

By: Nelson

S.B. No. 419

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas State Board
3 of Medical Examiners, Texas State Board of Physician Assistant
4 Examiners, and Texas State Board of Acupuncture Examiners and the
5 regulation of health care professions regulated by those state
6 agencies; providing administrative penalties.

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

8 ARTICLE 1. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
9 MEDICAL EXAMINERS

10 SECTION 1.01. Subdivision (1), Subsection (a), Section
11 151.002, Occupations Code, is amended to read as follows:

12 (1) "Board" means the Texas Medical [~~State~~] Board [~~of~~
13 ~~Medical Examiners~~].

14 SECTION 1.02. Section 151.004, Occupations Code, is amended
15 to read as follows:

16 Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical
17 [~~State~~] Board [~~of Medical Examiners~~] is subject to Chapter 325,
18 Government Code (Texas Sunset Act). Unless continued in existence
19 as provided by that chapter, the board is abolished and this
20 subtitle and Chapters 204, 205, and 206 expire [~~expires~~] September
21 1, 2017 [~~2005~~].

22 SECTION 1.03. Section 152.001, Occupations Code, is amended
23 to read as follows:

24 Sec. 152.001. TEXAS MEDICAL [~~STATE~~] BOARD [~~OF MEDICAL~~

1 ~~EXAMINERS~~]. (a) The Texas Medical [~~State~~] Board [~~of Medical~~
2 ~~Examiners~~] is an agency of the executive branch of state government
3 with the power to regulate the practice of medicine.

4 (b) A reference in any other law to the former Texas State
5 Board of Medical Examiners means the Texas Medical Board.

6 SECTION 1.04. Subsection (b), Section 152.003, Occupations
7 Code, is amended to read as follows:

8 (b) A person may not be a public member of the board if the
9 person or the person's spouse [~~may not be~~]:

10 (1) is registered, certified, or licensed by a
11 regulatory agency in the field of health care [~~licensed to practice~~
12 ~~medicine~~];

13 (2) is employed by or participates in the management
14 of a business entity or other [~~financially involved in any~~]
15 organization regulated by or receiving money from [~~subject to~~
16 ~~regulation by~~] the board; [~~or~~]

17 (3) owns or controls, directly or indirectly, more
18 than a 10 percent interest in a business entity or other
19 organization regulated by or receiving money from the board;

20 (4) uses or receives a substantial amount of tangible
21 goods, services, or money from the board other than compensation or
22 reimbursement authorized by law for board membership, attendance,
23 or expenses; or

24 (5) is a provider of health care.

25 SECTION 1.05. Subsections (a) through (e), Section 152.004,
26 Occupations Code, are amended to read as follows:

27 (a) In this section, "Texas trade [~~or professional~~]

1 association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily
2 joined association of business or professional competitors in this
3 state designed to assist its members and its industry or profession
4 in dealing with mutual business or professional problems and in
5 promoting their common interest.

6 (b) A person is ineligible for appointment to the board if,
7 at the time of appointment, the person is younger than 18 years of
8 age or is a stockholder[~~, paid full-time faculty member,~~] or a
9 member of the board of trustees of a medical school.

10 (c) A person may not be a member of the board and may not be a
11 board employee in a "bona fide executive, administrative, or
12 professional capacity," as that phrase is used for purposes of
13 establishing an exemption to the overtime provisions of the federal
14 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
15 if:

16 (1) the person is an [~~serving as the president, vice~~
17 ~~president, secretary, or treasurer of a statewide or national~~
18 ~~organization incorporated to represent the entire profession~~
19 ~~licensed to practice medicine in this state or the United States,~~
20 ~~including an organization representing the practice of osteopathic~~
21 ~~medicine, or is an employee of such an organization.~~

22 [~~(d) An~~] officer, employee, or paid consultant of a Texas
23 trade [~~or professional~~] association in the field of health care or a
24 national organization incorporated to represent the entire
25 profession licensed to practice medicine in this state or the
26 United States, including an organization representing the practice
27 of osteopathic medicine; or

1 (2) the person's ~~[may not be a board member or employee~~
2 ~~who is exempt from the state's position classification plan or is~~
3 ~~compensated at or above the amount prescribed by the General~~
4 ~~Appropriations Act for step 1, salary group A17, of the position~~
5 ~~classification salary schedule.~~

6 ~~[(c) A person who is the]~~ spouse is ~~[of]~~ an officer,
7 manager, or paid consultant of a Texas trade ~~[or professional]~~
8 association in the field of health care ~~[may not be a board member~~
9 ~~or employee who is exempt from the state's position classification~~
10 ~~plan or is compensated at or above the amount prescribed by the~~
11 ~~General Appropriations Act for step 1, salary group A17, of the~~
12 ~~position classification salary schedule].~~

13 SECTION 1.06. Subchapter A, Chapter 152, Occupations Code,
14 is amended by adding Section 152.0041 to read as follows:

15 Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board
16 member who is a physician or a physician acting as an agent of the
17 board, including a member of an expert physician panel appointed
18 under Section 154.056(e), may not use information to which the
19 person has access solely by virtue of the person's position as a
20 member or agent of the board for the benefit of the person's
21 practice or for the benefit of another physician or person
22 affiliated with the physician.

23 SECTION 1.07. Subsections (a) and (c), Section 152.006,
24 Occupations Code, are amended to read as follows:

25 (a) It is a ground for removal from the board that a member:
26 (1) does not have at the time of taking office
27 ~~[appointment]~~ the qualifications required by Section 152.002;

1 (2) does not maintain during service on the board the
2 qualifications required by Section 152.002;

3 (3) is ineligible for membership under Sections
4 152.003 and [~~violates a prohibition established by Section~~]
5 152.004;

6 (4) cannot, because of illness or disability,
7 discharge the member's duties for a substantial part of the member's
8 term; or

9 (5) is absent from more than half of the regularly
10 scheduled board meetings that the member is eligible to attend
11 during a calendar year without an excuse approved by a majority vote
12 of the board.

13 (c) If the executive director has knowledge that a potential
14 ground for removal exists, the executive director shall notify the
15 president of the board of the potential ground. The president shall
16 then notify the governor and the attorney general that a potential
17 ground for removal exists. If the potential ground for removal
18 involves the president of the board, the executive director shall
19 notify the next highest ranking officer of the board, who shall then
20 notify the governor and the attorney general that a potential
21 ground for removal exists.

22 SECTION 1.08. Section 152.008, Occupations Code, is amended
23 to read as follows:

24 Sec. 152.008. OFFICERS. Not later than December after each
25 regular session of the legislature, the governor shall appoint from
26 the members of the board a president, to serve in that capacity at
27 the pleasure of the governor, and the board shall elect from its

1 members a vice president, secretary-treasurer, and other officers
2 as are required, in the board's opinion, to carry out the board's
3 duties.

4 SECTION 1.09. Subsections (a), (b), and (c), Section
5 152.010, Occupations Code, are amended to read as follows:

6 (a) A person who is appointed to and qualifies for office as
7 a member of the board may not vote, deliberate, or be counted as a
8 member in attendance at a meeting of the board until the person
9 completes [~~Before a board member may assume the member's duties and~~
10 ~~before the member may be confirmed by the senate, the member must~~
11 ~~complete at least one course of]~~ a training program that complies
12 with [~~established by the board under~~] this section.

13 (b) The training program must [~~shall~~] provide the person
14 with information [~~to a participant~~] regarding:

- 15 (1) this subtitle;
- 16 (2) the programs operated by the board;
- 17 (3) the role and functions of the board;
- 18 (4) the rules of the board, with an emphasis on the
19 rules that relate to disciplinary and investigatory authority;
- 20 (5) the current budget for the board;
- 21 (6) the results of the most recent formal audit of the
22 board;
- 23 (7) the requirements of laws relating to open
24 meetings, public information, administrative procedure, and
25 conflicts of interest [~~Chapters 551, 552, 2001, and 2002,~~
26 ~~Government Code~~]; and
- 27 (8) [~~the requirements of the conflict of interest laws~~

1 ~~and other laws relating to public officials, and~~

2 ~~[(9)]~~ any applicable ethics policies adopted by the
3 board or the Texas Ethics Commission.

4 (c) A person appointed to the board is entitled to
5 reimbursement, as provided by the General Appropriations Act, for
6 the travel expenses incurred in attending the training program
7 regardless of whether the attendance at the program occurs before
8 or after the person qualifies for office ~~[In developing the~~
9 ~~training program, the board shall consult with the governor, the~~
10 ~~attorney general, and the Texas Ethics Commission].~~

11 SECTION 1.10. Section 152.056, Occupations Code, is amended
12 to read as follows:

13 Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board
14 shall develop and implement policies that clearly separate ~~define~~
15 the policy-making ~~respective~~ responsibilities of the board and
16 the management responsibilities of the executive director and the
17 staff of the board.

18 SECTION 1.11. Subchapter A, Chapter 153, Occupations Code,
19 is amended by adding Section 153.0015 to read as follows:

20 Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING.

21 (a) The board shall adopt guidelines to establish procedures for
22 receiving input during the rulemaking process from individuals and
23 groups that have an interest in matters under the board's
24 jurisdiction. The guidelines must provide an opportunity for those
25 individuals and groups to provide input before the board provides
26 notice of the proposed rule under Section 2001.023, Government
27 Code.

1 (b) In implementing the guidelines adopted under this
2 section, the board shall exercise its judgment in determining which
3 rules require input as described by Subsection (a).

4 (c) The guidelines adopted under this section shall also
5 include procedures for the board to receive comments on rules
6 recommended by the acupuncture board and physician assistant board
7 for adoption by the board.

8 SECTION 1.12. Subchapter A, Chapter 153, Occupations Code,
9 is amended by adding Section 153.0045 to read as follows:

10 Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL
11 CONVICTION. The board shall adopt rules and guidelines as
12 necessary to comply with Chapter 53, except to the extent the
13 requirements of this subtitle are stricter than the requirements of
14 that chapter.

15 SECTION 1.13. Subchapter B, Chapter 153, Occupations Code,
16 is amended by adding Sections 153.057 and 153.058 to read as
17 follows:

18 Sec. 153.057. USE OF TECHNOLOGY. The board shall implement
19 a policy requiring the board to use appropriate technological
20 solutions to improve the board's ability to perform its functions.
21 The policy must ensure that the public is able to interact with the
22 board on the Internet.

23 Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE
24 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
25 implement a policy to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter
27 2008, Government Code, for the adoption of board rules; and

1 (2) appropriate alternative dispute resolution
2 procedures under Chapter 2009, Government Code, to assist in the
3 resolution of internal and external disputes under the board's
4 jurisdiction.

5 (b) The board's procedures relating to alternative dispute
6 resolution must conform, to the extent possible, to any model
7 guidelines issued by the State Office of Administrative Hearings
8 for the use of alternative dispute resolution by state agencies.

9 (c) The board shall designate a trained person to:

10 (1) coordinate the implementation of the policy
11 adopted under Subsection (a);

12 (2) serve as a resource for any training needed to
13 implement the procedures for negotiated rulemaking or alternative
14 dispute resolution; and

15 (3) collect data concerning the effectiveness of those
16 procedures, as implemented by the board.

17 SECTION 1.14. Section 154.003, Occupations Code, is amended
18 by adding Subsection (d) to read as follows:

19 (d) The board shall publish information regarding errors in
20 and reversals of disciplinary actions taken by the board. The
21 information required by this subsection includes instances in which
22 a disciplinary action initiated by the board is overturned by a
23 court. The board shall disseminate the information required to be
24 published under this subsection in the same format, size, style,
25 and manner as the information regarding the original action by the
26 board was disseminated.

27 SECTION 1.15. Section 154.052, Occupations Code, is amended

1 to read as follows:

2 Sec. 154.052. RECORDS OF COMPLAINTS. The board shall
3 maintain a system to promptly and efficiently act on complaints
4 filed with the board. The board shall maintain [~~keep an~~]
5 information [~~file~~] about [~~each complaint filed with the board. The~~
6 ~~information file must be kept current and contain a record for each~~
7 ~~complaint of~~]:

8 (1) the parties to the complaint;

9 (2) the subject matter of the complaint;

10 (3) a summary of the results of the review or
11 investigation of the complaint; and

12 (4) the disposition of the complaint [~~each potential~~
13 ~~witness contacted in relation to the complaint;~~

14 [~~(2) a summary of findings made at each step of the~~
15 ~~complaint process;~~

16 [~~(3) an explanation of the legal basis and reason for~~
17 ~~the dismissal of a complaint;~~

18 [~~(4) the schedule for the disposition of the complaint~~
19 ~~prepared as required under Section 154.056 and a notation of any~~
20 ~~change in the schedule; and~~

21 [~~(5) other relevant information].~~

22 SECTION 1.16. Subsection (c), Section 154.053, Occupations
23 Code, is amended to read as follows:

24 (c) The board shall periodically [~~If a written complaint is~~
25 ~~filed with the board that the board has authority to resolve, the~~
26 ~~board, at least as frequently as quarterly and until final~~
27 ~~disposition of the complaint, shall] notify the parties to the~~

1 complaint of the status of the complaint until final disposition
2 unless the notice would jeopardize an investigation.

3 SECTION 1.17. Subsection (e), Section 154.056, Occupations
4 Code, is amended to read as follows:

5 (e) The board by rule shall provide for an expert physician
6 panel appointed by the board to assist with complaints and
7 investigations relating to medical competency by acting as expert
8 physician reviewers. Each member of an expert physician panel must
9 be licensed to practice medicine in this state. The rules adopted
10 under this subsection must include provisions governing the
11 composition of the panel, qualifications for membership on the
12 panel, length of time a member may serve on a panel, grounds for
13 removal from a panel, the avoidance of conflicts of interest, and
14 the duties to be performed by the panel. The board's rules
15 governing grounds for removal from a panel must include providing
16 for the removal of a panel member who is repeatedly delinquent in
17 reviewing complaints and in submitting reports to the board. The
18 board's rules governing appointment of expert physician panel
19 members to act as expert physician reviewers must include a
20 requirement that the board randomly select, to the extent permitted
21 by the conflict of interest provisions adopted under this
22 subsection, panel members to review a complaint.

23 SECTION 1.18. Subchapter B, Chapter 154, Occupations Code,
24 is amended by adding Section 154.0561 to read as follows:

25 Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW.

26 (a) A physician on an expert physician panel authorized by Section
27 154.056(e) who is selected to review a complaint shall:

1 (1) determine whether the physician who is the subject
2 of the complaint has violated the standard of care applicable to the
3 circumstances; and

4 (2) issue a preliminary written report of that
5 determination.

6 (b) A second expert physician reviewer shall review the
7 first physician's preliminary report and other information
8 associated with the complaint. If the second expert physician
9 agrees with the first expert physician, the first physician shall
10 issue a final written report on the matter.

11 (c) If the second expert physician does not agree with the
12 conclusions of the first expert physician, a third expert physician
13 reviewer shall review the preliminary report and information and
14 decide between the conclusions reached by the first two expert
15 physicians. The final written report shall be made by the third
16 physician or the physician with whom the third physician concurs.

17 SECTION 1.19. Subsection (b), Section 154.057, Occupations
18 Code, is amended to read as follows:

19 (b) The board shall complete [~~make~~] a preliminary
20 investigation of the complaint not later than the 30th day after the
21 date of receiving the complaint. The board shall first determine
22 whether the physician constitutes a continuing threat to the public
23 welfare. On completion of the preliminary investigation, the board
24 shall determine whether to officially proceed on the complaint. If
25 the board fails to complete the preliminary investigation in the
26 time required by this subsection, the board's official
27 investigation of the complaint is considered to commence on that

1 date.

2 SECTION 1.20. Section 155.002, Occupations Code, is amended
3 to read as follows:

4 Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its
5 sole discretion, may issue a license to practice medicine to a
6 person who:

7 (1) submits to the board a license application as
8 required by this chapter;

9 (2) presents satisfactory proof that the person meets
10 the eligibility requirements established by this chapter; and

11 (3) satisfies the examination requirements of Section
12 155.051.

