

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

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.....

Section 1. Paragraph (a) of subdivision (1) of section 8211 of the education law, as added by chapter 772 of the laws of 1990, is amended to read as follows:

(a) "Profession of acupuncture" is the treating, by means of mechanical, thermal or electrical stimulation effected by the insertion of needles or by the application of heat, pressure or electrical stimulation at a point or combination of points on the surface of the body predetermined on the basis of the theory of the physiological interrelationship of body organs with an associated point or combination of points for diseases, disorders and dysfunctions of the body for the purpose of achieving a therapeutic or prophylactic effect. The profession of acupuncture includes recommendation of traditional remedies and supplements made, including,

1 but not limited to, the recommendation and/or preparation of herbs, natural
2 products, and diet in accordance with traditional and modern practices of
3 modern East Asian or Oriental (Chinese, Korean or Japanese) medical
4 theory. Any acupuncturist whose practice includes the recommendation or
5 preparation of custom-made remedies or herbal formulations shall be subject
6 to the requirement imposed by the provisions of subdivision three-a of
7 section eight thousand two hundred fourteen of this article.

8 S2. Subdivision (1) of section 8213 of the education law, as added by
9 chapter 772 of the laws of 1990, is amended to read as follows:

10 (1) (a) There is hereby established within the department a state board for
11 acupuncture. [The} On and before December 31, 2008, the board shall
12 consist of not less than eleven members to be appointed by the board of
13 regents on the recommendation of the commissioner for the purpose of
14 assisting the board of regents and the department on matters of professional
15 licensing and professional conduct in accordance with section sixty-five
16 hundred eight of this chapter, four of whom shall be licensed acupuncturists,
17 four of whom shall be licensed physicians certified to use acupuncture and
18 three of whom shall be public members representing the consumer and
19 community. [Of the acupuncturists first appointed to the board, one may
20 be a registered specialist's assistant-acupuncture provided that the term of

1 such registered specialist's assistant-acupuncture shall not be more than
2 four years.] Of the members first appointed, three shall be appointed for a
3 one year term, three shall be appointed for a two year term and three shall be
4 appointed for a three year term, and two shall be appointed for a four year
5 term. Thereafter all members shall serve for five-year terms. In the event
6 that more than eleven members are appointed, a majority of the additional
7 members shall be licensed acupuncturists. The members of the board shall
8 select one of themselves as chairman to serve for a one-year term.

9 (b) On and after January 1, 2009, the board shall consist of not less
10 than twelve members appointed as specified in paragraph (a) of this
11 subdivision, except that at least six of such members shall be licensed
12 acupuncturists and three of such members shall be licensed physicians
13 certified to use acupuncture. No member who is a licensed physician
14 certified to use acupuncture and who is serving on the board on the effective
15 date of this paragraph shall be required to vacate his or her position as a
16 member of the board as a result of the reduction in such physician members
17 from four to three as specified in this paragraph, but such change in
18 composition shall be made upon the expiration of terms of office, or
19 vacancies in office, occurring on and after such date.

1 S3. Section 8214 of the education law is amended by adding a new
2 subdivision (3-a) to read as follows:

3 (3-a) Special requirement for recommendation and/or preparation of
4 custom-made remedies or herbal formulations. On and after January 1, 2009,
5 an applicant whose professional conduct in connection with the practice of
6 acupuncture shall include the recommendation and/or preparation of custom-
7 made remedies or herbal formulations must submit evidence of successful
8 passage of the NCCAOM herbal exam module.

9 S4. 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 acupuncture
12 in another state or country may practice acupuncture in this state without a
13 license if he or she is conducting a teaching clinical demonstration in this
14 state in connection with a program of basic clinical education, graduate
15 education, or post-graduate education in an approved school of acupuncture
16 or in its affiliated clinical facility or health care agency, or before a group of
17 licensed acupuncturists who are members of a professional society.

