

3306--B

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sens. NOZZOLIO, MARTINS, PARKER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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 and a new paragraph (c) is added 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

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

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

3 (C) NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT AN INDIVIDUAL WHO IS
4 NOT SUBJECT TO REGULATION IN THIS STATE AS A LICENSED ACUPUNCTURIST FROM
5 ENGAGING IN THE RECOMMENDATION OF TRADITIONAL REMEDIES AND SUPPLEMENTS
6 AS DEFINED HEREIN.

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

9 (1)(A) There is hereby established within the department a state board
10 for acupuncture. [The] ON AND BEFORE SEPTEMBER THIRTIETH, TWO THOUSAND
11 FIFTEEN, THE board shall consist of not less than eleven members to be
12 appointed by the board of regents on the recommendation of the commis-
13 sioner for the purpose of assisting the board of regents and the depart-
14 ment on matters of professional licensing and professional conduct in
15 accordance with section sixty-five hundred eight of this [chapter]
16 TITLE, four of whom shall be licensed acupuncturists, four of whom shall
17 be licensed physicians certified to use acupuncture and three of whom
18 shall be public members representing the consumer and community. [Of the
19 acupuncturists first appointed to the board, one may be a registered
20 specialist's assistant-acupuncture provided that the term of such regis-
21 tered specialist's assistant-acupuncture shall not be more than four
22 years.] Of the members first appointed, three shall be appointed for a
23 one year term, three shall be appointed for a two year term and three
24 shall be appointed for a three year term, and two shall be appointed for
25 a four year term. Thereafter all members shall serve for five year
26 terms. In the event that more than eleven members are appointed, a
27 majority of the additional members shall be licensed acupuncturists. The
28 members of the board shall select one of themselves as chairman to serve
29 for a one year term.

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

43 S 3. Subdivision 8 of section 8214 of the education law, as added by
44 chapter 772 of the laws of 1990, is amended and two new subdivisions 8-a
45 and 9 are added to read as follows:

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

49 (8-A) SPECIAL REQUIREMENT FOR RECOMMENDATION OF CUSTOM-MADE REMEDIES
50 OR HERBAL FORMULATIONS: ON AND AFTER OCTOBER FIRST, TWO THOUSAND
51 FIFTEEN, AN APPLICANT WHOSE PROFESSIONAL CONDUCT IN CONNECTION WITH THE
52 PRACTICE OF ACUPUNCTURE SHALL INCLUDE THE RECOMMENDATION OF CUSTOM-MADE
53 REMEDIES OR HERBAL FORMULATIONS MUST SUBMIT EVIDENCE OF SUCCESSFUL
54 PASSAGE OF THE HERBAL EXAMINATION MODULE OF A NATIONAL PROFESSIONAL
55 ORGANIZATION IN THE FIELD OF ACUPUNCTURE RECOGNIZED FOR THIS PURPOSE BY
56 THE COMMISSIONER; AND

1 (9) CERTIFICATES OF HERBAL PRACTICE: 1. NO ACUPUNCTURIST SHALL
2 DISPENSE OR RECOMMEND CUSTOM-MADE REMEDIES OR CUSTOM-MADE HERBAL FORMU-
3 LATIONS WITHOUT A CERTIFICATE OF HERBAL PRACTICE ISSUED BY THE DEPART-
4 MENT PURSUANT TO REGULATIONS OF THE COMMISSIONER.

5 2. THE FEE FOR A CERTIFICATE OF AUTHORITY SHALL BE DETERMINED BY THE
6 COMMISSIONER AND SHALL BE PAID ON A TRIENNIAL BASIS. A CERTIFICATE MAY
7 BE SUSPENDED OR REVOKED IN THE SAME MANNER AS A LICENSE TO PRACTICE
8 ACUPUNCTURE.

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

11 (8) ANY PERSON WHO IS AN ACUPUNCTURIST LICENSED TO PRACTICE ACUPUNC-
12 TURE IN ANOTHER STATE OR COUNTRY MAY PRACTICE ACUPUNCTURE IN THIS STATE
13 WITHOUT A LICENSE IF HE OR SHE IS CONDUCTING A TEACHING CLINICAL DEMON-
14 STRATION IN THIS STATE IN CONNECTION WITH A PROGRAM OF BASIC CLINICAL
15 EDUCATION, GRADUATE EDUCATION, OR POST-GRADUATE EDUCATION IN AN APPROVED
16 SCHOOL OF ACUPUNCTURE OR IN ITS AFFILIATED CLINICAL FACILITY OR HEALTH
17 CARE AGENCY, OR BEFORE A GROUP OF LICENSED ACUPUNCTURISTS WHO ARE
18 MEMBERS OF A PROFESSIONAL SOCIETY.