13 (b) The board may delegate authority to board employees to
14 issue licenses under this subtitle to applicants who clearly meet
15 all licensing requirements. If the board employees determine that
16 the applicant does not clearly meet all licensing requirements, the
17 application shall be returned to the board. A license issued under
18 this subsection does not require formal board approval.

19 SECTION 1.21. Subsection (a), Section 155.003, Occupations
20 Code, is amended to read as follows:

21 (a) To be eligible for a license under this chapter, an
22 applicant must present proof satisfactory to the board that the
23 applicant:

24 (1) is at least 21 years of age;

25 (2) is of good professional character and has not
26 violated Section 164.051, 164.052, or 164.053;

27 (3) has completed:

1 (A) at least 60 semester hours of college
2 courses, other than courses in medical school, that are acceptable
3 to The University of Texas at Austin for credit on a bachelor of
4 arts degree or a bachelor of science degree;

5 (B) the entire primary, secondary, and
6 premedical education required in the country of medical school
7 graduation, if the medical school is located outside the United
8 States or Canada; or

9 (C) substantially equivalent courses as
10 determined by board rule;

11 (4) is a graduate of a medical school located in the
12 United States or Canada and approved by the board;

13 (5) has either:

14 (A) successfully completed one year of graduate
15 medical training approved by the board in the United States or
16 Canada; or

17 (B) graduated from a medical school located
18 outside the United States or Canada and has successfully completed
19 three years of graduate medical training approved by the board in
20 the United States or Canada;

21 (6) has passed [~~within three attempts~~] an examination
22 accepted or administered by the board[~~, except as provided by~~
23 ~~Section 155.056~~]; and

24 (7) has passed a Texas medical jurisprudence
25 examination as determined by board rule.

26 SECTION 1.22. Subchapter A, Chapter 155, Occupations Code,
27 is amended by adding Section 155.006 to read as follows:

1 Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board
2 may adopt rules and prescribe fees related to the issuance of a
3 license under this section that is limited in scope to an applicant
4 by virtue of the applicant's conceded eminence and authority in the
5 applicant's specialty.

6 (b) An applicant is eligible for a limited license under
7 this section on presenting proof satisfactory to the board that the
8 applicant:

9 (1) is recommended to the board by the dean,
10 president, or chief academic officer of:

11 (A) a school of medicine in this state;

12 (B) The University of Texas Health Center at
13 Tyler;

14 (C) The University of Texas M. D. Anderson Cancer
15 Center; or

16 (D) a program of graduate medical education,
17 accredited by the Accreditation Council for Graduate Medical
18 Education or the American Osteopathic Association, that exceeds the
19 requirements for eligibility for first board certification in the
20 discipline;

21 (2) is expected to receive an appointment at the
22 institution or program making the recommendation under Subdivision
23 (1);

24 (3) has not failed a licensing examination that would
25 prevent the applicant from obtaining a full license not limited in
26 scope in this state;

27 (4) has passed a Texas medical jurisprudence

1 examination as determined by board rule;

2 (5) has successfully completed at least one year of
3 approved subspecialty training accredited by the Accreditation
4 Council for Graduate Medical Education or the American Osteopathic
5 Association;

6 (6) is of good professional character, is not subject
7 to denial of a license under Section 164.051, and has not engaged in
8 conduct described by Section 164.052 or 164.053; and

9 (7) meets any other requirements prescribed by board
10 rule adopted under this section.

11 (c) In adopting rules under this section, the board may
12 adopt rules that prescribe additional qualifications for an
13 applicant, including education and examination requirements,
14 conditions of employment, and application procedures. The board by
15 rule may qualify, restrict, or otherwise limit a license issued
16 under this section.

17 (d) The board by rule may define "conceded eminence and
18 authority in the applicant's specialty." In adopting rules under
19 this subsection, the board shall consider criteria that include a
20 person's:

- 21 (1) academic appointments;
22 (2) length of time in a profession;
23 (3) scholarly publications; and
24 (4) professional accomplishments.

25 (e) The board may require that the holder of a license under
26 this section serve a six-month probationary period during which
27 medical services provided by the license holder are supervised by

1 another licensed physician.

2 (f) The holder of a license under this section shall be
3 limited to the practice of only a specialty of medicine for which
4 the license holder has trained and qualified, as determined by the
5 board. The license holder may not practice medicine outside of the
6 setting of the institution or program, or an affiliate of the
7 institution or program, that recommended the license holder under
8 Subsection (b)(1).

9 (g) The holder of a license under this section may not
10 change the license holder's practice setting to a new institution
11 or program unless the license holder applies for a new license under
12 this section with the recommendation of that institution or program
13 as required by Subsection (b)(1).

14 (h) A license holder under this section may obtain a full
15 license not limited in scope to practice medicine in this state by
16 meeting all applicable eligibility requirements for that license.

17 SECTION 1.23. Subchapter A, Chapter 155, Occupations Code,
18 is amended by adding Section 155.009 to read as follows:

19 Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF
20 ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the
21 issuance of a license that limits the license holder to the practice
22 of administrative medicine. The board's rules under this section
23 must include provisions for eligibility for the license, issuance
24 and renewal of the license, the fees applicable to the license,
25 continuing education requirements, and the scope of practice of a
26 person who holds the license.

27 (b) An applicant for a license under this section must meet

1 all of the requirements for issuance of a license under Section
2 155.002.

3 (c) A license holder under this section who seeks to
4 practice medicine under an unrestricted license that is not limited
5 to the practice of administrative medicine must provide proof to
6 the board that the license holder has the clinical competence to
7 practice medicine under that license and must meet all applicable
8 eligibility requirements for that license. The board may require
9 the license holder to pass any examination the board determines
10 necessary.

11 SECTION 1.24. Section 155.056, Occupations Code, is amended
12 to read as follows:

13 Sec. 155.056. EXAMINATION ATTEMPT LIMITS [~~REEXAMINATION~~].

14 (a) An applicant must pass each part of an examination within
15 three attempts [~~, except that an applicant who has passed all but one~~
16 ~~part of an examination within three attempts may take the remaining~~
17 ~~part of the examination one additional time].~~

18 (b) The board shall adopt rules that prescribe how the limit
19 on the number of examination attempts under Subsection (a) shall
20 apply to an applicant who seeks a license and who attempts more than
21 one type of examination [~~Notwithstanding Subsection (a), an~~
22 ~~applicant is considered to have satisfied the requirements of this~~
23 ~~section if the applicant:~~

24 [~~(1) passed all but one part of an examination~~
25 ~~approved by the board within three attempts and passed the~~
26 ~~remaining part of the examination within five attempts,~~

27 [~~(2) is specialty board certified by a specialty board~~

1 ~~that:~~

2 ~~[(A) is a member of the American Board of Medical~~
3 ~~Specialties; or~~

4 ~~[(B) is approved by the American Osteopathic~~
5 ~~Association; and~~

6 ~~[(3) completed in this state an additional two years~~
7 ~~of postgraduate medical training approved by the board].~~

8 SECTION 1.25. Section 155.104, Occupations Code, is amended
9 to read as follows:

10 Sec. 155.104. TEMPORARY LICENSES. (a) The board may adopt
11 rules and set fees relating to granting temporary licenses and
12 extending the expiration dates of temporary licenses. The board by
13 rule shall set a time limit for the term of a temporary license.

14 (b) The board may issue a faculty temporary license to
15 practice medicine to a physician appointed by a medical school in
16 this state as provided by this section. The physician must:

17 (1) hold a current medical license that is
18 unrestricted and not subject to a disciplinary order or probation
19 in another state or Canadian province or have completed at least
20 three years of postgraduate residency;

21 (2) pass the Texas medical jurisprudence examination;
22 and

23 (3) hold a salaried faculty position of at least the
24 level of assistant professor and be working full-time at one of the
25 following institutions:

26 (A) The University of Texas Medical Branch at
27 Galveston;

1 (B) The University of Texas Southwestern Medical
2 Center at Dallas;

3 (C) The University of Texas Health Science Center
4 at Houston;

5 (D) The University of Texas Health Science Center
6 at San Antonio;

7 (E) The University of Texas Health Center at
8 Tyler;

9 (F) The University of Texas M. D. Anderson Cancer
10 Center;

11 (G) Texas A&M University College of Medicine;

12 (H) Texas Tech University School of Medicine;

13 (I) Baylor College of Medicine; or

14 (J) the University of North Texas Health Science
15 Center at Fort Worth.

16 (c) A physician is eligible for a temporary license under
17 Subsection (b) if the physician holds a faculty position of at least
18 the level of assistant professor and works at least part-time at an
19 institution listed in Subsection (b)(3) and:

20 (1) the physician is on active duty in the United
21 States armed forces; and

22 (2) the physician's practice under the temporary
23 license will fulfill critical needs of the citizens of this state.

24 (d) A physician who is issued a temporary license under
25 Subsection (b) must sign an oath on a form prescribed by the board
26 swearing that the physician:

27 (1) has read and is familiar with this subtitle and

1 board rules;

2 (2) will abide by the requirements of this subtitle
3 and board rules while practicing under the physician's temporary
4 license; and

5 (3) will be subject to the disciplinary procedures of
6 the board.

7 (e) A physician holding a temporary license under
8 Subsection (b) and the physician's medical school must file
9 affidavits with the board affirming acceptance of the terms and
10 limits imposed by the board on the medical activities of the
11 physician.

12 (f) A temporary license issued under Subsection (b) is valid
13 for one year.

14 (g) The holder of a temporary license issued under
15 Subsection (b) is limited to the teaching confines of the applying
16 medical school as a part of the physician's duties and
17 responsibilities assigned by the school and may not practice
18 medicine outside of the setting of the medical school or an
19 affiliate of the medical school. The physician may participate in
20 the full activities of the department of any hospital for which the
21 physician's medical school has full responsibility for clinical,
22 patient care, and teaching activities.

23 (h) The application for a temporary license under
24 Subsection (b) must be made by the chairman of the department of the
25 medical school in which the physician teaches and must contain the
26 information and documentation requested by the department. The
27 application must be endorsed by the dean of the medical school or

1 the president of the institution.

2 (i) Three years in a teaching faculty position at an
3 institution listed in Subsection (b)(3) may be treated as
4 equivalent to three years of an approved postgraduate residency
5 program if, at the conclusion of the three-year period, the
6 physician presents recommendations on the physician's behalf from
7 the chief administrative officer and the president of the
8 institution.

9 (j) A physician who holds a temporary license issued under
10 Subsection (b) and who wishes to receive a permanent unrestricted
11 license must meet the requirements for issuance of a permanent
12 unrestricted license.

13 SECTION 1.26. Subsection (a), Section 156.001, Occupations
14 Code, is amended to read as follows:

15 (a) Each person licensed to practice medicine in this state
16 must register with the board every two years. The initial
17 registration permit shall be issued with the license [~~and expires~~
18 ~~on the last day of the birth month of the license holder~~]. The board
19 by rule may adopt a system under which licenses expire on various
20 dates during the year.

21 SECTION 1.27. Subdivision (2), Section 157.051,
22 Occupations Code, is amended to read as follows:

23 (2) "Carrying out or signing a prescription drug
24 order" means completing a prescription drug order presigned by the
25 delegating physician, or the signing of a prescription by a
26 registered nurse or physician assistant [~~after that person has been~~
27 ~~designated to the board by the delegating physician as a person~~

1 ~~delegated to sign a prescription]~~.

2 SECTION 1.28. Section 157.0511, Occupations Code, is
3 amended by adding Subsection (b-1) to read as follows:

4 (b-1) The board shall adopt rules that require a physician
5 who delegates the carrying out or signing of a prescription drug
6 order under this subchapter to maintain records that show when and
7 to whom a delegation is made. The board may access the physician's
8 records under this subsection as necessary for an investigation.

9 SECTION 1.29. Section 160.006, Occupations Code, is amended
10 by amending Subsections (a) and (c) and adding Subsections (d) and
11 (e) to read as follows:

12 (a) A record, report, or other information received and
13 maintained by the board under this subchapter or Subchapter B,
14 including any material received or developed by the board during an
15 investigation or hearing and the identity of, and reports made by, a
16 physician performing or supervising compliance monitoring for the
17 board, is confidential. The board may disclose this information
18 only:

19 (1) in a disciplinary hearing before the board or
20 State Office of Administrative Hearings or in a subsequent trial or
21 appeal of a board action or order;

22 (2) to the physician licensing or disciplinary
23 authority of another jurisdiction, to a local, state, or national
24 professional medical society or association, or to a medical peer
25 review committee located inside or outside this state that is
26 concerned with granting, limiting, or denying a physician hospital
27 privileges;

1 (3) under a court order;

2 (4) to qualified personnel for bona fide research or
3 educational purposes, if personally identifiable information
4 relating to any physician or other individual is first deleted; or

5 (5) to the Texas Workers' Compensation Commission as
6 provided by Section 413.0514, Labor Code.

7 (c) A record or report disclosed by the board under this
8 subchapter, ~~and~~ a record or report received, maintained, or
9 developed by the board, a medical peer review committee, a member of
10 the committee, or a health care entity, and a record or report
11 received or maintained by the State Office of Administrative
12 Hearings under this subchapter are not available for discovery or
13 court subpoena and may not be introduced into evidence in any action
14 for damages, including a medical professional liability action that
15 arises out of the provision of or failure to provide a medical or
16 health care service.

17 (d) Peer review documents remain confidential at the board
18 and at the State Office of Administrative Hearings.

19 (e) The confidentiality requirements of this section do not
20 apply to records used by a peer review committee, including a
21 patient's medical records, if the records were not produced for the
22 purposes of peer review and are otherwise available to the board.

23 SECTION 1.30. Section 160.010, Occupations Code, is amended
24 by adding Subsection (e) to read as follows:

25 (e) A member of an expert panel under Section 154.056(e) and
26 a person serving as a consultant to the board are immune from suit
27 and judgment and may not be subjected to a suit for damages for any

1 investigation, report, recommendation, statement, evaluation,
2 finding, or other action taken without fraud or malice in the course
3 of performing the person's duties in evaluating a medical
4 competency case. The attorney general shall represent a member of
5 an expert panel or consultant in any suit resulting from a duty
6 provided by the person in good faith to the board.

7 SECTION 1.31. Section 162.103, Occupations Code, is amended
8 to read as follows:

9 Sec. 162.103. APPLICABILITY. Rules adopted by the board
10 under this subchapter do not apply to:

11 (1) an outpatient setting in which only local
12 anesthesia, peripheral nerve blocks, or both are used;

13 ~~(2) [an outpatient setting in which only anxiolytics~~
14 ~~and analgesics are used and only in doses that do not have the~~
15 ~~probability of placing the patient at risk for loss of the patient's~~
16 ~~life-preserving protective reflexes;~~

17 ~~[(3)]~~ a licensed hospital, including an outpatient
18 facility of the hospital that is located separate from the
19 hospital;

20 (3) ~~[(4)]~~ a licensed ambulatory surgical center;

21 (4) ~~[(5)]~~ a clinic located on land recognized as
22 tribal land by the federal government and maintained or operated by
23 a federally recognized Indian tribe or tribal organization as
24 listed by the United States secretary of the interior under 25
25 U.S.C. Section 479a-1 or as listed under a successor federal
26 statute or regulation;

27 (5) ~~[(6)]~~ a facility maintained or operated by a state

1 or local governmental entity;

2 (6) [~~(7)~~] a clinic directly maintained or operated by
3 the United States; or

4 (7) [~~(8)~~] an outpatient setting accredited by:

5 (A) the Joint Commission on Accreditation of
6 Healthcare Organizations relating to ambulatory surgical centers;

7 (B) the American Association for the
8 Accreditation of Ambulatory Surgery Facilities; or

9 (C) the Accreditation Association for Ambulatory
10 Health Care.

