

By: Nelson

S.B. No. 419

Substitute the following for S.B. No. 419:

By: Dawson

C.S.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. Sections 151.002(a)(1) and (7), Occupations  
11 Code, are amended to read as follows:

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

14 (7) "Medical peer review" or "professional review  
15 action" means the evaluation of medical and health care services,  
16 including evaluation of the qualifications and professional  
17 conduct of professional health care practitioners and of patient  
18 care provided by those practitioners. The term includes evaluation  
19 of the:

20 (A) merits of a complaint relating to a health  
21 care practitioner and a determination or recommendation regarding  
22 the complaint;

23 (B) accuracy of a diagnosis;

24 (C) quality of the care provided by a health care

1 practitioner;

2 (D) report made to a medical peer review  
3 committee concerning activities under the committee's review  
4 authority;

5 (E) report made by a medical peer review  
6 committee to another committee or to the board as permitted or  
7 required by law; and

8 (F) implementation of the duties of a medical  
9 peer review committee by a member, agent, or employee of the  
10 committee.

11 SECTION 1.02. Section 151.004, Occupations Code, is amended  
12 to read as follows:

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

19 SECTION 1.03. Section 152.001, Occupations Code, is amended  
20 to read as follows:

21 Sec. 152.001. TEXAS MEDICAL [~~STATE~~] BOARD [~~OF MEDICAL~~  
22 ~~EXAMINERS~~]. (a) The Texas Medical [~~State~~] Board [~~of Medical~~  
23 ~~Examiners~~] is an agency of the executive branch of state government  
24 with the power to regulate the practice of medicine.

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

27 SECTION 1.04. Section 152.003(b), Occupations Code, is

1 amended to read as follows:

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

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

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

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

14 (4) uses or receives a substantial amount of tangible  
15 goods, services, or money from the board other than compensation or  
16 reimbursement authorized by law for board membership, attendance,  
17 or expenses; or

18 (5) is a provider of health care.

19 SECTION 1.05. Sections 152.004(a)-(e), Occupations Code,  
20 are amended to read as follows:

21 (a) In this section, "Texas trade [~~or professional~~]  
22 association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily  
23 joined association of business or professional competitors in this  
24 state designed to assist its members and its industry or profession  
25 in dealing with mutual business or professional problems and in  
26 promoting their common interest.

27 (b) A person is ineligible for appointment to the board if,

1 at the time of appointment, the person is younger than 18 years of  
2 age or is a stockholder~~[, paid full-time faculty member,]~~ or a  
3 member of the board of trustees of a medical school.

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

10 (1) the person is an ~~[serving as the president, vice~~  
11 ~~president, secretary, or treasurer of a statewide or national~~  
12 ~~organization incorporated to represent the entire profession~~  
13 ~~licensed to practice medicine in this state or the United States,~~  
14 ~~including an organization representing the practice of osteopathic~~  
15 ~~medicine, or is an employee of such an organization.~~

16 [~~(d) An~~] officer, employee, or paid consultant of a Texas  
17 trade ~~[or professional]~~ association in the field of health care or a  
18 national organization incorporated to represent the entire  
19 profession licensed to practice medicine in this state or the  
20 United States, including an organization representing the practice  
21 of osteopathic medicine; or

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

27 [~~(e) A person who is the~~] spouse is ~~[of]~~ an officer,

1 manager, or paid consultant of a Texas trade [~~or professional~~]  
2 association in the field of health care [~~may not be a board member~~  
3 ~~or employee who is exempt from the state's position classification~~  
4 ~~plan or is compensated at or above the amount prescribed by the~~  
5 ~~General Appropriations Act for step 1, salary group A17, of the~~  
6 ~~position classification salary schedule].~~

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

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

17 SECTION 1.07. Sections 152.006(a) and (c), Occupations  
18 Code, are amended to read as follows:

19 (a) It is a ground for removal from the board that a member:

20 (1) does not have at the time of taking office  
21 [~~appointment~~] the qualifications required by Section 152.002;

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

24 (3) is ineligible for membership under Sections  
25 152.003 and [~~violates a prohibition established by Section~~]  
26 152.004;

27 (4) cannot, because of illness or disability,

1 discharge the member's duties for a substantial part of the member's  
2 term; or

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

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

16 SECTION 1.08. Section 152.008, Occupations Code, is amended  
17 to read as follows:

18 Sec. 152.008. OFFICERS. Not later than December after each  
19 regular session of the legislature, the governor shall appoint from  
20 the members of the board a president, to serve in that capacity at  
21 the pleasure of the governor, and the board shall elect from its  
22 members a vice president, secretary-treasurer, and other officers  
23 as are required, in the board's opinion, to carry out the board's  
24 duties.

25 SECTION 1.09. Sections 152.010(a)-(c), Occupations Code,  
26 are amended to read as follows:

27 (a) A person who is appointed to and qualifies for office as

1 a member of the board may not vote, deliberate, or be counted as a  
2 member in attendance at a meeting of the board until the person  
3 completes [~~Before a board member may assume the member's duties and~~  
4 ~~before the member may be confirmed by the senate, the member must~~  
5 ~~complete at least one course of~~] a training program that complies  
6 with [~~established by the board under~~] this section.

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

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

21 (8) [~~the requirements of the conflict of interest laws~~  
22 ~~and other laws relating to public officials, and~~

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

25 (c) A person appointed to the board is entitled to  
26 reimbursement, as provided by the General Appropriations Act, for  
27 the travel expenses incurred in attending the training program

1 regardless of whether the attendance at the program occurs before  
2 or after the person qualifies for office. [~~In developing the~~  
3 ~~training program, the board shall consult with the governor, the~~  
4 ~~attorney general, and the Texas Ethics Commission.~~]

5 SECTION 1.10. Section 152.056, Occupations Code, is amended  
6 to read as follows:

7 Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board  
8 shall develop and implement policies that clearly separate [~~define~~]  
9 the policy-making [~~respective~~] responsibilities of the board and  
10 the management responsibilities of the executive director and the  
11 staff of the board.

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

14 Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The  
15 board shall adopt guidelines to establish procedures for receiving  
16 input during the rulemaking process from individuals and groups  
17 that have an interest in matters under the board's jurisdiction,  
18 including input from the Texas State Board of Physician Assistant  
19 Examiners and the Texas State Board of Acupuncture Examiners. The  
20 guidelines must provide an opportunity for those individuals and  
21 groups to provide input before the board provides notice of the  
22 proposed rule under Section 2001.023, Government Code.

23 (b) The guidelines adopted under this section shall also  
24 include procedures for the board to receive comments on rules  
25 recommended by the physician assistant board or acupuncture board  
26 for adoption by the board.

27 (c) A rule adopted by the board may not be challenged on the

1 grounds that the board did not comply with this section. If the  
2 board was unable to solicit a significant amount of input from the  
3 public or affected persons early in the rulemaking process, the  
4 board shall state in writing the reasons why the board was unable to  
5 do so.

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

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

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

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

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

24 (1) negotiated rulemaking procedures under Chapter  
25 2008, Government Code, for the adoption of board rules; and

26 (2) appropriate alternative dispute resolution  
27 procedures under Chapter 2009, Government Code, to assist in the

1 resolution of internal and external disputes under the board's  
2 jurisdiction.

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

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

8 (1) coordinate the implementation of the policy  
9 adopted under Subsection (a);

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

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

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

17 (d) Except as provided by this subsection, the board shall  
18 publish information regarding errors in and reversals of  
19 disciplinary actions taken by the board. The information to be  
20 published under this subsection includes instances in which a  
21 disciplinary action initiated by the board is overturned by a  
22 court. The board shall disseminate the information under this  
23 subsection in the same format, size, style, and manner as the  
24 information regarding the original action by the board was  
25 disseminated. The board may not publish information under this  
26 subsection if the physician who was the subject of the disciplinary  
27 action requests that the information not be published.

1 SECTION 1.15. Section 154.052, Occupations Code, is amended  
2 to read as follows:

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

- 9 (1) the parties to the complaint;  
10 (2) the subject matter of the complaint;  
11 (3) a summary of the results of the review or  
12 investigation of the complaint; and  
13 (4) the disposition of the complaint [~~each potential~~  
14 ~~witness contacted in relation to the complaint;~~  
15 [~~(2) a summary of findings made at each step of the~~  
16 ~~complaint process;~~  
17 [~~(3) an explanation of the legal basis and reason for~~  
18 ~~the dismissal of a complaint;~~  
19 [~~(4) the schedule for the disposition of the complaint~~  
20 ~~prepared as required under Section 154.056 and a notation of any~~  
21 ~~change in the schedule; and~~  
22 [~~(5) other relevant information].~~

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

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

1 ~~disposition of the complaint, shall]~~ notify the parties to the  
2 complaint of the status of the complaint until final disposition  
3 unless the notice would jeopardize an investigation.

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

6 (e) The board by rule shall provide for an expert physician  
7 panel appointed by the board to assist with complaints and  
8 investigations relating to medical competency by acting as expert  
9 physician reviewers. Each member of the [an] expert physician  
10 panel must be licensed to practice medicine in this state. The  
11 rules adopted under this subsection must include provisions  
12 governing the composition of the panel, qualifications for  
13 membership on the panel, length of time a member may serve on the  
14 panel, grounds for removal from the panel, the avoidance of  
15 conflicts of interest, including situations in which the affected  
16 physician and the panel member live or work in the same geographical  
17 area or are competitors, and the duties to be performed by the  
18 panel. The board's rules governing grounds for removal from the  
19 panel must include providing for the removal of a panel member who  
20 is repeatedly delinquent in reviewing complaints and in submitting  
21 reports to the board. The board's rules governing appointment of  
22 expert physician panel members to act as expert physician reviewers  
23 must include a requirement that the board randomly select, to the  
24 extent permitted by Section 154.058(b) and the conflict of interest  
25 provisions adopted under this subsection, panel members to review a  
26 complaint.

27 SECTION 1.18. Subchapter B, Chapter 154, Occupations Code,

1 is amended by adding Section 154.0561 to read as follows:

2 Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW. (a)

3 A physician on the expert physician panel authorized by Section  
4 154.056(e) who is selected to review a complaint shall:

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

8 (2) issue a preliminary written report of that  
9 determination.

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

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

21 (d) In reviewing a complaint, the expert physician  
22 reviewers assigned to examine the complaint may consult and  
23 communicate with each other about the complaint in formulating  
24 their opinions and reports.

25 SECTION 1.19. Section 154.057(b), Occupations Code, is  
26 amended to read as follows:

27 (b) The board shall complete [~~make~~] a preliminary

1 investigation of the complaint not later than the 30th day after the  
2 date of receiving the complaint. The board shall first determine  
3 whether the physician constitutes a continuing threat to the public  
4 welfare. On completion of the preliminary investigation, the board  
5 shall determine whether to officially proceed on the complaint. If  
6 the board fails to complete the preliminary investigation in the  
7 time required by this subsection, the board's official  
8 investigation of the complaint is considered to commence on that  
9 date.

