

By: Armbrister

S.B. No. 1266

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of certain health care benefits and
3 services, including practice of acupuncture.

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

5 SECTION 1. Subsection (B), Section 2, Chapter 397, Acts of
6 the 54th Legislature, Regular Session, 1955, (Article 3.70-2,
7 Vernon's Texas Insurance Code), is amended to read as follows:

8 (B) No policy of accident and sickness insurance shall make
9 benefits contingent upon treatment or examination by a particular
10 practitioner or by particular practitioners of the healing arts
11 ~~[hereinafter designated unless such policy contains a provision~~
12 ~~designating the practitioner or practitioners who will be~~
13 ~~recognized by the insurer and those who will not be recognized by~~
14 ~~the insurer. Such provision may be located in the "Exceptions" or~~
15 ~~"Exceptions and Reductions" provisions, or elsewhere in the policy,~~
16 ~~or by endorsement attached to the policy, at the insurer's option.~~
17 ~~In designating the practitioners who will and will not be~~
18 ~~recognized, such provision shall use the following terms: Doctor~~
19 ~~of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of~~
20 ~~Chiropractic, Doctor of Optometry, Doctor of Podiatry, Licensed~~
21 ~~Audiologist, Licensed Speech-language Pathologist, Doctor in~~
22 ~~Psychology, Licensed Master Social Worker--Advanced Clinical~~
23 ~~Practitioner, Licensed Dietitian, Licensed Professional Counselor,~~
24 ~~Licensed Marriage and Family Therapist, Licensed Chemical~~

1 ~~Dependency Counselor, Licensed Hearing Instrument Fitter and~~
2 ~~Dispenser, Advanced Practice Nurse, Physician Assistant, Licensed~~
3 ~~Occupational Therapist, Licensed Physical Therapist, Licensed~~
4 ~~Acupuncturist, Licensed Psychological Associate, and Licensed~~
5 ~~Surgical Assistant.~~

6 ~~[For purposes of this Act, such designations shall have the~~
7 ~~following meanings:~~

8 ~~[Doctor of Medicine: One licensed by the Texas State Board of~~
9 ~~Medical Examiners on the basis of the degree "Doctor of Medicine";~~

10 ~~[Doctor of Osteopathy: One licensed by the Texas State Board~~
11 ~~of Medical Examiners on the basis of the degree of "Doctor of~~
12 ~~Osteopathy";~~

13 ~~[Doctor of Dentistry: One licensed by the State Board of~~
14 ~~Dental Examiners;~~

15 ~~[Doctor of Chiropractic: One licensed by the Texas Board of~~
16 ~~Chiropractic Examiners;~~

17 ~~[Doctor of Optometry: One licensed by the Texas Optometry~~
18 ~~Board;~~

19 ~~[Doctor of Podiatry: One licensed by the Texas State Board of~~
20 ~~Podiatric Medical Examiners;~~

21 ~~[Licensed Audiologist: One with a master's or doctorate~~
22 ~~degree in audiology from an accredited college or university and~~
23 ~~who is licensed as an audiologist by the State Board of Examiners~~
24 ~~for Speech-Language Pathology and Audiology;~~

25 ~~[Licensed Speech-language Pathologist: One with a master's~~
26 ~~or doctorate degree in speech pathology or speech-language~~
27 ~~pathology from an accredited college or university and who is~~

1 ~~licensed as a speech-language pathologist by the State Board of~~
2 ~~Examiners for Speech-Language Pathology and Audiology;~~

3 ~~[Doctor in Psychology: One licensed by the Texas State Board~~
4 ~~of Examiners of Psychologists and certified as a Health Service~~
5 ~~Provider;~~

6 ~~[Licensed Master Social Worker--Advanced Clinical~~
7 ~~Practitioner: One licensed by the Texas State Board of Social~~
8 ~~Worker Examiners as a Licensed Master Social Worker with the order~~
9 ~~of recognition of Advanced Clinical Practitioner;~~

10 ~~[Licensed Dietitian: One licensed by the Texas State Board~~
11 ~~of Examiners of Dietitians;~~

12 ~~[Licensed Professional Counselor: One licensed by the Texas~~
13 ~~State Board of Examiners of Professional Counselors;~~

14 ~~[Licensed Marriage and Family Therapist: One licensed by the~~
15 ~~Texas State Board of Examiners of Marriage and Family Therapists;~~

16 ~~[Licensed Chemical Dependency Counselor: One licensed by the~~
17 ~~Texas Commission on Alcohol and Drug Abuse;~~

18 ~~[Licensed Hearing Instrument Fitter and Dispenser: One~~
19 ~~licensed by the State Committee of Examiners in the Fitting and~~
20 ~~Dispensing of Hearing Instruments;~~