11 SECTION 1.32. Subsections (a) and (f), Section 163.003,
12 Occupations Code, are amended to read as follows:

13 (a) A committee consists of seven [~~five~~] members appointed
14 by the governor, as follows:

15 (1) three physician members who are doctors of
16 medicine (M.D.);

17 (2) one physician member who is a doctor of
18 osteopathic medicine (D.O.); and

19 (3) three [~~one~~] public members [~~member~~].

20 (f) A member of a committee is subject to law and the rules
21 of the board, including Sections 152.004, 152.006, and 152.010, as
22 if the committee member were a member of the board, except that a
23 committee member is not subject to Chapter 572, Government Code.
24 The training program a committee member must complete under Section
25 152.010 shall be an abbreviated version of the program under that
26 section that is limited to training relevant to serving on a
27 committee.

1 SECTION 1.33. Chapter 163, Occupations Code, is amended by
2 adding Section 163.0045 to read as follows:

3 Sec. 163.0045. ASSISTANCE TO BOARD. The board may request
4 members of a committee to participate in an informal meeting under
5 Section 164.003. A physician committee member who participates in
6 an informal meeting on a complaint relating to medical competency
7 must have the qualifications of a member of an expert panel under
8 Section 154.056(e).

9 SECTION 1.34. Section 164.002, Occupations Code, is amended
10 by adding Subsection (e) to read as follows:

11 (e) The board may not dismiss a complaint solely on the
12 grounds that the case has not been scheduled for an informal meeting
13 within the time required by Section 164.003(b).

14 SECTION 1.35. Subchapter A, Chapter 164, Occupations Code,
15 is amended by adding Section 164.0025 to read as follows:

16 Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT
17 DISPOSITIONS. (a) The board may delegate to a committee of board
18 employees the authority to dismiss or enter into an agreed
19 settlement of a complaint that involves only nonmedical or
20 administrative violations. The disposition determined by the
21 committee must be approved by the board at a public meeting.

22 (b) A complaint delegated under this section shall be
23 referred for informal proceedings under Section 164.003 if:

24 (1) the committee of employees determines that the
25 complaint should not be dismissed or settled;

26 (2) the committee is unable to reach an agreed
27 settlement; or

1 (3) the affected physician requests that the complaint
2 be referred for informal proceedings.

3 SECTION 1.36. Section 164.003, Occupations Code, is amended
4 by amending Subsection (b) and adding Subsections (f), (g), and (h)
5 to read as follows:

6 (b) Rules adopted under this section must require that:

7 (1) an informal meeting in compliance with Section
8 2001.054, Government Code, be scheduled not later than the 180th
9 day after the date the board's official investigation of the
10 complaint is commenced as provided by [~~filed with the board under~~]
11 Section 154.057(b) [~~154.051~~], unless good cause is shown by the
12 board for scheduling the informal meeting after that date;

13 (2) the board give notice to the license holder of the
14 time and place of the meeting not later than the 30th day before the
15 date the meeting is held;

16 (3) the complainant and the license holder be provided
17 an opportunity to be heard;

18 (4) at least one of the board members or district
19 review committee members participating in the informal meeting as a
20 panelist be a member who represents the public;

21 (5) the board's legal counsel or a representative of
22 the attorney general be present to advise the board or the board's
23 staff; and

24 (6) [~~(5)~~] a member of the board's staff be at the
25 meeting to present to the board's representative the facts the
26 staff reasonably believes it could prove by competent evidence or
27 qualified witnesses at a hearing.

1 (f) The notice required by Subsection (b)(2) must be
2 accompanied by a written statement of the nature of the allegations
3 and the information the board intends to use at the meeting, unless
4 the information is confidential. If the board does not provide the
5 statement or information at that time, the license holder may use
6 that failure as grounds for rescheduling the informal meeting. If
7 the complaint includes an allegation that the license holder has
8 violated the standard of care, the notice must include a copy of the
9 report by the expert physician reviewer. The license holder must
10 provide to the board the license holder's rebuttal at least 10
11 business days before the date of the meeting in order for the
12 information to be considered at the meeting.

13 (g) The board by rule shall define circumstances
14 constituting good cause for purposes of Subsection (b)(1),
15 including the extended illness of a board investigator and an
16 expert physician reviewer's delinquency in reviewing and
17 submitting a report to the board.

18 (h) Section 164.007(c) applies to the board's investigation
19 file used in an informal meeting under this section.

20 SECTION 1.37. Subchapter A, Chapter 164, Occupations Code,
21 is amended by adding Sections 164.0031 and 164.0032 to read as
22 follows:

23 Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL
24 PROCEEDINGS. (a) In an informal meeting under Section 164.003 or
25 an informal hearing under Section 164.103, at least two panelists
26 shall be appointed to determine whether an informal disposition is
27 appropriate. At least one of the panelists must be a physician.

1 (b) Notwithstanding Subsection (a) and Section
2 164.003(b)(4), an informal proceeding may be conducted by one
3 panelist if the affected physician waives the requirement that at
4 least two panelists conduct the informal proceeding. If the
5 physician waives that requirement, the panelist may be either a
6 physician or a member who represents the public.

7 (c) The panel requirements described by Subsection (a) do
8 not apply to an informal proceeding conducted by the board under
9 Section 164.003 to show compliance with an order of the board.

10 Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
11 IN INFORMAL PROCEEDINGS. (a) A board member or district review
12 committee member that serves as a panelist at an informal meeting
13 under Section 164.003 shall make recommendations for the
14 disposition of a complaint or allegation. The member may request
15 the assistance of a board employee at any time.

16 (b) Board employees shall present a summary of the
17 allegations against the affected physician and of the facts
18 pertaining to the allegation that the employees reasonably believe
19 may be proven by competent evidence at a formal hearing.

20 (c) A board attorney shall act as counsel to the panel and,
21 notwithstanding Subsection (e), shall be present during the
22 informal meeting and the panel's deliberations to advise the panel
23 on legal issues that arise during the proceeding. The attorney may
24 ask questions of participants in the informal meeting to clarify
25 any statement made by the participant. The attorney shall provide
26 to the panel a historical perspective on comparable cases that have
27 appeared before the board, keep the proceedings focused on the case

1 being discussed, and ensure that the board's employees and the
2 affected physician have an opportunity to present information
3 related to the case.

4 (d) The panel and board employees shall provide an
5 opportunity for the affected physician and the physician's
6 authorized representative to reply to the board employees'
7 presentation and to present oral and written statements and facts
8 that the physician and representative reasonably believe could be
9 proven by competent evidence at a formal hearing.

10 (e) An employee of the board who participated in the
11 presentation of the allegation or information gathered in the
12 investigation of the complaint, the affected physician, the
13 physician's authorized representative, the complainant, the
14 witnesses, and members of the public may not be present during the
15 deliberations of the panel. Only the members of the panel and the
16 board attorney serving as counsel to the panel may be present during
17 the deliberations.

18 (f) The panel shall recommend the dismissal of the complaint
19 or allegations or, if the panel determines that the affected
20 physician has violated a statute or board rule, the panel may
21 recommend board action and terms for an informal settlement of the
22 case.

23 (g) The panel's recommendations under Subsection (f) must
24 be made in a written order and presented to the affected physician
25 and the physician's authorized representative. The physician may
26 accept the proposed settlement within the time established by the
27 panel at the informal meeting. If the physician rejects the

1 proposed settlement or does not act within the required time, the
2 board may proceed with the filing of a formal complaint with the
3 State Office of Administrative Hearings.

4 SECTION 1.38. Subchapter A, Chapter 164, Occupations Code,
5 is amended by adding Section 164.0036 to read as follows:

6 Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS.

7 (a) If an informal meeting is not scheduled for a complaint before
8 the 180th day after the date the board's official investigation of
9 the complaint is commenced under Section 154.057(b), the board
10 shall provide notice to all parties to the complaint. The notice
11 must include an explanation of the reason why the informal meeting
12 has not been scheduled. The notice under this subsection is not
13 required if the notice would jeopardize an investigation.

14 (b) The board must include in its annual report to the
15 legislature information about any complaint for which notice is
16 required under Subsection (a), including the reason for failing to
17 schedule the informal meeting before the 180-day deadline. The
18 information provided under this subsection must also list any
19 complaint in which the investigation has extended beyond the first
20 anniversary of the date the complaint was filed with the board.

21 SECTION 1.39. Section 164.007, Occupations Code, is amended
22 by adding Subsection (a-1) to read as follows:

23 (a-1) The board may change a finding of fact or conclusion
24 of law or vacate or modify an order of the administrative law judge
25 only if the board makes a determination required by Section
26 2001.058(e), Government Code.

27 SECTION 1.40. Subchapter A, Chapter 164, Occupations Code,

1 is amended by adding Section 164.0071 to read as follows:

2 Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a
3 formal hearing described by Section 164.007 in which the sole basis
4 for disciplinary action is the basis described by Section
5 164.051(a)(7), the board shall provide evidence from the board's
6 investigation that shows the basis for the board's findings
7 required by that subdivision.

8 (b) In any formal hearing described by Section 164.007,
9 other than a hearing involving a prohibited practice under Section
10 164.052(a)(18), information obtained as a result of peer review may
11 not be used as evidence except as the basis for the opinion of an
12 expert witness called by the board.

13 (c) A member of a peer review committee is not subject to
14 subpoena and may not be compelled to provide evidence in a formal
15 hearing, other than a hearing involving a prohibited practice under
16 Section 164.052(a)(18).

17 SECTION 1.41. Subsection (a), Section 164.052,
18 Occupations Code, is amended to read as follows:

19 (a) A physician or an applicant for a license to practice
20 medicine commits a prohibited practice if that person:

21 (1) submits to the board a false or misleading
22 statement, document, or certificate in an application for a
23 license;

24 (2) presents to the board a license, certificate, or
25 diploma that was illegally or fraudulently obtained;

26 (3) commits fraud or deception in taking or passing an
27 examination;

1 (4) uses alcohol or drugs in an intemperate manner
2 that, in the board's opinion, could endanger a patient's life;

3 (5) commits unprofessional or dishonorable conduct
4 that is likely to deceive or defraud the public, as provided by
5 Section 164.053, or injure the public;

6 (6) uses an advertising statement that is false,
7 misleading, or deceptive;

8 (7) advertises professional superiority or the
9 performance of professional service in a superior manner if that
10 advertising is not readily subject to verification;

11 (8) purchases, sells, barter, or uses, or offers to
12 purchase, sell, barter, or use, a medical degree, license,
13 certificate, or diploma, or a transcript of a license, certificate,
14 or diploma in or incident to an application to the board for a
15 license to practice medicine;

16 (9) alters, with fraudulent intent, a medical license,
17 certificate, or diploma, or a transcript of a medical license,
18 certificate, or diploma;

19 (10) uses a medical license, certificate, or diploma,
20 or a transcript of a medical license, certificate, or diploma that
21 has been:

22 (A) fraudulently purchased or issued;

23 (B) counterfeited; or

24 (C) materially altered;

25 (11) impersonates or acts as proxy for another person
26 in an examination required by this subtitle for a medical license;

27 (12) engages in conduct that subverts or attempts to

1 subvert an examination process required by this subtitle for a
2 medical license;

3 (13) impersonates a physician or permits another to
4 use the person's license or certificate to practice medicine in
5 this state;

6 (14) directly or indirectly employs a person whose
7 license to practice medicine has been suspended, canceled, or
8 revoked;

9 (15) associates in the practice of medicine with a
10 person:

11 (A) whose license to practice medicine has been
12 suspended, canceled, or revoked; or

13 (B) who has been convicted of the unlawful
14 practice of medicine in this state or elsewhere;

15 (16) performs or procures a criminal abortion, aids or
16 abets in the procuring of a criminal abortion, attempts to perform
17 or procure a criminal abortion, or attempts to aid or abet the
18 performance or procurement of a criminal abortion; ~~or~~

19 (17) directly or indirectly aids or abets the practice
20 of medicine by a person, partnership, association, or corporation
21 that is not licensed to practice medicine by the board; or

22 (18) engages in conduct that misuses the peer review
23 process, including fraudulent and malicious conduct, as defined by
24 rules adopted by the board.

25 SECTION 1.42. Section 164.056, Occupations Code, is amended
26 by amending Subsection (a) and adding Subsections (d) and (e) to
27 read as follows:

1 (a) In enforcing Section 164.051(a)(4), the board, on
2 probable cause, shall request the affected physician or applicant
3 to submit to a mental or physical examination by physicians
4 designated by the board. The board shall adopt guidelines, in
5 conjunction with persons interested in or affected by this section,
6 to enable the board to evaluate circumstances in which a physician
7 or applicant may be required to submit to an examination for mental
8 or physical health conditions, alcohol and substance abuse, or
9 professional behavior problems.

10 (d) The board shall refer a physician or applicant with a
11 physical or mental health condition to the most appropriate medical
12 specialist for evaluation. The board may not require a physician or
13 applicant to submit to an examination by a physician having a
14 specialty specified by the board unless medically indicated. The
15 board may not require a physician or applicant to submit to an
16 examination to be conducted an unreasonable distance from the
17 person's home or place of business unless the physician or
18 applicant resides and works in an area in which there are a limited
19 number of physicians able to perform an appropriate examination.

20 (e) The guidelines adopted under this section do not impair
21 or remove the board's power to make an independent licensing
22 decision.

23 SECTION 1.43. Section 164.202, Occupations Code, is amended
24 to read as follows:

25 Sec. 164.202. REHABILITATION ORDER. (a) The board,
26 through an agreed order or after a contested proceeding, may impose
27 a nondisciplinary rehabilitation order on an applicant, as a

1 prerequisite for issuing a license, or on a license holder, based
2 on:

3 (1) intemperate use of drugs or alcohol directly
4 resulting from habituation or addiction caused by medical care or
5 treatment provided by a physician;

6 (2) self-reported intemperate use of drugs or alcohol
7 during the five years preceding the report that could adversely
8 affect the reporter's ability to practice medicine safely, if:

9 (A) the reporting individual has not previously
10 been the subject of a substance abuse-related order of the board;
11 and

12 (B) the applicant or license holder has not
13 committed a violation of the standard of care as a result of the
14 intemperate use of drugs or alcohol;

15 (3) a judgment by a court that the applicant or license
16 holder is of unsound mind;

17 (4) a determination of impairment based on a mental or
18 physical examination offered to establish the impairment in an
19 evidentiary hearing before the board in which the applicant or
20 license holder was provided an opportunity to respond; or

21 (5) an admission by the applicant or license holder
22 indicating that the applicant or license holder suffers from a
23 potentially dangerous limitation or an inability to practice
24 medicine with reasonable skill and safety by reason of illness or as
25 a result of any physical or mental condition.

26 (b) The board may not issue an order under this section if,
27 before the individual signs the proposed order, the board receives

1 a valid complaint with regard to the individual based on the
2 individual's intemperate use of drugs or alcohol in a manner
3 affecting the standard of care.

4 (c) The board must determine whether an individual has
5 committed a standard of care violation described by Subsection
6 (a)(2) before imposing an order under this section.

7 (d) The board may disclose a rehabilitation order to a local
8 or statewide private medical association only as provided by
9 Section 164.205.

10 SECTION 1.44. Subchapter E, Chapter 164, Occupations Code,
11 is amended by adding Section 164.205 to read as follows:

12 Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL
13 ASSOCIATIONS. (a) If a rehabilitation order imposed under Section
14 164.202 requires a license holder to participate in activities or
15 programs provided by a local or statewide private medical
16 association, the board shall inform the association of the license
17 holder's duties under the order. The information provided under
18 this section must include specific guidance to enable the
19 association to comply with any requirements necessary to assist in
20 the physician's rehabilitation.

21 (b) The board may provide to the association any information
22 that the board determines to be necessary, including a copy of the
23 rehabilitation order. Any information received by the association
24 remains confidential, is not subject to discovery, subpoena, or
25 other means of legal compulsion, and may be disclosed only to the
26 board.

