

By: Cook of Colorado

H.B. No. 3038

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the elimination of the Acupuncture Board and functions
3 of the Texas Acupuncture Association.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Amendment. Chapter 205, Subchapter A,
6 Occupations Code is amended by the following:

7 (2) "Acupuncture"

8 (B) the administration and/or recommendation of
9 thermal or electrical treatments, herbal and dietary formulas and
10 supplements, energy flow exercises (including acupressure, tuina,
11 shiatsu and other forms of Asian bodywork), and dietary guidelines

12 (3) "Acupuncture association" means the Texas
13 Association of Acupuncture and Oriental Medicine.

14 SECTION 2. Amendment. Chapter 205, Occupations Code is
15 amended by the following:

16 Sec. 205.002. Application of Sunset Act This chapter
17 expires September 1, 2008.

18 SECTION 3. Amendment. Chapter 205 of the Occupations Code
19 is amended by deleting Subchapter B, Texas State Board of
20 Acupuncture Examiners and adding the following:

21 SUITS: The Acupuncture association may sue and be sued in its own
22 name.

23 CONTRACTS: To carry out and promote the objectives of this
24 chapter, the Acupuncture association may enter into contracts and

1 do all other acts incidental to those contracts that are necessary
2 or expedient for the administration of its affairs and for the
3 attainment of its purposes.

4 PURCHASING: The Acupuncture association shall adopt guidelines
5 and procedures for purchasing. The Acupuncture association shall
6 maintain reports on Acupuncture association purchases and shall
7 make those reports available for review by the state auditor.

8 PROPERTY: (a) The Acupuncture association may acquire by gift,
9 bequest, devise, or other manner any interest in real or personal
10 property. (b) The Acupuncture association may acquire, hold,
11 lease, encumber, and dispose of real and personal property in the
12 exercise of its powers and the performance of its duties under this
13 chapter. (c) The property of the Acupuncture association is held
14 by the Acupuncture association for the purpose of overseeing and
15 regulating the practice of acupuncture in Texas. If the
16 Acupuncture association ceases to exist as a legal entity for any
17 reason, all property of the Acupuncture association shall be held
18 in trust for the board.

19 INDEBTNESS, LIABILITY AND OBLIGATION: (a) An indebtedness,
20 liability, or obligation of the Acupuncture association does not:
21 (1) create a debt or other liability of the state or of any entity
22 other than the Acupuncture association or any successor public
23 corporation; or (2) create any personal liability on the part of
24 the members of the Acupuncture association or the members of the
25 board of directors or any authorized person issuing, executing, or
26 delivering any evidence of the indebtedness, liability, or
27 obligation. (b) The Acupuncture association may not create an

1 indebtedness, liability, or obligation that cannot be paid from the
2 receipts for the current year unless approved by referendum of all
3 members of the Acupuncture association.

4 MANAGEMENT. The Acupuncture association may contract with
5 independent agencies and/or entities to perform certain management
6 and administrative functions of the Acupuncture association.

7 OFFICERS OF ACUPUNCTURE ASSOCIATION: (a) The officers of the
8 Acupuncture association are the president, president-elect, and
9 immediate past-president. (b) the officers shall be elected in
10 accordance with rules established by the Acupuncture association
11 and with the advice of the Medical board.

12 BOARD OF DIRECTORS: (a) The governing body of the Acupuncture
13 association is the board of directors. (b) The board is composed
14 of (1) officers of the Acupuncture association; (2) 6 licensed
15 acupuncturists; and (3) two physicians experienced in the practice
16 of acupuncture. (c) Elected members serve three-year terms, which
17 shall be staggered. (d) The board of directors shall provide to
18 its members and employees, as often as necessary, information
19 regarding their qualifications for office or employment under this
20 chapter and their responsibilities under applicable laws related to
21 standards of conduct for state officers. (d) The board of
22 directors shall develop and implement policies that clearly define
23 the respective responsibilities of the board. (e) Meetings of the
24 board of directors are subject to the Open Meetings Act. (f) The
25 Board of directors shall develop and implement policies that
26 provide the public with a reasonable opportunity to appear before
27 the board and to speak on any issue under the jurisdiction of the

1 board.

