

1-1 By: Nelson S.B. No. 419
1-2 (In the Senate - Filed March 3, 2005; March 10, 2005, read
1-3 first time and referred to Committee on Government Organization;
1-4 April 18, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 18, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 419 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas State Board
1-11 of Medical Examiners, Texas State Board of Physician Assistant
1-12 Examiners, and Texas State Board of Acupuncture Examiners and the
1-13 regulation of health care professions regulated by those state
1-14 agencies; providing administrative penalties.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 ARTICLE 1. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
1-17 MEDICAL EXAMINERS

1-18 SECTION 1.01. Subdivision (1), Subsection (a), Section
1-19 151.002, Occupations Code, is amended to read as follows:

1-20 (1) "Board" means the Texas Medical [~~State~~] Board [~~of~~
1-21 ~~Medical Examiners~~].

1-22 SECTION 1.02. Section 151.004, Occupations Code, is amended
1-23 to read as follows:

1-24 Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical
1-25 [~~State~~] Board [~~of Medical Examiners~~] is subject to Chapter 325,
1-26 Government Code (Texas Sunset Act). Unless continued in existence
1-27 as provided by that chapter, the board is abolished and this
1-28 subtitle and Chapters 204, 205, and 206 expire [~~expires~~] September
1-29 1, 2017 [~~2005~~].

1-30 SECTION 1.03. Section 152.001, Occupations Code, is amended
1-31 to read as follows:

1-32 Sec. 152.001. TEXAS MEDICAL [~~STATE~~] BOARD [~~OF MEDICAL~~
1-33 ~~EXAMINERS~~]. (a) The Texas Medical [~~State~~] Board [~~of Medical~~
1-34 ~~Examiners~~] is an agency of the executive branch of state government
1-35 with the power to regulate the practice of medicine.

1-36 (b) A reference in any other law to the former Texas State
1-37 Board of Medical Examiners means the Texas Medical Board.

1-38 SECTION 1.04. Subsection (b), Section 152.003, Occupations
1-39 Code, is amended to read as follows:

1-40 (b) A person may not be a public member of the board if the
1-41 person or the person's spouse [~~may not be~~]:

1-42 (1) is registered, certified, or licensed by a
1-43 regulatory agency in the field of health care [~~licensed to practice~~
1-44 ~~medicine~~];

1-45 (2) is employed by or participates in the management
1-46 of a business entity or other [~~financially involved in any~~]
1-47 organization regulated by or receiving money from [~~subject to~~
1-48 ~~regulation by~~] the board; [~~or~~]

1-49 (3) owns or controls, directly or indirectly, more
1-50 than a 10 percent interest in a business entity or other
1-51 organization regulated by or receiving money from the board;

1-52 (4) uses or receives a substantial amount of tangible
1-53 goods, services, or money from the board other than compensation or
1-54 reimbursement authorized by law for board membership, attendance,
1-55 or expenses; or

1-56 (5) is a provider of health care.

1-57 SECTION 1.05. Subsections (a) through (e), Section 152.004,
1-58 Occupations Code, are amended to read as follows:

1-59 (a) In this section, "Texas trade [~~or professional~~]
1-60 association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily
1-61 joined association of business or professional competitors in this
1-62 state designed to assist its members and its industry or profession
1-63 in dealing with mutual business or professional problems and in

2-1 promoting their common interest.

2-2 (b) A person is ineligible for appointment to the board if,
2-3 at the time of appointment, the person is younger than 18 years of
2-4 age or is a stockholder[~~, paid full-time faculty member,~~] or a
2-5 member of the board of trustees of a medical school.

2-6 (c) A person may not be a member of the board and may not be a
2-7 board employee in a "bona fide executive, administrative, or
2-8 professional capacity," as that phrase is used for purposes of
2-9 establishing an exemption to the overtime provisions of the federal
2-10 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
2-11 if:

2-12 (1) the person is an [~~serving as the president, vice~~
2-13 ~~president, secretary, or treasurer of a statewide or national~~
2-14 ~~organization incorporated to represent the entire profession~~
2-15 ~~licensed to practice medicine in this state or the United States,~~
2-16 ~~including an organization representing the practice of osteopathic~~
2-17 ~~medicine, or is an employee of such an organization.~~

2-18 [~~(d) An~~] officer, employee, or paid consultant of a Texas
2-19 trade [~~or professional~~] association in the field of health care or a
2-20 national organization incorporated to represent the entire
2-21 profession licensed to practice medicine in this state or the
2-22 United States, including an organization representing the practice
2-23 of osteopathic medicine; or

2-24 (2) the person's [~~may not be a board member or employee~~
2-25 ~~who is exempt from the state's position classification plan or is~~
2-26 ~~compensated at or above the amount prescribed by the General~~
2-27 ~~Appropriations Act for step 1, salary group A17, of the position~~
2-28 ~~classification salary schedule.~~

2-29 [~~(e) A person who is the~~] spouse is [~~of~~] an officer,
2-30 manager, or paid consultant of a Texas trade [~~or professional~~]
2-31 association in the field of health care [~~may not be a board member~~
2-32 ~~or employee who is exempt from the state's position classification~~
2-33 ~~plan or is compensated at or above the amount prescribed by the~~
2-34 ~~General Appropriations Act for step 1, salary group A17, of the~~
2-35 ~~position classification salary schedule].~~

2-36 SECTION 1.06. Subchapter A, Chapter 152, Occupations Code,
2-37 is amended by adding Section 152.0041 to read as follows:

2-38 Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board
2-39 member who is a physician or a physician acting as an agent of the
2-40 board, including a member of an expert physician panel appointed
2-41 under Section 154.056(e), may not use information to which the
2-42 person has access solely by virtue of the person's position as a
2-43 member or agent of the board for the benefit of the person's
2-44 practice or for the benefit of another physician or person
2-45 affiliated with the physician.

2-46 SECTION 1.07. Subsections (a) and (c), Section 152.006,
2-47 Occupations Code, are amended to read as follows:

2-48 (a) It is a ground for removal from the board that a member:
2-49 (1) does not have at the time of taking office
2-50 [~~appointment~~] the qualifications required by Section 152.002;

2-51 (2) does not maintain during service on the board the
2-52 qualifications required by Section 152.002;

2-53 (3) is ineligible for membership under Sections
2-54 152.003 and [~~violates a prohibition established by Section~~]
2-55 152.004;

2-56 (4) cannot, because of illness or disability,
2-57 discharge the member's duties for a substantial part of the member's
2-58 term; or

2-59 (5) is absent from more than half of the regularly
2-60 scheduled board meetings that the member is eligible to attend
2-61 during a calendar year without an excuse approved by a majority vote
2-62 of the board.

