8. Paragraph (a) of subdivision 1 of section 413 of the social
51 services law, as separately amended by chapters 323 and 366 of the laws
52 of 2008, is amended to read as follows:

53 (a) The following persons and officials are required to report or
54 cause a report to be made in accordance with this title when they have
55 reasonable cause to suspect that a child coming before them in their
56 professional or official capacity is an abused or maltreated child, or

1 when they have reasonable cause to suspect that a child is an abused or
2 maltreated child where the parent, guardian, custodian or other person
3 legally responsible for such child comes before them in their profes-
4 sional or official capacity and states from personal knowledge facts,
5 conditions or circumstances which, if correct, would render the child an
6 abused or maltreated child: any physician; registered physician assist-
7 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
8 osteopath; optometrist; chiropractor; podiatrist; ACUPUNCTURIST; resi-
9 dent; intern; psychologist; registered nurse; social worker; emergency
10 medical technician; licensed creative arts therapist; licensed marriage
11 and family therapist; licensed mental health counselor; licensed psycho-
12 analyst; hospital personnel engaged in the admission, examination, care
13 or treatment of persons; a Christian Science practitioner; school offi-
14 cial, which includes but is not limited to school teacher, school guid-
15 ance counselor, school psychologist, school social worker, school nurse,
16 school administrator or other school personnel required to hold a teach-
17 ing or administrative license or certificate; social services worker;
18 day care center worker; school-age child care worker; provider of family
19 or group family day care; employee or volunteer in a residential care
20 facility defined in subdivision four of section four hundred twelve-a of
21 this title or any other child care or foster care worker; mental health
22 professional; substance abuse counselor; alcoholism counselor; all
23 persons credentialed by the office of alcoholism and substance abuse
24 services; peace officer; police officer; district attorney or assistant
25 district attorney; investigator employed in the office of a district
26 attorney; or other law enforcement official.

27 S 9. This act shall take effect January 1, 2010.