2 REMOVAL OF DIRECTOR: (a) the board of directors may remove a
3 director from the board at any regular meeting by resolution
4 declaring the director's position vacant if the director has become
5 incapacitated and cannot perform his duties as a director or the
6 director has been absent, without cause considered adequate by the
7 board, from any two consecutive regular meetings of the board or
8 from a total of four meetings.

9 TRADE ASSOCIATION EMPLOYEE OR CONSULTANT: A member of the board of
10 directors or an employee of the board may not be an employee or paid
11 consultant of a trade association in the field of board interest.

12 EXECUTIVE DIRECTOR: (a) The board of directors, by a majority
13 vote, elects the executive director. The executive director serves
14 at the pleasure of the board. (b) The executive director shall
15 execute the policies and directives of the board in all Acupuncture
16 association activities. (c) The executive director shall perform
17 the duties usually required of a corporate secretary and other
18 duties as assigned by the board. (d) The executive director shall
19 act as the treasurer of the Acupuncture association and shall
20 receive funds on behalf of the Acupuncture association. The funds
21 are subject to audit. (e) The executive director shall maintain
22 the membership files. (f) The executive director must execute a
23 corporate surety bond in an amount determined by the board of
24 directors conditioned on faithful performance of the executive
25 director's duties. The Acupuncture association shall pay the
26 premium for the bond. (g) The executive director has no vote on
27 matters before the board of directors. (h) The executive director

1 or the executive director's designee shall develop a system of
2 annual performance evaluations. All merit pay for Acupuncture
3 association employees must be based on the system established under
4 this subsection. (i) The executive director or the executive
5 director's designee shall prepare and maintain a written policy
6 statement to assure implementation of a program of equal employment
7 opportunity under which all personnel transactions are made without
8 regard to race, color, handicap, sex, religion, age, or national
9 origin. The policy statement must include: (1) personnel
10 policies, including policies relating to recruitment, evaluation,
11 selection, appointment, training, and promotion of personnel; (2)
12 a comprehensive analysis of the Acupuncture association work force
13 that meets federal and state guidelines; (3) procedures by which a
14 determination can be made of significant underuse in the
15 Acupuncture association work force of all persons for whom federal
16 or state guidelines encourage a more equitable balance; and (4)
17 reasonable methods to appropriately address those areas of
18 significant underuse. (j) A policy statement prepared under
19 Subsection (i) must cover an annual period, be updated at least
20 annually, and be filed with the governor's office. (k) The
21 governor's office shall deliver a biennial report to the
22 legislature based on the information received under Subsection (i).
23 The report may be made separately or as a part of other biennial
24 reports made to the legislature.

25 COMMITTEES AND SECTIONS: The board of director's may create
26 committees and sections as it considers advisable and necessary to
27 carry out the purposes of this chapter.

1 OPEN RECORDS: All records of the Acupuncture association are
2 subject to Chapter 552.

3 AUDITS: The financial transactions of the Acupuncture
4 association are subject to audit by the state auditor in accordance
5 with Chapter 321, Government Code. The Acupuncture association
6 shall file annually with the governor and the presiding officer of
7 each house of the legislature a complete and detailed written
8 report accounting for all funds received and disbursed by the
9 Acupuncture association during the preceding fiscal year. The
10 annual report must be in the form and reported in the time provided
11 by the General Appropriations Act.

12 RULES: The Acupuncture association shall promulgate rules
13 governing the Acupuncture association.

14 SECTION 4. Amendment. Chapter 205 of the Occupations Code
15 is amended by the following:

16 SUBCHAPTER C. POWERS AND DUTIES OF ACUPUNCTURE ASSOCIATION AND
17 MEDICAL BOARD

18 Sec. 205.101. General Powers and Duties of Acupuncture
19 association (a) The Acupuncture association shall:

20 (1) establish qualifications for an acupuncturist to
21 practice in this state;

22 (2) (3) administer an examination that is validated
23 by independent testing professionals for a license to practice
24 acupuncture;

25 (4) develop requirements for licensure by endorsement
26 of other states;

27 (5) prescribe the application form for a license to

1 practice acupuncture;

2 (6) make recommendations on applications for licenses
3 to practice acupuncture;

4 (7) remit 50% of any profits, if any, derived from the
5 collection of membership dues at the end of the Acupuncture
6 association's fiscal year to the General Revenue Fund; and

7 (8) recommend additional rules as are necessary to
8 administer and enforce this chapter.