10 SECTION 1.20. Section 155.002, Occupations Code, is amended  
11 to read as follows:

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

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

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

19 (3) satisfies the examination requirements of Section  
20 155.051.

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

27 SECTION 1.21. Section 155.003(a), Occupations Code, is

1 amended to read as follows:

2 (a) To be eligible for a license under this chapter, an  
3 applicant must present proof satisfactory to the board that the  
4 applicant:

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

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

8 (3) has completed:

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

13 (B) the entire primary, secondary, and  
14 premedical education required in the country of medical school  
15 graduation, if the medical school is located outside the United  
16 States or Canada; or

17 (C) substantially equivalent courses as  
18 determined by board rule;

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

21 (5) has either:

22 (A) successfully completed one year of graduate  
23 medical training approved by the board in the United States or  
24 Canada; or

25 (B) graduated from a medical school located  
26 outside the United States or Canada and has successfully completed  
27 three years of graduate medical training approved by the board in

1 the United States or Canada;

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

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

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

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

14 (b) An applicant is eligible for a limited license under  
15 this section on presenting proof satisfactory to the board that the  
16 applicant:

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

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

20 (B) The University of Texas Health Center at  
21 Tyler;

22 (C) The University of Texas M. D. Anderson Cancer  
23 Center; or

24 (D) a program of graduate medical education,  
25 accredited by the Accreditation Council for Graduate Medical  
26 Education or the American Osteopathic Association, that exceeds the  
27 requirements for eligibility for first board certification in the

1 discipline;

2 (2) is expected to receive an appointment at the  
3 institution or program making the recommendation under Subdivision  
4 (1);

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

8 (4) has passed a Texas medical jurisprudence  
9 examination as determined by board rule;

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

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

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

19 (c) In adopting rules under this section, the board may  
20 adopt rules that prescribe additional qualifications for an  
21 applicant, including education and examination requirements,  
22 conditions of employment, and application procedures. The board by  
23 rule may qualify, restrict, or otherwise limit a license issued  
24 under this section.

25 (d) The board by rule may define "conceded eminence and  
26 authority in the applicant's specialty." In adopting rules under  
27 this subsection, the board shall consider criteria that include a

1 person's:

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

6 (e) The board may require that the holder of a license under  
7 this section serve a six-month probationary period during which  
8 medical services provided by the license holder are supervised by  
9 another licensed physician.

10 (f) The holder of a license under this section shall be  
11 limited to the practice of only a specialty of medicine for which  
12 the license holder has trained and qualified, as determined by the  
13 board. The license holder may not practice medicine outside of the  
14 setting of the institution or program that recommended the license  
15 holder under Subsection (b)(1).

16 (g) The holder of a license under this section may not  
17 change the license holder's practice setting to a new institution  
18 or program unless the license holder applies for a new license under  
19 this section with the recommendation of that institution or program  
20 as required by Subsection (b)(1).

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

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

26 Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF  
27 ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the

1 issuance of a license that limits the license holder to the practice  
2 of administrative medicine. The board's rules under this section  
3 must include provisions for eligibility for the license, issuance  
4 and renewal of the license, the fees applicable to the license,  
5 continuing education requirements, and the scope of practice of a  
6 person who holds the license.

7 (b) An applicant for a license under this section must meet  
8 all of the requirements for issuance of a license under Section  
9 155.002.

10 (c) A license holder under this section who seeks to  
11 practice medicine under an unrestricted license that is not limited  
12 to the practice of administrative medicine must provide proof to  
13 the board that the license holder has the clinical competence to  
14 practice medicine under that license and must meet all applicable  
15 eligibility requirements for that license. The board may require  
16 the license holder to pass any examination the board determines  
17 necessary.

18 SECTION 1.24. Section 155.056, Occupations Code, is amended  
19 to read as follows:

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

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

25 (b) The board shall adopt rules that prescribe how the limit  
26 on the number of examination attempts under Subsection (a) shall  
27 apply to an applicant who seeks a license and who attempts more than

1 one type of examination. [~~Notwithstanding Subsection (a), an~~  
2 ~~applicant is considered to have satisfied the requirements of this~~  
3 ~~section if the applicant:~~

4 [~~(1) passed all but one part of an examination~~  
5 ~~approved by the board within three attempts and passed the~~  
6 ~~remaining part of the examination within five attempts;~~

7 [~~(2) is specialty board certified by a specialty board~~  
8 ~~that:~~

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

11 [~~(B) is approved by the American Osteopathic~~  
12 ~~Association; and~~

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

15 SECTION 1.25. Section 155.104, Occupations Code, is amended  
16 to read as follows:

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

21 (b) The board may issue a faculty temporary license to  
22 practice medicine to a physician appointed by a medical school in  
23 this state as provided by this section. The physician:

24 (1) must hold a current medical license that is  
25 unrestricted and not subject to a disciplinary order or probation  
26 in another state or Canadian province or have completed at least  
27 three years of postgraduate residency;

1           (2) may not hold a medical license in another state or  
2 a Canadian province that has any restrictions, disciplinary orders,  
3 or probation;

4           (3) must pass the Texas medical jurisprudence  
5 examination; and

6           (4) must hold a salaried faculty position of at least  
7 the level of assistant professor and be working full-time at one of  
8 the following institutions:

9                   (A) The University of Texas Medical Branch at  
10 Galveston;

11                   (B) The University of Texas Southwestern Medical  
12 Center at Dallas;

13                   (C) The University of Texas Health Science Center  
14 at Houston;

15                   (D) The University of Texas Health Science Center  
16 at San Antonio;

17                   (E) The University of Texas Health Center at  
18 Tyler;

19                   (F) The University of Texas M. D. Anderson Cancer  
20 Center;

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

22                   (H) Texas Tech University School of Medicine;

23                   (I) Baylor College of Medicine; or

24                   (J) the University of North Texas Health Science  
25 Center at Fort Worth.

26           (c) A physician is eligible for a temporary license under  
27 Subsection (b) if the physician holds a faculty position of at least

1 the level of assistant professor and works at least part-time at an  
2 institution listed in Subsection (b)(4) and:

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

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

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

10 (1) has read and is familiar with this subtitle and  
11 board rules;

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

15 (3) will be subject to the disciplinary procedures of  
16 the board.

17 (e) A physician holding a temporary license under  
18 Subsection (b) and the physician's medical school must file  
19 affidavits with the board affirming acceptance of the terms and  
20 limits imposed by the board on the medical activities of the  
21 physician.

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

24 (g) The holder of a temporary license issued under  
25 Subsection (b) is limited to the teaching confines of the applying  
26 medical school as a part of the physician's duties and  
27 responsibilities assigned by the school and may not practice

1 medicine outside of the setting of the medical school or an  
2 affiliate of the medical school. The physician may participate in  
3 the full activities of the department of any hospital for which the  
4 physician's medical school has full responsibility for clinical,  
5 patient care, and teaching activities.

6 (h) The application for a temporary license under  
7 Subsection (b) must be made by the chairman of the department of the  
8 medical school in which the physician teaches and must contain the  
9 information and documentation requested by the department. The  
10 application must be endorsed by the dean of the medical school or  
11 the president of the institution.

12 (i) Three years in a teaching faculty position at an  
13 institution listed in Subsection (b)(4) may be treated as  
14 equivalent to three years of an approved postgraduate residency  
15 program if, at the conclusion of the three-year period, the  
16 physician presents recommendations on the physician's behalf from  
17 the chief administrative officer and the president of the  
18 institution.

19 (j) A physician who holds a temporary license issued under  
20 Subsection (b) and who wishes to receive a permanent unrestricted  
21 license must meet the requirements for issuance of a permanent  
22 unrestricted license, including any examination requirements.

23 SECTION 1.26. Section 156.001(a), Occupations Code, is  
24 amended to read as follows:

25 (a) Each person licensed to practice medicine in this state  
26 must register with the board every two years. The initial  
27 registration permit shall be issued with the license [~~and expires~~

1 ~~on the last day of the birth month of the license holder].~~ The board  
2 by rule may adopt a system under which licenses expire on various  
3 dates during the year.

4 SECTION 1.27. Section 157.051(2), Occupations Code, is  
5 amended to read as follows:

6 (2) "Carrying out or signing a prescription drug  
7 order" means completing a prescription drug order presigned by the  
8 delegating physician, or the signing of a prescription by a  
9 registered nurse or physician assistant [~~after that person has been~~  
10 ~~designated to the board by the delegating physician as a person~~  
11 ~~delegated to sign a prescription].~~

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

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

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

22 (a) A record, report, or other information received and  
23 maintained by the board under this subchapter or Subchapter B,  
24 including any material received or developed by the board during an  
25 investigation or hearing and the identity of, and reports made by, a  
26 physician performing or supervising compliance monitoring for the  
27 board, is confidential. The board may disclose this information

1 only:

2 (1) in a disciplinary hearing before the board or  
3 State Office of Administrative Hearings or in a subsequent trial or  
4 appeal of a board action or order;

5 (2) to the physician licensing or disciplinary  
6 authority of another jurisdiction, to a local, state, or national  
7 professional medical society or association, or to a medical peer  
8 review committee located inside or outside this state that is  
9 concerned with granting, limiting, or denying a physician hospital  
10 privileges;

11 (3) under a court order;

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

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

17 (c) A record or report disclosed by the board under this  
18 subchapter, ~~and~~ a record or report received, maintained, or  
19 developed by the board, a medical peer review committee, a member of  
20 the committee, or a health care entity, and a record or report  
21 received or maintained by the State Office of Administrative  
22 Hearings under this subchapter are not available for discovery or  
23 court subpoena and may not be introduced into evidence in any action  
24 for damages, including a medical professional liability action that  
25 arises out of the provision of or failure to provide a medical or  
26 health care service.

27 (d) Medical peer review documents remain confidential at

1 the board and at the State Office of Administrative Hearings. If  
2 medical peer review documents are admitted into evidence for any  
3 purpose at a proceeding before the State Office of Administrative  
4 Hearings, the documents must be admitted under seal to protect the  
5 confidentiality of the records as provided by this section and  
6 Section 160.007.

7 (e) The confidentiality requirements of this section do not  
8 apply to records used by a medical peer review committee, including  
9 a patient's medical records, if the records are available to the  
10 board through a means other than a medical peer review committee's  
11 records.

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

14 (e) A member of an expert panel under Section 154.056(e) and  
15 a person serving as a consultant to the board are immune from suit  
16 and judgment and may not be subjected to a suit for damages for any  
17 investigation, report, recommendation, statement, evaluation,  
18 finding, or other action taken without fraud or malice in the course  
19 of performing the person's duties in evaluating a medical  
20 competency case. The attorney general shall represent a member of  
21 an expert panel or consultant in any suit resulting from a duty  
22 provided by the person in good faith to the board.