18 S5. The education law is amended by adding a new section 8217 to read
19 as follows:

1 S.8217. Mandatory continuing education. 1. (a) Each licensed
2 acupuncturist required under article one hundred thirty of this chapter to
3 register triennially with the department to practice in the state shall comply
4 with provisions of the mandatory continuing education requirements
5 prescribed in subdivision two of this section except as set forth in paragraphs
6 (b) and (c) of this subdivision. Acupuncturists who do not satisfy the
7 mandatory continuing education requirements shall not practice until they
8 have met such requirements, and they have been issued a registration
9 certificate, except that an acupuncturist may practice without having met
10 such requirements if he or she is issued a conditional registration certificate
11 as specified in subdivision three of this section.

12 (b) Acupuncturists shall be exempt from the mandatory continuing
13 education requirement for the triennial registration period during which they
14 are first licensed. In accord with the intent of this section, adjustment to the
15 mandatory continuing education requirement may be granted by the
16 department for reasons of health certified by an appropriate health care
17 professional, for extended active duty with the armed forces of the United
18 States, or for other good cause acceptable to the department which may
19 prevent compliance.

1 (c) A licensed acupuncturist not engaged in practice as determined by the
2 department, shall be exempt from the mandatory continuing education
3 requirement upon the filing of a statement with the department declaring
4 such status. Any licensee who returns to the practice of acupuncture during
5 the triennial registration period shall notify the department prior to
6 reentering the profession and shall meet such mandatory education
7 requirements as shall be prescribed by regulations of the commissioner.

8 2. During each triennial registration period an applicant for registration
9 shall complete a minimum of thirty-six hours of acceptable formal
10 continuing education, as specified in subdivision four of this section,
11 provided that no more than eighteen hours of such continuing education
12 shall consist of self-study courses. Any acupuncturist whose first
13 registration date following the effective date of this section occurs less than
14 three years from such effective date, but on or after January first, two
15 thousand eight shall complete continuing education hours on a prorated basis
16 at the rate of one hour per month for the period beginning January first, two
17 thousand eight up to the first registration date thereafter, but no
18 acupuncturist shall in any event be required to be required to complete less
19 than six hours of continuing education. A licensee who has not satisfied the
20 mandatory continuing education requirements shall not be issued a triennial

1 registration certificate by the department and shall not practice unless and
2 until a conditional registration certificate is issued as provided for in
3 subdivision three of this section. Continuing education hours taken during
4 one triennium may not be transferred to a subsequent triennium.

5 3. The department, in its discretion, may issue a conditional registration
6 to a licensee who fails to meet the continuing education requirements
7 established in subdivision two of this section but who agrees to make up any
8 deficiencies and complete any additional education which the department
9 may require. The fee for such a conditional registration shall be the same as,
10 and in addition to, the fee for the triennial registration. The duration of such
11 conditional registration shall be determined by the department but shall not
12 exceed one year. Any licensee who is notified of the denial of registration
13 for failure to submit evidence, satisfactory to the department, of required
14 continuing education and who practices acupuncture without such
15 registration, may be subject to disciplinary proceedings pursuant to section
16 sixty-five hundred ten of this chapter.

17 4. (a) As used in subdivision two of this section, "acceptable formal
18 continuing education" shall mean formal courses of learning which
19 contribute to professional practice in acupuncture and which meet the
20 standards prescribed by regulations of the commissioner. The department

1 may, in its discretion and as needed to contribute to the health and welfare of
2 the public, require the completion of continuing education courses in
3 specific subjects. To fulfill this mandatory continuing education
4 requirement, courses must be taken from a sponsor approved by the
5 department, pursuant to the regulations of the commissioner or otherwise
6 qualify pursuant to paragraph (b) of this subdivision.