9 (b) The acupuncture association shall establish minimum
10 educational and training requirements as necessary to enable the
11 acupuncture board to recommend that the medical board issue a
12 license to practice acupuncture. In establishing the requirements,
13 the acupuncture association may consider the minimum educational
14 and training requirements established by the Accreditation
15 Commission for Acupuncture and Oriental Medicine.

16 SECTION 5. Amendment. Chapter 205 of the Occupations Code
17 is amended by the following:

18 Sec. 205.103. FEES. The medical board shall set and collect
19 fees in amounts that are reasonable and necessary to cover the costs
20 of administering and enforcing this chapter without the use of any
21 other funds generated by the medical board.

22 SECTION 6. Amendment. Chapter 205 of the Occupations Code
23 is amended by the following:

24 SUBCHAPTER D. PUBLIC ACCESS AND INFORMATION AND COMPLAINT
25 PROCEDURES

26 Sec. 205.151. Public Interest Information (a) The
27 Acupuncture association shall prepare information of public

1 interest describing the functions of the Acupuncture association
2 and the procedures by which complaints are filed with and resolved
3 by the Acupuncture association. (b) The Acupuncture association
4 shall make the information available to the public and appropriate

5 Sec. 205.152. Complaints (a) The Acupuncture association
6 by rule shall establish methods by which consumers and service
7 recipients are notified of the name, mailing address, and telephone
8 number of the Acupuncture association for the purpose of directing
9 a complaint to the Acupuncture association. The Acupuncture
10 association may provide for that notification:

11 (1) on each registration form, application, or written
12 contract for services of a person regulated under this chapter;

13 (2) on a sign prominently displayed in the place of
14 business of each person regulated under this chapter; or

15 (3) in a bill for service provided by a person
16 regulated under this chapter.

17 (b) The Acupuncture association shall keep information
18 about each complaint filed with the Acupuncture association. The
19 information shall include:

20 (1) the date the complaint is received;

21 (2) the name of the complainant;

22 (3) the subject matter of the complaint;

23 (4) a record of all persons contacted in relation to
24 the complaint;

25 (5) a summary of the results of the review or
26 investigation of the complaint; and

27 (6) for a complaint for which the Acupuncture

1 association took no action, an explanation of the reason the
2 complaint was closed without action.

3 (c) The Acupuncture association shall keep a file about each
4 written complaint filed with the Acupuncture association that the
5 Acupuncture association has authority to resolve. The Acupuncture
6 association shall provide to the person filing the complaint and
7 each person who is the subject of the complaint the Acupuncture
8 association's policies and procedures pertaining to complaint
9 investigation and resolution.

10 (d) The Acupuncture association, at least quarterly and
11 until final disposition of the complaint, shall notify the person
12 filing the complaint and each person who is the subject of the
13 complaint of the status of the complaint unless the notice would
14 jeopardize an investigation.

15 Sec. 205.153. Public Participation (a) Subject to the
16 advice and approval of the medical board, the Acupuncture
17 association shall develop and implement policies that provide the
18 public with a reasonable opportunity to appear before the
19 Acupuncture association and to speak on any issue under the
20 Acupuncture association's jurisdiction.

21 SECTION 7. Amendment. Chapter 205, Occupations Code is
22 amended by the following:

23 SUBCHAPTER E. LICENSE REQUIREMENTS

24 Sec. 205.202. Issuance of License
25 After consulting the Acupuncture association, the medical board
26 shall issue a license to practice acupuncture in this state to a
27 person who meets the requirements of this chapter and the rules

1 adopted under this chapter.