2-63 (c) If the executive director has knowledge that a potential
2-64 ground for removal exists, the executive director shall notify the
2-65 president of the board of the potential ground. The president shall
2-66 then notify the governor and the attorney general that a potential
2-67 ground for removal exists. If the potential ground for removal
2-68 involves the president of the board, the executive director shall
2-69 notify the next highest ranking officer of the board, who shall then

3-1 notify the governor and the attorney general that a potential
 3-2 ground for removal exists.

3-3 SECTION 1.08. Section 152.008, Occupations Code, is amended
 3-4 to read as follows:

3-5 Sec. 152.008. OFFICERS. Not later than December after each
 3-6 regular session of the legislature, the governor shall appoint from
 3-7 the members of the board a president, to serve in that capacity at
 3-8 the pleasure of the governor, and the board shall elect from its
 3-9 members a vice president, secretary-treasurer, and other officers
 3-10 as are required, in the board's opinion, to carry out the board's
 3-11 duties.

3-12 SECTION 1.09. Subsections (a), (b), and (c), Section
 3-13 152.010, Occupations Code, are amended to read as follows:

3-14 (a) A person who is appointed to and qualifies for office as
 3-15 a member of the board may not vote, deliberate, or be counted as a
 3-16 member in attendance at a meeting of the board until the person
 3-17 completes [~~Before a board member may assume the member's duties and~~
 3-18 ~~before the member may be confirmed by the senate, the member must~~
 3-19 ~~complete at least one course of]~~ a training program that complies
 3-20 with [~~established by the board under~~] this section.

3-21 (b) The training program must ~~[shall]~~ provide the person
 3-22 with information [~~to a participant~~] regarding:

- 3-23 (1) this subtitle;
- 3-24 (2) the programs operated by the board;
- 3-25 (3) the role and functions of the board;
- 3-26 (4) the rules of the board, with an emphasis on the
 3-27 rules that relate to disciplinary and investigatory authority;
- 3-28 (5) the current budget for the board;
- 3-29 (6) the results of the most recent formal audit of the
 3-30 board;

3-31 (7) the requirements of laws relating to open
 3-32 meetings, public information, administrative procedure, and
 3-33 conflicts of interest [~~Chapters 551, 552, 2001, and 2002,~~
 3-34 ~~Government Code]; and~~

3-35 (8) [~~The requirements of the conflict of interest laws~~
 3-36 ~~and other laws relating to public officials; and~~
 3-37 [~~9~~] any applicable ethics policies adopted by the
 3-38 board or the Texas Ethics Commission.

3-39 (c) A person appointed to the board is entitled to
 3-40 reimbursement, as provided by the General Appropriations Act, for
 3-41 the travel expenses incurred in attending the training program
 3-42 regardless of whether the attendance at the program occurs before
 3-43 or after the person qualifies for office [~~In developing the~~
 3-44 ~~training program, the board shall consult with the governor, the~~
 3-45 ~~attorney general, and the Texas Ethics Commission].~~

3-46 SECTION 1.10. Section 152.056, Occupations Code, is amended
 3-47 to read as follows:

3-48 Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board
 3-49 shall develop and implement policies that clearly separate [~~define~~]
 3-50 the policy-making [~~respective~~] responsibilities of the board and
 3-51 the management responsibilities of the executive director and the
 3-52 staff of the board.

3-53 SECTION 1.11. Subchapter A, Chapter 153, Occupations Code,
 3-54 is amended by adding Section 153.0015 to read as follows:

3-55 Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The
 3-56 board shall adopt guidelines to establish procedures for receiving
 3-57 input during the rulemaking process from individuals and groups
 3-58 that have an interest in matters under the board's jurisdiction.
 3-59 The guidelines must provide an opportunity for those individuals
 3-60 and groups to provide input before the board provides notice of the
 3-61 proposed rule under Section 2001.023, Government Code.

3-62 (b) In implementing the guidelines adopted under this
 3-63 section, the board shall exercise its judgment in determining which
 3-64 rules require input as described by Subsection (a).

3-65 (c) The guidelines adopted under this section shall also
 3-66 include procedures for the board to receive comments on rules
 3-67 recommended by the acupuncture board and physician assistant board
 3-68 for adoption by the board.

3-69 SECTION 1.12. Subchapter A, Chapter 153, Occupations Code,

is amended by adding Section 153.0045 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the parties to the complaint;

(2) the subject matter of the complaint;

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

(4) the disposition of the complaint [each potential witness contacted in relation to the complaint,

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

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

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

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

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

5-1 (c) The board shall periodically [If a written complaint is
 5-2 filed with the board that the board has authority to resolve, the
 5-3 board, at least as frequently as quarterly and until final
 5-4 disposition of the complaint, shall] notify the parties to the
 5-5 complaint of the status of the complaint until final disposition
 5-6 unless the notice would jeopardize an investigation.

5-7 SECTION 1.17. Subsection (e), Section 154.056, Occupations
 5-8 Code, is amended to read as follows:

5-9 (e) The board by rule shall provide for an expert physician
 5-10 panel appointed by the board to assist with complaints and
 5-11 investigations relating to medical competency by acting as expert
 5-12 physician reviewers. Each member of an expert physician panel must
 5-13 be licensed to practice medicine in this state. The rules adopted
 5-14 under this subsection must include provisions governing the
 5-15 composition of the panel, qualifications for membership on the
 5-16 panel, length of time a member may serve on a panel, grounds for
 5-17 removal from a panel, the avoidance of conflicts of interest, and
 5-18 the duties to be performed by the panel. The board's rules
 5-19 governing grounds for removal from a panel must include providing
 5-20 for the removal of a panel member who is repeatedly delinquent in
 5-21 reviewing complaints and in submitting reports to the board. The
 5-22 board's rules governing appointment of expert physician panel
 5-23 members to act as expert physician reviewers must include a
 5-24 requirement that the board randomly select, to the extent permitted
 5-25 by the conflict of interest provisions adopted under this
 5-26 subsection, panel members to review a complaint.

5-27 SECTION 1.18. Subchapter B, Chapter 154, Occupations Code,
 5-28 is amended by adding Section 154.0561 to read as follows:

5-29 Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW.
 5-30 (a) A physician on an expert physician panel authorized by Section
 5-31 154.056(e) who is selected to review a complaint shall:

5-32 (1) determine whether the physician who is the subject
 5-33 of the complaint has violated the standard of care applicable to the
 5-34 circumstances; and

5-35 (2) issue a preliminary written report of that
 5-36 determination.

5-37 (b) A second expert physician reviewer shall review the
 5-38 first physician's preliminary report and other information
 5-39 associated with the complaint. If the second expert physician
 5-40 agrees with the first expert physician, the first physician shall
 5-41 issue a final written report on the matter.

5-42 (c) If the second expert physician does not agree with the
 5-43 conclusions of the first expert physician, a third expert physician
 5-44 reviewer shall review the preliminary report and information and
 5-45 decide between the conclusions reached by the first two expert
 5-46 physicians. The final written report shall be made by the third
 5-47 physician or the physician with whom the third physician concurs.