7 (b) Any acupuncturist who (i) is a professor, assistant professor,
8 adjunct professor or instructor at an institution of higher education located in
9 this state or (ii) is sponsored by an approved institution or association and
10 who serves as an instructor in a course of continuing education which is
11 approved as specified in the standards established by the commissioner, may
12 receive continuing education credit for courses in which he or she serves as
13 the instructor. For every twelve hours of in-class instruction, such
14 acupuncturist shall receive one hour of continuing education credit, up to a
15 maximum of eighteen hours, for any triennial period. Evidence of such
16 instruction shall be submitted, and credit approved, as specified by the
17 commissioner.

18 5. Acupuncturists shall maintain adequate documentation of completion
19 of acceptable formal continuing education and shall provide such
20 documentation at the request of the department. Failure to provide such

1 documentation upon the request of the department shall be an act of
2 misconduct subject to disciplinary proceedings pursuant to section sixty-five
3 hundred ten of this chapter.

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

7 a. Establish standards for preprofessional and professional education,
8 experience and licensing examinations as required to implement the article
9 for each profession. Notwithstanding any other provision of law, the
10 commissioner shall establish standards requiring that all persons applying,
11 on or after January first, nineteen hundred ninety-one, initially, or for the
12 renewal of, a license, registration or limited permit to be a physician,
13 chiropractor, dentist, registered nurse, podiatrist, acupuncturist, optometrist,
14 psychiatrist, psychologist, licensed master social worker, licensed clinical
15 social worker, licensed creative arts therapist, licensed marriage and family
16 therapist, licensed mental health counselor, licensed psychoanalyst, or
17 dental hygienist shall, in addition to all the other licensure, certification
18 or permit requirements, have completed two hours of coursework or
19 training regarding the identification and reporting of child abuse and
20 maltreatment. The coursework or training shall be obtained from an

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

1 S7. Subdivision 1 of section 413 of the social services law, as separately
2 amended by chapters 420 and 676 of the laws of 2002, is amended to read as
3 follows:

4 1. The following persons and officials are required to report or cause a
5 report to be made in accordance with this title when they have reasonable
6 cause to suspect that a child coming before them in their professional or
7 official capacity is an abused or maltreated child, or when they have
8 reasonable cause to suspect that a child is an abused or maltreated child
9 where the parent, guardian, custodian or other person legally responsible for
10 such child comes before them in their professional or official capacity and
11 states from personal knowledge facts, conditions or circumstances which, if
12 correct, would render the child an abused or maltreated child: any
13 physician; registered physician assistant; surgeon; medical examiner;
14 coroner; dentist; dental hygienist; osteopath; optometrist; acupuncturist;
15 chiropractor; podiatrist; resident; intern; psychologist; registered nurse;
16 social worker; emergency medical technician; licensed creative arts
17 therapist; licensed marriage and family therapist; licensed mental
18 health counselor; licensed psychoanalyst; hospital personnel engaged in
19 the admission, examination, care or treatment of persons; a Christian
20 Science practitioner; school official; social services worker; day care center

1 worker; provider of family or group family day care; employee or volunteer
2 in a residential care facility defined in subdivision seven of section four
3 hundred twelve of this title or any other child care or foster care
4 worker; mental health professional; substance abuse counselor;
5 alcoholism counselor; peace officer; police officer; district attorney or
6 assistant district attorney; investigator employed in the office of a district
7 attorney; or other law enforcement official. Whenever such person is
8 required to report under this title in his or her capacity as a member of the
9 staff of a medical or other public or private institution, school, facility or
10 agency, he or she shall immediately notify the person in charge of such
11 institution, school, facility or agency, or his or her designated agent, who
12 then also shall become responsible to report or cause reports to be made.
13 However, nothing in this section or title is intended to require more than one
14 report from any such institution, school or agency. At the time of the making
15 of a report, or at any time thereafter, such person or official may exercise the
16 right to request, pursuant to paragraph (A) of subdivision four of section
17 four hundred twenty-two of this title, the findings of an investigation made
18 pursuant to this title or section 45.07 of the mental hygiene law.

19 S8. This act shall take effect on January 1, 2009.

20 .8