23 SECTION 1.31. Section 162.103, Occupations Code, is amended  
24 to read as follows:

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

27 (1) an outpatient setting in which only local

1 anesthesia, peripheral nerve blocks, or both are used;

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

6 [~~(3)~~] a licensed hospital, including an outpatient  
7 facility of the hospital that is located separate from the  
8 hospital;

9 (3) [~~(4)~~] a licensed ambulatory surgical center;

10 (4) [~~(5)~~] a clinic located on land recognized as  
11 tribal land by the federal government and maintained or operated by  
12 a federally recognized Indian tribe or tribal organization as  
13 listed by the United States secretary of the interior under 25  
14 U.S.C. Section 479a-1 or as listed under a successor federal  
15 statute or regulation;

16 (5) [~~(6)~~] a facility maintained or operated by a state  
17 or local governmental entity;

18 (6) [~~(7)~~] a clinic directly maintained or operated by  
19 the United States; or

20 (7) [~~(8)~~] an outpatient setting accredited by:

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

23 (B) the American Association for the  
24 Accreditation of Ambulatory Surgery Facilities; or

25 (C) the Accreditation Association for Ambulatory  
26 Health Care.

27 SECTION 1.32. Sections 163.003(a) and (f), Occupations

1 Code, are amended to read as follows:

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

4 (1) three physician members who are doctors of  
5 medicine (M.D.);

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

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

9 (f) A member of a committee is subject to law and the rules  
10 of the board, including Sections 152.004, 152.006, and 152.010, as  
11 if the committee member were a member of the board, except that a  
12 committee member is not subject to Chapter 572, Government Code.  
13 The training program a committee member must complete under Section  
14 152.010 shall be an abbreviated version of the program under that  
15 section that is limited to training relevant to serving on a  
16 committee.

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

19 Sec. 163.0045. ASSISTANCE TO BOARD. The board may request  
20 members of a committee to participate in an informal meeting under  
21 Section 164.003. A physician committee member who participates in  
22 an informal meeting on a complaint relating to medical competency  
23 must have the qualifications of a member of an expert panel under  
24 Section 154.056(e).

25 SECTION 1.34. Section 164.001, Occupations Code, is amended  
26 by adding Subsection (j) to read as follows:

27 (j) In determining the appropriate disciplinary action,

1 including the amount of any administrative penalty to impose, the  
2 board shall consider whether the violation relates directly to  
3 patient care or involves only an administrative violation.

4 SECTION 1.35. Section 164.002, Occupations Code, is amended  
5 by adding Subsection (e) to read as follows:

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

9 SECTION 1.36. Subchapter A, Chapter 164, Occupations Code,  
10 is amended by adding Section 164.0025 to read as follows:

11 Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT  
12 DISPOSITIONS. (a) The board may delegate to a committee of board  
13 employees the authority to dismiss or enter into an agreed  
14 settlement of a complaint that does not relate directly to patient  
15 care or that involves only administrative violations. The  
16 disposition determined by the committee must be approved by the  
17 board at a public meeting.

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

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

22 (2) the committee is unable to reach an agreed  
23 settlement; or

24 (3) the affected physician requests that the complaint  
25 be referred for informal proceedings.

26 SECTION 1.37. Section 164.003, Occupations Code, is amended  
27 by amending Subsection (b) and adding Subsections (f), (g), and (h)

1 to read as follows:

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

3 (1) an informal meeting in compliance with Section  
4 2001.054, Government Code, be scheduled not later than the 180th  
5 day after the date the board's official investigation of the  
6 complaint is commenced as provided by [~~filed with the board under~~]  
7 Section 154.057(b) [~~154.051~~], unless good cause is shown by the  
8 board for scheduling the informal meeting after that date;

9 (2) the board give notice to the license holder of the  
10 time and place of the meeting not later than the 30th day before the  
11 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 board members or district  
15 review committee members participating in the informal meeting as a  
16 panelist be a member who represents the public;

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

20 (6) [~~(5)~~] a member of the board's staff be at the  
21 meeting to present to the board's representative the facts the  
22 staff reasonably believes it could prove by competent evidence or  
23 qualified witnesses at a hearing.

24 (f) The notice required by Subsection (b)(2) must be  
25 accompanied by a written statement of the nature of the allegations  
26 and the information the board intends to use at the meeting. If the  
27 board does not provide the statement or information at that time,

1 the license holder may use that failure as grounds for rescheduling  
2 the informal meeting. If the complaint includes an allegation that  
3 the license holder has violated the standard of care, the notice  
4 must include a copy of the report by the expert physician reviewer.  
5 The license holder must provide to the board the license holder's  
6 rebuttal at least five business days before the date of the meeting  
7 in order for the information to be considered at the meeting.

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

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

15 SECTION 1.38. Subchapter A, Chapter 164, Occupations Code,  
16 is amended by adding Sections 164.0031 and 164.0032 to read as  
17 follows:

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

23 (b) Notwithstanding Subsection (a) and Section  
24 164.003(b)(4), an informal proceeding may be conducted by one  
25 panelist if the affected physician waives the requirement that at  
26 least two panelists conduct the informal proceeding. If the  
27 physician waives that requirement, the panelist may be either a

1 physician or a member who represents the public.

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

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

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

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

1 before the board.

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

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

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

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

1 State Office of Administrative Hearings.

2 (h) If the board rejects the panel's recommendation for  
3 settlement or dismissal, the board shall notify the physician and  
4 state in the board's minutes the reason for rejecting the  
5 recommendation and specify further action to be considered. In  
6 determining the appropriate further action to be taken, the board  
7 shall consider previous attempts to resolve the matter.

8 SECTION 1.39. Subchapter A, Chapter 164, Occupations Code,  
9 is amended by adding Section 164.0036 to read as follows:

10 Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a)  
11 If an informal meeting is not scheduled for a complaint before the  
12 180th day after the date the board's official investigation of the  
13 complaint is commenced under Section 154.057(b), the board shall  
14 provide notice to all parties to the complaint. The notice must  
15 include an explanation of the reason why the informal meeting has  
16 not been scheduled. The notice under this subsection is not  
17 required if the notice would jeopardize an investigation.

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

25 SECTION 1.40. Section 164.007, Occupations Code, is amended  
26 by adding Subsection (a-1) to read as follows:

27 (a-1) The board may change a finding of fact or conclusion

1 of law or vacate or modify an order of the administrative law judge  
2 only if the board makes a determination required by Section  
3 2001.058(e), Government Code.

4 SECTION 1.41. Subchapter A, Chapter 164, Occupations Code,  
5 is amended by adding Section 164.0071 to read as follows:

6 Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a  
7 formal hearing described by Section 164.007 in which the sole basis  
8 for disciplinary action is the basis described by Section  
9 164.051(a)(7), the board shall provide evidence from the board's  
10 investigation that shows the basis for the board's findings  
11 required by that subdivision.

12 (b) In any formal hearing described by Section 164.007,  
13 information obtained as a result of peer review may not be used as  
14 evidence except as the basis for the opinion of an expert witness  
15 called by the board.

16 (c) A member of a peer review committee is not subject to  
17 subpoena and may not be compelled to provide evidence in a formal  
18 hearing.

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

22 (a) In enforcing Section 164.051(a)(4), the board, on  
23 probable cause, shall request the affected physician or applicant  
24 to submit to a mental or physical examination by physicians  
25 designated by the board. The board shall adopt guidelines, in  
26 conjunction with persons interested in or affected by this section,  
27 to enable the board to evaluate circumstances in which a physician

1 or applicant may be required to submit to an examination for mental  
2 or physical health conditions, alcohol and substance abuse, or  
3 professional behavior problems.

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

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

17 SECTION 1.43. Section 164.202, Occupations Code, is amended  
18 to read as follows:

19 Sec. 164.202. REHABILITATION ORDER. (a) The board,  
20 through an agreed order or after a contested proceeding, may impose  
21 a nondisciplinary rehabilitation order on an applicant, as a  
22 prerequisite for issuing a license, or on a license holder, based  
23 on:

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

27 (2) self-reported intemperate use of drugs or alcohol

1 during the five years preceding the report that could adversely  
2 affect the reporter's ability to practice medicine safely, if:

3 (A) the reporting individual has not previously  
4 been the subject of a substance abuse-related order of the board;  
5 and

6 (B) the applicant or license holder has not  
7 committed a violation of the standard of care as a result of the  
8 intemperate use of drugs or alcohol;

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

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

15 (5) an admission by the applicant or license holder  
16 indicating that the applicant or license holder suffers from a  
17 potentially dangerous limitation or an inability to practice  
18 medicine with reasonable skill and safety by reason of illness or as  
19 a result of any physical or mental condition.

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

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

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

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

6       Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL  
7 ASSOCIATIONS. (a) If a rehabilitation order imposed under Section  
8 164.202 requires a license holder to participate in activities or  
9 programs provided by a local or statewide private medical  
10 association, the board shall inform the association of the license  
11 holder's duties under the order. The information provided under  
12 this section must include specific guidance to enable the  
13 association to comply with any requirements necessary to assist in  
14 the physician's rehabilitation.

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

21       SECTION 1.45. Subchapter E, Chapter 164, Occupations Code,  
22 is amended by adding Section 164.206 to read as follows:

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

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

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

8       SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

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

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

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

20       SECTION 1.48. The following laws are repealed:

21           (1) Section 152.010(d), Occupations Code; and

22           (2) Sections 157.0542(d)-(h), Occupations Code.

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

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

27           (2) adopt the rules required by Subtitle B, Title 3,

1 Occupations Code, as amended by this article.

2 SECTION 1.50. (a) The changes in law made by Sections  
3 152.003, 152.006, and 152.010, Occupations Code, as amended by this  
4 article, regarding the prohibitions on or qualifications of members  
5 of the Texas Medical Board do not affect the entitlement of a member  
6 serving on the board immediately before September 1, 2005, to  
7 continue to serve and function as a member of the board for the  
8 remainder of the member's term. The changes in law made by those  
9 sections apply only to a member appointed on or after September 1,  
10 2005.

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

14 (c) The changes in law made by this article related to the  
15 filing, investigation, or disposition of a complaint under Subtitle  
16 B, Title 3, Occupations Code, as amended by this article, apply only  
17 to a complaint filed with the Texas Medical Board on or after the  
18 effective date of this Act. A complaint filed before the effective  
19 date of this Act is governed by the law as it existed immediately  
20 before that date, and the former law is continued in effect for that  
21 purpose.

22 (d) The changes in law made by this article governing the  
23 eligibility of a person for a license under Subtitle B, Title 3,  
24 Occupations Code, apply only to an application for a license filed  
25 on or after the effective date of this Act. A license application  
26 filed before the effective date of this Act is governed by the law  
27 in effect at the time the application was filed, and the former law

1 is continued in effect for that purpose.