5-48 SECTION 1.19. Subsection (b), Section 154.057, Occupations
 5-49 Code, is amended to read as follows:

5-50 (b) The board shall complete [make] a preliminary
 5-51 investigation of the complaint not later than the 30th day after the
 5-52 date of receiving the complaint. The board shall first determine
 5-53 whether the physician constitutes a continuing threat to the public
 5-54 welfare. On completion of the preliminary investigation, the board
 5-55 shall determine whether to officially proceed on the complaint. If
 5-56 the board fails to complete the preliminary investigation in the
 5-57 time required by this subsection, the board's official
 5-58 investigation of the complaint is considered to commence on that
 5-59 date.

5-60 SECTION 1.20. Section 155.002, Occupations Code, is amended
 5-61 to read as follows:

5-62 Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its
 5-63 sole discretion, may issue a license to practice medicine to a
 5-64 person who:

5-65 (1) submits to the board a license application as
 5-66 required by this chapter;

5-67 (2) presents satisfactory proof that the person meets
 5-68 the eligibility requirements established by this chapter; and

5-69 (3) satisfies the examination requirements of Section

6-1 155.051.

6-2 (b) The board may delegate authority to board employees to
 6-3 issue licenses under this subtitle to applicants who clearly meet
 6-4 all licensing requirements. If the board employees determine that
 6-5 the applicant does not clearly meet all licensing requirements, the
 6-6 application shall be returned to the board. A license issued under
 6-7 this subsection does not require formal board approval.

6-8 SECTION 1.21. Subsection (a), Section 155.003, Occupations
 6-9 Code, is amended to read as follows:

6-10 (a) To be eligible for a license under this chapter, an
 6-11 applicant must present proof satisfactory to the board that the
 6-12 applicant:

6-13 (1) is at least 21 years of age;
 6-14 (2) is of good professional character and has not
 6-15 violated Section 164.051, 164.052, or 164.053;

6-16 (3) has completed:
 6-17 (A) at least 60 semester hours of college
 6-18 courses, other than courses in medical school, that are acceptable
 6-19 to The University of Texas at Austin for credit on a bachelor of
 6-20 arts degree or a bachelor of science degree;

6-21 (B) the entire primary, secondary, and
 6-22 premedical education required in the country of medical school
 6-23 graduation, if the medical school is located outside the United
 6-24 States or Canada; or

6-25 (C) substantially equivalent courses as
 6-26 determined by board rule;

6-27 (4) is a graduate of a medical school located in the
 6-28 United States or Canada and approved by the board;

6-29 (5) has either:

6-30 (A) successfully completed one year of graduate
 6-31 medical training approved by the board in the United States or
 6-32 Canada; or

6-33 (B) graduated from a medical school located
 6-34 outside the United States or Canada and has successfully completed
 6-35 three years of graduate medical training approved by the board in
 6-36 the United States or Canada;

6-37 (6) has passed [~~within three attempts~~] an examination
 6-38 accepted or administered by the board[~~, except as provided by~~
 6-39 ~~Section 155.056~~]; and

6-40 (7) has passed a Texas medical jurisprudence
 6-41 examination as determined by board rule.

6-42 SECTION 1.22. Subchapter A, Chapter 155, Occupations Code,
 6-43 is amended by adding Section 155.006 to read as follows:

6-44 Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board
 6-45 may adopt rules and prescribe fees related to the issuance of a
 6-46 license under this section that is limited in scope to an applicant
 6-47 by virtue of the applicant's conceded eminence and authority in the
 6-48 applicant's specialty.

6-49 (b) An applicant is eligible for a limited license under
 6-50 this section on presenting proof satisfactory to the board that the
 6-51 applicant:

6-52 (1) is recommended to the board by the dean,
 6-53 president, or chief academic officer of:

6-54 (A) a school of medicine in this state;

6-55 (B) The University of Texas Health Center at
 6-56 Tyler;

6-57 (C) The University of Texas M. D. Anderson Cancer
 6-58 Center; or

6-59 (D) a program of graduate medical education,
 6-60 accredited by the Accreditation Council for Graduate Medical
 6-61 Education or the American Osteopathic Association, that exceeds the
 6-62 requirements for eligibility for first board certification in the
 6-63 discipline;

6-64 (2) is expected to receive an appointment at the
 6-65 institution or program making the recommendation under Subdivision
 6-66 (1);

6-67 (3) has not failed a licensing examination that would
 6-68 prevent the applicant from obtaining a full license not limited in
 6-69 scope in this state;

7-1 (4) has passed a Texas medical jurisprudence
 7-2 examination as determined by board rule;

7-3 (5) has successfully completed at least one year of
 7-4 approved subspecialty training accredited by the Accreditation
 7-5 Council for Graduate Medical Education or the American Osteopathic
 7-6 Association;

7-7 (6) is of good professional character, is not subject
 7-8 to denial of a license under Section 164.051, and has not engaged in
 7-9 conduct described by Section 164.052 or 164.053; and

7-10 (7) meets any other requirements prescribed by board
 7-11 rule adopted under this section.

7-12 (c) In adopting rules under this section, the board may
 7-13 adopt rules that prescribe additional qualifications for an
 7-14 applicant, including education and examination requirements,
 7-15 conditions of employment, and application procedures. The board by
 7-16 rule may qualify, restrict, or otherwise limit a license issued
 7-17 under this section.

7-18 (d) The board by rule may define "conceded eminence and
 7-19 authority in the applicant's specialty." In adopting rules under
 7-20 this subsection, the board shall consider criteria that include a
 7-21 person's:

- 7-22 (1) academic appointments;
- 7-23 (2) length of time in a profession;
- 7-24 (3) scholarly publications; and
- 7-25 (4) professional accomplishments.

7-26 (e) The board may require that the holder of a license under
 7-27 this section serve a six-month probationary period during which
 7-28 medical services provided by the license holder are supervised by
 7-29 another licensed physician.

7-30 (f) The holder of a license under this section shall be
 7-31 limited to the practice of only a specialty of medicine for which
 7-32 the license holder has trained and qualified, as determined by the
 7-33 board. The license holder may not practice medicine outside of the
 7-34 setting of the institution or program, or an affiliate of the
 7-35 institution or program, that recommended the license holder under
 7-36 Subsection (b)(1).

7-37 (g) The holder of a license under this section may not
 7-38 change the license holder's practice setting to a new institution
 7-39 or program unless the license holder applies for a new license under
 7-40 this section with the recommendation of that institution or program
 7-41 as required by Subsection (b)(1).

7-42 (h) A license holder under this section may obtain a full
 7-43 license not limited in scope to practice medicine in this state by
 7-44 meeting all applicable eligibility requirements for that license.

