

By: Nelson

S.B. No. 419

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) In this section, "Texas trade [~~or professional]~~
27 association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily

1 joined association of business or professional competitors in this
2 state designed to assist its members and its industry or profession
3 in dealing with mutual business or professional problems and in
4 promoting their common interest.

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

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

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

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

27 (2) the person's [~~may not be a board member or employee~~

1 ~~who is exempt from the state's position classification plan or is~~
2 ~~compensated at or above the amount prescribed by the General~~
3 ~~Appropriations Act for step 1, salary group A17, of the position~~
4 ~~classification salary schedule.~~

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

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

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

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

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

1 qualifications required by Section 152.002;

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

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

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

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

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

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

1 as are required, in the board's opinion, to carry out the board's
2 duties.

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

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

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

14 (1) this subtitle;

15 (2) the programs operated by the board;

16 (3) the role and functions of the board;

17 (4) the rules of the board, with an emphasis on the
18 rules that relate to disciplinary and investigatory authority;

19 (5) the current budget for the board;

20 (6) the results of the most recent formal audit of the
21 board;

22 (7) the requirements of laws relating to open
23 meetings, public information, administrative procedure, and
24 conflicts of interest [~~Chapters 551, 552, 2001, and 2002,~~
25 ~~Government Code~~]; and

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

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

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

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

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

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

19 Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The
20 board shall adopt guidelines to establish procedures for receiving
21 input during the rulemaking process from individuals and groups
22 that have an interest in matters under the board's jurisdiction.
23 The guidelines must provide an opportunity for those individuals
24 and groups to provide input before the board provides notice of the
25 proposed rule under Section 2001.023, Government Code.

26 (b) In implementing the guidelines adopted under this
27 section, the board shall exercise its judgment in determining which

1 rules require input as described by Subsection (a).

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

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.

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

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

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

22 (1) negotiated rulemaking procedures under Chapter
23 2008, Government Code, for the adoption of board rules; and

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

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

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

6 (1) coordinate the implementation of the policy
7 adopted under Subsection (a);

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

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

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

15 (d) The board shall publish information regarding errors in
16 and reversals of disciplinary actions taken by the board. The
17 information required by this subsection includes instances in which
18 a disciplinary action initiated by the board is overturned by a
19 court. The board shall disseminate the information required to be
20 published under this subsection in the same manner as the
21 information regarding the original action by the board was
22 disseminated, subject to the approval of the affected physician,
23 physician's authorized representative, or an arbitrator.

24 SECTION 1.15. Section 154.052, Occupations Code, is amended
25 to read as follows:

26 Sec. 154.052. RECORDS OF COMPLAINTS. The board shall
27 maintain a system to promptly and efficiently act on complaints

1 filed with the board. The board shall maintain [~~keep an~~
2 information [~~file~~] about [~~each complaint filed with the board. The~~
3 ~~information file must be kept current and contain a record for each~~
4 ~~complaint of~~]:

5 (1) the parties to the complaint;

6 (2) the subject matter of the complaint;

7 (3) a summary of the results of the review or
8 investigation of the complaint; and

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

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

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

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

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

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

21 (c) The board shall periodically [~~If a written complaint is~~
22 ~~filed with the board that the board has authority to resolve, the~~
23 ~~board, at least as frequently as quarterly and until final~~
24 ~~disposition of the complaint, shall] notify the parties to the
25 complaint of the status of the complaint until final disposition
26 [~~unless the notice would jeopardize an investigation].~~~~

27 SECTION 1.17. Section 154.056(e), Occupations Code, is

1 amended to read as follows:

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

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

20 Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN PANEL. (a)
21 A physician on an expert physician panel authorized by Section
22 154.056(e) who reviews a complaint shall:

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

26 (2) issue a preliminary written report of that
27 determination.

1 (b) A second physician on the panel shall review the first
2 physician's preliminary report and other information associated
3 with the complaint. If the second expert physician agrees with the
4 first expert physician, the first physician shall issue a final
5 written report on the matter.

6 (c) If the second expert physician does not agree with the
7 conclusions of the first expert physician, a third physician on the
8 panel shall review the preliminary report and information and
9 decide between the conclusions reached by the first two expert
10 physicians. The final written report shall be made by the third
11 physician or the physician with whom the third physician concurs.

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

14 (b) The board shall complete [~~make~~] a preliminary
15 investigation of the complaint not later than the 30th day after the
16 date of receiving the complaint. The board shall first determine
17 whether the physician constitutes a continuing threat to the public
18 welfare. On completion of the preliminary investigation, the board
19 shall determine whether to file an official complaint. If the board
20 fails to complete the preliminary investigation in the time
21 required by this subsection, the complaint is considered to be
22 officially filed on that date.

23 SECTION 1.20. Section 155.002, Occupations Code, is amended
24 to read as follows:

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

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

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

5 (3) satisfies the examination requirements of Section
6 155.051.

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

13 SECTION 1.21. Section 155.003(a), Occupations Code, is
14 amended to read as follows:

15 (a) To be eligible for a license under this chapter, an
16 applicant must present proof satisfactory to the board that the
17 applicant:

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

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

21 (3) has completed:

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

26 (B) the entire primary, secondary, and
27 premedical education required in the country of medical school

1 graduation, if the medical school is located outside the United
2 States or Canada; or

3 (C) substantially equivalent courses as
4 determined by board rule;

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

7 (5) has either:

8 (A) successfully completed one year of graduate
9 medical training approved by the board in the United States or
10 Canada; or

11 (B) graduated from a medical school located
12 outside the United States or Canada and has successfully completed
13 three years of graduate medical training approved by the board in
14 the United States or Canada;

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

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

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

22 Sec. 155.006. ISSUANCE OF INSTITUTIONAL MEDICAL LICENSE.

23 (a) The board may issue and renew a license under this section to a
24 foreign medical graduate who has extensive and verifiable academic
25 or clinical qualifications and achievements and who is recommended
26 and endorsed by the president or dean of an accredited medical
27 school in this state.