27 SECTION 1.45. Subchapter E, Chapter 164, Occupations Code,

1 is amended by adding Section 164.206 to read as follows:

2 Sec. 164.206. REFUND. (a) Subject to Subsection (b), the
3 board may order a license holder to pay a refund to a consumer as
4 provided in an agreement resulting from an informal settlement
5 conference instead of or in addition to imposing an administrative
6 penalty under Chapter 165.

7 (b) The amount of a refund ordered as provided in an
8 agreement resulting from an informal settlement conference may not
9 exceed the amount the consumer paid to the license holder for a
10 service regulated by this subtitle. The board may not require
11 payment of other damages or estimate harm in a refund order.

12 SECTION 1.46. The heading to Subchapter B, Chapter 165,
13 Occupations Code, is amended to read as follows:

14 SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

15 SECTION 1.47. Subchapter B, Chapter 165, Occupations Code,
16 is amended by adding Section 165.052 to read as follows:

17 Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to
18 the board that a person who is not licensed under this subtitle is
19 violating this subtitle, a rule adopted under this subtitle, or
20 another state statute or rule relating to the practice of medicine,
21 the board after notice and opportunity for a hearing may issue a
22 cease and desist order prohibiting the person from engaging in the
23 activity.

24 (b) A violation of an order under this section constitutes
25 grounds for imposing an administrative penalty under this chapter.

26 SECTION 1.48. The following laws are repealed:

27 (1) Subsection (d), Section 152.010, Occupations

1 Code; and

2 (2) Subsections (d) through (h), Section 157.0542,
3 Occupations Code.

4 SECTION 1.49. Not later than January 1, 2006, the Texas
5 Medical Board shall:

6 (1) adopt the policies required by Sections 153.057
7 and 153.058, Occupations Code, as added by this article; and

8 (2) adopt the rules required by Subtitle B, Title 3,
9 Occupations Code, as amended by this article.

10 SECTION 1.50. (a) The changes in law made by Sections
11 152.003, 152.006, and 152.010, Occupations Code, as amended by this
12 article, regarding the prohibitions on or qualifications of members
13 of the Texas Medical Board do not affect the entitlement of a member
14 serving on the board immediately before September 1, 2005, to
15 continue to serve and function as a member of the board for the
16 remainder of the member's term. The changes in law made by those
17 sections apply only to a member appointed on or after September 1,
18 2005.

19 (b) The Texas Medical Board shall adopt rules necessary to
20 implement the requirements of Section 155.006, Occupations Code, as
21 added by this article, not later than March 1, 2006.

22 (c) The changes in law made by this article related to the
23 filing, investigation, or disposition of a complaint under Subtitle
24 B, Title 3, Occupations Code, as amended by this article, apply only
25 to a complaint filed with the Texas Medical Board on or after the
26 effective date of this Act. A complaint filed before the effective
27 date of this Act is governed by the law as it existed immediately

1 before that date, and the former law is continued in effect for that
2 purpose.

3 (d) The changes in law made by this article governing the
4 eligibility of a person for a license under Subtitle B, Title 3,
5 Occupations Code, apply only to an application for a license filed
6 on or after the effective date of this Act. A license application
7 filed before the effective date of this Act is governed by the law
8 in effect at the time the application was filed, and the former law
9 is continued in effect for that purpose.

10 (e) The change in law made by this article with respect to
11 conduct that is grounds for imposition of a disciplinary sanction,
12 including a refund or cease and desist order, applies only to
13 conduct that occurs on or after the effective date of this Act.
14 Conduct that occurs before the effective date of this Act is
15 governed by the law in effect on the date the conduct occurred, and
16 the former law is continued in effect for that purpose.

17 ARTICLE 2. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
18 PHYSICIAN ASSISTANT EXAMINERS

19 SECTION 2.01. Subdivision (1), Section 204.002,
20 Occupations Code, is amended to read as follows:

21 (1) "Medical board" means the Texas [~~State Board of~~
22 Medical Board ~~Examiners~~].

23 SECTION 2.02. Section 204.052, Occupations Code, is amended
24 to read as follows:

25 Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician
26 assistant board consists of nine members appointed by the governor
27 with the advice and consent of the senate as follows:

1 (1) three practicing physician assistant members who
2 each have at least five years of clinical experience as a physician
3 assistant;

4 (2) three physician members who are licensed in this
5 state and who supervise physician assistants; and

6 (3) three public members who are not licensed as a
7 physician or physician assistant.

8 (b) Appointments to the physician assistant board shall be
9 made without regard to the race, color, disability, sex, religion,
10 age, or national origin of the appointee.

11 SECTION 2.03. Section 204.053, Occupations Code, is amended
12 to read as follows:

13 Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS.

14 (a) In this section, "Texas trade association" means a cooperative
15 and voluntarily joined statewide association of business or
16 professional competitors in this state designed to assist its
17 members and its industry or profession in dealing with mutual
18 business or profession problems and in promoting their common
19 interest.

20 (b) A person may not be [~~is not eligible for appointment as~~]
21 a public member of the physician assistant board if the person or
22 the person's spouse:

23 (1) is registered, certified, or licensed by a [~~an~~]
24 [~~occupational~~] regulatory agency in the field of health care; [~~or~~]

25 (2) is employed by or participates in the management
26 of a business entity or other organization regulated by or
27 receiving money from the medical board or physician assistant

1 board;

2 (3) owns or controls, directly or indirectly, more
3 than a 10 percent interest in a business entity or other
4 organization regulated by or receiving money from the medical board
5 or physician assistant board; or

6 (4) uses or receives a substantial amount of tangible
7 goods, services, or money from the medical board or physician
8 assistant board other than compensation or reimbursement
9 authorized by law for physician assistant board membership,
10 attendance, or expenses [~~that provides health care services or that~~
11 ~~sells, manufactures, or distributes health care supplies or~~
12 ~~equipment~~].

13 (c) [~~(b)~~] A person may not be [~~serve as~~] a member of the
14 physician assistant board and may not be a medical board employee in
15 a "bona fide executive, administrative, or professional capacity,"
16 as that phrase is used for purposes of establishing an exemption to
17 the overtime provisions of the federal Fair Labor Standards Act of
18 1938 (29 U.S.C. Section 201 et seq.), if:

19 (1) the person is an officer, employee, or paid
20 consultant of a Texas trade association in the field of health care;
21 or

22 (2) the person's spouse is an officer, manager, or paid
23 consultant of a Texas trade association in the field of health care.

24 (d) A person may not be a member of the physician assistant
25 board or act as the general counsel to the physician assistant board
26 if the person is required to register as a lobbyist under Chapter
27 305, Government Code, because of the person's activities for

1 compensation on behalf of a profession related to the operation of
2 the medical board or physician assistant board.

3 SECTION 2.04. Section 204.055, Occupations Code, is amended
4 to read as follows:

5 Sec. 204.055. OFFICERS. The governor shall designate a
6 member of the physician assistant board as the presiding officer of
7 the board to serve in that capacity at the will of the governor. The
8 physician assistant board shall select from its membership a
9 [~~presiding officer and a~~] secretary to serve a one-year term
10 [~~terms~~].

11 SECTION 2.05. Section 204.056, Occupations Code, is amended
12 by amending Subsection (a) and adding Subsection (c) to read as
13 follows:

14 (a) It is a ground for removal from the physician assistant
15 board that a member:

16 (1) does not have at the time of taking office
17 [~~appointment~~] the qualifications required by Sections 204.052 and
18 204.053 [~~this subchapter for appointment to the board~~];

19 (2) does not maintain during [~~the~~] service on the
20 physician assistant board the qualifications required by Sections
21 204.052 and 204.053 [~~this subchapter for appointment to the board~~];
22 [~~or~~]

23 (3) is ineligible for membership under Section
24 204.053;

25 (4) cannot, because of illness or disability,
26 discharge the member's duties for a substantial part of the member's
27 term; or

1 (5) is absent from more than half [~~fails to attend at~~
2 ~~least one-half~~] of the regularly scheduled physician assistant
3 board meetings that the member is eligible to attend during a
4 calendar year without an excuse approved by a majority vote of the
5 board.

6 (c) If the executive director of the medical board has
7 knowledge that a potential ground for removal exists, the executive
8 director shall notify the presiding officer of the physician
9 assistant board of the potential ground. The presiding officer
10 shall then notify the governor and the attorney general that a
11 potential ground for removal exists. If the potential ground for
12 removal involves the presiding officer, the executive director
13 shall notify the next highest ranking officer of the physician
14 assistant board, who shall then notify the governor and the
15 attorney general that a potential ground for removal exists.

16 SECTION 2.06. Subchapter B, Chapter 204, Occupations Code,
17 is amended by adding Section 204.059 to read as follows:

18 Sec. 204.059. TRAINING. (a) A person who is appointed to
19 and qualifies for office as a member of the physician assistant
20 board may not vote, deliberate, or be counted as a member in
21 attendance at a meeting of the board until the person completes a
22 training program that complies with this section.

23 (b) The training program must provide the person with
24 information regarding:

25 (1) this chapter and the physician assistant board's
26 programs, functions, rules, and budget;

27 (2) the results of the most recent formal audit of the

1 physician assistant board;

2 (3) the requirements of laws relating to open
3 meetings, public information, administrative procedure, and
4 conflicts of interest; and

5 (4) any applicable ethics policies adopted by the
6 physician assistant board or the Texas Ethics Commission.

7 (c) A person appointed to the physician assistant board is
8 entitled to reimbursement, as provided by the General
9 Appropriations Act, for the travel expenses incurred in attending
10 the training program regardless of whether the attendance at the
11 program occurs before or after the person qualifies for office.

12 SECTION 2.07. Subchapter C, Chapter 204, Occupations Code,
13 is amended by adding Section 204.1015 to read as follows:

14 Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN
15 RULEMAKING PROCESS. (a) The physician assistant board shall adopt
16 guidelines to establish procedures for receiving input during the
17 rulemaking process from individuals and groups that have an
18 interest in matters under the board's jurisdiction. The guidelines
19 must provide an opportunity for those individuals and groups to
20 provide input before the physician assistant board submits the rule
21 to the medical board for approval.

22 (b) In implementing the guidelines adopted under this
23 section, the physician assistant board shall exercise its judgment
24 in determining which rules require input as described by Subsection
25 (a).

26 SECTION 2.08. Subchapter C, Chapter 204, Occupations Code,
27 is amended by adding Section 204.105 to read as follows:

1 Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

2 The physician assistant board shall adopt rules and guidelines as
3 necessary to comply with Chapter 53, except to the extent the
4 requirements of this chapter are stricter than the requirements of
5 Chapter 53.

6 SECTION 2.09. Subchapter C, Chapter 204, Occupations Code,
7 is amended by adding Section 204.106 to read as follows:

8 Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the
9 advice and approval of the medical board, the physician assistant
10 board shall develop and implement policies that clearly separate
11 the policy-making responsibilities of the physician assistant
12 board and the management responsibilities of the executive director
13 and the staff of the medical board.

14 SECTION 2.10. Subchapter C, Chapter 204, Occupations Code,
15 is amended by adding Section 204.107 to read as follows:

16 Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice
17 and approval of the medical board, the physician assistant board
18 shall develop and implement policies that provide the public with a
19 reasonable opportunity to appear before the physician assistant
20 board and to speak on any issue under the jurisdiction of the
21 physician assistant board.

22 SECTION 2.11. Subchapter C, Chapter 204, Occupations Code,
23 is amended by adding Section 204.108 to read as follows:

24 Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician
25 assistant board shall maintain a system to promptly and efficiently
26 act on complaints filed with the physician assistant board. The
27 board shall maintain:

1 (1) information about the parties to the complaint and
2 the subject matter of the complaint;

3 (2) a summary of the results of the review or
4 investigation of the complaint; and

5 (3) information about the disposition of the
6 complaint.

7 (b) The physician assistant board shall make information
8 available describing its procedures for complaint investigation
9 and resolution.

10 (c) The physician assistant board shall periodically notify
11 the parties of the status of the complaint until final disposition
12 of the complaint, unless the notice would jeopardize an
13 investigation.

14 SECTION 2.12. Subchapter C, Chapter 204, Occupations Code,
15 is amended by adding Section 204.109 to read as follows:

16 Sec. 204.109. USE OF TECHNOLOGY. Subject to the advice and
17 approval of the medical board, the physician assistant board shall
18 implement a policy requiring the physician assistant board to use
19 appropriate technological solutions to improve the physician
20 assistant board's ability to perform its functions. The policy
21 must ensure that the public is able to interact with the board on
22 the Internet.

23 SECTION 2.13. Subchapter C, Chapter 204, Occupations Code,
24 is amended by adding Section 204.110 to read as follows:

25 Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE
26 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
27 of the medical board, the physician assistant board shall develop

1 and implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008, Government Code, for the adoption of physician assistant
4 board rules; and

5 (2) appropriate alternative dispute resolution
6 procedures under Chapter 2009, Government Code, to assist in the
7 resolution of internal and external disputes under the physician
8 assistant board's jurisdiction.

9 (b) The physician assistant board's procedures relating to
10 alternative dispute resolution must conform, to the extent
11 possible, to any model guidelines issued by the State Office of
12 Administrative Hearings for the use of alternative dispute
13 resolution by state agencies.

14 (c) The physician assistant board shall designate a trained
15 person to:

16 (1) coordinate the implementation of the policy
17 adopted under Subsection (a);

18 (2) serve as a resource for any training needed to
19 implement the procedures for negotiated rulemaking or alternative
20 dispute resolution; and

21 (3) collect data concerning the effectiveness of those
22 procedures, as implemented by the physician assistant board.

23 SECTION 2.14. Section 204.152, Occupations Code, is amended
24 to read as follows:

25 Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician
26 assistant board shall issue a license to an applicant who:

27 (1) meets the eligibility requirements of Section

1 204.153;

2 (2) submits an application on a form prescribed by the
3 board;

4 (3) pays the required application fee;

5 (4) certifies that the applicant is mentally and
6 physically able to function safely as a physician assistant; and

7 (5) submits to the board any other information the
8 board considers necessary to evaluate the applicant's
9 qualifications.

10 (b) The physician assistant board may delegate authority to
11 medical board employees to issue licenses under this chapter to
12 applicants who clearly meet all licensing requirements. If the
13 medical board employees determine that the applicant does not
14 clearly meet all licensing requirements, the application shall be
15 returned to the physician assistant board. A license issued under
16 this subsection does not require formal physician assistant board
17 approval.

18 SECTION 2.15. Section 204.153, Occupations Code, is amended
19 by amending Subsection (a) and adding Subsection (a-1) to read as
20 follows:

21 (a) To be eligible for a license under this chapter, an
22 applicant must:

23 (1) successfully complete an educational program for
24 physician assistants or surgeon assistants accredited by the
25 Committee on Allied Health Education and Accreditation or by that
26 committee's predecessor or successor entities;

27 (2) pass the Physician Assistant National Certifying

1 Examination administered by the National Commission on
2 Certification of Physician Assistants;

3 (3) hold a certificate issued by the National
4 Commission on Certification of Physician Assistants;

5 (4) be of good moral character; ~~and~~

6 (5) meet any other requirement established by board
7 rule; and

8 (6) pass a jurisprudence examination approved by the
9 physician assistant board as provided by Subsection (a-1).

10 (a-1) The jurisprudence examination shall be conducted on
11 the licensing requirements and other laws, rules, or regulations
12 applicable to the physician assistant profession in this state.
13 The physician assistant board shall establish rules for the
14 jurisprudence examination under Subsection (a)(6) regarding:

15 (1) the development of the examination;

16 (2) applicable fees;

17 (3) administration of the examination;

18 (4) reexamination procedures;

19 (5) grading procedures; and

20 (6) notice of results.

21 SECTION 2.16. Section 204.156, Occupations Code, is amended
22 to read as follows:

23 Sec. 204.156. LICENSE RENEWAL. (a) On notification from
24 the physician assistant board, a person who holds a license under
25 this chapter may renew the license by:

26 (1) paying the required renewal fee;

27 (2) submitting the appropriate form; and

1 (3) meeting any other requirement established by board
2 rule.

