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I N A S S E M B L Y

(PREFILED)

January 4, 2012

Introduced by M. of A. GOTTFRIED, COOK, ENGLEBRIGHT, CLARK, GALEF, COLTON, MAGNARELLI -- Multi-Sponsored by -- M. of A. CAHILL, MAGEE, McENENY -- read once and referred 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:

23 (1)(A) There is hereby established within the department a state board  
24 for acupuncture. [The] ON AND BEFORE SEPTEMBER THIRTIETH, TWO THOUSAND  
25 THIRTEEN, THE board shall consist of not less than eleven members to be  
26 appointed by the board of regents on the recommendation of the commis-  
27 sioner for the purpose of assisting the board of regents and the depart-

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

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1 ment on matters of professional licensing and professional conduct in  
2 accordance with section sixty-five hundred eight of this [chapter]  
3 TITLE, four of whom shall be licensed acupuncturists, four of whom shall  
4 be licensed physicians certified to use acupuncture and three of whom  
5 shall be public members representing the consumer and community. [Of the  
6 acupuncturists first appointed to the board, one may be a registered  
7 specialist's assistant-acupuncture provided that the term of such regis-  
8 tered specialist's assistant-acupuncture shall not be more than four  
9 years.] Of the members first appointed, three shall be appointed for a  
10 one year term, three shall be appointed for a two year term and three  
11 shall be appointed for a three year term, and two shall be appointed for  
12 a four year term. Thereafter all members shall serve for five year  
13 terms. In the event that more than eleven members are appointed, a  
14 majority of the additional members shall be licensed acupuncturists. The  
15 members of the board shall select one of themselves as chairman to serve  
16 for a one year term.

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

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

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

36 (8-A) SPECIAL REQUIREMENT FOR RECOMMENDATION OF CUSTOM-MADE REMEDIES  
37 OR HERBAL FORMULATIONS: ON AND AFTER OCTOBER FIRST, TWO THOUSAND THIR-  
38 TEEN, AN APPLICANT WHOSE PROFESSIONAL CONDUCT IN CONNECTION WITH THE  
39 PRACTICE OF ACUPUNCTURE SHALL INCLUDE THE RECOMMENDATION OF CUSTOM-MADE  
40 REMEDIES OR HERBAL FORMULATIONS MUST SUBMIT EVIDENCE OF SUCCESSFUL  
41 PASSAGE OF THE HERBAL EXAMINATION MODULE OF A NATIONAL PROFESSIONAL  
42 ORGANIZATION IN THE FIELD OF ACUPUNCTURE RECOGNIZED FOR THIS PURPOSE BY  
43 THE COMMISSIONER.

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

46 (8) ANY PERSON WHO IS AN ACUPUNCTURIST LICENSED TO PRACTICE ACUPUNC-  
47 TURE IN ANOTHER STATE OR COUNTRY MAY PRACTICE ACUPUNCTURE IN THIS STATE  
48 WITHOUT A LICENSE IF HE OR SHE IS CONDUCTING A TEACHING CLINICAL DEMON-  
49 STRATION IN THIS STATE IN CONNECTION WITH A PROGRAM OF BASIC CLINICAL  
50 EDUCATION, GRADUATE EDUCATION, OR POST-GRADUATE EDUCATION IN AN APPROVED  
51 SCHOOL OF ACUPUNCTURE OR IN ITS AFFILIATED CLINICAL FACILITY OR HEALTH  
52 CARE AGENCY, OR BEFORE A GROUP OF LICENSED ACUPUNCTURISTS WHO ARE  
53 MEMBERS OF A PROFESSIONAL SOCIETY.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 S 7. Paragraph (a) of subdivision 1 of section 413 of the social  
17 services law, as amended by chapter 91 of the laws of 2011, is amended  
18 to read as follows:

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

51 S 8. This act shall take effect October 1, 2013; provided, however,  
52 that effective immediately, the state education department is authorized  
53 to take such steps in advance of such effective date, including the  
54 addition, amendment and/or repeal of any rule or regulation as may be  
55 necessary, to ensure the timely implementation of the provisions of this  
56 act on such effective date.