1 (b) A license holder under this section may practice as a
2 physician only at the medical school that recommended and endorsed
3 the person under Subsection (a).

4 (c) A license issued under this section expires when the
5 license holder's employment at the medical school ends.

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

8 Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF
9 ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the
10 issuance of a license that limits the license holder to the practice
11 of administrative medicine. The board's rules under this section
12 must include provisions for the issuance and renewal of the
13 license, the fees applicable to the license, continuing education
14 requirements, and the scope of practice of a person who holds the
15 license.

16 (b) An applicant for a license under this section must meet
17 all of the requirements for issuance of a license under Section
18 155.002.

19 (c) A license holder under this section who seeks to
20 practice medicine under a license issued under Section 155.002 must
21 provide proof to the board that the license holder has the clinical
22 competence to practice medicine under that license. The board may
23 require the license holder to pass any examination the board
24 determines necessary.

25 SECTION 1.24. Section 155.056, Occupations Code, is amended
26 to read as follows:

27 Sec. 155.056. REEXAMINATION. (a) An applicant must pass

1 each part of an examination within three attempts [~~, except that an~~
2 ~~applicant who has passed all but one part of an examination within~~
3 ~~three attempts may take the remaining part of the examination one~~
4 ~~additional time]~~.

5 (b) The board shall adopt rules that prescribe how the limit
6 on the number of examination attempts under Subsection (a) shall
7 apply to an applicant who seeks a license as a doctor of osteopathic
8 medicine and who attempts more than one type of examination.

9 [~~Notwithstanding Subsection (a), an applicant is considered to have~~
10 ~~satisfied the requirements of this section if the applicant:~~

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

14 [~~(2) is specialty board certified by a specialty board~~
15 ~~that:~~

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

18 [~~(B) is approved by the American Osteopathic~~
19 ~~Association; and~~

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

22 SECTION 1.25. Section 156.001(a), Occupations Code, is
23 amended to read as follows:

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

1 by rule may adopt a system under which licenses expire on various
2 dates during the year.

3 SECTION 1.26. Section 157.051(2), Occupations Code, is
4 amended to read as follows:

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

11 SECTION 1.27. Section 157.0511, Occupations Code, is
12 amended by adding Subsection (b-1) to read as follows:

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

18 SECTION 1.28. Section 160.006, Occupations Code, is amended
19 by amending Subsections (a) and (c) and adding Subsections (d) and
20 (e) to read as follows:

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

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

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

10 (3) under a court order;

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

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

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

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

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

5 SECTION 1.29. Section 160.010, Occupations Code, is amended
6 by adding Subsection (e) to read as follows:

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

16 SECTION 1.30. Section 162.103, Occupations Code, is amended
17 to read as follows:

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

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

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

26 ~~[(3)]~~ a licensed hospital, including an outpatient
27 facility of the hospital that is located separate from the

1 hospital;

2 (3) [~~4~~] a licensed ambulatory surgical center;

3 (4) [~~5~~] a clinic located on land recognized as
4 tribal land by the federal government and maintained or operated by
5 a federally recognized Indian tribe or tribal organization as
6 listed by the United States secretary of the interior under 25
7 U.S.C. Section 479a-1 or as listed under a successor federal
8 statute or regulation;

9 (5) [~~6~~] a facility maintained or operated by a state
10 or local governmental entity;

11 (6) [~~7~~] a clinic directly maintained or operated by
12 the United States; or

13 (7) [~~8~~] an outpatient setting accredited by:

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

16 (B) the American Association for the
17 Accreditation of Ambulatory Surgery Facilities; or

18 (C) the Accreditation Association for Ambulatory
19 Health Care.

20 SECTION 1.31. Sections 163.003(a) and (f), Occupations
21 Code, are amended to read as follows:

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

24 (1) three physician members who are doctors of
25 medicine (M.D.);

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

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

2 (f) A member of a committee is subject to law and the rules
3 of the board, including Sections 152.004, 152.006, and 152.010, as
4 if the committee member were a member of the board, except that a
5 committee member is not subject to Chapter 572, Government Code.

6 SECTION 1.32. Chapter 163, Occupations Code, is amended by
7 adding Section 163.0045 to read as follows:

8 Sec. 163.0045. ASSISTANCE TO BOARD. The board may request
9 members of a committee to participate in an informal meeting under
10 Section 164.003. A committee member who participates in an
11 informal meeting on a complaint relating to medical competency must
12 have the qualifications of a member of an expert panel under Section
13 154.056(e).

14 SECTION 1.33. Section 164.002, Occupations Code, is amended
15 by adding Subsection (e) to read as follows:

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

19 SECTION 1.34. Subchapter A, Chapter 164, Occupations Code,
20 is amended by adding Section 164.0025 to read as follows:

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

27 (b) A complaint delegated under this section shall be

1 referred for informal proceedings under Section 164.003 if:

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

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

6 (3) the affected physician requests that the complaint
7 be referred for informal proceedings.

8 SECTION 1.35. Section 164.003, Occupations Code, is amended
9 by amending Subsection (b) and adding Subsections (f), (g), and (h)
10 to read as follows:

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

12 (1) an informal meeting in compliance with Section
13 2001.054, Government Code, be scheduled not later than the 180th
14 day after the date the complaint is officially filed as provided by
15 ~~[with the board under]~~ Section 154.057(b) ~~[154.051]~~, unless good
16 cause is shown by the board for scheduling the informal meeting
17 after that date;

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

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

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

26 (5) the board's legal counsel or a representative of
27 the attorney general be present to advise the board or the board's

1 staff; and

2 (6) [~~(5)~~] a member of the board's staff be at the
3 meeting to present to the board's representative the facts the
4 staff reasonably believes it could prove by competent evidence or
5 qualified witnesses at a hearing.