3 (b) The physician assistant board by rule may adopt a system
4 under which licenses expire on various dates during the year.

5 (c) A person who is otherwise eligible to renew a license
6 may renew an unexpired license by paying the required renewal fee to
7 the physician assistant board before the expiration date of the
8 license. A person whose license has expired may not engage in
9 activities that require a license until the license has been
10 renewed.

11 (d) A person whose license has been expired for 90 days or
12 less may renew the license by paying to the physician assistant
13 board a fee that is equal to 1-1/2 times the renewal fee for the
14 license.

15 (e) A person whose license has been expired for more than 90
16 days but less than one year may renew the license by paying to the
17 physician assistant board a fee equal to two times the renewal fee
18 for the license.

19 (f) A person who was licensed in this state, moved to
20 another state, and is currently licensed and has been in practice in
21 the other state for the two years preceding the date of the
22 application may obtain a new license without reexamination. The
23 person must pay to the physician assistant board a fee that is equal
24 to two times the normally required renewal fee for the license.

25 SECTION 2.17. Subchapter D, Chapter 204, Occupations Code,
26 is amended by adding Section 204.1562 to read as follows:

27 Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

1 (a) The physician assistant board by rule shall adopt, monitor,
2 and enforce a reporting program for the continuing medical
3 education of license holders. The physician assistant board shall
4 adopt and administer rules that:

5 (1) establish the number of hours of continuing
6 medical education the physician assistant board determines
7 appropriate as a prerequisite to the renewal of a license under this
8 chapter;

9 (2) require at least one-half of the hours of
10 continuing medical education established under Subdivision (1) to
11 be approved by the physician assistant board; and

12 (3) adopt a process to assess a license holder's
13 participation in continuing medical education courses.

14 (b) The physician assistant board may require that a
15 specified number of continuing medical education hours be completed
16 informally, including through self-study and self-directed
17 education.

18 SECTION 2.18. Section 204.157, Occupations Code, is amended
19 by amending Subsection (c) and adding Subsection (d) to read as
20 follows:

21 (c) A person whose license is on inactive status under this
22 section may return the person's license to active status by:

23 (1) applying to the physician assistant board; ~~and~~

24 (2) satisfying the requirements of Section 204.156;
25 and

26 (3) paying the fee established by the physician
27 assistant board for returning a license to active status.

1 (d) The physician assistant board by rule shall establish a
2 limit on the length of time a physician assistant's license may
3 remain on inactive status.

4 SECTION 2.19. Subsection (a), Section 204.301, Occupations
5 Code, is amended to read as follows:

6 (a) Except as provided by Section 204.305, on a
7 determination that an applicant or license holder committed an act
8 described in Section 204.302, 204.303, or 204.304, the physician
9 assistant board by order shall take any of the following actions:

10 (1) deny the person's application for a license
11 [~~application~~] or license renewal or revoke the person's license or
12 other authorization;

13 (2) require the person to submit to the care,
14 counseling, or treatment of a health care practitioner designated
15 by the physician assistant board;

16 (3) stay enforcement of an order and place the person
17 on probation;

18 (4) require the person to complete additional
19 training;

20 (5) suspend, limit, or restrict the person's license,
21 including:

22 (A) limiting the practice of the person to, or
23 excluding from the practice, one or more specified activities of
24 the practice as a physician assistant; or

25 (B) stipulating periodic physician assistant
26 board review;

27 (6) assess an administrative penalty against the

1 person under Section 204.351;

2 (7) order the person to perform public service; or

3 (8) administer a public reprimand.

4 SECTION 2.20. Subchapter G, Chapter 204, Occupations Code,
5 is amended by adding Section 204.3011 to read as follows:

6 Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT
7 DISPOSITIONS. (a) The physician assistant board may delegate to a
8 committee of medical board employees the authority to dismiss or
9 enter into an agreed settlement of a complaint that involves only
10 nonmedical or administrative violations. The disposition
11 determined by the committee must be approved by the physician
12 assistant board at a public meeting.

13 (b) A complaint delegated under this section shall be
14 referred for informal proceedings under Section 204.312 if:

15 (1) the committee of employees determines that the
16 complaint should not be dismissed or settled;

17 (2) the committee is unable to reach an agreed
18 settlement; or

19 (3) the affected physician assistant requests that the
20 complaint be referred for informal proceedings.

21 SECTION 2.21. Subchapter G, Chapter 204, Occupations Code,
22 is amended by adding Section 204.3045 to read as follows:

23 Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The
24 physician assistant board shall adopt guidelines, in conjunction
25 with persons interested in or affected by this section, to enable
26 the physician assistant board to evaluate circumstances in which a
27 physician assistant or applicant may be required to submit to an

1 examination for mental or physical health conditions, alcohol and
2 substance abuse, or professional behavior problems.

3 (b) The physician assistant board shall refer a physician
4 assistant or applicant with a physical or mental health condition
5 to the most appropriate medical specialist for evaluation. The
6 physician assistant board may not require a physician assistant or
7 applicant to submit to an examination by a physician having a
8 specialty specified by the physician assistant board unless
9 medically indicated. The physician assistant board may not require
10 a physician assistant or applicant to submit to an examination to be
11 conducted an unreasonable distance from the person's home or place
12 of business unless the physician assistant or applicant resides and
13 works in an area in which there are a limited number of physicians
14 able to perform an appropriate examination.

15 (c) The guidelines adopted under this section do not impair
16 or remove the physician assistant board's power to make an
17 independent licensing decision.

18 SECTION 2.22. Section 204.305, Occupations Code, is amended
19 to read as follows:

20 Sec. 204.305. REHABILITATION ORDER. (a) The physician
21 assistant board, through an agreed order or after a contested
22 proceeding, may impose a rehabilitation order on an applicant, as a
23 prerequisite for issuing a license, or on a license holder based on:

24 (1) the person's intemperate use of drugs or alcohol
25 directly resulting from habituation or addiction caused by medical
26 care or treatment provided by a physician;

27 (2) the person's intemperate use of drugs or alcohol

1 during the five years preceding the date of the report that could
2 adversely affect the person's ability to safely practice as a
3 physician assistant, if the person:

4 (A) reported the use; ~~and~~

5 (B) has not previously been the subject of a
6 substance abuse related order of the board; and

7 (C) has not committed a violation of the standard
8 of care as a result of the intemperate use of drugs or alcohol;

9 (3) a judgment by a court that the person is of unsound
10 mind; or

11 (4) the results of a mental or physical examination,
12 or an admission by the person, indicating that the person suffers
13 from a potentially dangerous limitation or an inability to practice
14 as a physician assistant with reasonable skill and safety because
15 of illness or any other physical or mental condition.

16 (b) The physician assistant board may not issue an order
17 under this section if, before the individual signs the proposed
18 order, the physician assistant board receives a valid complaint
19 with regard to the individual based on the individual's intemperate
20 use of drugs or alcohol in a manner affecting the standard of care.

21 (c) The physician assistant board must determine whether an
22 individual has committed a standard of care violation described by
23 Subsection (a)(2) before imposing an order under this section.

24 SECTION 2.23. Subchapter G, Chapter 204, Occupations Code,
25 is amended by adding Section 204.3075 to read as follows:

26 Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

27 (a) If a rehabilitation order imposed under Section 204.305

1 requires a license holder to participate in activities or programs
2 provided by a local or statewide private association of physician
3 assistants, the physician assistant board shall inform the
4 association of the license holder's duties under the order. The
5 information provided under this section must include specific
6 guidance to enable the association to comply with any requirements
7 necessary to assist in the physician assistant's rehabilitation.

8 (b) The physician assistant board may provide to the
9 association any information that the board determines to be
10 necessary, including a copy of the rehabilitation order. Any
11 information received by the association remains confidential, is
12 not subject to discovery, subpoena, or other means of legal
13 compulsion, and may be disclosed only to the physician assistant
14 board.

15 SECTION 2.24. Subchapter G, Chapter 204, Occupations Code,
16 is amended by adding Section 204.312 to read as follows:

17 Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician
18 assistant board by rule shall adopt procedures governing:

19 (1) informal disposition of a contested case under
20 Section 2001.056, Government Code; and

21 (2) informal proceedings held in compliance with
22 Section 2001.054, Government Code.

23 (b) Rules adopted under this section must require that:

24 (1) an informal meeting in compliance with Section
25 2001.054, Government Code, be scheduled not later than the 180th
26 day after the date the complaint is filed with the physician
27 assistant board, unless good cause is shown by the physician

1 assistant board for scheduling the informal meeting after that
2 date;

3 (2) the physician assistant board give notice to the
4 license holder of the time and place of the meeting not later than
5 the 30th day before the date the meeting is held;

6 (3) the complainant and the license holder be provided
7 an opportunity to be heard;

8 (4) at least one of the physician assistant board
9 members participating in the informal meeting as a panelist be a
10 member who represents the public;

11 (5) the physician assistant board's legal counsel or a
12 representative of the attorney general be present to advise the
13 physician assistant board or the medical board's staff; and

14 (6) a member of the medical board's staff be at the
15 meeting to present to the physician assistant board's
16 representative the facts the staff reasonably believes it could
17 prove by competent evidence or qualified witnesses at a hearing.

18 (c) An affected physician assistant is entitled to:

19 (1) reply to the staff's presentation; and

20 (2) present the facts the physician assistant
21 reasonably believes the physician assistant could prove by
22 competent evidence or qualified witnesses at a hearing.

23 (d) After ample time is given for the presentations, the
24 physician assistant board representative shall recommend that the
25 investigation be closed or shall attempt to mediate the disputed
26 matters and make a recommendation regarding the disposition of the
27 case in the absence of a hearing under applicable law concerning

1 contested cases.

2 (e) If the license holder has previously been the subject of
3 disciplinary action by the physician assistant board, the physician
4 assistant board shall schedule the informal meeting as soon as
5 practicable but not later than the deadline prescribed by
6 Subsection (b)(1).

7 SECTION 2.25. Subchapter G, Chapter 204, Occupations Code,
8 is amended by adding Section 204.313 to read as follows:

9 Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN
10 INFORMAL PROCEEDINGS. (a) In an informal meeting under Section
11 204.312, at least two panelists shall be appointed to determine
12 whether an informal disposition is appropriate.

13 (b) Notwithstanding Subsection (a) and Section
14 204.312(b)(4), an informal proceeding may be conducted by one
15 panelist if the affected physician assistant waives the requirement
16 that at least two panelists conduct the informal proceeding. If the
17 physician assistant waives that requirement, the panelist may be
18 any member of the physician assistant board.

19 (c) The panel requirements described by Subsections (a) and
20 (b) apply to an informal proceeding conducted by the physician
21 assistant board under Section 204.312, including a proceeding to:

22 (1) consider a disciplinary case to determine if a
23 violation has occurred; or

24 (2) request modification or termination of an order.

25 (d) The panel requirements described by Subsections (a) and
26 (b) do not apply to an informal proceeding conducted by the
27 physician assistant board under Section 204.312 to show compliance

1 with an order of the physician assistant board.

2 SECTION 2.26. Subchapter G, Chapter 204, Occupations Code,
3 is amended by adding Sections 204.314 and 204.3145 to read as
4 follows:

5 Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN
6 INFORMAL PROCEEDINGS. (a) A physician assistant board member that
7 serves as a panelist at an informal meeting under Section 204.312
8 shall make recommendations for the disposition of a complaint or
9 allegation. The member may request the assistance of a medical
10 board employee at any time.

11 (b) Medical board employees shall present a summary of the
12 allegations against the affected physician assistant and of the
13 facts pertaining to the allegation that the employees reasonably
14 believe may be proven by competent evidence at a formal hearing.

15 (c) A physician assistant board or medical board attorney
16 shall act as counsel to the panel and, notwithstanding Subsection
17 (e), shall be present during the informal meeting and the panel's
18 deliberations to advise the panel on legal issues that arise during
19 the proceeding. The attorney may ask questions of participants in
20 the informal meeting to clarify any statement made by the
21 participant. The attorney shall provide to the panel a historical
22 perspective on comparable cases that have appeared before the
23 physician assistant board or medical board, keep the proceedings
24 focused on the case being discussed, and ensure that the medical
25 board's employees and the affected physician assistant have an
26 opportunity to present information related to the case.

27 (d) The panel and medical board employees shall provide an

1 opportunity for the affected physician assistant and the physician
2 assistant's authorized representative to reply to the medical board
3 employees' presentation and to present oral and written statements
4 and facts that the physician assistant and representative
5 reasonably believe could be proven by competent evidence at a
6 formal hearing.

7 (e) An employee of the medical board who participated in the
8 presentation of the allegation or information gathered in the
9 investigation of the complaint, the affected physician assistant,
10 the physician assistant's authorized representative, the
11 complainant, the witnesses, and members of the public may not be
12 present during the deliberations of the panel. Only the members of
13 the panel and the attorney serving as counsel to the panel may be
14 present during the deliberations.

15 (f) The panel shall recommend the dismissal of the complaint
16 or allegations or, if the panel determines that the affected
17 physician assistant has violated a statute or physician assistant
18 board rule, the panel may recommend physician assistant board
19 action and terms for an informal settlement of the case.

20 (g) The panel's recommendations under Subsection (f) must
21 be made in a written order and presented to the affected physician
22 assistant and the physician assistant's authorized representative.
23 The physician assistant may accept the proposed settlement within
24 the time established by the panel at the informal meeting. If the
25 physician assistant rejects the proposed settlement or does not act
26 within the required time, the physician assistant board may proceed
27 with the filing of a formal complaint with the State Office of

1 Administrative Hearings.

2 Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The
3 physician assistant board shall prohibit or limit access to an
4 investigation file relating to a license holder in an informal
5 proceeding in the manner provided by Section 164.007(c).

6 SECTION 2.27. Subchapter G, Chapter 204, Occupations Code,
7 is amended by adding Section 204.315 to read as follows:

8 Sec. 204.315. SURRENDER OF LICENSE. (a) The physician
9 assistant board may accept the voluntary surrender of a license.

10 (b) A surrendered license may not be returned to the license
11 holder unless the physician assistant board determines, under
12 physician assistant board rules, that the former holder of the
13 license is competent to resume practice.

14 (c) The physician assistant board by rule shall establish
15 guidelines for determining the competency of a former license
16 holder to return to practice.

17 SECTION 2.28. Subchapter G, Chapter 204, Occupations Code,
18 is amended by adding Section 204.316 to read as follows:

19 Sec. 204.316. REFUND. (a) Subject to Subsection (b), the
20 physician assistant board may order a license holder to pay a refund
21 to a consumer as provided in an agreement resulting from an informal
22 settlement conference instead of or in addition to imposing an
23 administrative penalty under Section 204.351.

24 (b) The amount of a refund ordered as provided in an
25 agreement resulting from an informal settlement conference may not
26 exceed the amount the consumer paid to the license holder for a
27 service regulated by this chapter. The physician assistant board

1 may not require payment of other damages or estimate harm in a
2 refund order.

3 SECTION 2.29. Subchapter G, Chapter 204, Occupations Code,
4 is amended by adding Section 204.317 to read as follows:

5 Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY
6 ADMINISTRATIVE LAW JUDGE. The physician assistant board may change
7 a finding of fact or conclusion of law or vacate or modify an order
8 of an administrative law judge only if the physician assistant
9 board makes a determination required by Section 2001.058(e),
10 Government Code.

11 SECTION 2.30. Subchapter G, Chapter 204, Occupations Code,
12 is amended by adding Section 204.318 to read as follows:

13 Sec. 204.318. EXPERT IMMUNITY. An expert who assists the
14 physician assistant board is immune from suit and judgment and may
15 not be subjected to a suit for damages for any investigation,
16 report, recommendation, statement, evaluation, finding, or other
17 action taken without fraud or malice in the course of assisting the
18 board in a disciplinary proceeding. The attorney general shall
19 represent the expert in any suit resulting from a service provided
20 by the person in good faith to the physician assistant board.