2 Sec. 205.203. License Examination (a) An applicant for a
3 license to practice acupuncture must pass an examination approved
4 by the Acupuncture association.

5 (b) To be eligible for the examination, an applicant must:

6 (1) be at least 21 years of age;

7 (2) have completed at least 60 semester hours of
8 college courses, including basic science courses as determined by
9 the Acupuncture association; and

10 (3) be a graduate of an acupuncture school with
11 entrance requirements and a course of instruction that meet
12 standards set under Section 205.206.

13 (c) The examination shall be conducted on practical and
14 theoretical acupuncture and other subjects required by the
15 Acupuncture association.

16 (d) The examination may be in writing, by a practical
17 demonstration of the applicant's skill, or both, as required by the
18 Acupuncture association.

19 (e) The medical board shall notify each applicant of the
20 time and place of the examination.

21 Sec. 205.204. Application for Examination

22 An application for examination must be:

23 (1) in writing on a form prescribed by the Acupuncture
24 association;

25 (2) verified by affidavit;

26 (3) filed with the executive director; and

27 (4) accompanied by a fee in an amount set by the

1 medical board.

2 Sec. 205.2045. Appearance of Applicant Before Acupuncture
3 association

4 An applicant for a license to practice acupuncture may not be
5 required to appear before the Acupuncture association or a
6 committee of the Acupuncture association unless the application
7 raises questions concerning:

- 8 (1) a physical or mental impairment of the applicant;
9 (2) a criminal conviction of the applicant; or
10 (3) revocation of a professional license held by the
11 applicant.

12 Sec. 205.205. Examination Results (a) Not later than the
13 30th day after the date a licensing examination is administered
14 under this chapter, the Acupuncture association shall notify each
15 examinee of the results of the examination. If an examination is
16 graded or reviewed by a national testing service, the Acupuncture
17 association shall notify examinees of the results of the
18 examination not later than the 14th day after the date the
19 Acupuncture association receives the results from the testing
20 service.

21 (b) If the notice of examination results graded or reviewed
22 by a national testing service will be delayed for longer than 90
23 days after the examination date, the Acupuncture association shall
24 notify the examinee of the reason for the delay before the 90th day.
25 The Acupuncture association may require a testing service to notify
26 examinees of the results of an examination.

27 (c) If requested in writing by a person who fails a

1 licensing examination administered under this chapter, the
2 Acupuncture association shall furnish the person with an analysis
3 of the person's performance on the examination if an analysis is
4 available from the national testing service.

5 Sec. 205.206. Acupuncture Schools (a) A reputable
6 acupuncture school, in addition to meeting standards set by the
7 Acupuncture association, must:

8 (1) maintain a resident course of instruction
9 equivalent to not less than six terms of four months each for a
10 total of not less than 1,800 instructional hours;

11 (2) provide supervised patient treatment for at least
12 two terms of the resident course of instruction;

13 (3) maintain a course of instruction in
14 anatomy-histology, bacteriology, physiology, symptomatology,
15 pathology, meridian and point locations, hygiene, and public
16 health; and

17 (4) have the necessary teaching force and facilities
18 for proper instruction in required subjects.

19 (b) In establishing standards for the entrance requirements
20 and course of instruction of an acupuncture school, the Acupuncture
21 association may consider the standards set by the National
22 Accreditation Commission for Schools and Colleges of Acupuncture
23 and Oriental Medicine.

24 Sec. 205.208. Temporary License (a) The Medical board may,
25 through the executive director, issue a temporary license to
26 practice acupuncture to an applicant who:

27 (1) submits an application on a form prescribed by the

1 Medical board;

2 (2) has passed a national or other examination
3 recognized by the Medical board relating to the practice of
4 acupuncture.

5 SECTION 8. Amendment. Chapter 205, Occupations Code is
6 amended by the following:

7 Sec. 205.251. Annual Renewal Required (a) The medical
8 board by rule shall provide for the annual renewal of a license to
9 practice acupuncture. License renewal shall be contingent upon
10 completion of the continuing education requirements proscribed by
11 the Acupuncture association.