6 (f) The notice required by Subsection (b)(2) must be
7 accompanied by a written statement of the nature of the allegations
8 and the information the board intends to use at the meeting, unless
9 the information is confidential. If the board does not provide the
10 statement or information at that time, the license holder may use
11 that failure as grounds for rescheduling the informal meeting.

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

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

19 SECTION 1.36. Subchapter A, Chapter 164, Occupations Code,
20 is amended by adding Sections 164.0031 and 164.0032 to read as
21 follows:

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

27 (b) Notwithstanding Subsection (a) and Section

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

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

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

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

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

1 affected physician have an opportunity to present information
2 related to the case.

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

9 (e) Unless the affected physician consents to their
10 presence, an employee of the board who participated in the
11 presentation of the allegation or information gathered in the
12 investigation of the complaint, the affected physician, the
13 physician's authorized representative, the complainant, the
14 witnesses, and members of the public may not be present during the
15 deliberations of the panel.

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 SECTION 1.37. Subchapter A, Chapter 164, Occupations Code,
3 is amended by adding Section 164.0036 to read as follows:

4 Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a)
5 The board shall provide notice to all parties to a complaint in
6 which the investigation extends beyond the 180th day after the date
7 the complaint is filed with the board under Section 154.051. The
8 notice must include an explanation of the reason why the
9 investigation has extended beyond that date.

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

17 SECTION 1.38. Section 164.007, Occupations Code, is amended
18 by adding Subsection (a-1) to read as follows:

19 (a-1) The board may change a finding of fact or conclusion
20 of law or vacate or modify an order of the administrative law judge
21 only if the board makes a determination required by Section
22 2001.058(e), Government Code.

23 SECTION 1.39. Subchapter A, Chapter 164, Occupations Code,
24 is amended by adding Section 164.0071 to read as follows:

25 Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a
26 formal hearing described by Section 164.007 in which the sole basis
27 for disciplinary action is the basis described by Section

1 164.051(a)(7), the board shall provide evidence from the board's
2 investigation that shows the basis for the board's findings
3 required by that subdivision.

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

8 (c) A member of a peer review committee is not subject to
9 subpoena and may not be compelled to provide evidence in the formal
10 hearing.

11 SECTION 1.40. Section 164.052(a), Occupations Code, is
12 amended to read as follows:

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

15 (1) submits to the board a false or misleading
16 statement, document, or certificate in an application for a
17 license;

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

20 (3) commits fraud or deception in taking or passing an
21 examination;

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

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

27 (6) uses an advertising statement that is false,

1 misleading, or deceptive;

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

5 (8) purchases, sells, barter, or uses, or offers to
6 purchase, sell, barter, or use, a medical degree, license,
7 certificate, or diploma, or a transcript of a license, certificate,
8 or diploma in or incident to an application to the board for a
9 license to practice medicine;

10 (9) alters, with fraudulent intent, a medical license,
11 certificate, or diploma, or a transcript of a medical license,
12 certificate, or diploma;

13 (10) uses a medical license, certificate, or diploma,
14 or a transcript of a medical license, certificate, or diploma that
15 has been:

16 (A) fraudulently purchased or issued;

17 (B) counterfeited; or

18 (C) materially altered;

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

21 (12) engages in conduct that subverts or attempts to
22 subvert an examination process required by this subtitle for a
23 medical license;

24 (13) impersonates a physician or permits another to
25 use the person's license or certificate to practice medicine in
26 this state;

27 (14) directly or indirectly employs a person whose

1 license to practice medicine has been suspended, canceled, or
2 revoked;

3 (15) associates in the practice of medicine with a
4 person:

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

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

9 (16) performs or procures a criminal abortion, aids or
10 abets in the procuring of a criminal abortion, attempts to perform
11 or procure a criminal abortion, or attempts to aid or abet the
12 performance or procurement of a criminal abortion; ~~[or]~~

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

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

19 SECTION 1.41. 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 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 1.42. 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 must determine whether an individual has
21 committed a standard of care violation described by Subsection
22 (a)(2) before imposing an order under this section.

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

1 SECTION 1.43. Subchapter E, Chapter 164, Occupations Code,
2 is amended by adding Section 164.205 to read as follows:

3 Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL
4 ASSOCIATIONS. The board shall inform a local or statewide private
5 medical association of the association's duties with regard to a
6 rehabilitation order imposed under Section 164.202 if the
7 rehabilitation order imposes duties on the association. The
8 information provided under this section must include specific
9 directions to enable the association to comply with any
10 requirements necessary to assist in the physician's
11 rehabilitation.

12 SECTION 1.44. Subchapter E, Chapter 164, Occupations Code,
13 is amended by adding Section 164.206 to read as follows:

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

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

24 SECTION 1.45. The heading to Subchapter B, Chapter 165,
25 Occupations Code, is amended to read as follows:

26 SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

27 SECTION 1.46. Subchapter B, Chapter 165, Occupations Code,

1 is amended by adding Section 165.052 to read as follows:

2 Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to
3 the board that a person who is not licensed under this subtitle is
4 violating this subtitle, a rule adopted under this subtitle, or
5 another state statute or rule relating to the practice of medicine,
6 the board after notice and opportunity for a hearing may issue a
7 cease and desist order prohibiting the person from engaging in the
8 activity.