21 ~~[Advanced Practice Nurse: One licensed by the Board of Nurse~~
22 ~~Examiners as a registered nurse and recognized by that board as an~~
23 ~~advanced practice nurse;~~

24 ~~[Physician Assistant: One licensed by the Texas State Board~~
25 ~~of Physician Assistant Examiners;~~

26 ~~[Licensed Occupational Therapist: One licensed by the Texas~~
27 ~~Board of Occupational Therapy Examiners;~~

~~[Licensed Physical Therapist: One licensed by the Texas Board of Physical Therapy Examiners;~~

~~[Licensed Acupuncturist: One licensed by the Texas State Board of Medical Examiners as an acupuncturist;~~

~~[Licensed Psychological Associate: One licensed by the Texas State Board of Examiners of Psychologists and practicing under the supervision of a licensed psychologist; and~~

~~[Licensed Surgical Assistant: One licensed by the Texas State Board of Medical Examiners as a surgical assistant].~~

SECTION 2. Subdivision (9), Section 1, Article 3.70-3C, Insurance Code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(9) "Practitioner" means a person who practices a healing art including a:

- (A) doctor of medicine;
- (B) doctor of osteopathy;
- (C) doctor of dentistry;
- (D) doctor of chiropractic;
- (E) doctor of optometry;
- (F) doctor of podiatry;
- (G) licensed audiologist;
- (H) licensed speech-language pathologist;
- (I) doctor in psychology;
- (J) licensed master social worker--advanced clinical practitioner;
- (K) licensed dietitian;
- (L) licensed professional counselor;

- 1 (M) licensed marriage and family therapist;
- 2 (N) licensed chemical dependency counselor;
- 3 (O) licensed hearing instrument fitter and
- 4 dispenser;
- 5 (P) advanced practice nurse;
- 6 (Q) physician assistant;
- 7 (R) licensed occupational therapist;
- 8 (S) licensed physical therapist;
- 9 (T) licensed acupuncturist;
- 10 (U) licensed psychological associate;
- 11 (V) licensed surgical assistant; or
- 12 (W) person listed in [and is a practitioner
- 13 described by:

14 ~~[(A) Section 2(B), Chapter 397, Acts of the 54th~~

15 ~~Legislature, 1955 (Article 3.70-2, Vernon's Texas Insurance Code);~~

16 ~~or~~

17 ~~[(B)]~~ Article 21.52 of this code.

18 SECTION 3. Subdivision (3), Subsection (a), Article 21.52C,

19 Insurance Code, is amended to read as follows:

20 (3) "Provider" means a person who provides health care

21 under a license issued by this state, including a:

- 22 (A) doctor of medicine;
- 23 (B) doctor of osteopathy;
- 24 (C) doctor of dentistry;
- 25 (D) doctor of chiropractic;
- 26 (E) doctor of optometry;
- 27 (F) doctor of podiatry;

- 1 (G) licensed audiologist;
- 2 (H) licensed speech-language pathologist;
- 3 (I) doctor in psychology;
- 4 (J) licensed master social worker--advanced
5 clinical practitioner;
- 6 (K) licensed dietitian;
- 7 (L) licensed professional counselor;
- 8 (M) licensed marriage and family therapist;
- 9 (N) licensed chemical dependency counselor;
- 10 (O) licensed hearing instrument fitter and
11 dispenser;
- 12 (P) advanced practice nurse;
- 13 (Q) physician assistant;
- 14 (R) licensed occupational therapist;
- 15 (S) licensed physical therapist;
- 16 (T) licensed acupuncturist;
- 17 (U) licensed psychological associate;
- 18 (V) licensed surgical assistant; or
- 19 (W) person listed in [Section 2(B), Chapter 397,
20 Acts of the 54th Legislature, Regular Session, 1955 (Article
21 3.70-2, Vernon's Texas Insurance Code), or in] Article 21.52 of
22 this code.

23 SECTION 4. Subsection (c), Section 843.304, the Insurance
24 Code, as effective June 1, 2003, is amended to read as follows:

25 (c) This section does not require that a health maintenance
26 organization:

27 (1) ~~[use a particular type of provider in its~~

1 ~~operation,~~

2 ~~[(2)]~~ accept each provider of a category or type,
3 except as provided by Article 21.52B; or

4 (2) ~~[(3)]~~ contract directly with providers of a
5 particular category or type.