2 (e) The change in law made by this article with respect to  
3 conduct that is grounds for imposition of a disciplinary sanction,  
4 including a refund or cease and desist order, applies only to  
5 conduct that occurs on or after the effective date of this Act.  
6 Conduct that occurs before the effective date of this Act is  
7 governed by the law in effect on the date the conduct occurred, and  
8 the former law is continued in effect for that purpose.

9 SECTION 1.51. MEDICAL PEER REVIEW STUDY. (a) The presiding  
10 officer of each house of the legislature shall appoint a joint  
11 interim committee to study the medical peer review process in  
12 hospitals and other health care entities in this state. The study  
13 shall include an examination of:

14 (1) the use of medical peer review in identifying and  
15 reporting to the Texas Medical Board the conduct of or the quality  
16 of care provided by physicians who are members of the medical staffs  
17 of hospitals and other health care entities;

18 (2) the use of medical peer review in disciplining a  
19 physician based on the conduct or quality of care provided by the  
20 physician as a member of the medical staff of a hospital or other  
21 health care entity;

22 (3) the appropriate level of immunity protections for  
23 hospitals and other health care entities, medical peer review  
24 committees, and individuals who participate on those committees in  
25 health care liability claims brought by patients alleging bad faith  
26 physician credentialing; and

27 (4) whether there are adequate mechanisms in state law

1 to ensure appropriate regulatory supervision of the  
2 appropriateness and effectiveness of medical peer review in  
3 hospitals and other health care entities.

4 (b) As part of the joint interim committee's study, the  
5 committee shall investigate:

6 (1) the adequacy of the Texas Medical Board's  
7 oversight and investigation of physician claims that the medical  
8 peer review process is misused, including whether the board's  
9 oversight and investigation powers should be strengthened and how  
10 other states investigate claims of misuse of the medical peer  
11 review process;

12 (2) the state regulatory reporting mechanisms  
13 relating to the appropriateness and effectiveness of medical peer  
14 review in hospitals and other health care entities and the  
15 oversight and authority of the state to ensure good faith medical  
16 peer review in hospitals and other health care entities in this  
17 state;

18 (3) the potentially negative impact on medical peer  
19 review in this state that could result from potential changes to:

20 (A) immunity protections; or

21 (B) the oversight and investigation of physician  
22 claims of misuse of the medical peer review process;

23 (4) how the laws of other states address immunity  
24 protections for medical peer review; and

25 (5) any other matter relevant to the medical peer  
26 review process, including how state and federal law identifies  
27 physician conduct that is considered to be unprofessional or unsafe

1 by a medical peer review committee.

2 (c) The Department of State Health Services and the Texas  
3 Medical Board shall provide information and assistance to the joint  
4 interim committee in conducting the investigation required by this  
5 section on the committee's request.

6 (d) Not later than January 1, 2007, the joint interim  
7 committee shall report the committee's findings to the governor,  
8 lieutenant governor, and speaker of the house of representatives.

9 (e) This section expires September 1, 2007.

10 ARTICLE 2. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF  
11 PHYSICIAN ASSISTANT EXAMINERS

12 SECTION 2.01. Section 204.002(1), Occupations Code, is  
13 amended to read as follows:

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

16 SECTION 2.02. Section 204.052, Occupations Code, is amended  
17 to read as follows:

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

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

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

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

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

4        SECTION 2.03. Section 204.053, Occupations Code, is amended  
5 to read as follows:

6        Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a)  
7 In this section, "Texas trade association" means a cooperative and  
8 voluntarily joined statewide association of business or  
9 professional competitors in this state designed to assist its  
10 members and its industry or profession in dealing with mutual  
11 business or profession problems and in promoting their common  
12 interest.

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

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

18            (2) is employed by or participates in the management  
19 of a business entity or other organization regulated by or  
20 receiving money from the medical board or physician assistant  
21 board;

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

26            (4) uses or receives a substantial amount of tangible  
27 goods, services, or money from the medical board or physician

1 assistant board other than compensation or reimbursement  
2 authorized by law for physician assistant board membership,  
3 attendance, or expenses [~~that provides health care services or that~~  
4 ~~sells, manufactures, or distributes health care supplies or~~  
5 ~~equipment~~].

6 (c) [~~(b)~~] A person may not be [~~serve as~~] a member of the  
7 physician assistant board and may not be a medical board employee in  
8 a "bona fide executive, administrative, or professional capacity,"  
9 as that phrase is used for purposes of establishing an exemption to  
10 the overtime provisions of the federal Fair Labor Standards Act of  
11 1938 (29 U.S.C. Section 201 et seq.), if:

12 (1) the person is an officer, employee, or paid  
13 consultant of a Texas trade association in the field of health care;  
14 or

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

17 (d) A person may not be a member of the physician assistant  
18 board or act as the general counsel to the physician assistant board  
19 if the person is required to register as a lobbyist under Chapter  
20 305, Government Code, because of the person's activities for  
21 compensation on behalf of a profession related to the operation of  
22 the medical board or physician assistant board.

23 SECTION 2.04. Section 204.055, Occupations Code, is amended  
24 to read as follows:

25 Sec. 204.055. OFFICERS. The governor shall designate a  
26 member of the physician assistant board as the presiding officer of  
27 the board to serve in that capacity at the will of the governor. The

1 physician assistant board shall select from its membership a  
2 [~~presiding officer and a~~] secretary to serve a one-year term  
3 [~~terms~~].

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

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

9 (1) does not have at the time of taking office  
10 [~~appointment~~] the qualifications required by Sections 204.052 and  
11 204.053 [~~this subchapter for appointment to the board~~];

12 (2) does not maintain during [~~the~~] service on the  
13 physician assistant board the qualifications required by Sections  
14 204.052 and 204.053 [~~this subchapter for appointment to the board~~];  
15 [~~or~~]

16 (3) is ineligible for membership under Section  
17 204.053;

18 (4) cannot, because of illness or disability,  
19 discharge the member's duties for a substantial part of the member's  
20 term; or

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

27 (c) If the executive director of the medical board has

1 knowledge that a potential ground for removal exists, the executive  
2 director shall notify the presiding officer of the physician  
3 assistant board of the potential ground. The presiding officer  
4 shall then notify the governor and the attorney general that a  
5 potential ground for removal exists. If the potential ground for  
6 removal involves the presiding officer, the executive director  
7 shall notify the next highest ranking officer of the physician  
8 assistant board, who shall then notify the governor and the  
9 attorney general that a potential ground for removal exists.

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

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

17 (b) The training program must provide the person with  
18 information regarding:

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

21 (2) the results of the most recent formal audit of the  
22 physician assistant board;

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

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

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

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

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

16       (b) A rule adopted by the medical board may not be  
17 challenged on the grounds that the physician assistant board did  
18 not comply with this section. If the physician assistant board was  
19 unable to solicit a significant amount of input from the public or  
20 affected persons early in the rulemaking process, the physician  
21 assistant board shall state in writing the reasons why the  
22 physician assistant board was unable to do so.

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

25       Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.  
26 The physician assistant board shall adopt rules and guidelines as  
27 necessary to comply with Chapter 53, except to the extent the

1 requirements of this chapter are stricter than the requirements of  
2 Chapter 53.

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

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

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

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

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

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

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

27 (2) a summary of the results of the review or

1 investigation of the complaint; and

2 (3) information about the disposition of the  
3 complaint.

4 (b) The physician assistant board shall make information  
5 available describing its procedures for complaint investigation  
6 and resolution.

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

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

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

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

22 Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE  
23 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval  
24 of the medical board, the physician assistant board shall develop  
25 and implement a policy to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter  
27 2008, Government Code, for the adoption of physician assistant

1 board rules; and

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

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

11 (c) The physician assistant board shall designate a trained  
12 person to:

13 (1) coordinate the implementation of the policy  
14 adopted under Subsection (a);

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

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

20 SECTION 2.14. Section 204.152, Occupations Code, is amended  
21 to read as follows:

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

24 (1) meets the eligibility requirements of Section  
25 204.153;

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

1 (3) pays the required application fee;

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

4 (5) submits to the board any other information the  
5 board considers necessary to evaluate the applicant's  
6 qualifications.

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

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

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

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

24 (2) pass the Physician Assistant National Certifying  
25 Examination administered by the National Commission on  
26 Certification of Physician Assistants;

27 (3) hold a certificate issued by the National

1 Commission on Certification of Physician Assistants;

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

3 (5) meet any other requirement established by board  
4 rule; and

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

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

12 (1) the development of the examination;

13 (2) applicable fees;

14 (3) administration of the examination;

15 (4) reexamination procedures;

16 (5) grading procedures; and

17 (6) notice of results.

18 SECTION 2.16. Section 204.156, Occupations Code, is amended  
19 to read as follows:

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

23 (1) paying the required renewal fee;

24 (2) submitting the appropriate form; and

25 (3) meeting any other requirement established by board  
26 rule.

27 (b) The physician assistant board by rule may adopt a system

1 under which licenses expire on various dates during the year.

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

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

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

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

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

24 Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

25 (a) The physician assistant board by rule shall adopt, monitor, and  
26 enforce a reporting program for the continuing medical education of  
27 license holders. The physician assistant board shall adopt and

1 administer rules that:

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

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

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

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

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

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

20 (1) applying to the physician assistant board; ~~and~~  
21 (2) satisfying the requirements of Section 204.156;  
22 and

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

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

1 SECTION 2.19. Subchapter F, Chapter 204, Occupations Code,  
2 is amended by adding Section 204.2511 to read as follows:

3 Sec. 204.2511. CONDUCT OF INVESTIGATION. The physician  
4 assistant board shall complete a preliminary investigation of a  
5 complaint filed with the physician assistant board not later than  
6 the 30th day after the date of receiving the complaint. The  
7 physician assistant board shall first determine whether the  
8 physician assistant constitutes a continuing threat to the public  
9 welfare. On completion of the preliminary investigation, the  
10 physician assistant board shall determine whether to officially  
11 proceed on the complaint. If the physician assistant board fails to  
12 complete the preliminary investigation in the time required by this  
13 section, the physician assistant board's official investigation of  
14 the complaint is considered to commence on that date.

15 SECTION 2.20. Section 204.301(a), Occupations Code, is  
16 amended to read as follows:

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

21 (1) deny the person's application for a license  
22 [application] or license renewal or revoke the person's license or  
23 other authorization;

24 (2) require the person to submit to the care,  
25 counseling, or treatment of a health care practitioner designated  
26 by the physician assistant board;

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

1 on probation;

2 (4) require the person to complete additional  
3 training;

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

6 (A) limiting the practice of the person to, or  
7 excluding from the practice, one or more specified activities of  
8 the practice as a physician assistant; or

9 (B) stipulating periodic physician assistant  
10 board review;

11 (6) assess an administrative penalty against the  
12 person under Section 204.351;

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

14 (8) administer a public reprimand.