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

11 SECTION 1.47. The following laws are repealed:

- 12 (1) Section 152.010(d), Occupations Code; and
13 (2) Sections 157.0542(d)-(h), Occupations Code.

14 SECTION 1.48. Not later than January 1, 2006, the Texas
15 Medical Board shall:

- 16 (1) adopt the policies required by Sections 153.057
17 and 153.058, Occupations Code, as added by this article; and
18 (2) adopt the rules required by Subtitle B, Title 3,
19 Occupations Code, as amended by this article.

20 SECTION 1.49. (a) The changes in law made by Sections
21 152.003, 152.006, and 152.010, Occupations Code, as amended by this
22 article, regarding the prohibitions on or qualifications of members
23 of the Texas Medical Board do not affect the entitlement of a member
24 serving on the board immediately before September 1, 2005, to
25 continue to serve and function as a member of the board for the
26 remainder of the member's term. The changes in law made by those
27 sections apply only to a member appointed on or after September 1,

1 2005.

2 (b) The changes in law made by this article related to the
3 filing, investigation, or disposition of a complaint under Subtitle
4 B, Title 3, Occupations Code, as amended by this article, apply only
5 to a complaint filed with the Texas Medical Board on or after the
6 effective date of this Act. A complaint filed before the effective
7 date of this Act is governed by the law as it existed immediately
8 before that date, and the former law is continued in effect for that
9 purpose.

10 (c) The changes in law made by this article governing the
11 eligibility of a person for a license under Subtitle B, Title 3,
12 Occupations Code, apply only to an application for a license filed
13 on or after the effective date of this Act. A license application
14 filed before the effective date of this Act is governed by the law
15 in effect at the time the application was filed, and the former law
16 is continued in 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 or cease and desist order, applies only to
20 conduct that occurs on or after the effective date of this Act.
21 Conduct that occurs before the effective date of this Act is
22 governed by the law in effect on the date the conduct occurred, and
23 the former law is continued in effect for that purpose.

24 ARTICLE 2. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
25 PHYSICIAN ASSISTANT EXAMINERS

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

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

3 SECTION 2.02. Section 204.052, Occupations Code, is amended
4 to read as follows:

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

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

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

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

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

18 SECTION 2.03. Section 204.053, Occupations Code, is amended
19 to read as follows:

20 Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a)
21 In this section, "Texas trade association" means a cooperative and
22 voluntarily joined statewide association of business or
23 professional competitors in this state designed to assist its
24 members and its industry or profession in dealing with mutual
25 business or profession problems and in promoting their common
26 interest.

27 (b) A person may not be [~~is not eligible for appointment as~~]

1 a public member of the physician assistant board if the person or
2 the person's spouse:

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

5 (2) is employed by or participates in the management
6 of a business entity or other organization regulated by or
7 receiving money from the medical board or physician assistant
8 board;

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

13 (4) uses or receives a substantial amount of tangible
14 goods, services, or money from the medical board or physician
15 assistant board other than compensation or reimbursement
16 authorized by law for physician assistant board membership,
17 attendance, or expenses [~~that provides health care services or that~~
18 ~~sells, manufactures, or distributes health care supplies or~~
19 ~~equipment~~].

20 (c) [~~(b)~~] A person may not be [~~serve as~~] a member of the
21 physician assistant board and may not be a medical board employee in
22 a "bona fide executive, administrative, or professional capacity,"
23 as that phrase is used for purposes of establishing an exemption to
24 the overtime provisions of the federal Fair Labor Standards Act of
25 1938 (29 U.S.C. Section 201 et seq.), if:

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

1 or

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

4 (d) A person may not be a member of the physician assistant
5 board or act as the general counsel to the physician assistant board
6 if the person is required to register as a lobbyist under Chapter
7 305, Government Code, because of the person's activities for
8 compensation on behalf of a profession related to the operation of
9 the medical board or physician assistant board.

10 SECTION 2.04. Section 204.055, Occupations Code, is amended
11 to read as follows:

12 Sec. 204.055. OFFICERS. The governor shall designate a
13 public member of the physician assistant board as the presiding
14 officer of the board to serve in that capacity at the will of the
15 governor. The physician assistant board shall select from its
16 membership a [~~presiding officer and a~~] secretary to serve a
17 one-year term [~~terms~~].

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

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

23 (1) does not have at the time of taking office
24 [~~appointment~~] the qualifications required by Sections 204.052 and
25 204.053 [~~this subchapter for appointment to the board~~];

26 (2) does not maintain during [~~the~~] service on the
27 physician assistant board the qualifications required by Sections

1 204.052 and 204.053 [~~this subchapter for appointment to the board~~];
2 [~~or~~]

3 (3) is ineligible for membership under Section
4 204.053;

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

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

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

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

26 Sec. 204.059. TRAINING. (a) A person who is appointed to
27 and qualifies for office as a member of the physician assistant

1 board may not vote, deliberate, or be counted as a member in
2 attendance at a meeting of the board until the person completes a
3 training program that complies with this section.

4 (b) The training program must provide the person with
5 information regarding:

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

8 (2) the results of the most recent formal audit of the
9 physician assistant board;

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

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

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

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

22 Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN
23 RULEMAKING PROCESS. (a) The physician assistant board shall adopt
24 guidelines to establish procedures for receiving input during the
25 rulemaking process from individuals and groups that have an
26 interest in matters under the board's jurisdiction. The guidelines
27 must provide an opportunity for those individuals and groups to

1 provide input before the physician assistant board submits the rule
2 to the medical board for approval.

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

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

9 Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.
10 The physician assistant board shall adopt rules and guidelines as
11 necessary to comply with Chapter 53.