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

21 S 8217. MANDATORY CONTINUING EDUCATION. 1. (A) EACH LICENSED ACUPUNC-
22 TURIST REQUIRED UNDER ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER TO
23 REGISTER TRIENNIALLY WITH THE DEPARTMENT TO PRACTICE IN THE STATE SHALL
24 COMPLY WITH PROVISIONS OF THE MANDATORY CONTINUING EDUCATION REQUIRE-
25 MENTS PRESCRIBED IN SUBDIVISION TWO OF THIS SECTION EXCEPT AS SET FORTH
26 IN PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION. ACUPUNCTURISTS WHO DO NOT
27 SATISFY THE MANDATORY CONTINUING EDUCATION REQUIREMENTS SHALL NOT PRAC-
28 TICE UNTIL THEY HAVE MET SUCH REQUIREMENTS, EXCEPT THAT AN ACUPUNCTURIST
29 MAY PRACTICE WITHOUT HAVING MET SUCH REQUIREMENTS IF HE OR SHE IS ISSUED
30 A CONDITIONAL REGISTRATION CERTIFICATE AS SPECIFIED IN SUBDIVISION THREE
31 OF THIS SECTION.

32 (B) ACUPUNCTURISTS SHALL BE EXEMPT FROM THE MANDATORY CONTINUING
33 EDUCATION REQUIREMENT FOR THE TRIENNIAL REGISTRATION PERIOD DURING WHICH
34 THEY ARE FIRST LICENSED. IN ACCORD WITH THE INTENT OF THIS SECTION,
35 ADJUSTMENT TO THE MANDATORY CONTINUING EDUCATION REQUIREMENT MAY BE
36 GRANTED BY THE DEPARTMENT FOR REASONS OF HEALTH CERTIFIED BY AN APPRO-
37 PRIATE HEALTH CARE PROFESSIONAL, FOR EXTENDED ACTIVE DUTY WITH THE ARMED
38 FORCES OF THE UNITED STATES, OR FOR OTHER GOOD CAUSE ACCEPTABLE TO THE
39 DEPARTMENT WHICH MAY PREVENT COMPLIANCE.

40 (C) A LICENSED ACUPUNCTURIST NOT ENGAGED IN PRACTICE AS DETERMINED BY
41 THE DEPARTMENT, SHALL BE EXEMPT FROM THE MANDATORY CONTINUING EDUCATION
42 REQUIREMENT UPON THE FILING OF A STATEMENT WITH THE DEPARTMENT DECLARING
43 SUCH STATUS. ANY LICENSEE WHO RETURNS TO THE PRACTICE OF ACUPUNCTURE
44 DURING THE TRIENNIAL REGISTRATION PERIOD SHALL NOTIFY THE DEPARTMENT
45 PRIOR TO REENTERING THE PROFESSION AND SHALL MEET SUCH MANDATORY EDUCA-
46 TION REQUIREMENTS AS SHALL BE PRESCRIBED BY REGULATIONS OF THE COMMIS-
47 SIONER.

48 2. DURING EACH TRIENNIAL REGISTRATION PERIOD AN APPLICANT FOR REGIS-
49 TRATION SHALL COMPLETE A MINIMUM OF THIRTY-SIX HOURS OF ACCEPTABLE
50 FORMAL CONTINUING EDUCATION, AS SPECIFIED IN SUBDIVISION FOUR OF THIS
51 SECTION, PROVIDED THAT NO MORE THAN EIGHTEEN HOURS OF SUCH CONTINUING
52 EDUCATION SHALL CONSIST OF SELF-STUDY COURSES. ANY ACUPUNCTURIST WHOSE
53 FIRST REGISTRATION DATE FOLLOWING THE EFFECTIVE DATE OF THIS SECTION
54 OCCURS LESS THAN THREE YEARS FROM SUCH EFFECTIVE DATE, BUT ON OR AFTER
55 OCTOBER FIRST, TWO THOUSAND FIFTEEN, SHALL COMPLETE CONTINUING EDUCATION
56 HOURS ON A PRORATED BASIS AT THE RATE OF ONE HOUR PER MONTH FOR THE