21 SECTION 2.31. The heading to Subchapter H, Chapter 204,
22 Occupations Code, is amended to read as follows:

23 SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

24 SECTION 2.32. Subchapter H, Chapter 204, Occupations Code,
25 is amended by adding Section 204.353 to read as follows:

26 Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to
27 the physician assistant board that a person who is not licensed

1 under this chapter is violating this chapter, a rule adopted under
2 this chapter, or another state statute or rule relating to
3 physician assistant practice, the board after notice and
4 opportunity for a hearing may issue a cease and desist order
5 prohibiting the person from engaging in the activity.

6 (b) A violation of an order under this section constitutes
7 grounds for imposing an administrative penalty under this
8 subchapter.

9 SECTION 2.33. Section 204.004, Occupations Code, is
10 repealed.

11 SECTION 2.34. (a) Not later than January 1, 2006, the
12 Texas State Board of Physician Assistant Examiners shall:

13 (1) adopt the policies required by Sections 204.109
14 and 204.110, Occupations Code, as added by this article; and

15 (2) adopt the rules required by Chapter 204,
16 Occupations Code, as amended by this article.

17 (b) Not later than March 1, 2006, the Texas State Board of
18 Physician Assistant Examiners shall develop the jurisprudence
19 examination required by Section 204.153, Occupations Code, as
20 amended by this article.

21 (c) The requirement to pass a jurisprudence examination
22 under Section 204.153, Occupations Code, as amended by this
23 article, applies only to an individual who applies for a license as
24 a physician assistant on or after September 1, 2006.

25 SECTION 2.35. (a) The changes in law made by Sections
26 204.053, 204.056, and 204.059, Occupations Code, as amended or
27 added by this article, regarding the prohibitions on or

1 qualifications of members of the Texas State Board of Physician
2 Assistant Examiners do not affect the entitlement of a member
3 serving on the board immediately before September 1, 2005, to
4 continue to serve and function as a member of the board for the
5 remainder of the member's term. The changes in law made by those
6 sections apply only to a member appointed on or after September 1,
7 2005.

8 (b) The changes in law made by this article related to the
9 filing, investigation, or resolution of a complaint under Chapter
10 204, Occupations Code, as amended by this article, apply only to a
11 complaint filed with the Texas State Board of Physician Assistant
12 Examiners on or after the effective date of this Act. A complaint
13 filed before the effective date of this Act is governed by the law
14 as it existed immediately before that date, and the former law is
15 continued in effect for that purpose.

16 (c) The changes in law made by this article governing the
17 authority of the Texas State Board of Physician Assistant Examiners
18 to issue, renew, or revoke a license under Chapter 204, Occupations
19 Code, apply only to an application for a license filed with the
20 Texas State Board of Physician Assistant Examiners under Chapter
21 204, Occupations Code, as amended by this article, on or after the
22 effective date of this Act. A license application filed before the
23 effective date of this Act is governed by the law in effect at the
24 time the application was filed, and the former law is continued in
25 effect for that purpose.

26 (d) The change in law made by this article with respect to
27 conduct that is grounds for imposition of a disciplinary sanction,

1 including a refund or cease and desist order, applies only to
2 conduct that occurs on or after the effective date of this Act.
3 Conduct that occurs before the effective date of this Act is
4 governed by the law in effect on the date the conduct occurred, and
5 the former law is continued in effect for that purpose.

6 ARTICLE 3. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
7 ACUPUNCTURE EXAMINERS

8 SECTION 3.01. Subdivisions (6), (7), and (8), Section
9 205.001, Occupations Code, are amended to read as follows:

10 (6) "Executive director" means the executive director
11 of the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

12 (7) "Medical board" means the Texas Medical [~~State~~]
13 Board [~~of Medical Examiners~~].

14 (8) "Physician" means a person licensed to practice
15 medicine by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

16 SECTION 3.02. Subsection (a), Section 205.051, Occupations
17 Code, is amended to read as follows:

18 (a) The Texas State Board of Acupuncture Examiners consists
19 of nine members appointed by the governor with the advice and
20 consent of the senate as follows:

21 (1) four acupuncturist members who have at least five
22 years of experience in the practice of acupuncture in this state and
23 who are not physicians;

24 (2) two physician members experienced in the practice
25 of acupuncture; and

26 (3) three members of the general public who are not
27 licensed or trained in a health care profession.

1 SECTION 3.03. Subsections (a), (c), and (d), Section
2 205.053, Occupations Code, are amended to read as follows:

3 (a) In this section, "Texas trade association" means a
4 ~~[nonprofit,]~~ cooperative~~[,]~~ and voluntarily joined statewide
5 association of business or professional competitors in this state
6 designed to assist its members and its industry or profession in
7 dealing with mutual business or professional problems and in
8 promoting their common interest.

9 (c) A person ~~[who is the spouse of an officer, board member,~~
10 ~~manager, or paid consultant of a Texas trade association in the~~
11 ~~field of health care]~~ may not be a member of the acupuncture board
12 and may not be a medical board employee in a
13 "bona fide executive, administrative, or professional capacity,"
14 as that phrase is used for purposes of establishing an exemption to
15 the overtime provisions of the federal Fair Labor Standards Act of
16 1938 (29 U.S.C. Section 201 et seq.), if:

17 (1) the person is an officer, employee, or paid
18 consultant of a Texas trade association in the field of health care;
19 or

20 (2) the person's spouse is an officer, manager, or paid
21 consultant of a Texas trade association in the field of health care
22 ~~[who is exempt from the state's position classification plan or is~~
23 ~~compensated at or above the amount prescribed by the General~~
24 ~~Appropriations Act for step 1, salary group A17, of the position~~
25 ~~classification salary schedule].~~

26 (d) A person may not be a member of ~~[serve on]~~ the
27 acupuncture board or act as general counsel to the acupuncture

1 board or the medical board if the person is required to register as
2 a lobbyist under Chapter 305, Government Code, because of the
3 person's activities for compensation on behalf of a profession
4 related to the operation of the medical board or acupuncture board.

5 SECTION 3.04. Section 205.055, Occupations Code, is amended
6 to read as follows:

7 Sec. 205.055. PRESIDING OFFICER. The governor shall
8 designate an acupuncturist [~~a~~] member of the acupuncture board as
9 presiding officer. The presiding officer serves in that capacity
10 at the will of the governor.

11 SECTION 3.05. Section 205.057, Occupations Code, is
12 amended to read as follows:

13 Sec. 205.057. TRAINING. (a) A [~~To be eligible to take~~
14 ~~office as a member of the acupuncture board, a~~] person who is
15 appointed to and qualifies for office as a member of the acupuncture
16 board may not vote, deliberate, or be counted as a member in
17 attendance at a meeting of the acupuncture board until the person
18 completes [~~must complete at least one course of~~] a training program
19 that complies with this section.

20 (b) The training program must provide the person with
21 information [~~to the person~~] regarding:

- 22 (1) this chapter [~~and the acupuncture board~~];
23 (2) the programs operated by the acupuncture board;
24 (3) the role and functions of the acupuncture board;
25 (4) the rules of the acupuncture board [~~, with an~~
26 ~~emphasis on the rules that relate to disciplinary and investigatory~~
27 ~~authority~~];

1 (5) the current budget for the acupuncture board;

2 (6) the results of the most recent formal audit of the
3 acupuncture board;

4 (7) the requirements of laws relating to open
5 meetings, public information, administrative procedure, and
6 conflicts of interest [~~the~~;

7 [(A) ~~open meetings law, Chapter 551, Government~~
8 ~~Code;~~

9 [(B) ~~open records law, Chapter 552, Government~~
10 ~~Code; and~~

11 [(C) ~~administrative procedure law, Chapter 2001,~~
12 ~~Government Code]; and~~

13 (8) [~~the requirements of the conflict of interest laws~~
14 ~~and other laws relating to public officials; and~~

15 [~~(9)~~] any applicable ethics policies adopted by the
16 acupuncture [~~medical~~] board or the Texas Ethics Commission.

17 (c) A person appointed to the acupuncture board is entitled
18 to reimbursement, as provided by the General Appropriations Act,
19 for the travel expenses incurred in attending the training program
20 regardless of whether the attendance at the program occurs before
21 or after [~~, as provided by the General Appropriations Act and as if]~~
22 the person qualifies for office [~~were a member of the acupuncture~~
23 ~~board]~~.

24 SECTION 3.06. Section 205.101, Occupations Code, is amended
25 to read as follows:

26 Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE
27 BOARD. (a) Subject to the advice and approval of the medical

1 board, the acupuncture board shall:

2 (1) establish qualifications for an acupuncturist to
3 practice in this state;

4 (2) establish minimum education and training
5 requirements necessary for the acupuncture board to recommend that
6 the medical board issue a license to practice acupuncture;

7 (3) administer an examination that is validated by
8 independent testing professionals for a license to practice
9 acupuncture;

10 (4) develop requirements for licensure by endorsement
11 of other states;

12 (5) prescribe the application form for a license to
13 practice acupuncture;

14 (6) recommend rules to establish licensing and other
15 fees [~~make recommendations on applications for licenses to practice~~
16 ~~acupuncture~~];

17 (7) establish the requirements for a tutorial program
18 for acupuncture students who have completed at least 48 semester
19 hours of college; and

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

22 (b) The acupuncture board does not have independent
23 rulemaking authority. A rule adopted by the acupuncture board is
24 subject to medical board approval.

25 (c) The acupuncture board shall:

26 (1) review and approve or reject each application for
27 the issuance or renewal of a license;

1 (2) issue each license; and

2 (3) deny, suspend, or revoke a license or otherwise
3 discipline a license holder.

4 SECTION 3.07. Subchapter C, Chapter 205, Occupations Code,
5 is amended by adding Section 205.1041 to read as follows:

6 Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN
7 RULEMAKING PROCESS. (a) The acupuncture board shall develop
8 guidelines to establish procedures for receiving input during the
9 rulemaking process from individuals and groups that have an
10 interest in matters under the acupuncture board's jurisdiction.
11 The guidelines must provide an opportunity for those individuals
12 and groups to provide input before the acupuncture board submits
13 the rule to the medical board for approval.

14 (b) In implementing the guidelines adopted under this
15 section, the acupuncture board shall exercise its judgment in
16 determining which rules require input as described by Subsection
17 (a).

18 SECTION 3.08. Subchapter C, Chapter 205, Occupations Code,
19 is amended by adding Section 205.1045 to read as follows:

20 Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL
21 CONVICTION. The acupuncture board shall adopt rules and guidelines
22 as necessary to comply with Chapter 53, except to the extent the
23 requirements of this chapter are stricter than the requirements of
24 Chapter 53.

25 SECTION 3.09. Subchapter C, Chapter 205, Occupations Code,
26 is amended by adding Section 205.106 to read as follows:

27 Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and

1 approval of the medical board, the acupuncture board shall
2 implement a policy requiring the acupuncture board to use
3 appropriate technological solutions to improve the acupuncture
4 board's ability to perform its functions. The policy must ensure
5 that the public is able to interact with the acupuncture board on
6 the Internet.

7 SECTION 3.10. Subchapter C, Chapter 205, Occupations Code,
8 is amended by adding Section 205.107 to read as follows:

9 Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE
10 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
11 of the medical board, the acupuncture board shall develop and
12 implement a policy to encourage the use of:

13 (1) negotiated rulemaking procedures under Chapter
14 2008, Government Code, for the adoption of acupuncture board rules;
15 and

16 (2) appropriate alternative dispute resolution
17 procedures under Chapter 2009, Government Code, to assist in the
18 resolution of internal and external disputes under the acupuncture
19 board's jurisdiction.

20 (b) The acupuncture board procedures relating to
21 alternative dispute resolution must conform, to the extent
22 possible, to any model guidelines issued by the State Office of
23 Administrative Hearings for the use of alternative dispute
24 resolution by state agencies.

25 (c) The acupuncture board shall designate a trained person
26 to:

27 (1) coordinate the implementation of the policy

1 adopted under Subsection (a);

2 (2) serve as a resource for any training needed to
3 implement the procedures for negotiated rulemaking or alternative
4 dispute resolution; and

5 (3) collect data concerning the effectiveness of those
6 procedures, as implemented by the acupuncture board.

7 SECTION 3.11. Section 205.201, Occupations Code, is amended
8 to read as follows:

9 Sec. 205.201. LICENSE REQUIRED. Except as provided by
10 Section 205.303, a person may not practice acupuncture in this
11 state unless the person holds a license to practice acupuncture
12 issued by the acupuncture ~~[medical]~~ board under this chapter.

13 SECTION 3.12. Section 205.202, Occupations Code, is amended
14 to read as follows:

15 Sec. 205.202. ISSUANCE OF LICENSE. (a) The ~~[After~~
16 ~~consulting the]~~ acupuncture board~~[, the medical board]~~ shall issue
17 a license to practice acupuncture in this state to a person who
18 meets the requirements of this chapter and the rules adopted under
19 this chapter.

20 (b) The acupuncture board may delegate authority to medical
21 board employees to issue licenses under this chapter to applicants
22 who clearly meet all licensing requirements. If the medical board
23 employees determine that the applicant does not clearly meet all
24 licensing requirements, the application shall be returned to the
25 acupuncture board. A license issued under this subsection does not
26 require formal acupuncture board approval.

27 SECTION 3.13. Section 205.203, Occupations Code, is amended

1 by amending Subsections (a) and (c) and adding Subsections (c-1)
2 and (f) to read as follows:

3 (a) An applicant for a license to practice acupuncture must
4 pass an acupuncture examination and a jurisprudence examination
5 approved by the acupuncture board as provided by this section.

6 (c) The acupuncture examination shall be conducted on
7 practical and theoretical acupuncture and other subjects required
8 by the acupuncture board.

9 (c-1) The jurisprudence examination shall be conducted on
10 the licensing requirements and other laws, rules, or regulations
11 applicable to the professional practice of acupuncture in this
12 state.

13 (f) The acupuncture board shall adopt rules for the
14 jurisprudence examination under Subsection (c-1) regarding:

- 15 (1) the development of the examination;
16 (2) applicable fees;
17 (3) administration of the examination;
18 (4) reexamination procedures;
19 (5) grading procedures; and
20 (6) notice of results.

21 SECTION 3.14. Section 205.206, Occupations Code, is amended
22 by adding Subsection (c) to read as follows:

23 (c) In addition to the other requirements of this section,
24 an acupuncture school or degree program is subject to approval by
25 the Texas Higher Education Coordinating Board unless the school or
26 program qualifies for an exemption under Section 61.303, Education
27 Code.

1 SECTION 3.15. Section 205.255, Occupations Code, is amended
2 by adding Subsections (a-1) and (c) to read as follows:

3 (a-1) The acupuncture board shall establish written
4 guidelines for granting continuing education credit that specify:

5 (1) procedural requirements;

6 (2) the qualifications needed to be considered a
7 preferred provider of continuing education; and

8 (3) course content requirements.

9 (c) After guidelines are established under Subsection
10 (a-1), the acupuncture board shall delegate to medical board
11 employees the authority to approve course applications for courses
12 that clearly meet the guidelines. Medical board employees shall
13 refer any courses that are not clearly within the guidelines to the
14 acupuncture board for review and approval.

15 SECTION 3.16. Subsections (b) and (c), Section 205.351,
16 Occupations Code, are amended to read as follows:

17 (b) If the acupuncture [~~medical~~] board proposes to suspend,
18 revoke, or refuse to renew a person's license, the person is
19 entitled to a hearing conducted by the State Office of
20 Administrative Hearings.

21 (c) A complaint, indictment, or conviction of a violation of
22 law is not necessary for an action under Subsection (a)(11). Proof
23 of the commission of the act while in the practice of acupuncture or
24 under the guise of the practice of acupuncture is sufficient for
25 action by the acupuncture [~~medical~~] board.

26 SECTION 3.17. Section 205.352, Occupations Code, is amended
27 to read as follows:

1 Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.