12 SECTION 9. Amendment. Chapter 205, Occupations Code is
13 amended by the following:

14 SUBCHAPTER F. LICENSE RENEWAL

15 Sec. 205.255. Continuing Education (a) The acupuncture
16 association by rule may require a license holder to complete a
17 certain number of hours of continuing education courses approved by
18 the Acupuncture association to renew a license.

19 (b) The Acupuncture association shall consider the approval
20 of a course conducted by:

21 (1) a knowledgeable health care provider; or

22 (2) a reputable school, state, or professional
23 organization.

24 SUBCHAPTER G. PRACTICE BY LICENSE HOLDER

25 Sec. 205.301. Evaluation by Other Health Care Practitioner
26 Required (a) A license holder may perform acupuncture on a person
27 only if the person was:

1 (1) evaluated by a physician or dentist, as
2 appropriate, for the condition being treated within one year before
3 the date acupuncture is performed; or

4 (2) evaluated by a chiropractor within 30 days before
5 the date acupuncture is performed.

6 (b) A license holder acting under Subsection (a)(1) must
7 obtain reasonable documentation that the required evaluation has
8 taken place. If the license holder is unable to determine that an
9 evaluation has taken place, the license holder must obtain a
10 written statement signed by the person on a form prescribed by the
11 Acupuncture association that states the person has been evaluated
12 by a physician or dentist within the prescribed time. The form must
13 contain a clear statement that the person should be evaluated by a
14 physician or dentist for the condition being treated by the license
15 holder.

16 (c) A license holder acting under Subsection (a)(2) shall
17 refer the person to a physician after performing acupuncture 30
18 times or for 120 days, whichever occurs first, if substantial
19 improvement does not occur in the person's condition for which the
20 evaluation was made.

21 (d) The medical board, with advice from the Acupuncture
22 association, by rule may modify:

23 (1) the scope of the evaluation under Subsection
24 (a)(1);

25 (2) the period during which treatment must begin under
26 Subsection (a)(1) or (2); or

27 (3) the number of treatments or days before referral

1 to a physician is required under Subsection (c).

2 Sec. 205.302. Authorized Practice Without Evaluation (a)
3 After notice and public hearing, the medical board with the advice
4 of the Acupuncture association shall determine by rule whether an
5 acupuncturist may treat a patient for or the prevention of stress,
6 allergies, nausea and digestive disorders, depression, insomnia
7 and cosmetic procedures without an evaluation from a physician,
8 dentist, or chiropractor. The medical board shall make the
9 determination based on clinical evidence and what the medical board
10 determines to be in the best interest of affected patients.

11 (b) Notwithstanding Section 205.301, a license holder may,
12 without an evaluation from a physician, dentist, or chiropractor,
13 perform acupuncture on a person for:

- 14 (1) smoking addiction;
15 (2) weight loss; or
16 (3) substance abuse; (4) alcoholism; or
17 (5) chronic pain.

18 Sec. 205.305. License Holder Information (a) Each license
19 holder shall file with the Medical board and the Acupuncture
20 association:

- 21 (1) the license holder's mailing address;
22 (2) the address of the license holder's residence;
23 (3) the mailing address of each office of the license
24 holder; and
25 (4) the address for the location of each office of the
26 license holder that has an address different from the office's
27 mailing address.

1 (b) A license holder shall:

2 (1) notify the Medical board and the acupuncture board
3 of a change of the license holder's residence or business address;
4 and

5 (2) provide the Medical board and the Acupuncture
6 association with the license holder's new address not later than
7 the 30th day after the date the address change occurs.

