

5512

2009-2010 Regular Sessions

I N   S E N A T E

May 13, 2009

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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 mandato-  
ry reporters of suspected cases of child abuse and maltreatment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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

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 JANUARY FIRST, TWO THOUSAND TEN, SHALL COMPLETE CONTINUING EDUCATION HOURS ON A PRORATED BASIS AT THE RATE OF ONE HOUR PER MONTH FOR THE PERIOD BEGINNING JANUARY FIRST, TWO THOUSAND TEN 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.

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 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.