2 (a) On finding that grounds exist to deny a license or take
3 disciplinary action against a license holder, the acupuncture board
4 by order may:

5 (1) deny the person's application for a license,
6 license renewal, or certificate to practice acupuncture or revoke
7 the person's license or certificate to practice acupuncture;

8 (2) require the person to submit to the care,
9 counseling, or treatment of a health care practitioner designated
10 by the acupuncture board as a condition for the issuance,
11 continuance, or renewal of a license or certificate to practice
12 acupuncture;

13 (3) require the person to participate in a program of
14 education or counseling prescribed by the acupuncture board;

15 (4) suspend, limit, or restrict the person's license
16 or certificate to practice acupuncture, including limiting the
17 practice of the person to, or excluding from the practice, one or
18 more specified activities of acupuncture or stipulating periodic
19 review by the acupuncture board;

20 (5) require the person to practice under the direction
21 of an acupuncturist designated by the acupuncture board for a
22 specified period of time;

23 (6) assess an administrative penalty against the
24 person as provided by Subchapter J [~~Chapter 165~~];

25 (7) require the person to perform public service
26 considered appropriate by the acupuncture board; [~~or~~]

27 (8) stay enforcement of an order and place the person

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

5 (9) require the person to continue or review
6 professional education until the person attains a degree of skill
7 satisfactory to the acupuncture board in those areas that are the
8 basis of the probation under Subdivision (8);

9 (10) require the person to report regularly to the
10 acupuncture board on matters that are the basis of the probation
11 under Subdivision (8); or

12 (11) administer a public reprimand.

13 (b) The acupuncture board may reinstate or reissue a license
14 or remove any disciplinary or corrective measure that the
15 acupuncture board has imposed under this section.

16 SECTION 3.18. Subchapter H, Chapter 205, Occupations Code,
17 is amended by adding Section 205.3522 to read as follows:

18 Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture
19 board may accept the voluntary surrender of a license.

20 (b) A surrendered license may not be returned to the license
21 holder unless the acupuncture board determines, under acupuncture
22 board rules, that the former holder of the license is competent to
23 resume practice.

24 (c) The acupuncture board shall recommend rules to the
25 medical board for determining the competency of a former license
26 holder to return to practice.

27 SECTION 3.19. Subchapter H, Chapter 205, Occupations Code,

1 is amended by adding Section 205.3523 to read as follows:

2 Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The
3 acupuncture board shall adopt guidelines, in conjunction with
4 persons interested in or affected by this section, to enable the
5 board to evaluate circumstances in which an acupuncturist or
6 applicant may be required to submit to an examination for mental or
7 physical health conditions, alcohol and substance abuse, or
8 professional behavior problems.

9 (b) The acupuncture board shall refer an acupuncturist or
10 applicant with a physical or mental health condition to the most
11 appropriate medical specialist. The acupuncture board may not
12 require an acupuncturist or applicant to submit to an examination
13 by a physician having a specialty specified by the board unless
14 medically indicated. The acupuncture board may not require an
15 acupuncturist or applicant to submit to an examination to be
16 conducted an unreasonable distance from the person's home or place
17 of business unless the acupuncturist or applicant resides and works
18 in an area in which there are a limited number of physicians able to
19 perform an appropriate examination.

20 (c) The guidelines adopted under this section do not impair
21 or remove the acupuncture board's power to make an independent
22 licensing decision.

23 SECTION 3.20. Subchapter H, Chapter 205, Occupations Code,
24 is amended by adding Section 205.3541 to read as follows:

25 Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture
26 board by rule shall adopt procedures governing:

27 (1) informal disposition of a contested case under

1 Section 2001.056, Government Code; and

2 (2) informal proceedings held in compliance with
3 Section 2001.054, Government Code.

4 (b) Rules adopted under this section must require that:

5 (1) an informal meeting in compliance with Section
6 2001.054, Government Code, be scheduled not later than the 180th
7 day after the date the complaint is filed with the acupuncture
8 board, unless good cause is shown by the acupuncture board for
9 scheduling the informal meeting after that date;

10 (2) the acupuncture board give notice to the license
11 holder of the time and place of the meeting not later than the 30th
12 day before the date the meeting is held;

13 (3) the complainant and the license holder be provided
14 an opportunity to be heard;

15 (4) at least one of the acupuncture board members
16 participating in the informal meeting as a panelist be a member who
17 represents the public;

18 (5) the acupuncture board's legal counsel or a
19 representative of the attorney general be present to advise the
20 acupuncture board or the medical board's staff; and

21 (6) an employee of the medical board be at the meeting
22 to present to the acupuncture board's representative the facts the
23 medical board staff reasonably believes it could prove by competent
24 evidence or qualified witnesses at a hearing.

25 (c) An affected acupuncturist is entitled, orally or in
26 writing, to:

27 (1) reply to the staff's presentation; and

1 (2) present the facts the acupuncturist reasonably
2 believes the acupuncturist could prove by competent evidence or
3 qualified witnesses at a hearing.

4 (d) After ample time is given for the presentations, the
5 acupuncture board panel shall recommend that the investigation be
6 closed or shall attempt to mediate the disputed matters and make a
7 recommendation regarding the disposition of the case in the absence
8 of a hearing under applicable law concerning contested cases.

9 (e) If the license holder has previously been the subject of
10 disciplinary action by the acupuncture board, the acupuncture board
11 shall schedule the informal meeting as soon as practicable but not
12 later than the deadline prescribed by Subsection (b)(1).

13 SECTION 3.21. Subchapter H, Chapter 205, Occupations Code,
14 is amended by adding Section 205.3542 to read as follows:

15 Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN
16 INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section
17 205.3541, at least two panelists shall be appointed to determine
18 whether an informal disposition is appropriate.

19 (b) Notwithstanding Subsection (a) and Section
20 205.3541(b)(4), an informal proceeding may be conducted by one
21 panelist if the affected acupuncturist waives the requirement that
22 at least two panelists conduct the informal proceeding. If the
23 acupuncturist waives that requirement, the panelist may be any
24 member of the acupuncture board.

25 (c) The panel requirements described by Subsection (a)
26 apply to an informal proceeding conducted by the acupuncture board
27 under Section 205.3541, including a proceeding to:

1 (1) consider a disciplinary case to determine if a
2 violation has occurred; or

3 (2) request modification or termination of an order.

4 (d) The panel requirements described by Subsection (a) do
5 not apply to an informal proceeding conducted by the acupuncture
6 board under Section 205.3541 to show compliance with an order of the
7 acupuncture board.

8 SECTION 3.22. Subchapter H, Chapter 205, Occupations Code,
9 is amended by adding Section 205.3543 to read as follows:

10 Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
11 IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that
12 serves as a panelist at an informal meeting under Section 205.3541
13 shall make recommendations for the disposition of a complaint or
14 allegation. The member may request the assistance of a medical
15 board employee at any time.

16 (b) Medical board employees shall present a summary of the
17 allegations against the affected acupuncturist and of the facts
18 pertaining to the allegation that the employees reasonably believe
19 may be proven by competent evidence at a formal hearing.

20 (c) An acupuncture board or medical board attorney shall act
21 as counsel to the panel and, notwithstanding Subsection (e), shall
22 be present during the informal meeting and the panel's
23 deliberations to advise the panel on legal issues that arise during
24 the proceeding. The attorney may ask questions of participants in
25 the informal meeting to clarify any statement made by the
26 participant. The attorney shall provide to the panel a historical
27 perspective on comparable cases that have appeared before the

1 acupuncture board or medical board, keep the proceedings focused on
2 the case being discussed, and ensure that the medical board's
3 employees and the affected acupuncturist have an opportunity to
4 present information related to the case.

5 (d) The panel and medical board employees shall provide an
6 opportunity for the affected acupuncturist and the acupuncturist's
7 authorized representative to reply to the board employees'
8 presentation and to present oral and written statements and facts
9 that the acupuncturist and representative reasonably believe could
10 be proven by competent evidence at a formal hearing.

11 (e) An employee of the medical board who participated in the
12 presentation of the allegation or information gathered in the
13 investigation of the complaint, the affected acupuncturist, the
14 acupuncturist's authorized representative, the complainant, the
15 witnesses, and members of the public may not be present during the
16 deliberations of the panel. Only the members of the panel and the
17 attorney serving as counsel to the panel may be present during the
18 deliberations.

19 (f) The panel shall recommend the dismissal of the complaint
20 or allegations or, if the panel determines that the affected
21 acupuncturist has violated a statute or acupuncture board rule, the
22 panel may recommend board action and terms for an informal
23 settlement of the case.

24 (g) The panel's recommendations under Subsection (f) must
25 be made in a written order and presented to the affected
26 acupuncturist and the acupuncturist's authorized representative.
27 The acupuncturist may accept the proposed settlement within the

1 time established by the panel at the informal meeting. If the
2 acupuncturist rejects the proposed settlement or does not act
3 within the required time, the acupuncture board may proceed with
4 the filing of a formal complaint with the State Office of
5 Administrative Hearings.

6 SECTION 3.23. Subchapter H, Chapter 205, Occupations Code,
7 is amended by adding Section 205.3544 to read as follows:

8 Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The
9 acupuncture board shall prohibit or limit access to an
10 investigation file relating to a license holder in an informal
11 proceeding in the manner provided by Section 164.007(c).

12 SECTION 3.24. Section 205.356, Occupations Code, is amended
13 to read as follows:

14 Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture
15 board, through an agreed order or after a contested proceeding, may
16 impose a nondisciplinary rehabilitation order on an applicant, as a
17 prerequisite for issuing a license, or on a license holder based on:

18 (1) the person's intemperate use of drugs or alcohol
19 directly resulting from habituation or addiction caused by medical
20 care or treatment provided by a physician;

21 (2) the person's intemperate use of drugs or alcohol
22 during the five years preceding the date of the report that could
23 adversely affect the person's ability to safely practice as an
24 acupuncturist, if the person:

25 (A) reported the use; ~~and~~

26 (B) has not previously been the subject of a
27 substance abuse related order of the acupuncture board; and

1 (C) did not violate the standard of care as a
2 result of the impairment;

3 (3) a judgment by a court that the person is of unsound
4 mind; or

5 (4) the results of a mental or physical examination,
6 or an admission by the person, indicating that the person suffers
7 from a potentially dangerous limitation or an inability to practice
8 as an acupuncturist with reasonable skill and safety by reason of
9 illness or as a result of any physical or mental condition.

10 (b) The acupuncture board may not issue an order under this
11 section if, before the individual signs the proposed order, the
12 board receives a valid complaint with regard to the individual
13 based on the individual's intemperate use of drugs or alcohol in a
14 manner affecting the standard of care.

15 (c) The acupuncture board must determine whether an
16 individual has committed a standard of care violation described by
17 Subsection (a)(2) before imposing an order under this section.

18 SECTION 3.25. Subchapter H, Chapter 205, Occupations Code,
19 is amended by adding Sections 205.3561 and 205.3562 to read as
20 follows:

21 Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the
22 acupuncture board is immune from suit and judgment and may not be
23 subjected to a suit for damages for any investigation, report,
24 recommendation, statement, evaluation, finding, or other action
25 taken without fraud or malice in the course of assisting the board
26 in a disciplinary proceeding. The attorney general shall represent
27 the expert in any suit resulting from a service provided by the

1 expert in good faith to the acupuncture board.

2 Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

3 (a) If a rehabilitation order imposed under Section 205.356
4 requires a license holder to participate in activities or programs
5 provided by a local or statewide private acupuncture association,
6 the acupuncture board shall inform the association of the license
7 holder's duties under the order. The information provided under
8 this section must include specific guidance to enable the
9 association to comply with any requirements necessary to assist in
10 the acupuncturist's rehabilitation.

11 (b) The acupuncture board may provide to the association any
12 information that the board determines to be necessary, including a
13 copy of the rehabilitation order. Any information received by the
14 association remains confidential, is not subject to discovery,
15 subpoena, or other means of legal compulsion, and may be disclosed
16 only to the acupuncture board.

17 SECTION 3.26. Subchapter H, Chapter 205, Occupations Code,
18 is amended by adding Section 205.360 to read as follows:

19 Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT
20 DISPOSITIONS. (a) The acupuncture board may delegate to a
21 committee of medical board employees the authority to dismiss or
22 enter into an agreed settlement of a complaint that involves only
23 nonacupuncture or administrative violations. The disposition
24 determined by the committee must be approved by the acupuncture
25 board at a public meeting.

26 (b) A complaint delegated under this section shall be
27 referred for informal proceedings under Section 205.3541 if:

1 (1) the committee of employees determines that the
2 complaint should not be dismissed or settled;

3 (2) the committee is unable to reach an agreed
4 settlement; or

5 (3) the affected acupuncturist requests that the
6 complaint be referred for informal proceedings.

7 SECTION 3.27. Subchapter H, Chapter 205, Occupations Code,
8 is amended by adding Section 205.361 to read as follows:

9 Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding
10 officer of the acupuncture board, with that board's approval, shall
11 appoint a three-member disciplinary panel consisting of
12 acupuncture board members to determine whether a person's license
13 to practice as an acupuncturist should be temporarily suspended.

14 (b) If the disciplinary panel determines from the
15 information presented to the panel that a person licensed to
16 practice as an acupuncturist would, by the person's continuation in
17 practice, constitute a continuing threat to the public welfare, the
18 disciplinary panel shall temporarily suspend the license of that
19 person.

20 (c) A license may be suspended under this section without
21 notice or hearing on the complaint if:

22 (1) institution of proceedings for a hearing before
23 the acupuncture board is initiated simultaneously with the
24 temporary suspension; and

25 (2) a hearing is held under Chapter 2001, Government
26 Code, and this chapter as soon as possible.

27 (d) Notwithstanding Chapter 551, Government Code, the

1 disciplinary panel may hold a meeting by telephone conference call
2 if immediate action is required and convening of the panel at one
3 location is inconvenient for any member of the disciplinary panel.

4 SECTION 3.28. Subchapter H, Chapter 205, Occupations Code,
5 is amended by adding Section 205.362 to read as follows:

6 Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to
7 the acupuncture board that a person who is not licensed under this
8 chapter is violating this chapter, a rule adopted under this
9 chapter, or another state statute or rule relating to the practice
10 of acupuncture, the board, after notice and opportunity for a
11 hearing, may issue a cease and desist order prohibiting the person
12 from engaging in the activity.

13 (b) A violation of an order under this section constitutes
14 grounds for imposing an administrative penalty under Section
15 205.352.

16 SECTION 3.29. Subchapter H, Chapter 205, Occupations Code,
17 is amended by adding Section 205.363 to read as follows:

18 Sec. 205.363. REFUND. (a) Subject to Subsection (b), the
19 acupuncture board may order a license holder to pay a refund to a
20 consumer as provided in an agreement resulting from an informal
21 settlement conference instead of or in addition to imposing an
22 administrative penalty under this subchapter.

23 (b) The amount of a refund ordered under Subsection (a) may
24 not exceed the amount the consumer paid to the license holder for a
25 service regulated by this chapter. The acupuncture board may not
26 require payment of other damages or estimate harm in a refund order.

27 SECTION 3.30. Subchapter H, Chapter 205, Occupations Code,

1 is amended by adding Section 205.364 to read as follows:

2 Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY
3 ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a
4 finding of fact or conclusion of law or vacate or modify an order of
5 an administrative law judge only if the acupuncture board makes a
6 determination required by Section 2001.058(e), Government Code.

7 SECTION 3.31. Subsections (a) and (d), Section 205.402,
8 Occupations Code, are amended to read as follows:

9 (a) The acupuncture [~~medical~~] board, the attorney general,
10 or a district or county attorney may bring a civil action to compel
11 compliance with this chapter or to enforce a rule adopted under this
12 chapter.

13 (d) The attorney general, at the request of the acupuncture
14 [~~medical~~] board or on the attorney general's own initiative, may
15 bring a civil action to collect a civil penalty.