7-45 SECTION 1.23. Subchapter A, Chapter 155, Occupations Code,
 7-46 is amended by adding Section 155.009 to read as follows:

7-47 Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF
 7-48 ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the
 7-49 issuance of a license that limits the license holder to the practice
 7-50 of administrative medicine. The board's rules under this section
 7-51 must include provisions for eligibility for the license, issuance
 7-52 and renewal of the license, the fees applicable to the license,
 7-53 continuing education requirements, and the scope of practice of a
 7-54 person who holds the license.

7-55 (b) An applicant for a license under this section must meet
 7-56 all of the requirements for issuance of a license under Section
 7-57 155.002.

7-58 (c) A license holder under this section who seeks to
 7-59 practice medicine under an unrestricted license that is not limited
 7-60 to the practice of administrative medicine must provide proof to
 7-61 the board that the license holder has the clinical competence to
 7-62 practice medicine under that license and must meet all applicable
 7-63 eligibility requirements for that license. The board may require
 7-64 the license holder to pass any examination the board determines
 7-65 necessary.

7-66 SECTION 1.24. Section 155.056, Occupations Code, is amended
 7-67 to read as follows:

7-68 Sec. 155.056. EXAMINATION ATTEMPT LIMITS [REEXAMINATION].
 7-69 (a) An applicant must pass each part of an examination within

8-1 three attempts [~~except that an applicant who has passed all but one~~
8-2 ~~part of an examination within three attempts may take the remaining~~
8-3 ~~part of the examination one additional time~~].

8-4 (b) The board shall adopt rules that prescribe how the limit
8-5 on the number of examination attempts under Subsection (a) shall
8-6 apply to an applicant who seeks a license and who attempts more than
8-7 one type of examination [~~Notwithstanding Subsection (a), an~~
8-8 ~~applicant is considered to have satisfied the requirements of this~~
8-9 ~~section if the applicant:~~

8-10 [~~(1) passed all but one part of an examination~~
8-11 ~~approved by the board within three attempts and passed the~~
8-12 ~~remaining part of the examination within five attempts;~~

8-13 [~~(2) is specialty board certified by a specialty board~~
8-14 ~~that:~~

8-15 [~~(A) is a member of the American Board of Medical~~
8-16 ~~Specialties; or~~

8-17 [~~(B) is approved by the American Osteopathic~~
8-18 ~~Association; and~~

8-19 [~~(3) completed in this state an additional two years~~
8-20 ~~of postgraduate medical training approved by the board].~~

8-21 SECTION 1.25. Section 155.104, Occupations Code, is amended
8-22 to read as follows:

8-23 Sec. 155.104. TEMPORARY LICENSES. (a) The board may adopt
8-24 rules and set fees relating to granting temporary licenses and
8-25 extending the expiration dates of temporary licenses. The board by
8-26 rule shall set a time limit for the term of a temporary license.

8-27 (b) The board may issue a faculty temporary license to
8-28 practice medicine to a physician appointed by a medical school in
8-29 this state as provided by this section. The physician must:

8-30 (1) hold a current medical license that is
8-31 unrestricted and not subject to a disciplinary order or probation
8-32 in another state or Canadian province or have completed at least
8-33 three years of postgraduate residency;

8-34 (2) pass the Texas medical jurisprudence examination;
8-35 and

8-36 (3) hold a salaried faculty position of at least the
8-37 level of assistant professor and be working full-time at one of the
8-38 following institutions:

8-39 (A) The University of Texas Medical Branch at
8-40 Galveston;

8-41 (B) The University of Texas Southwestern Medical
8-42 Center at Dallas;

8-43 (C) The University of Texas Health Science Center
8-44 at Houston;

8-45 (D) The University of Texas Health Science Center
8-46 at San Antonio;

8-47 (E) The University of Texas Health Center at
8-48 Tyler;

8-49 (F) The University of Texas M. D. Anderson Cancer
8-50 Center;

8-51 (G) Texas A&M University College of Medicine;

8-52 (H) Texas Tech University School of Medicine;

8-53 (I) Baylor College of Medicine; or

8-54 (J) the University of North Texas Health Science
8-55 Center at Fort Worth.

8-56 (c) A physician is eligible for a temporary license under
8-57 Subsection (b) if the physician holds a faculty position of at least
8-58 the level of assistant professor and works at least part-time at an
8-59 institution listed in Subsection (b)(3) and:

8-60 (1) the physician is on active duty in the United
8-61 States armed forces; and

8-62 (2) the physician's practice under the temporary
8-63 license will fulfill critical needs of the citizens of this state.

8-64 (d) A physician who is issued a temporary license under
8-65 Subsection (b) must sign an oath on a form prescribed by the board
8-66 swearing that the physician:

8-67 (1) has read and is familiar with this subtitle and
8-68 board rules;

8-69 (2) will abide by the requirements of this subtitle

9-1 and board rules while practicing under the physician's temporary
 9-2 license; and

9-3 (3) will be subject to the disciplinary procedures of
 9-4 the board.

9-5 (e) A physician holding a temporary license under
 9-6 Subsection (b) and the physician's medical school must file
 9-7 affidavits with the board affirming acceptance of the terms and
 9-8 limits imposed by the board on the medical activities of the
 9-9 physician.

9-10 (f) A temporary license issued under Subsection (b) is valid
 9-11 for one year.

9-12 (g) The holder of a temporary license issued under
 9-13 Subsection (b) is limited to the teaching confines of the applying
 9-14 medical school as a part of the physician's duties and
 9-15 responsibilities assigned by the school and may not practice
 9-16 medicine outside of the setting of the medical school or an
 9-17 affiliate of the medical school. The physician may participate in
 9-18 the full activities of the department of any hospital for which the
 9-19 physician's medical school has full responsibility for clinical,
 9-20 patient care, and teaching activities.

9-21 (h) The application for a temporary license under
 9-22 Subsection (b) must be made by the chairman of the department of the
 9-23 medical school in which the physician teaches and must contain the
 9-24 information and documentation requested by the department. The
 9-25 application must be endorsed by the dean of the medical school or
 9-26 the president of the institution.

9-27 (i) Three years in a teaching faculty position at an
 9-28 institution listed in Subsection (b)(3) may be treated as
 9-29 equivalent to three years of an approved postgraduate residency
 9-30 program if, at the conclusion of the three-year period, the
 9-31 physician presents recommendations on the physician's behalf from
 9-32 the chief administrative officer and the president of the
 9-33 institution.

9-34 (j) A physician who holds a temporary license issued under
 9-35 Subsection (b) and who wishes to receive a permanent unrestricted
 9-36 license must meet the requirements for issuance of a permanent
 9-37 unrestricted license.

9-38 SECTION 1.26. Subsection (a), Section 156.001, Occupations
 9-39 Code, is amended to read as follows:

9-40 (a) Each person licensed to practice medicine in this state
 9-41 must register with the board every two years. The initial
 9-42 registration permit shall be issued with the license [~~and expires~~
 9-43 ~~on the last day of the birth month of the license holder~~]. The board
 9-44 by rule may adopt a system under which licenses expire on various
 9-45 dates during the year.