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

14 Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the
15 advice and approval of the medical board, the physician assistant
16 board shall develop and implement policies that clearly separate
17 the policy-making responsibilities of the physician assistant
18 board and the management responsibilities of the executive director
19 and the staff of the medical board.

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

22 Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice
23 and approval of the medical board, the physician assistant board
24 shall develop and implement policies that provide the public with a
25 reasonable opportunity to appear before the physician assistant
26 board and to speak on any issue under the jurisdiction of the
27 physician assistant board.

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

3 Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician
4 assistant board shall maintain a system to promptly and efficiently
5 act on complaints filed with the physician assistant board. The
6 board shall maintain:

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

9 (2) a summary of the results of the review or
10 investigation of the complaint; and

11 (3) information about the disposition of the
12 complaint.

13 (b) The physician assistant board shall make information
14 available describing its procedures for complaint investigation
15 and resolution.

16 (c) The physician assistant board shall periodically notify
17 the parties of the status of the complaint until final disposition
18 of the complaint.

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

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

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

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

7 (1) negotiated rulemaking procedures under Chapter
8 2008, Government Code, for the adoption of physician assistant
9 board rules; and

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

14 (b) The physician assistant board's procedures relating to
15 alternative dispute resolution must conform, to the extent
16 possible, to any model guidelines issued by the State Office of
17 Administrative Hearings for the use of alternative dispute
18 resolution by state agencies.

19 (c) The physician assistant board shall designate a trained
20 person to:

21 (1) coordinate the implementation of the policy
22 adopted under Subsection (a);

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

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

1 SECTION 2.14. Section 204.152, Occupations Code, is amended
2 to read as follows:

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

5 (1) meets the eligibility requirements of Section
6 204.153;

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

9 (3) pays the required application fee;

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

12 (5) submits to the board any other information the
13 board considers necessary to evaluate the applicant's
14 qualifications.

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

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

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

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

5 (2) pass the Physician Assistant National Certifying
6 Examination administered by the National Commission on
7 Certification of Physician Assistants;

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

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

11 (5) meet any other requirement established by board
12 rule; and

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

15 (a-1) The jurisprudence examination shall be conducted on
16 the licensing requirements and other laws, rules, or regulations
17 applicable to the physician assistant profession in this state.
18 The physician assistant board shall establish rules for the
19 jurisprudence examination under Subsection (a)(6) regarding:

20 (1) the development of the examination;

21 (2) applicable fees;

22 (3) administration of the examination;

23 (4) reexamination procedures;

24 (5) grading procedures; and

25 (6) notice of results.

26 SECTION 2.16. Section 204.156, Occupations Code, is amended
27 to read as follows:

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

- 4 (1) paying the required renewal fee;
5 (2) submitting the appropriate form; and
6 (3) meeting any other requirement established by board
7 rule.

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

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

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

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

24 (f) A person who was licensed in this state, moved to
25 another state, and is currently licensed and has been in practice in
26 the other state for the two years preceding the date of the
27 application may obtain a new license without reexamination. The

1 person must pay to the physician assistant board a fee that is equal
2 to two times the normally required renewal fee for the license.

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

5 Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

6 (a) The physician assistant board by rule shall adopt, monitor, and
7 enforce a reporting program for the continuing medical education of
8 license holders. The physician assistant board shall adopt and
9 administer rules that:

10 (1) establish the number of hours of continuing
11 medical education the physician assistant board determines
12 appropriate as a prerequisite to the renewal of a license under this
13 chapter;

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

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

19 (b) The physician assistant board may require that a
20 specified number of continuing medical education hours be completed
21 informally, including through self-study and self-directed
22 education.

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

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

- 1 (1) applying to the physician assistant board; [~~and~~]
2 (2) satisfying the requirements of Section 204.156;
3 and
4 (3) paying the fee established by the physician
5 assistant board for returning a license to active status.

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

9 SECTION 2.19. Subchapter G, Chapter 204, Occupations Code,
10 is amended by adding Section 204.3011 to read as follows:

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

18 (b) A complaint delegated under this section shall be
19 referred for informal proceedings under Section 204.312 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 assistant requests that the
25 complaint be referred for informal proceedings.

26 SECTION 2.20. Subchapter G, Chapter 204, Occupations Code,
27 is amended by adding Section 204.3045 to read as follows:

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

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

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

23 SECTION 2.21. Section 204.305, Occupations Code, is amended
24 to read as follows:

25 Sec. 204.305. REHABILITATION ORDER. (a) The physician
26 assistant board, through an agreed order or after a contested
27 proceeding, may impose a rehabilitation order on an applicant, as a

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

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

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

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

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

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

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

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

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

24 (c) The physician assistant board may not issue an order
25 under this section if, before the individual signs the proposed
26 order, the physician assistant board receives a valid complaint
27 with regard to the individual based on the individual's intemperate

1 use of drugs or alcohol in a manner affecting the standard of care.

2 SECTION 2.22. Subchapter G, Chapter 204, Occupations Code,
3 is amended by adding Section 204.3075 to read as follows:

4 Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

5 The physician assistant board shall inform an association of
6 physician assistants of the association's duties with regard to a
7 rehabilitation order imposed under Section 204.305 if the
8 rehabilitation order imposes duties on the association. The
9 information provided under this section must include specific
10 directions to enable the association to comply with any
11 requirements necessary to assist in the physician assistant's
12 rehabilitation.