16 SECTION 3.32. The heading to Subchapter I, Chapter 205,
17 Occupations Code, is amended to read as follows:

18 SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

19 SECTION 3.33. Chapter 205, Occupations Code, is amended by
20 adding Subchapter J to read as follows:

21 SUBCHAPTER J. ADMINISTRATIVE PENALTIES

22 Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
23 acupuncture board by order may impose an administrative penalty
24 against a person licensed or regulated under this chapter who
25 violates this chapter or a rule or order adopted under this chapter.

26 Sec. 205.452. PROCEDURE. (a) The acupuncture board by
27 rule shall prescribe the procedure by which it may impose an

1 administrative penalty.

2 (b) A proceeding under this subchapter is subject to Chapter
3 2001, Government Code.

4 Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an
5 administrative penalty may not exceed \$5,000 for each violation.
6 Each day a violation continues or occurs is a separate violation for
7 purposes of imposing a penalty.

8 (b) The amount of the penalty shall be based on:

9 (1) the seriousness of the violation, including:

10 (A) the nature, circumstances, extent, and
11 gravity of any prohibited act; and

12 (B) the hazard or potential hazard created to the
13 health, safety, or economic welfare of the public;

14 (2) the economic harm to property or the environment
15 caused by the violation;

16 (3) the history of previous violations;

17 (4) the amount necessary to deter a future violation;

18 (5) efforts to correct the violation; and

19 (6) any other matter that justice may require.

20 Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the
21 acupuncture board by order determines that a violation has occurred
22 and imposes an administrative penalty, the acupuncture board shall
23 notify the affected person of the board's order.

24 (b) The notice must include a statement of the right of the
25 person to judicial review of the order.

26 Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

27 (a) Not later than the 30th day after the date the acupuncture

1 board's order imposing the administrative penalty is final, the
2 person shall:

3 (1) pay the penalty;

4 (2) pay the penalty and file a petition for judicial
5 review contesting the occurrence of the violation, the amount of
6 the penalty, or both; or

7 (3) without paying the penalty, file a petition for
8 judicial review contesting the occurrence of the violation, the
9 amount of the penalty, or both.

10 (b) Within the 30-day period, a person who acts under
11 Subsection (a)(3) may:

12 (1) stay enforcement of the penalty by:

13 (A) paying the penalty to the court for placement
14 in an escrow account; or

15 (B) giving to the court a supersedeas bond
16 approved by the court for the amount of the penalty and that is
17 effective until all judicial review of the acupuncture board's
18 order is final; or

19 (2) request the court to stay enforcement of the
20 penalty by:

21 (A) filing with the court an affidavit of the
22 person stating that the person is financially unable to pay the
23 penalty and is financially unable to give the supersedeas bond; and

24 (B) giving a copy of the affidavit to the
25 presiding officer of the acupuncture board by certified mail.

26 (c) If the presiding officer of the acupuncture board
27 receives a copy of an affidavit under Subsection (b)(2), the

1 presiding officer may file with the court a contest to the affidavit
2 not later than the fifth day after the date the copy is received.

3 (d) The court shall hold a hearing on the facts alleged in
4 the affidavit as soon as practicable and shall stay the enforcement
5 of the penalty on finding that the alleged facts are true. The
6 person who files an affidavit has the burden of proving that the
7 person is financially unable to pay the penalty and to give a
8 supersedeas bond.

9 Sec. 205.456. COLLECTION OF PENALTY. If the person does not
10 pay the administrative penalty and the enforcement of the penalty
11 is not stayed, the presiding officer of the acupuncture board may
12 refer the matter to the attorney general for collection of the
13 penalty.

14 Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal
15 the court sustains the determination that a violation occurred, the
16 court may uphold or reduce the amount of the administrative penalty
17 and order the person to pay the full or reduced penalty.

18 (b) If the court does not sustain the determination that a
19 violation occurred, the court shall order that a penalty is not
20 owed.

21 Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If
22 after judicial review the administrative penalty is reduced or not
23 imposed by the court, the court shall, after the judgment becomes
24 final:

25 (1) order that the appropriate amount, plus accrued
26 interest, be remitted to the person if the person paid the penalty;
27 or

1 (2) order the release of the bond in full if the
2 penalty is not imposed or order the release of the bond after the
3 person pays the penalty imposed if the person posted a supersedeas
4 bond.

5 (b) The interest paid under Subsection (a)(1) is the rate
6 charged on loans to depository institutions by the New York Federal
7 Reserve Bank. The interest is paid for the period beginning on the
8 date the penalty is paid and ending on the date the penalty is
9 remitted.

10 SECTION 3.34. Sections 205.002 and 205.353, Occupations
11 Code, are repealed.

12 SECTION 3.35. (a) Not later than January 1, 2006, the
13 Texas State Board of Acupuncture Examiners shall:

14 (1) adopt the policies required by Sections 205.106
15 and 205.107, Occupations Code, as added by this article; and

16 (2) adopt the rules required by Chapter 205,
17 Occupations Code, as amended by this article.

18 (b) Not later than March 1, 2006, the Texas State Board of
19 Acupuncture Examiners shall develop the jurisprudence examination
20 required by Section 205.203, Occupations Code, as amended by this
21 article.

22 (c) The requirement to pass a jurisprudence examination
23 under Section 205.203, Occupations Code, as amended by this
24 article, applies only to an individual who applies for a license as
25 an acupuncturist on or after September 1, 2006.

26 SECTION 3.36. (a) The changes in law made by Sections
27 205.053 and 205.057, Occupations Code, as amended by this article,

1 regarding the prohibitions on or qualifications of members of the
2 Texas State Board of Acupuncture Examiners do not affect the
3 entitlement of a member serving on the board immediately before
4 September 1, 2005, to continue to serve and function as a member of
5 the board for the remainder of the member's term. The changes in
6 law made by those sections apply only to a member appointed on or
7 after September 1, 2005.

8 (b) The changes in law made by this article related to the
9 filing, investigation, or resolution of a complaint under Chapter
10 205, Occupations Code, as amended by this article, apply only to a
11 complaint filed with the Texas State Board of Acupuncture Examiners
12 on or after the effective date of this Act. A complaint filed
13 before the effective date of this Act is governed by the law as it
14 existed immediately before that date, and the former law is
15 continued in effect for that purpose.

16 (c) The changes in law made by this article governing the
17 authority of the Texas State Board of Acupuncture Examiners to
18 issue, renew, or revoke a license under Chapter 205, Occupations
19 Code, apply only to an application for a license filed with the
20 Texas State Board of Acupuncture Examiners under Chapter 205,
21 Occupations Code, as amended by this article, on or after the
22 effective date of this Act. A license application filed before the
23 effective date of this Act is governed by the law in effect at the
24 time the application was filed, and the former law is continued in
25 effect for that purpose.

26 (d) The change in law made by this article with respect to
27 conduct that is grounds for imposition of a disciplinary sanction,

1 including a refund, temporary license suspension, or cease and
2 desist order, applies only to conduct that occurs on or after the
3 effective date of this Act. Conduct that occurs before the
4 effective date of this Act is governed by the law in effect on the
5 date the conduct occurred, and the former law is continued in effect
6 for that purpose.

7 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

8 SECTION 4.01. Subdivision (5), Section 206.001,
9 Occupations Code, is amended to read as follows:

10 (5) "Medical board" means the Texas [~~State Board of~~
11 Medical Board ~~Examiners~~].

12 SECTION 4.02. Section 206.209, Occupations Code, is amended
13 to read as follows:

14 Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The
15 medical board shall issue a surgical assistant license in this
16 state to a person who meets the requirements of this chapter and the
17 rules adopted under this chapter.

18 (b) The medical board may delegate authority to board
19 employees to issue licenses under this chapter to applicants who
20 clearly meet all licensing requirements. If the medical board
21 employees determine that the applicant does not clearly meet all
22 licensing requirements, the application shall be returned to the
23 medical board. A license issued under this subsection does not
24 require formal medical board approval.

25 SECTION 4.03. Section 206.305, Occupations Code, is amended
26 to read as follows:

27 Sec. 206.305. REHABILITATION ORDER. (a) The medical

1 board, through an agreed order or after a contested case
2 proceeding, may impose a rehabilitation order on an applicant, as a
3 prerequisite for issuing a license, or on a license holder based on:

4 (1) the person's intemperate use of drugs or alcohol
5 directly resulting from habituation or addiction caused by medical
6 care or treatment provided by a physician;

7 (2) the person's intemperate use of drugs or alcohol
8 during the five years preceding the date of the report that could
9 adversely affect the person's ability to safely practice as a
10 surgical assistant, if the person:

11 (A) reported the use; ~~and~~

12 (B) has not previously been the subject of a
13 substance abuse related order of the medical board; and

14 (C) has not committed a violation of the standard
15 of care as a result of the intemperate use of drugs or alcohol;

16 (3) a judgment by a court that the person is of unsound
17 mind; or

18 (4) the results of a mental or physical examination,
19 or an admission by the person, indicating that the person suffers
20 from a potentially dangerous limitation or an inability to practice
21 as a surgical assistant with reasonable skill and safety because of
22 illness or any other physical or mental condition.

23 (b) The medical board may not issue an order under this
24 section if, before the individual signs the proposed order, the
25 board receives a valid complaint with regard to the individual
26 based on the individual's intemperate use of drugs or alcohol in a
27 manner affecting the standard of care.

1 (c) The medical board must determine whether an individual
2 has committed a standard of care violation described by Subsection
3 (a)(2) before imposing an order under this section.

4 SECTION 4.04. Subchapter G, Chapter 206, Occupations Code,
5 is amended by adding Section 206.3075 to read as follows:

6 Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

7 (a) If a rehabilitation order imposed under Section 206.305
8 requires a license holder to participate in activities or programs
9 provided by a local or statewide private medical or surgical
10 assistant association, the medical board shall inform the
11 association of the license holder's duties under the order. The
12 information provided under this section must include specific
13 guidance to enable the association to comply with any requirements
14 necessary to assist in the surgical assistant's rehabilitation.

15 (b) The medical board may provide to the association any
16 information that the board determines to be necessary, including a
17 copy of the rehabilitation order. Any information received by the
18 association remains confidential, is not subject to discovery,
19 subpoena, or other means of legal compulsion, and may be disclosed
20 only to the medical board.

21 SECTION 4.05. Subchapter G, Chapter 206, Occupations Code,
22 is amended by adding Sections 206.313, 206.314, and 206.315 to read
23 as follows:

24 Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board
25 by rule shall adopt procedures under this chapter governing:

26 (1) informal disposition of a contested case under
27 Section 2001.056, Government Code; and

1 (2) informal proceedings held in compliance with
2 Section 2001.054, Government Code.

3 (b) Rules adopted under this section must require that:

4 (1) an informal meeting in compliance with Section
5 2001.054, Government Code, be scheduled not later than the 180th
6 day after the date the medical board's official investigation of
7 the complaint is commenced, unless good cause is shown by the board
8 for scheduling the informal meeting after that date;

9 (2) the medical board give notice to the license
10 holder of the time and place of the meeting not later than the 30th
11 day before the date the meeting is held;

12 (3) the complainant and the license holder be provided
13 an opportunity to be heard;

14 (4) at least one of the medical board members or
15 district review committee members participating in the informal
16 meeting as a panelist be a member who represents the public;

17 (5) the medical board's legal counsel or a
18 representative of the attorney general be present to advise the
19 medical board or the board's staff; and

20 (6) a member of the medical board's staff be at the
21 meeting to present to the panel the facts the staff reasonably
22 believes it could prove by competent evidence or qualified
23 witnesses at a hearing.

24 (c) An affected surgical assistant is entitled, orally or in
25 writing, to:

26 (1) reply to the staff's presentation; and

27 (2) present the facts the surgical assistant

1 reasonably believes the surgical assistant could prove by competent
2 evidence or qualified witnesses at a hearing.

3 (d) After ample time is given for the presentations, the
4 medical board panel shall recommend that the investigation be
5 closed or shall attempt to mediate the disputed matters and make a
6 recommendation regarding the disposition of the case in the absence
7 of a hearing under applicable law concerning contested cases.

8 (e) If the license holder has previously been the subject of
9 disciplinary action by the medical board, the board shall schedule
10 the informal meeting as soon as practicable but not later than the
11 deadline prescribed by Subsection (b)(1).

12 Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN
13 INFORMAL PROCEEDINGS. (a) A medical board or district review
14 committee member that serves as a panelist at an informal meeting
15 under Section 206.313 shall make recommendations for the
16 disposition of a complaint or allegation. The member may request
17 the assistance of a medical board employee at any time.

18 (b) Medical board employees shall present a summary of the
19 allegations against the affected surgical assistant and of the
20 facts pertaining to the allegation that the employees reasonably
21 believe may be proven by competent evidence at a formal hearing.

22 (c) A medical board attorney shall act as counsel to the
23 panel and, notwithstanding Subsection (e), shall be present during
24 the informal meeting and the panel's deliberations to advise the
25 panel on legal issues that arise during the proceeding. The
26 attorney may ask questions of participants in the informal meeting
27 to clarify any statement made by the participant. The attorney

1 shall provide to the panel a historical perspective on comparable
2 cases that have appeared before the medical board, keep the
3 proceedings focused on the case being discussed, and ensure that
4 the medical board's employees and the affected surgical assistant
5 have an opportunity to present information related to the case.

6 (d) The panel and medical board employees shall provide an
7 opportunity for the affected surgical assistant and the surgical
8 assistant's authorized representative to reply to the board
9 employees' presentation and to present oral and written statements
10 and facts that the surgical assistant and representative reasonably
11 believe could be proven by competent evidence at a formal hearing.

12 (e) An employee of the medical board who participated in the
13 presentation of the allegation or information gathered in the
14 investigation of the complaint, the affected surgical assistant,
15 the surgical assistant's authorized representative, the
16 complainant, the witnesses, and members of the public may not be
17 present during the deliberations of the panel. Only the members of
18 the panel and the medical board attorney serving as counsel to the
19 panel may be present during the deliberations.

20 (f) The panel shall recommend the dismissal of the complaint
21 or allegations or, if the panel determines that the affected
22 surgical assistant has violated a statute or medical board rule,
23 the panel may recommend board action and terms for an informal
24 settlement of the case.

25 (g) The panel's recommendations under Subsection (f) must
26 be made in a written order and presented to the affected surgical
27 assistant and the surgical assistant's authorized representative.

1 The surgical assistant may accept the proposed settlement within
2 the time established by the panel at the informal meeting. If the
3 surgical assistant rejects the proposed settlement or does not act
4 within the required time, the medical board may proceed with the
5 filing of a formal complaint with the State Office of
6 Administrative Hearings.

7 Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL
8 PROCEEDINGS. (a) In an informal proceeding under Section 206.313,
9 at least two panelists shall be appointed to determine whether an
10 informal disposition is appropriate.

11 (b) The medical board may request members of a committee
12 under Chapter 163 to participate in an informal meeting under
13 Section 206.313.

14 (c) Notwithstanding Subsection (a) and Section
15 206.313(b)(4), an informal proceeding may be conducted by one
16 panelist if the affected surgical assistant waives the requirement
17 that at least two panelists conduct the informal proceeding. If the
18 surgical assistant waives that requirement, the panelist may be
19 either a physician or a member who represents the public.

20 (d) The panel requirements described by Subsection (a) do
21 not apply to an informal proceeding conducted by the medical board
22 under Section 206.313 to show compliance with an order of the board.

23 SECTION 4.06. The changes in law made by this article
24 related to the filing, investigation, or disposition of a complaint
25 under Chapter 206, Occupations Code, as amended by this article,
26 apply only to a complaint filed with the Texas Medical Board on or
27 after the effective date of this Act. A complaint filed before the

1 effective date of this Act is governed by the law as it existed
2 immediately before that date, and the former law is continued in
3 effect for that purpose.

4 ARTICLE 5. EFFECTIVE DATE

5 SECTION 5.01. This Act takes effect September 1, 2005.