9-46 SECTION 1.27. Subdivision (2), Section 157.051,
 9-47 Occupations Code, is amended to read as follows:

9-48 (2) "Carrying out or signing a prescription drug
 9-49 order" means completing a prescription drug order presigned by the
 9-50 delegating physician, or the signing of a prescription by a
 9-51 registered nurse or physician assistant [~~after that person has been~~
 9-52 ~~designated to the board by the delegating physician as a person~~
 9-53 ~~delegated to sign a prescription~~].

9-54 SECTION 1.28. Section 157.0511, Occupations Code, is
 9-55 amended by adding Subsection (b-1) to read as follows:

9-56 (b-1) The board shall adopt rules that require a physician
 9-57 who delegates the carrying out or signing of a prescription drug
 9-58 order under this subchapter to maintain records that show when and
 9-59 to whom a delegation is made. The board may access the physician's
 9-60 records under this subsection as necessary for an investigation.

9-61 SECTION 1.29. Section 160.006, Occupations Code, is amended
 9-62 by amending Subsections (a) and (c) and adding Subsections (d) and
 9-63 (e) to read as follows:

9-64 (a) A record, report, or other information received and
 9-65 maintained by the board under this subchapter or Subchapter B,
 9-66 including any material received or developed by the board during an
 9-67 investigation or hearing and the identity of, and reports made by, a
 9-68 physician performing or supervising compliance monitoring for the
 9-69 board, is confidential. The board may disclose this information

only:

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

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

(3) under a court order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the Joint Commission on Accreditation of

11-1 Healthcare Organizations relating to ambulatory surgical centers;
 11-2 (B) the American Association for the
 11-3 Accreditation of Ambulatory Surgery Facilities; or
 11-4 (C) the Accreditation Association for Ambulatory
 11-5 Health Care.

11-6 SECTION 1.32. Subsections (a) and (f), Section 163.003,
 11-7 Occupations Code, are amended to read as follows:

11-8 (a) A committee consists of seven [~~five~~] members appointed
 11-9 by the governor, as follows:

11-10 (1) three physician members who are doctors of
 11-11 medicine (M.D.);

11-12 (2) one physician member who is a doctor of
 11-13 osteopathic medicine (D.O.); and

11-14 (3) three [~~one~~] public members [~~member~~].

11-15 (f) A member of a committee is subject to law and the rules
 11-16 of the board, including Sections 152.004, 152.006, and 152.010, as
 11-17 if the committee member were a member of the board, except that a
 11-18 committee member is not subject to Chapter 572, Government Code.
 11-19 The training program a committee member must complete under Section
 11-20 152.010 shall be an abbreviated version of the program under that
 11-21 section that is limited to training relevant to serving on a
 11-22 committee.

11-23 SECTION 1.33. Chapter 163, Occupations Code, is amended by
 11-24 adding Section 163.0045 to read as follows:

11-25 Sec. 163.0045. ASSISTANCE TO BOARD. The board may request
 11-26 members of a committee to participate in an informal meeting under
 11-27 Section 164.003. A physician committee member who participates in
 11-28 an informal meeting on a complaint relating to medical competency
 11-29 must have the qualifications of a member of an expert panel under
 11-30 Section 154.056(e).

11-31 SECTION 1.34. Section 164.002, Occupations Code, is amended
 11-32 by adding Subsection (e) to read as follows:

11-33 (e) The board may not dismiss a complaint solely on the
 11-34 grounds that the case has not been scheduled for an informal meeting
 11-35 within the time required by Section 164.003(b).

11-36 SECTION 1.35. Subchapter A, Chapter 164, Occupations Code,
 11-37 is amended by adding Section 164.0025 to read as follows:

11-38 Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT
 11-39 DISPOSITIONS. (a) The board may delegate to a committee of board
 11-40 employees the authority to dismiss or enter into an agreed
 11-41 settlement of a complaint that involves only nonmedical or
 11-42 administrative violations. The disposition determined by the
 11-43 committee must be approved by the board at a public meeting.

11-44 (b) A complaint delegated under this section shall be
 11-45 referred for informal proceedings under Section 164.003 if:

11-46 (1) the committee of employees determines that the
 11-47 complaint should not be dismissed or settled;

11-48 (2) the committee is unable to reach an agreed
 11-49 settlement; or

11-50 (3) the affected physician requests that the complaint
 11-51 be referred for informal proceedings.

11-52 SECTION 1.36. Section 164.003, Occupations Code, is amended
 11-53 by amending Subsection (b) and adding Subsections (f), (g), and (h)
 11-54 to read as follows:

11-55 (b) Rules adopted under this section must require that:

11-56 (1) an informal meeting in compliance with Section
 11-57 2001.054, Government Code, be scheduled not later than the 180th
 11-58 day after the date the board's official investigation of the
 11-59 complaint is commenced as provided by [~~filed with the board under~~]
 11-60 Section 154.057(b) [154.051], unless good cause is shown by the
 11-61 board for scheduling the informal meeting after that date;

11-62 (2) the board give notice to the license holder of the
 11-63 time and place of the meeting not later than the 30th day before the
 11-64 date the meeting is held;

11-65 (3) the complainant and the license holder be provided
 11-66 an opportunity to be heard;

11-67 (4) at least one of the board members or district
 11-68 review committee members participating in the informal meeting as a
 11-69 panelist be a member who represents the public;

12-1 (5) the board's legal counsel or a representative of
12-2 the attorney general be present to advise the board or the board's
12-3 staff; and

12-4 (6) ~~[(5)]~~ a member of the board's staff be at the
12-5 meeting to present to the board's representative the facts the
12-6 staff reasonably believes it could prove by competent evidence or
12-7 qualified witnesses at a hearing.

12-8 (f) The notice required by Subsection (b)(2) must be
12-9 accompanied by a written statement of the nature of the allegations
12-10 and the information the board intends to use at the meeting, unless
12-11 the information is confidential. If the board does not provide the
12-12 statement or information at that time, the license holder may use
12-13 that failure as grounds for rescheduling the informal meeting. If
12-14 the complaint includes an allegation that the license holder has
12-15 violated the standard of care, the notice must include a copy of the
12-16 report by the expert physician reviewer. The license holder must
12-17 provide to the board the license holder's rebuttal at least 10
12-18 business days before the date of the meeting in order for the
12-19 information to be considered at the meeting.

12-20 (g) The board by rule shall define circumstances
12-21 constituting good cause for purposes of Subsection (b)(1),
12-22 including the extended illness of a board investigator and an
12-23 expert physician reviewer's delinquency in reviewing and
12-24 submitting a report to the board.

12-25 (h) Section 164.007(c) applies to the board's investigation
12-26 file used in an informal meeting under this section.