15 SECTION 2.21. Subchapter G, Chapter 204, Occupations Code,  
16 is amended by adding Section 204.3011 to read as follows:

17 Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT  
18 DISPOSITIONS. (a) The physician assistant board may delegate to a  
19 committee of medical board employees the authority to dismiss or  
20 enter into an agreed settlement of a complaint that does not relate  
21 directly to patient care or that involves only administrative  
22 violations. The disposition determined by the committee must be  
23 approved by the physician assistant board at a public meeting.

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

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

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

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

5           SECTION 2.22. Subchapter G, Chapter 204, Occupations Code,  
6 is amended by adding Section 204.3045 to read as follows:

7           Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The  
8 physician assistant board shall adopt guidelines, in conjunction  
9 with persons interested in or affected by this section, to enable  
10 the physician assistant board to evaluate circumstances in which a  
11 physician assistant or applicant may be required to submit to an  
12 examination for mental or physical health conditions, alcohol and  
13 substance abuse, or professional behavior problems.

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

26           (c) The guidelines adopted under this section do not impair  
27 or remove the physician assistant board's power to make an

1 independent licensing decision.

2 SECTION 2.23. Section 204.305, Occupations Code, is amended  
3 to read as follows:

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

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

11 (2) the person's intemperate use of drugs or alcohol  
12 during the five years preceding the date of the report that could  
13 adversely affect the person's ability to safely practice as a  
14 physician assistant, if the person:

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

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

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

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

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

27 (b) The physician assistant board may not issue an order

1 under this section if, before the individual signs the proposed  
2 order, the physician assistant board receives a valid complaint  
3 with regard to the individual based on the individual's intemperate  
4 use of drugs or alcohol in a manner affecting the standard of care.

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

8 (d) The physician assistant board may disclose a  
9 rehabilitation order to a local or statewide private association of  
10 physician assistants only as provided by Section 204.3075.

11 SECTION 2.24. Subchapter G, Chapter 204, Occupations Code,  
12 is amended by adding Section 204.3075 to read as follows:

13 Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

14 (a) If a rehabilitation order imposed under Section 204.305  
15 requires a license holder to participate in activities or programs  
16 provided by a local or statewide private association of physician  
17 assistants, the physician assistant board shall inform the  
18 association of the license holder's duties under the order. The  
19 information provided under this section must include specific  
20 guidance to enable the association to comply with any requirements  
21 necessary to assist in the physician assistant's rehabilitation.

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

1 board.

2 SECTION 2.25. Subchapter G, Chapter 204, Occupations Code,  
3 is amended by adding Section 204.312 to read as follows:

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

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

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

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

11 (1) an informal meeting in compliance with Section  
12 2001.054, Government Code, be scheduled not later than the 180th  
13 day after the date the complaint is filed with the physician  
14 assistant board, unless good cause is shown by the physician  
15 assistant board for scheduling the informal meeting after that  
16 date;

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

20 (3) the complainant and the license holder be provided  
21 an opportunity to be heard;

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

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

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

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

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

7                 (2) present the facts the physician assistant  
8 reasonably believes the physician assistant could prove by  
9 competent evidence or qualified witnesses at a hearing.

10           (d) After ample time is given for the presentations, the  
11 physician assistant board representative shall recommend that the  
12 investigation be closed or shall attempt to mediate the disputed  
13 matters and make a recommendation regarding the disposition of the  
14 case in the absence of a hearing under applicable law concerning  
15 contested cases.

16           (e) If the license holder has previously been the subject of  
17 disciplinary action by the physician assistant board, the physician  
18 assistant board shall schedule the informal meeting as soon as  
19 practicable but not later than the deadline prescribed by  
20 Subsection (b)(1).

21           SECTION 2.26. Subchapter G, Chapter 204, Occupations Code,  
22 is amended by adding Section 204.313 to read as follows:

23           Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN  
24 INFORMAL PROCEEDINGS. (a) In an informal meeting under Section  
25 204.312, at least two panelists shall be appointed to determine  
26 whether an informal disposition is appropriate.

27           (b) Notwithstanding Subsection (a) and Section

1 204.312(b)(4), an informal proceeding may be conducted by one  
2 panelist if the affected physician assistant waives the requirement  
3 that at least two panelists conduct the informal proceeding. If the  
4 physician assistant waives that requirement, the panelist may be  
5 any member of the physician assistant board.

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

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

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

12 (d) The panel requirements described by Subsections (a) and  
13 (b) do not apply to an informal proceeding conducted by the  
14 physician assistant board under Section 204.312 to show compliance  
15 with an order of the physician assistant board.

16 SECTION 2.27. Subchapter G, Chapter 204, Occupations Code,  
17 is amended by adding Sections 204.314 and 204.3145 to read as  
18 follows:

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

25 (b) Medical board employees shall present a summary of the  
26 allegations against the affected physician assistant and of the  
27 facts pertaining to the allegation that the employees reasonably

1 believe may be proven by competent evidence at a formal hearing.

2 (c) A physician assistant board or medical board attorney  
3 shall act as counsel to the panel and, notwithstanding Subsection  
4 (e), shall be present during the informal meeting and the panel's  
5 deliberations to advise the panel on legal issues that arise during  
6 the proceeding. The attorney may ask questions of participants in  
7 the informal meeting to clarify any statement made by the  
8 participant. The attorney shall provide to the panel a historical  
9 perspective on comparable cases that have appeared before the  
10 physician assistant board or medical board, keep the proceedings  
11 focused on the case being discussed, and ensure that the medical  
12 board's employees and the affected physician assistant have an  
13 opportunity to present information related to the case. During the  
14 panel's deliberations, the attorney may be present only to advise  
15 the panel on legal issues and to provide information on comparable  
16 cases that have appeared before the physician assistant board or  
17 medical board.

18 (d) The panel and medical board employees shall provide an  
19 opportunity for the affected physician assistant and the physician  
20 assistant's authorized representative to reply to the medical board  
21 employees' presentation and to present oral and written statements  
22 and facts that the physician assistant and representative  
23 reasonably believe could be proven by competent evidence at a  
24 formal hearing.

25 (e) An employee of the medical board who participated in the  
26 presentation of the allegation or information gathered in the  
27 investigation of the complaint, the affected physician assistant,

1 the physician assistant's authorized representative, the  
2 complainant, the witnesses, and members of the public may not be  
3 present during the deliberations of the panel. Only the members of  
4 the panel and the attorney serving as counsel to the panel may be  
5 present during the deliberations.

6 (f) The panel shall recommend the dismissal of the complaint  
7 or allegations or, if the panel determines that the affected  
8 physician assistant has violated a statute or physician assistant  
9 board rule, the panel may recommend physician assistant board  
10 action and terms for an informal settlement of the case.

11 (g) The panel's recommendations under Subsection (f) must  
12 be made in a written order and presented to the affected physician  
13 assistant and the physician assistant's authorized representative.  
14 The physician assistant may accept the proposed settlement within  
15 the time established by the panel at the informal meeting. If the  
16 physician assistant rejects the proposed settlement or does not act  
17 within the required time, the physician assistant board may proceed  
18 with the filing of a formal complaint with the State Office of  
19 Administrative Hearings.

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

24 SECTION 2.28. Subchapter G, Chapter 204, Occupations Code,  
25 is amended by adding Section 204.315 to read as follows:

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

1       (b) A surrendered license may not be returned to the license  
2 holder unless the physician assistant board determines, under  
3 physician assistant board rules, that the former holder of the  
4 license is competent to resume practice.

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

8       SECTION 2.29. Subchapter G, Chapter 204, Occupations Code,  
9 is amended by adding Section 204.316 to read as follows:

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

15       (b) The amount of a refund ordered as provided in an  
16 agreement resulting from an informal settlement conference may not  
17 exceed the amount the consumer paid to the license holder for a  
18 service regulated by this chapter. The physician assistant board  
19 may not require payment of other damages or estimate harm in a  
20 refund order.

21       SECTION 2.30. Subchapter G, Chapter 204, Occupations Code,  
22 is amended by adding Section 204.317 to read as follows:

23       Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY  
24 ADMINISTRATIVE LAW JUDGE. The physician assistant board may change  
25 a finding of fact or conclusion of law or vacate or modify an order  
26 of an administrative law judge only if the physician assistant  
27 board makes a determination required by Section 2001.058(e),

1 Government Code.

2 SECTION 2.31. Subchapter G, Chapter 204, Occupations Code,  
3 is amended by adding Section 204.318 to read as follows:

4 Sec. 204.318. EXPERT IMMUNITY. An expert who assists the  
5 physician assistant board is immune from suit and judgment and may  
6 not be subjected to a suit for damages for any investigation,  
7 report, recommendation, statement, evaluation, finding, or other  
8 action taken without fraud or malice in the course of assisting the  
9 board in a disciplinary proceeding. The attorney general shall  
10 represent the expert in any suit resulting from a service provided  
11 by the person in good faith to the physician assistant board.

12 SECTION 2.32. The heading to Subchapter H, Chapter 204,  
13 Occupations Code, is amended to read as follows:

14 SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

15 SECTION 2.33. Subchapter H, Chapter 204, Occupations Code,  
16 is amended by adding Section 204.353 to read as follows:

17 Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to  
18 the physician assistant board that a person who is not licensed  
19 under this chapter is violating this chapter, a rule adopted under  
20 this chapter, or another state statute or rule relating to  
21 physician assistant practice, the board after notice and  
22 opportunity for a hearing may issue a cease and desist order  
23 prohibiting the person from engaging in the activity.

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

27 SECTION 2.34. Section 204.004, Occupations Code, is

1 repealed.

2 SECTION 2.35. (a) Not later than January 1, 2006, the Texas  
3 State Board of Physician Assistant Examiners shall:

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

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

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

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

16 SECTION 2.36. (a) The changes in law made by Sections  
17 204.053, 204.056, and 204.059, Occupations Code, as amended by this  
18 article, regarding the prohibitions on or qualifications of members  
19 of the Texas State Board of Physician Assistant Examiners do not  
20 affect the entitlement of a member serving on the board immediately  
21 before September 1, 2005, to continue to serve and function as a  
22 member of the board for the remainder of the member's term. The  
23 changes in law made by those sections apply only to a member  
24 appointed on or after September 1, 2005.

25 (b) The changes in law made by this article related to the  
26 filing, investigation, or resolution of a complaint under Chapter  
27 204, Occupations Code, as amended by this article, apply only to a

1 complaint filed with the Texas State Board of Physician Assistant  
2 Examiners on or after the effective date of this Act. A complaint  
3 filed before the effective date of this Act is governed by the law  
4 as it existed immediately before that date, and the former law is  
5 continued in effect for that purpose.

6 (c) The changes in law made by this article governing the  
7 authority of the Texas State Board of Physician Assistant Examiners  
8 to issue, renew, or revoke a license under Chapter 204, Occupations  
9 Code, apply only to an application for a license filed with the  
10 Texas State Board of Physician Assistant Examiners under Chapter  
11 204, Occupations Code, as amended by this article, on or after the  
12 effective date of this Act. A license application filed before the  
13 effective date of this Act is governed by the law in effect at the  
14 time the application was filed, and the former law is continued in  
15 effect for that purpose.