1 PERIOD BEGINNING OCTOBER FIRST, TWO THOUSAND FIFTEEN UP TO THE FIRST
2 REGISTRATION DATE THEREAFTER, BUT NO ACUPUNCTURIST SHALL IN ANY EVENT BE
3 REQUIRED TO COMPLETE LESS THAN SIX HOURS OF CONTINUING EDUCATION. A
4 LICENSEE WHO HAS NOT SATISFIED THE MANDATORY CONTINUING EDUCATION
5 REQUIREMENTS SHALL NOT BE ISSUED A TRIENNIAL REGISTRATION CERTIFICATE BY
6 THE DEPARTMENT AND SHALL NOT PRACTICE UNLESS AND UNTIL A CONDITIONAL
7 REGISTRATION CERTIFICATE IS ISSUED AS PROVIDED FOR IN SUBDIVISION THREE
8 OF THIS SECTION. CONTINUING EDUCATION HOURS TAKEN DURING ONE TRIENNIUM
9 MAY NOT BE TRANSFERRED TO A SUBSEQUENT TRIENNIUM. THE MANDATORY CONTIN-
10 UING EDUCATION FEE SHALL BE THIRTY DOLLARS, SHALL BE PAYABLE ON OR
11 BEFORE THE FIRST DAY OF EACH TRIENNIAL REGISTRATION PERIOD, AND SHALL BE
12 PAID IN ADDITION TO THE TRIENNIAL REGISTRATION FEE REQUIRED BY SECTION
13 SIXTY-SEVEN HUNDRED THIRTY-FOUR OF THIS TITLE.

14 3. THE DEPARTMENT, IN ITS DISCRETION, MAY ISSUE A CONDITIONAL REGIS-
15 TRATION TO A LICENSEE WHO FAILS TO MEET THE CONTINUING EDUCATION
16 REQUIREMENTS ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION BUT WHO
17 AGREES TO MAKE UP ANY DEFICIENCIES AND COMPLETE ANY ADDITIONAL EDUCATION
18 WHICH THE DEPARTMENT MAY REQUIRE. THE FEE FOR SUCH A CONDITIONAL REGIS-
19 TRATION SHALL BE THE SAME AS, AND IN ADDITION TO, THE FEE FOR THE TRIEN-
20 NIAL REGISTRATION. THE DURATION OF SUCH CONDITIONAL REGISTRATION SHALL
21 BE DETERMINED BY THE DEPARTMENT BUT SHALL NOT EXCEED ONE YEAR. ANY
22 LICENSEE WHO IS NOTIFIED OF THE DENIAL OF REGISTRATION FOR FAILURE TO
23 SUBMIT EVIDENCE, SATISFACTORY TO THE DEPARTMENT, OF REQUIRED CONTINUING
24 EDUCATION AND WHO PRACTICES ACUPUNCTURE WITHOUT SUCH REGISTRATION, MAY
25 BE SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION SIXTY-FIVE
26 HUNDRED TEN OF THIS TITLE.

27 4. (A) AS USED IN SUBDIVISION TWO OF THIS SECTION, "ACCEPTABLE FORMAL
28 CONTINUING EDUCATION" SHALL MEAN FORMAL COURSES OF LEARNING WHICH
29 CONTRIBUTE TO PROFESSIONAL PRACTICE IN ACUPUNCTURE AND WHICH MEET THE
30 STANDARDS PRESCRIBED BY REGULATIONS OF THE COMMISSIONER. THE DEPARTMENT
31 MAY, IN ITS DISCRETION AND AS NEEDED TO CONTRIBUTE TO THE HEALTH AND
32 WELFARE OF THE PUBLIC, REQUIRE THE COMPLETION OF CONTINUING EDUCATION
33 COURSES IN SPECIFIC SUBJECTS. TO FULFILL THIS MANDATORY CONTINUING
34 EDUCATION REQUIREMENT, COURSES SHALL BE TAKEN FROM A SPONSOR APPROVED BY
35 THE DEPARTMENT, PURSUANT TO THE REGULATIONS OF THE COMMISSIONER OR
36 OTHERWISE QUALIFY PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

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

48 5. ACUPUNCTURISTS SHALL MAINTAIN ADEQUATE DOCUMENTATION OF COMPLETION
49 OF ACCEPTABLE FORMAL CONTINUING EDUCATION AND SHALL PROVIDE SUCH
50 DOCUMENTATION AT THE REQUEST OF THE DEPARTMENT. FAILURE TO PROVIDE SUCH
51 DOCUMENTATION UPON THE REQUEST OF THE DEPARTMENT SHALL BE AN ACT OF
52 MISCONDUCT SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION
53 SIXTY-FIVE HUNDRED TEN OF THIS TITLE.