13 SECTION 2.23. Subchapter G, Chapter 204, Occupations Code,
14 is amended by adding Section 204.312 to read as follows:

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

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

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

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

22 (1) an informal meeting in compliance with Section
23 2001.054, Government Code, be scheduled not later than the 180th
24 day after the date the complaint is filed with the physician
25 assistant board, unless good cause is shown by the physician
26 assistant board for scheduling the informal meeting after that
27 date;

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

4 (3) the complainant and the license holder be provided
5 an opportunity to be heard;

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

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

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

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

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

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

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

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

6 SECTION 2.24. Subchapter G, Chapter 204, Occupations Code,
7 is amended by adding Section 204.313 to read as follows:

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

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

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

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

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

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

1 SECTION 2.25. Subchapter G, Chapter 204, Occupations Code,
2 is amended by adding Sections 204.314 and 204.3145 to read as
3 follows:

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

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

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

26 (d) The panel and medical board employees shall provide an
27 opportunity for the affected physician assistant and the physician

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

6 (e) Unless the affected physician assistant consents to
7 their presence, an employee of the medical board who participated
8 in the presentation of the allegation or information gathered in
9 the investigation of the complaint, the affected physician
10 assistant, the physician assistant's authorized representative,
11 the complainant, the witnesses, and members of the public may not be
12 present during the deliberations of the panel.

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

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

27 Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The

1 physician assistant board shall prohibit or limit access to an
2 investigation file relating to a license holder in an informal
3 proceeding in the manner provided by Section 164.007(c).

4 SECTION 2.26. Subchapter G, Chapter 204, Occupations Code,
5 is amended by adding Section 204.315 to read as follows:

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

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

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

15 SECTION 2.27. Subchapter G, Chapter 204, Occupations Code,
16 is amended by adding Section 204.316 to read as follows:

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

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

1 SECTION 2.28. Subchapter G, Chapter 204, Occupations Code,
2 is amended by adding Section 204.317 to read as follows:

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

9 SECTION 2.29. The heading to Subchapter H, Chapter 204,
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

12 SECTION 2.30. Subchapter H, Chapter 204, Occupations Code,
13 is amending by adding Section 204.353 to read as follows:

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

21 (b) A violation of an order under this section constitutes
22 grounds for imposing an administrative penalty under this
23 subchapter.

24 SECTION 2.31. Section 204.004, Occupations Code, is
25 repealed.

26 SECTION 2.32. (a) Not later than January 1, 2006, the Texas
27 State Board of Physician Assistant Examiners shall:

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

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

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

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

13 SECTION 2.33. (a) The changes in law made by Sections
14 204.053, 204.056, and 204.059, Occupations Code, as amended by this
15 article, regarding the prohibitions on or qualifications of members
16 of the Texas State Board of Physician Assistant Examiners do not
17 affect the entitlement of a member serving on the board immediately
18 before September 1, 2005, to continue to serve and function as a
19 member of the board for the remainder of the member's term. The
20 changes in law made by those sections apply only to a member
21 appointed on or after September 1, 2005.

22 (b) The changes in law made by this article related to the
23 filing, investigation, or resolution of a complaint under Chapter
24 204, Occupations Code, as amended by this article, apply only to a
25 complaint filed with the Texas State Board of Physician Assistant
26 Examiners on or after the effective date of this Act. A complaint
27 filed before the effective date of this Act is governed by the law

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

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

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

20 ARTICLE 3. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
21 ACUPUNCTURE EXAMINERS

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

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

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

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

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

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

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

11 (2) two physician members experienced in the practice
12 of acupuncture; and

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

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

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

23 (c) A person [~~who is the spouse of an officer, board member,~~
24 ~~manager, or paid consultant of a Texas trade association in the~~
25 ~~field of health care~~] may not be a member of the acupuncture board
26 and may not be a an employee of the medical board employee in a
27 "bona fide executive, administrative, or professional capacity,"

1 as that phrase is used for purposes of establishing an exemption to
2 the overtime provisions of the federal Fair Labor Standards Act of
3 1938 (29 U.S.C. Section 201 et seq.), if:

4 (1) the person is an officer, employee, or paid
5 consultant of a Texas trade association in the field of health care;
6 or

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

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

19 SECTION 3.04. Section 205.055, Occupations Code, is amended
20 to read as follows:

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

25 SECTION 3.05. Section 205.057, Occupations Code, is
26 amended to read as follows:

27 Sec. 205.057. TRAINING. (a) A ~~[To be eligible to take~~

1 ~~office as a member of the acupuncture board, a]~~ person who is
2 appointed to and qualifies for office as a member of the acupuncture
3 board may not vote, deliberate, or be counted as a member in
4 attendance at a meeting of the acupuncture board until the person
5 completes [~~must complete at least one course of~~] a training program
6 that complies with this section.

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

9 (1) this chapter [~~and the acupuncture board~~];
10 (2) the programs operated by the acupuncture board;
11 (3) the role and functions of the acupuncture board;
12 (4) the rules of the acupuncture board[~~, with an~~
13 ~~emphasis on the rules that relate to disciplinary and investigatory~~
14 ~~authority~~];

15 (5) the current budget for the acupuncture board;
16 (6) the results of the most recent formal audit of the
17 acupuncture board;

18 (7) the requirements of laws relating to open
19 meetings, public information, administrative procedure, and
20 conflicts of interest [~~the:~~

21 [~~(A) open meetings law, Chapter 551, Government~~
22 ~~Code,~~

23 [~~(B) open records law, Chapter 552, Government~~
24 ~~Code, and~~

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

27 (8) [~~the requirements of the conflict of interest laws~~

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

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

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

11 SECTION 3.06. Section 205.101, Occupations Code, is amended
12 to read as follows:

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

16 (1) establish qualifications for an acupuncturist to
17 practice in this state;

18 (2) establish minimum education and training
19 requirements necessary for the acupuncture board to recommend that
20 the medical board issue a license to practice acupuncture;

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

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

26 (5) prescribe the application form for a license to
27 practice acupuncture;

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

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

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

9 (b) The acupuncture board does not have independent
10 rulemaking authority. A rule adopted by the acupuncture board is
11 subject to medical board approval.