16 (d) The change in law made by this article with respect to  
17 conduct that is grounds for imposition of a disciplinary sanction,  
18 including a refund or cease and desist order, applies only to  
19 conduct that occurs on or after the effective date of this Act.  
20 Conduct that occurs before the effective date of this Act is  
21 governed by the law in effect on the date the conduct occurred, and  
22 the former law is continued in effect for that purpose.

23 ARTICLE 3. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF  
24 ACUPUNCTURE EXAMINERS

25 SECTION 3.01. Sections 205.001(6), (7), and (8),  
26 Occupations Code, are amended to read as follows:

27 (6) "Executive director" means the executive director

1 of the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

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

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

6 SECTION 3.02. Section 205.051(a), Occupations Code, is  
7 amended to read as follows:

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

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

14 (2) two physician members experienced in the practice  
15 of acupuncture; and

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

18 SECTION 3.03. Sections 205.053(a), (c), and (d),  
19 Occupations Code, are amended to read as follows:

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

26 (c) A person [~~who is the spouse of an officer, board member,~~  
27 ~~manager, or paid consultant of a Texas trade association in the~~

1 ~~field of health care]~~ may not be a member of the acupuncture board  
2 and may not be a ~~[an employee of the]~~ medical board employee in a  
3 "bona fide executive, administrative, or professional capacity,"  
4 as that phrase is used for purposes of establishing an exemption to  
5 the overtime provisions of the federal Fair Labor Standards Act of  
6 1938 (29 U.S.C. Section 201 et seq.), if:

7 (1) the person is an officer, employee, or paid  
8 consultant of a Texas trade association in the field of health care;  
9 or

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

16 (d) A person may not be a member of ~~[serve on]~~ the  
17 acupuncture board or act as general counsel to the acupuncture  
18 board or the medical board if the person is required to register as  
19 a lobbyist under Chapter 305, Government Code, because of the  
20 person's activities for compensation on behalf of a profession  
21 related to the operation of the medical board or acupuncture board.

22 SECTION 3.04. Section 205.055, Occupations Code, is amended  
23 to read as follows:

24 Sec. 205.055. PRESIDING OFFICER. The governor shall  
25 designate an acupuncturist ~~[a]~~ member of the acupuncture board as  
26 presiding officer. The presiding officer serves in that capacity  
27 at the will of the governor.

1 SECTION 3.05. Section 205.057, Occupations Code, is  
2 amended to read as follows:

3 Sec. 205.057. TRAINING. (a) A [~~To be eligible to take~~  
4 ~~office as a member of the acupuncture board, a~~] person who is  
5 appointed to and qualifies for office as a member of the acupuncture  
6 board may not vote, deliberate, or be counted as a member in  
7 attendance at a meeting of the acupuncture board until the person  
8 completes [~~must complete at least one course of~~] a training program  
9 that complies with this section.

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

- 12 (1) this chapter [~~and the acupuncture board~~];  
13 (2) the programs operated by the acupuncture board;  
14 (3) the role and functions of the acupuncture board;  
15 (4) the rules of the acupuncture board[~~, with an~~  
16 ~~emphasis on the rules that relate to disciplinary and investigatory~~  
17 ~~authority~~];  
18 (5) the current budget for the acupuncture board;  
19 (6) the results of the most recent formal audit of the  
20 acupuncture board;  
21 (7) the requirements of laws relating to open  
22 meetings, public information, administrative procedure, and  
23 conflicts of interest [~~the~~;

24 [~~(A) open meetings law, Chapter 551, Government~~  
25 ~~Code,~~

26 [~~(B) open records law, Chapter 552, Government~~  
27 ~~Code, and~~

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

3                    (8) [~~the requirements of the conflict of interest laws~~  
4 ~~and other laws relating to public officials, and~~

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

7                    (c) A person appointed to the acupuncture board is entitled  
8 to reimbursement, as provided by the General Appropriations Act,  
9 for the travel expenses incurred in attending the training program  
10 regardless of whether the attendance at the program occurs before  
11 or after [~~, as provided by the General Appropriations Act and as if~~]  
12 the person qualifies for office [~~were a member of the acupuncture~~  
13 ~~board~~].

14                    SECTION 3.06. Section 205.101, Occupations Code, is amended  
15 to read as follows:

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

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

21                    (2) establish minimum education and training  
22 requirements necessary for the acupuncture board to recommend that  
23 the medical board issue a license to practice acupuncture;

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

27                    (4) develop requirements for licensure by endorsement

1 of other states;

2 (5) prescribe the application form for a license to  
3 practice acupuncture;

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

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

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

12 (b) The acupuncture board does not have independent  
13 rulemaking authority. A rule adopted by the acupuncture board is  
14 subject to medical board approval.

15 (c) The acupuncture board shall:

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

18 (2) issue each license; and

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

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

23 Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN  
24 RULEMAKING PROCESS. (a) The acupuncture board shall develop  
25 guidelines to establish procedures for receiving input during the  
26 rulemaking process from individuals and groups that have an  
27 interest in matters under the acupuncture board's jurisdiction.

1 The guidelines must provide an opportunity for those individuals  
2 and groups to provide input before the acupuncture board submits  
3 the rule to the medical board for approval.

4 (b) A rule adopted by the acupuncture board may not be  
5 challenged on the grounds that the board did not comply with this  
6 section. If the acupuncture board was unable to solicit a  
7 significant amount of input from the public or affected persons  
8 early in the rulemaking process, the board shall state in writing  
9 the reasons why the board was unable to do so.

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

12 Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL  
13 CONVICTION. The acupuncture board shall adopt rules and guidelines  
14 as necessary to comply with Chapter 53, except to the extent the  
15 requirements of this chapter are stricter than the requirements of  
16 Chapter 53.

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

19 Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and  
20 approval of the medical board, the acupuncture board shall  
21 implement a policy requiring the acupuncture board to use  
22 appropriate technological solutions to improve the acupuncture  
23 board's ability to perform its functions. The policy must ensure  
24 that the public is able to interact with the acupuncture board on  
25 the Internet.

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

1           Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE  
2 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval  
3 of the medical board, the acupuncture board shall develop and  
4 implement a policy to encourage the use of:

5                   (1) negotiated rulemaking procedures under Chapter  
6 2008, Government Code, for the adoption of acupuncture board rules;  
7 and

8                   (2) appropriate alternative dispute resolution  
9 procedures under Chapter 2009, Government Code, to assist in the  
10 resolution of internal and external disputes under the acupuncture  
11 board's jurisdiction.

12           (b) The acupuncture board procedures relating to  
13 alternative dispute resolution must conform, to the extent  
14 possible, to any model guidelines issued by the State Office of  
15 Administrative Hearings for the use of alternative dispute  
16 resolution by state agencies.

17           (c) The acupuncture board shall designate a trained person  
18 to:

19                   (1) coordinate the implementation of the policy  
20 adopted under Subsection (a);

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

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

26           SECTION 3.11. Subchapter D, Chapter 205, Occupations Code,  
27 is amended by adding Section 205.1521 to read as follows:

1       Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture  
2 board shall complete a preliminary investigation of a complaint  
3 received by the acupuncture board not later than the 30th day after  
4 the date of receiving the complaint. The acupuncture board shall  
5 first determine whether the acupuncturist constitutes a continuing  
6 threat to the public welfare. On completion of the preliminary  
7 investigation, the acupuncture board shall determine whether to  
8 officially proceed on the complaint. If the acupuncture board  
9 fails to complete the preliminary investigation in the time  
10 required by this section, the acupuncture board's official  
11 investigation of the complaint is considered to commence on that  
12 date.

13       SECTION 3.12. Section 205.201, Occupations Code, is amended  
14 to read as follows:

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

19       SECTION 3.13. Section 205.202, Occupations Code, is amended  
20 to read as follows:

21       Sec. 205.202. ISSUANCE OF LICENSE. (a) The [~~After~~  
22 ~~consulting the~~] acupuncture board[~~, the medical board~~] shall issue  
23 a license to practice acupuncture in this state to a person who  
24 meets the requirements of this chapter and the rules adopted under  
25 this chapter.

26       (b) The acupuncture board may delegate authority to medical  
27 board employees to issue licenses under this chapter to applicants

1 who clearly meet all licensing requirements. If the medical board  
2 employees determine that the applicant does not clearly meet all  
3 licensing requirements, the application shall be returned to the  
4 acupuncture board. A license issued under this subsection does not  
5 require formal acupuncture board approval.

6 SECTION 3.14. Section 205.203, Occupations Code, is amended  
7 by amending Subsections (a) and (c) and adding Subsections (c-1)  
8 and (f) to read as follows:

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

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

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

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

21 (1) the development of the examination;

22 (2) applicable fees;

23 (3) administration of the examination;

24 (4) reexamination procedures;

25 (5) grading procedures; and

26 (6) notice of results.

27 SECTION 3.15. Section 205.206, Occupations Code, is amended

1 by adding Subsections (c) and (d) to read as follows:

2 (c) In addition to the other requirements of this section,  
3 an acupuncture school or degree program is subject to approval by  
4 the Texas Higher Education Coordinating Board unless the school or  
5 program qualifies for an exemption under Section 61.303, Education  
6 Code.

7 (d) In reviewing an acupuncture school or degree program as  
8 required by Subsection (c), the Texas Higher Education Coordinating  
9 Board shall seek input from the acupuncture board regarding the  
10 standards to be used for assessing whether a school or degree  
11 program adequately prepares an individual for the practice of  
12 acupuncture.

13 SECTION 3.16. Section 205.255, Occupations Code, is amended  
14 by adding Subsections (a-1) and (c) to read as follows:

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

17 (1) procedural requirements;

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

20 (3) course content requirements.

21 (c) After guidelines are established under Subsection  
22 (a-1), the acupuncture board shall delegate to medical board  
23 employees the authority to approve course applications for courses  
24 that clearly meet the guidelines. Medical board employees shall  
25 refer any courses that are not clearly within the guidelines to the  
26 acupuncture board for review and approval.

27 SECTION 3.17. Sections 205.351(b) and (c), Occupations

1 Code, are amended to read as follows:

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

6 (c) A complaint, indictment, or conviction of a violation of  
7 law is not necessary for an action under Subsection (a)(11). Proof  
8 of the commission of the act while in the practice of acupuncture or  
9 under the guise of the practice of acupuncture is sufficient for  
10 action by the acupuncture [~~medical~~] board.

11 SECTION 3.18. Section 205.352, Occupations Code, is amended  
12 to read as follows:

13 Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.