12-27 SECTION 1.37. Subchapter A, Chapter 164, Occupations Code,
12-28 is amended by adding Sections 164.0031 and 164.0032 to read as
12-29 follows:

12-30 Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL
12-31 PROCEEDINGS. (a) In an informal meeting under Section 164.003 or
12-32 an informal hearing under Section 164.103, at least two panelists
12-33 shall be appointed to determine whether an informal disposition is
12-34 appropriate. At least one of the panelists must be a physician.

12-35 (b) Notwithstanding Subsection (a) and Section
12-36 164.003(b)(4), an informal proceeding may be conducted by one
12-37 panelist if the affected physician waives the requirement that at
12-38 least two panelists conduct the informal proceeding. If the
12-39 physician waives that requirement, the panelist may be either a
12-40 physician or a member who represents the public.

12-41 (c) The panel requirements described by Subsection (a) do
12-42 not apply to an informal proceeding conducted by the board under
12-43 Section 164.003 to show compliance with an order of the board.

12-44 Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
12-45 IN INFORMAL PROCEEDINGS. (a) A board member or district review
12-46 committee member that serves as a panelist at an informal meeting
12-47 under Section 164.003 shall make recommendations for the
12-48 disposition of a complaint or allegation. The member may request
12-49 the assistance of a board employee at any time.

12-50 (b) Board employees shall present a summary of the
12-51 allegations against the affected physician and of the facts
12-52 pertaining to the allegation that the employees reasonably believe
12-53 may be proven by competent evidence at a formal hearing.

12-54 (c) A board attorney shall act as counsel to the panel and,
12-55 notwithstanding Subsection (e), shall be present during the
12-56 informal meeting and the panel's deliberations to advise the panel
12-57 on legal issues that arise during the proceeding. The attorney may
12-58 ask questions of participants in the informal meeting to clarify
12-59 any statement made by the participant. The attorney shall provide
12-60 to the panel a historical perspective on comparable cases that have
12-61 appeared before the board, keep the proceedings focused on the case
12-62 being discussed, and ensure that the board's employees and the
12-63 affected physician have an opportunity to present information
12-64 related to the case.

12-65 (d) The panel and board employees shall provide an
12-66 opportunity for the affected physician and the physician's
12-67 authorized representative to reply to the board employees'
12-68 presentation and to present oral and written statements and facts
12-69 that the physician and representative reasonably believe could be

13-1 proven by competent evidence at a formal hearing.

13-2 (e) An employee of the board who participated in the
 13-3 presentation of the allegation or information gathered in the
 13-4 investigation of the complaint, the affected physician, the
 13-5 physician's authorized representative, the complainant, the
 13-6 witnesses, and members of the public may not be present during the
 13-7 deliberations of the panel. Only the members of the panel and the
 13-8 board attorney serving as counsel to the panel may be present during
 13-9 the deliberations.

13-10 (f) The panel shall recommend the dismissal of the complaint
 13-11 or allegations or, if the panel determines that the affected
 13-12 physician has violated a statute or board rule, the panel may
 13-13 recommend board action and terms for an informal settlement of the
 13-14 case.

13-15 (g) The panel's recommendations under Subsection (f) must
 13-16 be made in a written order and presented to the affected physician
 13-17 and the physician's authorized representative. The physician may
 13-18 accept the proposed settlement within the time established by the
 13-19 panel at the informal meeting. If the physician rejects the
 13-20 proposed settlement or does not act within the required time, the
 13-21 board may proceed with the filing of a formal complaint with the
 13-22 State Office of Administrative Hearings.

13-23 SECTION 1.38. Subchapter A, Chapter 164, Occupations Code,
 13-24 is amended by adding Section 164.0036 to read as follows:

13-25 Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS.

13-26 (a) If an informal meeting is not scheduled for a complaint before
 13-27 the 180th day after the date the board's official investigation of
 13-28 the complaint is commenced under Section 154.057(b), the board
 13-29 shall provide notice to all parties to the complaint. The notice
 13-30 must include an explanation of the reason why the informal meeting
 13-31 has not been scheduled. The notice under this subsection is not
 13-32 required if the notice would jeopardize an investigation.

13-33 (b) The board must include in its annual report to the
 13-34 legislature information about any complaint for which notice is
 13-35 required under Subsection (a), including the reason for failing to
 13-36 schedule the informal meeting before the 180-day deadline. The
 13-37 information provided under this subsection must also list any
 13-38 complaint in which the investigation has extended beyond the first
 13-39 anniversary of the date the complaint was filed with the board.

13-40 SECTION 1.39. Section 164.007, Occupations Code, is amended
 13-41 by adding Subsection (a-1) to read as follows:

13-42 (a-1) The board may change a finding of fact or conclusion
 13-43 of law or vacate or modify an order of the administrative law judge
 13-44 only if the board makes a determination required by Section
 13-45 2001.058(e), Government Code.

13-46 SECTION 1.40. Subchapter A, Chapter 164, Occupations Code,
 13-47 is amended by adding Section 164.0071 to read as follows:

13-48 Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a
 13-49 formal hearing described by Section 164.007 in which the sole basis
 13-50 for disciplinary action is the basis described by Section
 13-51 164.051(a)(7), the board shall provide evidence from the board's
 13-52 investigation that shows the basis for the board's findings
 13-53 required by that subdivision.

13-54 (b) In any formal hearing described by Section 164.007,
 13-55 other than a hearing involving a prohibited practice under Section
 13-56 164.052(a)(18), information obtained as a result of peer review may
 13-57 not be used as evidence except as the basis for the opinion of an
 13-58 expert witness called by the board.

13-59 (c) A member of a peer review committee is not subject to
 13-60 subpoena and may not be compelled to provide evidence in a formal
 13-61 hearing, other than a hearing involving a prohibited practice under
 13-62 Section 164.052(a)(18).

13-63 SECTION 1.41. Subsection (a), Section 164.052,
 13-64 Occupations Code, is amended to read as follows:

13-65 (a) A physician or an applicant for a license to practice
 13-66 medicine commits a prohibited practice if that person:

13-67 (1) submits to the board a false or misleading
 13-68 statement, document, or certificate in an application for a
 13-69 license;

14-1 (2) presents to the board a license, certificate, or
 14-2 diploma that was illegally or fraudulently obtained;

14-3 (3) commits fraud or deception in taking or passing an
 14-4 examination;

14-5 (4) uses alcohol or drugs in an intemperate manner
 14-6 that, in the board's opinion, could endanger a patient's life;

14-7 (5) commits unprofessional or dishonorable conduct
 14-8 that is likely to deceive or defraud the public, as provided by
 14-9 Section 164.053, or injure the public;

14-10 (6) uses an advertising statement that is false,
 14-11 misleading, or deceptive;

14-12 (7) advertises professional superiority or the
 14-13 performance of professional service in a superior manner if that
 14-14 advertising is not readily subject to verification;