6 SECTION 5. Subdivision (2), Section 205.001, Occupations
7 Code, is amended to read as follows:

8 (2) "Acupuncture" means:

9 (A) the nonsurgical, nonincisive insertion of an
10 acupuncture needle and the application of moxibustion to specific
11 areas of the human body as a primary mode of therapy to treat and
12 mitigate a human condition, including evaluation and assessment of
13 the condition; and

14 (B) the administration or recommendation of
15 thermal or electrical treatments, herbal and dietary formulas and
16 supplements, and energy flow exercises, including acupressure,
17 tuina, shiatsu, and other forms of Asian bodywork, and ~~[or]~~ the
18 recommendation of dietary guidelines, ~~[energy flow exercise, or~~
19 ~~dietary or herbal supplements]~~ in conjunction with the treatment
20 described by Paragraph (A).

21 SECTION 6. Section 205.101, Occupations Code, is amended to
22 read as follows:

23 Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE
24 BOARD. (a) Subject to the advice and approval of the medical
25 board, the acupuncture board shall:

26 (1) establish qualifications for an acupuncturist to
27 practice in this state;

1 (2) ~~[establish minimum education and training~~
2 ~~requirements necessary for the acupuncture board to recommend that~~
3 ~~the medical board issue a license to practice acupuncture;~~

4 ~~[(3)]~~ administer an examination that is validated by
5 independent testing professionals for a license to practice
6 acupuncture;

7 (3) ~~[(4)]~~ develop requirements for licensure by
8 endorsement of other states;

9 (4) ~~[(5)]~~ prescribe the application form for a license
10 to practice acupuncture;

11 (5) ~~[(6)]~~ make recommendations on applications for
12 licenses to practice acupuncture; and

13 (6) ~~[(7)] establish the requirements for a tutorial~~
14 ~~program for acupuncture students who have completed at least 48~~
15 ~~semester hours of college; and~~

16 ~~[(8)]~~ recommend additional rules as are necessary to
17 administer and enforce this chapter.

18 (b) The acupuncture board shall establish minimum
19 educational and training requirements as necessary to enable the
20 acupuncture board to recommend that the medical board issue a
21 license to practice acupuncture. In establishing the requirements,
22 the acupuncture board may consider the minimum educational and
23 training requirements established by the Accreditation Commission
24 for Acupuncture and Oriental Medicine ~~[does not have independent~~
25 ~~rulemaking authority].~~

26 SECTION 7. The section heading and Subsections (a) and (c),
27 Section 205.301, Occupations Code, is amended to read as follows:

1 Sec. 205.301. EVALUATION [~~REFERRAL~~] BY OTHER HEALTH CARE
2 PRACTITIONER REQUIRED. (a) A license holder may perform
3 acupuncture on a person only if the person was:

4 (1) evaluated by a physician or dentist, as
5 appropriate, for the condition being treated within six months
6 before the date acupuncture is performed; or

7 (2) evaluated [~~referred~~] by a chiropractor within 30
8 days before the date acupuncture is performed.

9 (c) A license holder acting under Subsection (a)(2) shall
10 refer the person to a physician after performing acupuncture 20
11 times or for 30 days, whichever occurs first, if substantial
12 improvement does not occur in the person's condition for which the
13 evaluation [~~referral~~] was made.

14 SECTION 8. Section 205.302, Occupations Code, is amended to
15 read as follows:

16 Sec. 205.302. AUTHORIZED PRACTICE WITHOUT EVALUATION
17 [~~REFERRAL~~]. (a) After notice and public hearing, the medical
18 board shall determine by rule whether an acupuncturist may treat a
19 patient for stress, allergies, nausea and digestive disorders,
20 depression, insomnia, and cosmetic procedures [~~alcoholism or~~
21 ~~chronic pain~~] without an evaluation [~~a referral~~] from a physician,
22 dentist, or chiropractor. The medical board shall make the
23 determination based on clinical evidence and what the medical board
24 determines to be in the best interest of affected patients.

25 (b) Notwithstanding Section 205.301, a license holder may,
26 without an evaluation [~~a referral~~] from a physician, dentist, or
27 chiropractor, perform acupuncture on a person for:

- 1 (1) smoking addiction;
- 2 (2) weight loss; [~~or~~]
- 3 (3) substance abuse;
- 4 (4) alcoholism; or
- 5 (5) chronic pain [~~, to the extent permitted by medical~~
- 6 ~~board rule adopted with advice from the acupuncture board]~~.

7 SECTION 9. Section 205.355, Occupations Code, is amended to
8 read as follows:

9 Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO
10 OBTAIN EVALUATION [~~REFERRAL~~]. Except as provided by Section
11 205.301(a)(2), a license to practice acupuncture shall be denied
12 or, after notice and hearing, revoked if the applicant or license
13 holder violates Section 205.301(a)(1).

14 SECTION 10. This Act takes effect September 1, 2003.