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

17 (1) deny the person's application for a license,  
18 license renewal, or certificate to practice acupuncture or revoke  
19 the person's license or certificate to practice acupuncture;

20 (2) require the person to submit to the care,  
21 counseling, or treatment of a health care practitioner designated  
22 by the acupuncture board as a condition for the issuance,  
23 continuance, or renewal of a license or certificate to practice  
24 acupuncture;

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

27 (4) suspend, limit, or restrict the person's license

1 or certificate to practice acupuncture, including limiting the  
2 practice of the person to, or excluding from the practice, one or  
3 more specified activities of acupuncture or stipulating periodic  
4 review by the acupuncture board;

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

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

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

12 (8) stay enforcement of an order and place the person  
13 on probation with the acupuncture board retaining the right to  
14 vacate the probationary stay and enforce the original order for  
15 noncompliance with the terms of probation or impose any other  
16 remedial measure or sanction authorized by this section;

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

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

24 (11) administer a public reprimand.

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

1 SECTION 3.19. Subchapter H, Chapter 205, Occupations Code,  
2 is amended by adding Section 205.3522 to read as follows:

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

5 (b) A surrendered license may not be returned to the license  
6 holder unless the acupuncture board determines, under acupuncture  
7 board rules, that the former holder of the license is competent to  
8 resume practice.

9 (c) The acupuncture board shall recommend rules to the  
10 medical board for determining the competency of a former license  
11 holder to return to practice.

12 SECTION 3.20. Subchapter H, Chapter 205, Occupations Code,  
13 is amended by adding Section 205.3523 to read as follows:

14 Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The  
15 acupuncture board shall adopt guidelines, in conjunction with  
16 persons interested in or affected by this section, to enable the  
17 board to evaluate circumstances in which an acupuncturist or  
18 applicant may be required to submit to an examination for mental or  
19 physical health conditions, alcohol and substance abuse, or  
20 professional behavior problems.

21 (b) The acupuncture board shall refer an acupuncturist or  
22 applicant with a physical or mental health condition to the most  
23 appropriate medical specialist. The acupuncture board may not  
24 require an acupuncturist or applicant to submit to an examination  
25 by a physician having a specialty specified by the board unless  
26 medically indicated. The acupuncture board may not require an  
27 acupuncturist or applicant to submit to an examination to be

1 conducted an unreasonable distance from the person's home or place  
2 of business unless the acupuncturist or applicant resides and works  
3 in an area in which there are a limited number of physicians able to  
4 perform an appropriate examination.

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

8 SECTION 3.21. Subchapter H, Chapter 205, Occupations Code,  
9 is amended by adding Section 205.3541 to read as follows:

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

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

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

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

17 (1) an informal meeting in compliance with Section  
18 2001.054, Government Code, be scheduled not later than the 180th  
19 day after the date the complaint is filed with the acupuncture  
20 board, unless good cause is shown by the acupuncture board for  
21 scheduling the informal meeting after that date;

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

25 (3) the complainant and the license holder be provided  
26 an opportunity to be heard;

27 (4) at least one of the acupuncture board members

1 participating in the informal meeting as a panelist be a member who  
2 represents the public;

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

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

10 (c) An affected acupuncturist is entitled, orally or in  
11 writing, to:

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

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

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

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

25 SECTION 3.22. Subchapter H, Chapter 205, Occupations Code,  
26 is amended by adding Section 205.3542 to read as follows:

27 Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN

1 INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section  
2 205.3541, at least two panelists shall be appointed to determine  
3 whether an informal disposition is appropriate.

4 (b) Notwithstanding Subsection (a) and Section  
5 205.3541(b)(4), an informal proceeding may be conducted by one  
6 panelist if the affected acupuncturist waives the requirement that  
7 at least two panelists conduct the informal proceeding. If the  
8 acupuncturist waives that requirement, the panelist may be any  
9 member of the acupuncture board.

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

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

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

16 (d) The panel requirements described by Subsection (a) do  
17 not apply to an informal proceeding conducted by the acupuncture  
18 board under Section 205.3541 to show compliance with an order of the  
19 acupuncture board.

20 SECTION 3.23. Subchapter H, Chapter 205, Occupations Code,  
21 is amended by adding Section 205.3543 to read as follows:

22 Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS  
23 IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that  
24 serves as a panelist at an informal meeting under Section 205.3541  
25 shall make recommendations for the disposition of a complaint or  
26 allegation. The member may request the assistance of a medical  
27 board employee at any time.

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

5       (c) An acupuncture board or medical board attorney shall act  
6 as counsel to the panel and, notwithstanding Subsection (e), shall  
7 be present during the informal meeting and the panel's  
8 deliberations to advise the panel on legal issues that arise during  
9 the proceeding. The attorney may ask questions of participants in  
10 the informal meeting to clarify any statement made by the  
11 participant. The attorney shall provide to the panel a historical  
12 perspective on comparable cases that have appeared before the  
13 acupuncture board or medical board, keep the proceedings focused on  
14 the case being discussed, and ensure that the medical board's  
15 employees and the affected acupuncturist have an opportunity to  
16 present information related to the case. During the panel's  
17 deliberation, the attorney may be present only to advise the panel  
18 on legal issues and to provide information on comparable cases that  
19 have appeared before the acupuncture board or medical board.

20       (d) The panel and medical board employees shall provide an  
21 opportunity for the affected acupuncturist and the acupuncturist's  
22 authorized representative to reply to the board employees'  
23 presentation and to present oral and written statements and facts  
24 that the acupuncturist and representative reasonably believe could  
25 be proven by competent evidence at a formal hearing.

26       (e) An employee of the medical board who participated in the  
27 presentation of the allegation or information gathered in the

1 investigation of the complaint, the affected acupuncturist, the  
2 acupuncturist's authorized representative, the complainant, the  
3 witnesses, and members of the public may not be present during the  
4 deliberations of the panel. Only the members of the panel and the  
5 attorney serving as counsel to the panel may be present during the  
6 deliberations.

7 (f) The panel shall recommend the dismissal of the complaint  
8 or allegations or, if the panel determines that the affected  
9 acupuncturist has violated a statute or acupuncture board rule, the  
10 panel may recommend board action and terms for an informal  
11 settlement of the case.

12 (g) The panel's recommendations under Subsection (f) must  
13 be made in a written order and presented to the affected  
14 acupuncturist and the acupuncturist's authorized representative.  
15 The acupuncturist may accept the proposed settlement within the  
16 time established by the panel at the informal meeting. If the  
17 acupuncturist rejects the proposed settlement or does not act  
18 within the required time, the acupuncture board may proceed with  
19 the filing of a formal complaint with the State Office of  
20 Administrative Hearings.

21 SECTION 3.24. Subchapter H, Chapter 205, Occupations Code,  
22 is amended by adding Section 205.3544 to read as follows:

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

27 SECTION 3.25. Section 205.356, Occupations Code, is amended

1 to read as follows:

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

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

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

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

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

16                   (C) did not violate the standard of care as a  
17 result of the impairment;

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

20           (4) the results of a mental or physical examination,  
21 or an admission by the person, indicating that the person suffers  
22 from a potentially dangerous limitation or an inability to practice  
23 as an acupuncturist with reasonable skill and safety by reason of  
24 illness or as a result of any physical or mental condition.

25           (b) The acupuncture board may not issue an order under this  
26 section if, before the individual signs the proposed order, the  
27 board receives a valid complaint with regard to the individual

1 based on the individual's intemperate use of drugs or alcohol in a  
2 manner affecting the standard of care.

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

6 (d) The acupuncture board may disclose a rehabilitation  
7 order to a local or statewide private acupuncture association only  
8 as provided by Section 205.3562.

9 SECTION 3.26. Subchapter H, Chapter 205, Occupations Code,  
10 is amended by adding Sections 205.3561 and 205.3562 to read as  
11 follows:

12 Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the  
13 acupuncture board is immune from suit and judgment and may not be  
14 subjected to a suit for damages for any investigation, report,  
15 recommendation, statement, evaluation, finding, or other action  
16 taken without fraud or malice in the course of assisting the board  
17 in a disciplinary proceeding. The attorney general shall represent  
18 the expert in any suit resulting from a service provided by the  
19 expert in good faith to the acupuncture board.

20 Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

21 (a) If a rehabilitation order imposed under Section 205.356  
22 requires a license holder to participate in activities or programs  
23 provided by a local or statewide private acupuncture association,  
24 the acupuncture board shall inform the association of the license  
25 holder's duties under the order. The information provided under  
26 this section must include specific guidance to enable the  
27 association to comply with any requirements necessary to assist in

1 the acupuncturist's rehabilitation.

2 (b) The acupuncture board may provide to the association any  
3 information that the board determines to be necessary, including a  
4 copy of the rehabilitation order. Any information received by the  
5 association remains confidential, is not subject to discovery,  
6 subpoena, or other means of legal compulsion, and may be disclosed  
7 only to the acupuncture board.

8 SECTION 3.27. Subchapter H, Chapter 205, Occupations Code,  
9 is amended by adding Section 205.360 to read as follows:

10 Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT  
11 DISPOSITIONS. (a) The acupuncture board may delegate to a  
12 committee of medical board employees the authority to dismiss or  
13 enter into an agreed settlement of a complaint that does not relate  
14 directly to patient care or that involves only administrative  
15 violations. The disposition determined by the committee must be  
16 approved by the acupuncture board at a public meeting.

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

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

21 (2) the committee is unable to reach an agreed  
22 settlement; or

23 (3) the affected acupuncturist requests that the  
24 complaint be referred for informal proceedings.

25 SECTION 3.28. Subchapter H, Chapter 205, Occupations Code,  
26 is amended by adding Section 205.361 to read as follows:

27 Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding

1 officer of the acupuncture board, with that board's approval, shall  
2 appoint a three-member disciplinary panel consisting of  
3 acupuncture board members to determine whether a person's license  
4 to practice as an acupuncturist should be temporarily suspended.

5 (b) If the disciplinary panel determines from the  
6 information presented to the panel that a person licensed to  
7 practice as an acupuncturist would, by the person's continuation in  
8 practice, constitute a continuing threat to the public welfare, the  
9 disciplinary panel shall temporarily suspend the license of that  
10 person.

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

13 (1) institution of proceedings for a hearing before  
14 the acupuncture board is initiated simultaneously with the  
15 temporary suspension; and

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

18 (d) Notwithstanding Chapter 551, Government Code, the  
19 disciplinary panel may hold a meeting by telephone conference call  
20 if immediate action is required and convening of the panel at one  
21 location is inconvenient for any member of the disciplinary panel.

22 SECTION 3.29. Subchapter H, Chapter 205, Occupations Code,  
23 is amended by adding Section 205.362 to read as follows:

24 Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to  
25 the acupuncture board that a person who is not licensed under this  
26 chapter is violating this chapter, a rule adopted under this  
27 chapter, or another state statute or rule relating to the practice

1 of acupuncture, the board, after notice and opportunity for a  
2 hearing, may issue a cease and desist order prohibiting the person  
3 from engaging in the activity.