12 (c) The acupuncture board shall:

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

15 (2) issue each license; and

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

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

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

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

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

7 Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL
8 CONVICTION. The acupuncture board shall adopt rules and guidelines
9 as necessary to comply with Chapter 53.

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

12 Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and
13 approval of the medical board, the acupuncture board shall
14 implement a policy requiring the acupuncture board to use
15 appropriate technological solutions to improve the acupuncture
16 board's ability to perform its functions. The policy must ensure
17 that the public is able to interact with the acupuncture board on
18 the Internet.

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

21 Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE
22 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
23 of the medical board, the acupuncture board shall develop and
24 implement a policy to encourage the use of:

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

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

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

10 (c) The acupuncture board shall designate a trained person
11 to:

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

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

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

19 SECTION 3.11. Section 205.201, Occupations Code, is amended
20 to read as follows:

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

25 SECTION 3.12. Section 205.202, Occupations Code, is amended
26 to read as follows:

27 Sec. 205.202. ISSUANCE OF LICENSE. (a) The ~~[After~~

1 ~~consulting the~~ acupuncture board[, ~~the medical board~~] shall issue
2 a license to practice acupuncture in this state to a person who
3 meets the requirements of this chapter and the rules adopted under
4 this chapter.

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

12 SECTION 3.13. Section 205.203, Occupations Code, is amended
13 by amending Subsections (a) and (c) and adding Subsections (c-1)
14 and (f) to read as follows:

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

18 (c) The acupuncture examination shall be conducted on
19 practical and theoretical acupuncture and other subjects required
20 by the acupuncture board.

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

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

27 (1) the development of the examination;

- 1 (2) applicable fees;
- 2 (3) administration of the examination;
- 3 (4) reexamination procedures;
- 4 (5) grading procedures; and
- 5 (6) notice of results.

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

8 (c) In addition to the other requirements of this section,
9 an acupuncture school or degree program is subject to approval by
10 the Texas Higher Education Coordinating Board unless the school or
11 program qualifies for an exemption under Section 61.303, Education
12 Code.

13 SECTION 3.15. 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 3.16. 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 3.17. 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 3.18. 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 3.19. 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 health condition to the most appropriate
23 medical specialist. The acupuncture board may not require an
24 acupuncturist or applicant to submit to an examination by a
25 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 3.20. 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 officially filed, unless good
20 cause is shown by the acupuncture board for scheduling the informal
21 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 board's staff; and

6 (6) an employee of the medical board be at the meeting
7 to present to the board's representative the facts the board staff
8 reasonably believes it could prove by competent evidence or
9 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 board shall
23 schedule the informal meeting as soon as practicable but not later
24 than the deadline prescribed by Subsection (b)(1).

25 SECTION 3.21. 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 3.22. 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 board
27 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.

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

23 (e) Unless the affected acupuncturist consents to their
24 presence, an employee of the medical board who participated in the
25 presentation of the allegation or information gathered in the
26 investigation of the complaint, the affected acupuncturist, the
27 acupuncturist's authorized representative, the complainant, the

1 witnesses, and members of the public may not be present during the
2 deliberations of the panel.

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

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

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

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

23 SECTION 3.24. Section 205.356, Occupations Code, is amended
24 to read as follows:

25 Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture
26 board, through an agreed order or after a contested proceeding, may
27 impose a nondisciplinary rehabilitation order on an applicant, as a

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

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

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

9 (A) reported the use; [~~and~~]

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

12 (C) did not violate the standard of care as a
13 result of the impairment;

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

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

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

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

1 manner affecting the standard of care.

2 SECTION 3.25. Subchapter H, Chapter 205, Occupations Code,
3 is amended by adding Section 205.3561 to read as follows:

4 Sec. 205.3561. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

5 The acupuncture board shall inform a local or statewide private
6 acupuncture association of the association's duties with regard to
7 a rehabilitation order imposed under Section 205.356 if the
8 rehabilitation order imposes duties on the association. The
9 information provided under this section must include specific
10 directions to enable the association to comply with any
11 requirements necessary to assist in the acupuncturist's
12 rehabilitation.

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

15 Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT

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

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

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

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

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

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

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

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

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

18 (1) institution of proceedings for a hearing before
19 the acupuncture board is initiated simultaneously with the
20 temporary suspension; and

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

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

27 SECTION 3.28. Subchapter H, Chapter 205, Occupations Code,

1 is amended by adding Section 205.362 to read as follows:

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

9 (b) A violation of an order under this section constitutes
10 grounds for imposing an administrative penalty under Section
11 205.352.

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

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

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

23 SECTION 3.30. Subchapter H, Chapter 205, Occupations Code,
24 is amended by adding Section 205.364 to read as follows:

25 Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY
26 ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a
27 finding of fact or conclusion of law or vacate or modify an order of

1 an administrative law judge only if the acupuncture board makes a
2 determination required by Section 2001.058(e), Government Code.

3 SECTION 3.31. Sections 205.402(a) and (d), Occupations
4 Code, are amended to read as follows:

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

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

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

14 SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

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

17 SUBCHAPTER J. ADMINISTRATIVE PENALTIES

18 Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
19 acupuncture board by order may impose an administrative penalty
20 against a person licensed or regulated under this chapter who
21 violates this chapter or a rule or order adopted under this chapter.

22 Sec. 205.452. PROCEDURE. (a) The acupuncture board by rule
23 shall prescribe the procedure by which it may impose an
24 administrative penalty.

25 (b) A proceeding under this subchapter is subject to Chapter
26 2001, Government Code.

27 Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an

1 administrative penalty may not exceed \$5,000 for each violation.
2 Each day a violation continues or occurs is a separate violation for
3 purposes of imposing a penalty.

