

3511

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. NOZZOLIO, YOUNG, 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 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRATION 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 addition 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

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

18 S 7. Paragraph (a) of subdivision 1 of section 413 of the social
19 services law, as separately amended by chapters 323 and 366 of the laws
20 of 2008, is amended to read as follows:

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