4 (b) A violation of an order under this section constitutes  
5 grounds for imposing an administrative penalty under Section  
6 205.352.

7 SECTION 3.30. Subchapter H, Chapter 205, Occupations Code,  
8 is amended by adding Section 205.363 to read as follows:

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

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

18 SECTION 3.31. Subchapter H, Chapter 205, Occupations Code,  
19 is amended by adding Section 205.364 to read as follows:

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

25 SECTION 3.32. Sections 205.402(a) and (d), Occupations  
26 Code, are amended to read as follows:

27 (a) The acupuncture [~~medical~~] board, the attorney general,

1 or a district or county attorney may bring a civil action to compel  
2 compliance with this chapter or to enforce a rule adopted under this  
3 chapter.

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

7 SECTION 3.33. The heading to Subchapter I, Chapter 205,  
8 Occupations Code, is amended to read as follows:

9 SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

10 SECTION 3.34. Chapter 205, Occupations Code, is amended by  
11 adding Subchapter J to read as follows:

12 SUBCHAPTER J. ADMINISTRATIVE PENALTIES

13 Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
14 acupuncture board by order may impose an administrative penalty  
15 against a person licensed or regulated under this chapter who  
16 violates this chapter or a rule or order adopted under this chapter.

17 Sec. 205.452. PROCEDURE. (a) The acupuncture board by rule  
18 shall prescribe the procedure by which it may impose an  
19 administrative penalty.

20 (b) A proceeding under this subchapter is subject to Chapter  
21 2001, Government Code.

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

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

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

1           (A) the nature, circumstances, extent, and  
2 gravity of any prohibited act; and

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

5           (2) the economic harm to property or the environment  
6 caused by the violation;

7           (3) the history of previous violations;

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

9           (5) efforts to correct the violation; and

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

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

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

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

18          (a) Not later than the 30th day after the date the acupuncture  
19 board's order imposing the administrative penalty is final, the  
20 person shall:

21           (1) pay the penalty;

22           (2) pay the penalty and file a petition for judicial  
23 review contesting the occurrence of the violation, the amount of  
24 the penalty, or both; or

25           (3) without paying the penalty, file a petition for  
26 judicial review contesting the occurrence of the violation, the  
27 amount of the penalty, or both.

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

3            (1) stay enforcement of the penalty by:

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

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

10            (2) request the court to stay enforcement of the  
11 penalty by:

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

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

17        (c) If the presiding officer of the acupuncture board  
18 receives a copy of an affidavit under Subsection (b)(2), the  
19 presiding officer may file with the court a contest to the affidavit  
20 not later than the fifth day after the date the copy is received.

21        (d) The court shall hold a hearing on the facts alleged in  
22 the affidavit as soon as practicable and shall stay the enforcement  
23 of the penalty on finding that the alleged facts are true. The  
24 person who files an affidavit has the burden of proving that the  
25 person is financially unable to pay the penalty and to give a  
26 supersedeas bond.

27        Sec. 205.456. COLLECTION OF PENALTY. If the person does not

1 pay the administrative penalty and the enforcement of the penalty  
2 is not stayed, the presiding officer of the acupuncture board may  
3 refer the matter to the attorney general for collection of the  
4 penalty.

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

9 (b) If the court does not sustain the determination that a  
10 violation occurred, the court shall order that a penalty is not  
11 owed.

12 Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If  
13 after judicial review the administrative penalty is reduced or not  
14 imposed by the court, the court shall, after the judgment becomes  
15 final:

16 (1) order that the appropriate amount, plus accrued  
17 interest, be remitted to the person if the person paid the penalty;  
18 or

19 (2) order the release of the bond in full if the  
20 penalty is not imposed or order the release of the bond after the  
21 person pays the penalty imposed if the person posted a supersedeas  
22 bond.

23 (b) The interest paid under Subsection (a)(1) is the rate  
24 charged on loans to depository institutions by the New York Federal  
25 Reserve Bank. The interest is paid for the period beginning on the  
26 date the penalty is paid and ending on the date the penalty is  
27 remitted.

1 SECTION 3.35. Sections 205.002 and 205.353, Occupations  
2 Code, are repealed.

3 SECTION 3.36. (a) Not later than January 1, 2006, the Texas  
4 State Board of Acupuncture Examiners shall:

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

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

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

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

17 SECTION 3.37. (a) The changes in law made by Sections  
18 205.053 and 205.057, Occupations Code, as amended by this article,  
19 regarding the prohibitions on or qualifications of members of the  
20 Texas State Board of Acupuncture Examiners do not affect the  
21 entitlement of a member serving on the board immediately before  
22 September 1, 2005, to continue to serve and function as a member of  
23 the board for the remainder of the member's term. The changes in  
24 law made by those sections apply only to a member appointed on or  
25 after September 1, 2005.

26 (b) The changes in law made by this article related to the  
27 filing, investigation, or resolution of a complaint under Chapter

1 205, Occupations Code, as amended by this article, apply only to a  
2 complaint filed with the Texas State Board of Acupuncture Examiners  
3 on or after the effective date of this Act. A complaint filed  
4 before the effective date of this Act is governed by the law as it  
5 existed immediately before that date, and the former law is  
6 continued in effect for that purpose.

7 (c) The changes in law made by this article governing the  
8 authority of the Texas State Board of Acupuncture Examiners to  
9 issue, renew, or revoke a license under Chapter 205, Occupations  
10 Code, apply only to an application for a license filed with the  
11 Texas State Board of Acupuncture Examiners under Chapter 205,  
12 Occupations Code, as amended by this article, on or after the  
13 effective date of this Act. A license application filed before the  
14 effective date of this Act is governed by the law in effect at the  
15 time the application was filed, and the former law is continued in  
16 effect for that purpose.

17 (d) The change in law made by this article with respect to  
18 conduct that is grounds for imposition of a disciplinary sanction,  
19 including a refund, temporary license suspension, or cease and  
20 desist order, applies only to conduct that occurs on or after the  
21 effective date of this Act. Conduct that occurs before the  
22 effective date of this Act is governed by the law in effect on the  
23 date the conduct occurred, and the former law is continued in effect  
24 for that purpose.

25 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

26 SECTION 4.01. Section 206.001(5), Occupations Code, is  
27 amended to read as follows:

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

3           SECTION 4.02. Subchapter D, Chapter 206, Occupations Code,  
4 is amended by adding Section 206.1575 to read as follows:

5           Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board  
6 shall complete a preliminary investigation of a complaint not later  
7 than the 30th day after the date of receiving the complaint. The  
8 medical board shall first determine whether the surgical assistant  
9 constitutes a continuing threat to the public welfare. On  
10 completion of the preliminary investigation, the medical board  
11 shall determine whether to officially proceed on the complaint. If  
12 the medical board fails to complete the preliminary investigation  
13 in the time required by this section, the medical board's official  
14 investigation is considered to commence on that date.

15           SECTION 4.03. Section 206.209, Occupations Code, is amended  
16 to read as follows:

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

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

1           SECTION 4.04. Section 206.305, Occupations Code, is amended  
2 to read as follows:

3           Sec. 206.305. REHABILITATION ORDER. (a) The medical board,  
4 through an agreed order or after a contested case proceeding, may  
5 impose a rehabilitation order on an applicant, as a prerequisite  
6 for issuing a license, or on a license holder based on:

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

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

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

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

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

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

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

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

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

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

7 (d) The medical board may disclose a rehabilitation order to  
8 a local or statewide private medical or surgical assistant  
9 association only as provided by Section 206.3075.

10 SECTION 4.05. Subchapter G, Chapter 206, Occupations Code,  
11 is amended by adding Section 206.3075 to read as follows:

12 Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

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

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

27 SECTION 4.06. Subchapter G, Chapter 206, Occupations Code,

1 is amended by adding Sections 206.313-206.315 to read as follows:

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

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

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

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

9 (1) an informal meeting in compliance with Section  
10 2001.054, Government Code, be scheduled not later than the 180th  
11 day after the date the medical board's official investigation of  
12 the complaint is commenced, unless good cause is shown by the board  
13 for scheduling the informal meeting after that date;

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

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

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

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

25 (6) a member of the medical board's staff be at the  
26 meeting to present to the panel the facts the staff reasonably  
27 believes it could prove by competent evidence or qualified

1 witnesses at a hearing.

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

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

5 (2) present the facts the surgical assistant  
6 reasonably believes the surgical assistant could prove by competent  
7 evidence or qualified witnesses at a hearing.

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

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

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

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

27 (c) A medical board attorney shall act as counsel to the

1 panel and, notwithstanding Subsection (e), shall be present during  
2 the informal meeting and the panel's deliberations to advise the  
3 panel on legal issues that arise during the proceeding. The  
4 attorney may ask questions of participants in the informal meeting  
5 to clarify any statement made by the participant. The attorney  
6 shall provide to the panel a historical perspective on comparable  
7 cases that have appeared before the medical board, keep the  
8 proceedings focused on the case being discussed, and ensure that  
9 the medical board's employees and the affected surgical assistant  
10 have an opportunity to present information related to the case.  
11 During the panel's deliberations, the attorney may be present only  
12 to advise the panel on legal issues and to provide information on  
13 comparable cases that have appeared before the medical board.

14 (d) The panel and medical board employees shall provide an  
15 opportunity for the affected surgical assistant and the surgical  
16 assistant's authorized representative to reply to the board  
17 employees' presentation and to present oral and written statements  
18 and facts that the surgical assistant and representative reasonably  
19 believe could be proven by competent evidence at a formal hearing.

20 (e) An employee of the medical board who participated in the  
21 presentation of the allegation or information gathered in the  
22 investigation of the complaint, the affected surgical assistant,  
23 the surgical assistant's authorized representative, the  
24 complainant, the witnesses, and members of the public may not be  
25 present during the deliberations of the panel. Only the members of  
26 the panel and the medical board attorney serving as counsel to the  
27 panel may be present during the deliberations.

1       (f) The panel shall recommend the dismissal of the complaint  
2 or allegations or, if the panel determines that the affected  
3 surgical assistant has violated a statute or medical board rule,  
4 the panel may recommend board action and terms for an informal  
5 settlement of the case.

6       (g) The panel's recommendations under Subsection (f) must  
7 be made in a written order and presented to the affected surgical  
8 assistant and the surgical assistant's authorized representative.  
9 The surgical assistant may accept the proposed settlement within  
10 the time established by the panel at the informal meeting. If the  
11 surgical assistant rejects the proposed settlement or does not act  
12 within the required time, the medical board may proceed with the  
13 filing of a formal complaint with the State Office of  
14 Administrative Hearings.

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

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

22       (c) Notwithstanding Subsection (a) and Section  
23 206.313(b)(4), an informal proceeding may be conducted by one  
24 panelist if the affected surgical assistant waives the requirement  
25 that at least two panelists conduct the informal proceeding. If the  
26 surgical assistant waives that requirement, the panelist may be  
27 either a physician or a member who represents the public.