8 SECTION 10. Amendment. Chapter 205, Occupations Code is
9 amended by the following:

10 SUBCHAPTER H. DISCIPLINARY PROCEDURES

11 Sec. 205.351. Grounds for License Denial or Disciplinary
12 Action (13) directly or indirectly aids or abets the practice of
13 acupuncture by any person not licensed to practice acupuncture by
14 the Medical board;

15 (15) is the subject of repeated or recurring
16 meritorious health-care liability claims that in the opinion of the
17 Medical board evidence professional incompetence likely to injure
18 the public;

19 Sec. 205.353. Disciplinary Powers of Acupuncture
20 association (a) On finding that a person licensed under this
21 chapter has committed an offense described in Section 205.351, the
22 Acupuncture association may:

23 (1) require the person to submit to the care,
24 counseling, or treatment of a health care practitioner designated
25 by the Acupuncture association;

26 (2) stay enforcement of an order and place the person
27 on probation with the Acupuncture association retaining the right

1 to vacate the probationary stay and enforce the original order for
2 noncompliance with the terms of probation or impose any other
3 remedial measure or sanction authorized by this section;

4 (3) order the person to perform public service;

5 (4) limit the person's practice to the areas
6 prescribed by the Acupuncture association;

7 (5) require the person to report regularly to the
8 Acupuncture association on matters that are the basis of the
9 probation; or

10 (6) require the person to continue or review
11 professional education until the person attains a degree of skill
12 satisfactory to the Acupuncture association in those areas that are
13 the basis of the probation under Subdivision (2).

14 (b) The Medical board, upon the recommendation of the
15 Acupuncture association, may restore or reissue a license or remove
16 any disciplinary or corrective measure that the Acupuncture
17 association has imposed under this section.

18 Sec. 205.356. Rehabilitation Order The Acupuncture
19 association, through an agreed order or after a contested
20 proceeding, may impose a nondisciplinary rehabilitation order on an
21 applicant, as a prerequisite for issuing a license, or on a license
22 holder based on:

23 (B) has not previously been the subject of a
24 substance abuse related order of the Acupuncture association;

25 Sec. 205.357. Effect of Rehabilitation Order (b) A
26 rehabilitation order imposed under Section 205.356 must contain
27 findings of fact and conclusions of law. The order may impose a

1 revocation, cancellation, suspension, period of probation or
2 restriction, or any other term authorized by this chapter or agreed
3 to by the Acupuncture association and the person subject to the
4 order.

5 Sec. 205.358. Audit of Rehabilitation Order (a) The
6 Acupuncture association shall keep rehabilitation orders imposed
7 under Section 205.356 in a confidential file. The file is subject
8 to an independent audit to ensure that only qualified license
9 holders are subject to rehabilitation orders. The audit shall be
10 conducted by a state auditor or private auditor with whom the
11 Acupuncture association contracts to perform the audit.

12 (b) An audit may be performed at any time at the direction of
13 the Acupuncture association. The Acupuncture association shall
14 ensure that an audit is performed at least once in each three-year
15 period.

16 Sec. 205.359. Subpoena (a) On behalf of the Acupuncture
17 association, the executive director of the medical board or the
18 presiding officer of the Acupuncture association may issue a
19 subpoena or subpoena duces tecum:

20 (b) Failure to timely comply with a subpoena issued under
21 this section is a ground for:

22 (1) disciplinary action by the Acupuncture
23 association or any other licensing or regulatory agency with
24 jurisdiction over the individual or entity subject to the subpoena;
25 and

26 (2) denial of a license application.

27 SECTION 11. Amendment. Chapter 152, Occupations Code is

1 amended by adding the following: MEMBERSHIP REQUIRED: All
2 licensed acupuncturists shall pay annual membership dues. The
3 Board of directors will set such dues on an annual basis to the
4 Acupuncture association.

5 SECTION 12. Amendment. Chapter 152, Occupations Code is
6 amended by the following:

7 Sec. 152.002. Board Membership (1) twelve members who are
8 learned and eminent physicians licensed in this state for at least
9 three years before the appointment, nine of whom must be graduates
10 of a reputable medical school or college with a degree of doctor of
11 medicine (M.D.) and three of whom must be graduates of a reputable
12 medical school or college with a degree of doctor of osteopathic
13 medicine (D.O.);

14 (2) two members who are licensed acupuncturists and
15 who have been members of the Acupuncture association for at least 5
16 years; and

17 (3) four members who represent the public.

18 SECTION 13. This Act is effective September 1, 2003.

19 SECTION 14. Emergency. The importance of this legislation
20 and the crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.