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

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

6 (A) the nature, circumstances, extent, and
7 gravity of any prohibited act; and

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

10 (2) the economic harm to property or the environment
11 caused by the violation;

12 (3) the history of previous violations;

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

14 (5) efforts to correct the violation; and

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

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

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

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

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

26 (1) pay the penalty;

27 (2) pay the penalty and file a petition for judicial

1 review contesting the occurrence of the violation, the amount of
2 the penalty, or both; or

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

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

8 (1) stay enforcement of the penalty by:

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

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

15 (2) request the court to stay enforcement of the
16 penalty by:

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

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

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

26 (d) The court shall hold a hearing on the facts alleged in
27 the affidavit as soon as practicable and shall stay the enforcement

1 of the penalty on finding that the alleged facts are true. The
2 person who files an affidavit has the burden of proving that the
3 person is financially unable to pay the penalty and to give a
4 supersedeas bond.

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

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

14 (b) If the court does not sustain the determination that a
15 violation occurred, the court shall order that a penalty is not
16 owed.

17 Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If
18 after judicial review the administrative penalty is reduced or not
19 imposed by the court, the court shall, after the judgment becomes
20 final:

21 (1) order that the appropriate amount, plus accrued
22 interest, be remitted to the person if the person paid the penalty;
23 or

24 (2) order the release of the bond in full if the
25 penalty is not imposed or order the release of the bond after the
26 person pays the penalty imposed if the person posted a supersedeas
27 bond.

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

6 SECTION 3.34. Sections 205.002 and 205.353, Occupations
7 Code, are repealed.

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

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

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

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

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

22 SECTION 3.36. (a) The changes in law made by Sections
23 205.053 and 205.057, Occupations Code, as amended by this article,
24 regarding the prohibitions on or qualifications of members of the
25 Texas State Board of Acupuncture Examiners do not affect the
26 entitlement of a member serving on the board immediately before
27 September 1, 2005, to continue to serve and function as a member of

1 the board for the remainder of the member's term. The changes in
2 law made by those sections apply only to a member appointed on or
3 after September 1, 2005.

4 (b) The changes in law made by this article related to the
5 filing, investigation, or resolution of a complaint under Chapter
6 205, Occupations Code, as amended by this article, apply only to a
7 complaint filed with the Texas State Board of Acupuncture Examiners
8 on or after the effective date of this Act. A complaint filed
9 before the effective date of this Act is governed by the law as it
10 existed immediately before that date, and the former law is
11 continued in effect for that purpose.

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

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

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

3 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

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

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

8 SECTION 4.02. Section 206.209, Occupations Code, is amended
9 to read as follows:

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

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

21 SECTION 4.03. Section 206.305, Occupations Code, is amended
22 to read as follows:

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

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

1 directly resulting from habituation or addiction caused by medical
2 care or treatment provided by a physician;

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

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

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

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

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

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

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

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

27 SECTION 4.04. Subchapter G, Chapter 206, Occupations Code,

1 is amended by adding Section 206.3075 to read as follows:

2 Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.
3 The medical board shall inform an association of surgical
4 assistants of the association's duties with regard to a
5 rehabilitation order imposed under Section 206.305 if the
6 rehabilitation order imposes duties on the association. The
7 information provided under this section must include specific
8 directions to enable the association to comply with any
9 requirements necessary to assist in the surgical assistant's
10 rehabilitation.

11 SECTION 4.05. Subchapter G, Chapter 206, Occupations Code,
12 is amended by adding Sections 206.313-206.315 to read as follows:

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

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

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

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

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

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

1 (3) the complainant and the license holder be provided
2 an opportunity to be heard;

3 (4) at least one of the medical board members
4 participating in the informal meeting as a panelist be a member who
5 represents the public;

6 (5) the medical board's legal counsel or a
7 representative of the attorney general be present to advise the
8 medical board or the board's staff; and

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

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

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

16 (2) present the facts the surgical assistant
17 reasonably believes the surgical assistant could prove by competent
18 evidence or qualified witnesses at a hearing.

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

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

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

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

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

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

1 (e) Unless the affected surgical assistant consents to
2 their presence, an employee of the medical board who participated
3 in the presentation of the allegation or information gathered in
4 the investigation of the complaint, the affected surgical
5 assistant, the surgical assistant's authorized representative, the
6 complainant, the witnesses, and members of the public may not be
7 present during the deliberations of the panel.

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

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

22 Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL
23 PROCEEDINGS. (a) In an informal proceeding under Section 206.313,
24 at least two panelists shall be appointed to determine whether an
25 informal disposition is appropriate. At least one of the panelists
26 must be a physician.

27 (b) The medical board may request members of a committee

1 under Chapter 163 to participate in an informal meeting under
2 Section 206.313. At least one of the committee members who
3 participates in an informal meeting as described by Subsection (a)
4 must be a public member.

5 (c) Notwithstanding Subsection (a) and Section
6 206.313(b)(4), an informal proceeding may be conducted by one
7 panelist if the affected surgical assistant waives the requirement
8 that at least two panelists conduct the informal proceeding. If the
9 surgical assistant waives that requirement, the panelist may be
10 either a physician or a member who represents the public.

11 SECTION 4.06. The changes in law made by this article
12 related to the filing, investigation, or disposition of a complaint
13 under Chapter 206, Occupations Code, as amended by this article,
14 apply only to a complaint filed with the Texas Medical Board on or
15 after the effective date of this Act. A complaint filed before the
16 effective date of this Act is governed by the law as it existed
17 immediately before that date, and the former law is continued in
18 effect for that purpose.

19 ARTICLE 5. EFFECTIVE DATE

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