54 S 6. Paragraph a of subdivision 3 of section 6507 of the education
55 law, as amended by chapter 554 of the laws of 2013, is amended to read
56 as follows:

1 a. Establish standards for preprofessional and professional education,
2 experience and licensing examinations as required to implement the arti-
3 cle for each profession. Notwithstanding any other provision of law, the
4 commissioner shall establish standards requiring that all persons apply-
5 ing, on or after January first, nineteen hundred ninety-one, initially,
6 or for the renewal of, a license, registration or limited permit to be a
7 physician, chiropractor, dentist, registered nurse, podiatrist, ACUPUNC-
8 TURIST, optometrist, psychiatrist, psychologist, licensed master social
9 worker, licensed clinical social worker, licensed creative arts thera-
10 pist, licensed marriage and family therapist, licensed mental health
11 counselor, licensed psychoanalyst, dental hygienist, licensed behavior
12 analyst, or certified behavior analyst assistant shall, in addition to
13 all the other licensure, certification or permit requirements, have
14 completed two hours of coursework or training regarding the identifica-
15 tion and reporting of child abuse and maltreatment. The coursework or
16 training shall be obtained from an institution or provider which has
17 been approved by the department to provide such coursework or training.
18 The coursework or training shall include information regarding the phys-
19 ical and behavioral indicators of child abuse and maltreatment and the
20 statutory reporting requirements set out in sections four hundred thir-
21 teen through four hundred twenty of the social services law, including
22 but not limited to, when and how a report must be made, what other
23 actions the reporter is mandated or authorized to take, the legal
24 protections afforded reporters, and the consequences for failing to
25 report. Such coursework or training may also include information regard-
26 ing the physical and behavioral indicators of the abuse of individuals
27 with mental retardation and other developmental disabilities and volun-
28 tary reporting of abused or neglected adults to the office [of mental
29 retardation and] FOR PEOPLE WITH developmental disabilities or the local
30 adult protective services unit. Each applicant shall provide the depart-
31 ment with documentation showing that he or she has completed the
32 required training. The department shall provide an exemption from the
33 child abuse and maltreatment training requirements to any applicant who
34 requests such an exemption and who shows, to the department's satisfac-
35 tion, that there would be no need because of the nature of his or her
36 practice for him or her to complete such training;

37 S 7. Paragraph (a) of subdivision 1 of section 413 of the social
38 services law, as amended by chapter 554 of the laws of 2013, is amended
39 to read as follows:

40 (a) The following persons and officials are required to report or
41 cause a report to be made in accordance with this title when they have
42 reasonable cause to suspect that a child coming before them in their
43 professional or official capacity is an abused or maltreated child, or
44 when they have reasonable cause to suspect that a child is an abused or
45 maltreated child where the parent, guardian, custodian or other person
46 legally responsible for such child comes before them in their profes-
47 sional or official capacity and states from personal knowledge facts,
48 conditions or circumstances which, if correct, would render the child an
49 abused or maltreated child: any physician; registered physician assist-
50 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
51 osteopath; optometrist; chiropractor; podiatrist; ACUPUNCTURIST; resi-
52 dent; intern; psychologist; registered nurse; social worker; emergency
53 medical technician; licensed creative arts therapist; licensed marriage
54 and family therapist; licensed mental health counselor; licensed psycho-
55 analyst; licensed behavior analyst; certified behavior analyst assist-
56 ant; hospital personnel engaged in the admission, examination, care or

1 treatment of persons; a Christian Science practitioner; school official,
2 which includes but is not limited to school teacher, school guidance
3 counselor, school psychologist, school social worker, school nurse,
4 school administrator or other school personnel required to hold a teach-
5 ing or administrative license or certificate; social services worker;
6 director of a children's overnight camp, summer day camp or traveling
7 summer day camp, as such camps are defined in section thirteen hundred
8 ninety-two of the public health law; day care center worker; school-age
9 child care worker; provider of family or group family day care; or any
10 other child care or foster care worker; mental health professional;
11 substance abuse counselor; alcoholism counselor; all persons creden-
12 tialed by the office of alcoholism and substance abuse services; peace
13 officer; police officer; district attorney or assistant district attor-
14 ney; investigator employed in the office of a district attorney; or
15 other law enforcement official.

16 S 8. This act shall take effect October 1, 2015; provided, however,
17 that if chapter 554 of the laws of 2013 is not in effect on such effec-
18 tive date, then the amendments made to paragraph a of subdivision 3 of
19 section 6507 of the education law by section six of this act and to
20 paragraph (a) of subdivision 1 of section 413 of the social services law
21 by section seven of this act shall take effect on the same date and in
22 the same manner as chapter 554 of the laws of 2013, as amended, takes
23 effect; provided, however, that effective immediately, the state educa-
24 tion department is authorized to take such steps in advance of such
25 effective date, including the addition, amendment and/or repeal of any
26 rule or regulation as may be necessary, to ensure the timely implementa-
27 tion of the provisions of this act on such effective date.