14-15 (8) purchases, sells, barter, or uses, or offers to
 14-16 purchase, sell, barter, or use, a medical degree, license,
 14-17 certificate, or diploma, or a transcript of a license, certificate,
 14-18 or diploma in or incident to an application to the board for a
 14-19 license to practice medicine;

14-20 (9) alters, with fraudulent intent, a medical license,
 14-21 certificate, or diploma, or a transcript of a medical license,
 14-22 certificate, or diploma;

14-23 (10) uses a medical license, certificate, or diploma,
 14-24 or a transcript of a medical license, certificate, or diploma that
 14-25 has been:

14-26 (A) fraudulently purchased or issued;

14-27 (B) counterfeited; or

14-28 (C) materially altered;

14-29 (11) impersonates or acts as proxy for another person
 14-30 in an examination required by this subtitle for a medical license;

14-31 (12) engages in conduct that subverts or attempts to
 14-32 subvert an examination process required by this subtitle for a
 14-33 medical license;

14-34 (13) impersonates a physician or permits another to
 14-35 use the person's license or certificate to practice medicine in
 14-36 this state;

14-37 (14) directly or indirectly employs a person whose
 14-38 license to practice medicine has been suspended, canceled, or
 14-39 revoked;

14-40 (15) associates in the practice of medicine with a
 14-41 person:

14-42 (A) whose license to practice medicine has been
 14-43 suspended, canceled, or revoked; or

14-44 (B) who has been convicted of the unlawful
 14-45 practice of medicine in this state or elsewhere;

14-46 (16) performs or procures a criminal abortion, aids or
 14-47 abets in the procuring of a criminal abortion, attempts to perform
 14-48 or procure a criminal abortion, or attempts to aid or abet the
 14-49 performance or procurement of a criminal abortion; ~~or~~

14-50 (17) directly or indirectly aids or abets the practice
 14-51 of medicine by a person, partnership, association, or corporation
 14-52 that is not licensed to practice medicine by the board; or

14-53 (18) engages in conduct that misuses the peer review
 14-54 process, including fraudulent and malicious conduct, as defined by
 14-55 rules adopted by the board.

14-56 SECTION 1.42. Section 164.056, Occupations Code, is amended
 14-57 by amending Subsection (a) and adding Subsections (d) and (e) to
 14-58 read as follows:

14-59 (a) In enforcing Section 164.051(a)(4), the board, on
 14-60 probable cause, shall request the affected physician or applicant
 14-61 to submit to a mental or physical examination by physicians
 14-62 designated by the board. The board shall adopt guidelines, in
 14-63 conjunction with persons interested in or affected by this section,
 14-64 to enable the board to evaluate circumstances in which a physician
 14-65 or applicant may be required to submit to an examination for mental
 14-66 or physical health conditions, alcohol and substance abuse, or
 14-67 professional behavior problems.

14-68 (d) The board shall refer a physician or applicant with a
 14-69 physical or mental health condition to the most appropriate medical

15-1 specialist for evaluation. The board may not require a physician or
 15-2 applicant to submit to an examination by a physician having a
 15-3 specialty specified by the board unless medically indicated. The
 15-4 board may not require a physician or applicant to submit to an
 15-5 examination to be conducted an unreasonable distance from the
 15-6 person's home or place of business unless the physician or
 15-7 applicant resides and works in an area in which there are a limited
 15-8 number of physicians able to perform an appropriate examination.

15-9 (e) The guidelines adopted under this section do not impair
 15-10 or remove the board's power to make an independent licensing
 15-11 decision.

15-12 SECTION 1.43. Section 164.202, Occupations Code, is amended
 15-13 to read as follows:

15-14 Sec. 164.202. REHABILITATION ORDER. (a) The board,
 15-15 through an agreed order or after a contested proceeding, may impose
 15-16 a nondisciplinary rehabilitation order on an applicant, as a
 15-17 prerequisite for issuing a license, or on a license holder, based
 15-18 on:

15-19 (1) intemperate use of drugs or alcohol directly
 15-20 resulting from habituation or addiction caused by medical care or
 15-21 treatment provided by a physician;

15-22 (2) self-reported intemperate use of drugs or alcohol
 15-23 during the five years preceding the report that could adversely
 15-24 affect the reporter's ability to practice medicine safely, if:

15-25 (A) the reporting individual has not previously
 15-26 been the subject of a substance abuse-related order of the board;
 15-27 and

15-28 (B) the applicant or license holder has not
 15-29 committed a violation of the standard of care as a result of the
 15-30 intemperate use of drugs or alcohol;

15-31 (3) a judgment by a court that the applicant or license
 15-32 holder is of unsound mind;

15-33 (4) a determination of impairment based on a mental or
 15-34 physical examination offered to establish the impairment in an
 15-35 evidentiary hearing before the board in which the applicant or
 15-36 license holder was provided an opportunity to respond; or

15-37 (5) an admission by the applicant or license holder
 15-38 indicating that the applicant or license holder suffers from a
 15-39 potentially dangerous limitation or an inability to practice
 15-40 medicine with reasonable skill and safety by reason of illness or as
 15-41 a result of any physical or mental condition.

15-42 (b) The board may not issue an order under this section if,
 15-43 before the individual signs the proposed order, the board receives
 15-44 a valid complaint with regard to the individual based on the
 15-45 individual's intemperate use of drugs or alcohol in a manner
 15-46 affecting the standard of care.

15-47 (c) The board must determine whether an individual has
 15-48 committed a standard of care violation described by Subsection
 15-49 (a)(2) before imposing an order under this section.

15-50 (d) The board may disclose a rehabilitation order to a local
 15-51 or statewide private medical association only as provided by
 15-52 Section 164.205.

15-53 SECTION 1.44. Subchapter E, Chapter 164, Occupations Code,
 15-54 is amended by adding Section 164.205 to read as follows:

15-55 Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL
 15-56 ASSOCIATIONS. (a) If a rehabilitation order imposed under Section
 15-57 164.202 requires a license holder to participate in activities or
 15-58 programs provided by a local or statewide private medical
 15-59 association, the board shall inform the association of the license
 15-60 holder's duties under the order. The information provided under
 15-61 this section must include specific guidance to enable the
 15-62 association to comply with any requirements necessary to assist in
 15-63 the physician's rehabilitation.

15-64 (b) The board may provide to the association any information
 15-65 that the board determines to be necessary, including a copy of the
 15-66 rehabilitation order. Any information received by the association
 15-67 remains confidential, is not subject to discovery, subpoena, or
 15-68 other means of legal compulsion, and may be disclosed only to the
 15-69 board.

16-1 SECTION 1.45. Subchapter E, Chapter 164, Occupations Code,
16-2 is amended by adding Section 164.206 to read as follows:

16-3 Sec. 164.206. REFUND. (a) Subject to Subsection (b), the
16-4 board may order a license holder to pay a refund to a consumer as
16-5 provided in an agreement resulting from an informal settlement
16-6 conference instead of or in addition to imposing an administrative
16-7 penalty under Chapter 165.

16-8 (b) The amount of a refund ordered as provided in an
16-9 agreement resulting from an informal settlement conference may not
16-10 exceed the amount the consumer paid to the license holder for a
16-11 service regulated by this subtitle. The board may not require
16-12 payment of other damages or estimate harm in a refund order.

16-13 SECTION 1.46. The heading to Subchapter B, Chapter 165,
16-14 Occupations Code, is amended to read as follows:

16-15 SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

16-16 SECTION 1.47. Subchapter B, Chapter 165, Occupations Code,
16-17 is amended by adding Section 165.052 to read as follows:

16-18 Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to
16-19 the board that a person who is not licensed under this subtitle is
16-20 violating this subtitle, a rule adopted under this subtitle, or
16-21 another state statute or rule relating to the practice of medicine,
16-22 the board after notice and opportunity for a hearing may issue a
16-23 cease and desist order prohibiting the person from engaging in the
16-24 activity.

16-25 (b) A violation of an order under this section constitutes
16-26 grounds for imposing an administrative penalty under this chapter.

16-27 SECTION 1.48. The following laws are repealed:

16-28 (1) Subsection (d), Section 152.010, Occupations
16-29 Code; and

16-30 (2) Subsections (d) through (h), Section 157.0542,
16-31 Occupations Code.

16-32 SECTION 1.49. Not later than January 1, 2006, the Texas
16-33 Medical Board shall:

16-34 (1) adopt the policies required by Sections 153.057
16-35 and 153.058, Occupations Code, as added by this article; and

16-36 (2) adopt the rules required by Subtitle B, Title 3,
16-37 Occupations Code, as amended by this article.

16-38 SECTION 1.50. (a) The changes in law made by Sections
16-39 152.003, 152.006, and 152.010, Occupations Code, as amended by this
16-40 article, regarding the prohibitions on or qualifications of members
16-41 of the Texas Medical Board do not affect the entitlement of a member
16-42 serving on the board immediately before September 1, 2005, to
16-43 continue to serve and function as a member of the board for the
16-44 remainder of the member's term. The changes in law made by those
16-45 sections apply only to a member appointed on or after September 1,
16-46 2005.

16-47 (b) The Texas Medical Board shall adopt rules necessary to
16-48 implement the requirements of Section 155.006, Occupations Code, as
16-49 added by this article, not later than March 1, 2006.

16-50 (c) The changes in law made by this article related to the
16-51 filing, investigation, or disposition of a complaint under Subtitle
16-52 B, Title 3, Occupations Code, as amended by this article, apply only
16-53 to a complaint filed with the Texas Medical Board on or after the
16-54 effective date of this Act. A complaint filed before the effective
16-55 date of this Act is governed by the law as it existed immediately
16-56 before that date, and the former law is continued in effect for that
16-57 purpose.

16-58 (d) The changes in law made by this article governing the
16-59 eligibility of a person for a license under Subtitle B, Title 3,
16-60 Occupations Code, apply only to an application for a license filed
16-61 on or after the effective date of this Act. A license application
16-62 filed before the effective date of this Act is governed by the law
16-63 in effect at the time the application was filed, and the former law
16-64 is continued in effect for that purpose.

16-65 (e) The change in law made by this article with respect to
16-66 conduct that is grounds for imposition of a disciplinary sanction,
16-67 including a refund or cease and desist order, applies only to
16-68 conduct that occurs on or after the effective date of this Act.
16-69 Conduct that occurs before the effective date of this Act is

governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

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

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

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

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

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

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

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

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

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

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

Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS.

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

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

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

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

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

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

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

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

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

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

18-1 SECTION 2.04. Section 204.055, Occupations Code, is amended
18-2 to read as follows:

18-3 Sec. 204.055. OFFICERS. The governor shall designate a
18-4 member of the physician assistant board as the presiding officer of
18-5 the board to serve in that capacity at the will of the governor. The
18-6 physician assistant board shall select from its membership a
18-7 [~~presiding officer and a~~] secretary to serve a one-year term
18-8 [~~terms~~].

18-9 SECTION 2.05. Section 204.056, Occupations Code, is amended
18-10 by amending Subsection (a) and adding Subsection (c) to read as
18-11 follows:

18-12 (a) It is a ground for removal from the physician assistant
18-13 board that a member:

18-14 (1) does not have at the time of taking office
18-15 [~~appointment~~] the qualifications required by Sections 204.052 and
18-16 204.053 [~~this subchapter for appointment to the board~~];

18-17 (2) does not maintain during [~~the~~] service on the
18-18 physician assistant board the qualifications required by Sections
18-19 204.052 and 204.053 [~~this subchapter for appointment to the board~~];
18-20 [~~or~~]

18-21 (3) is ineligible for membership under Section
18-22 204.053;

18-23 (4) cannot, because of illness or disability,
18-24 discharge the member's duties for a substantial part of the member's
18-25 term; or

18-26 (5) is absent from more than half [~~fails to attend at~~
18-27 ~~least one-half~~] of the regularly scheduled physician assistant
18-28 board meetings that the member is eligible to attend during a
18-29 calendar year without an excuse approved by a majority vote of the
18-30 board.

18-31 (c) If the executive director of the medical board has
18-32 knowledge that a potential ground for removal exists, the executive
18-33 director shall notify the presiding officer of the physician
18-34 assistant board of the potential ground. The presiding officer
18-35 shall then notify the governor and the attorney general that a
18-36 potential ground for removal exists. If the potential ground for
18-37 removal involves the presiding officer, the executive director
18-38 shall notify the next highest ranking officer of the physician
18-39 assistant board, who shall then notify the governor and the
18-40 attorney general that a potential ground for removal exists.

18-41 SECTION 2.06. Subchapter B, Chapter 204, Occupations Code,
18-42 is amended by adding Section 204.059 to read as follows:

18-43 Sec. 204.059. TRAINING. (a) A person who is appointed to
18-44 and qualifies for office as a member of the physician assistant
18-45 board may not vote, deliberate, or be counted as a member in
18-46 attendance at a meeting of the board until the person completes a
18-47 training program that complies with this section.

18-48 (b) The training program must provide the person with
18-49 information regarding:

18-50 (1) this chapter and the physician assistant board's
18-51 programs, functions, rules, and budget;

18-52 (2) the results of the most recent formal audit of the
18-53 physician assistant board;

18-54 (3) the requirements of laws relating to open
18-55 meetings, public information, administrative procedure, and
18-56 conflicts of interest; and

18-57 (4) any applicable ethics policies adopted by the
18-58 physician assistant board or the Texas Ethics Commission.

18-59 (c) A person appointed to the physician assistant board is
18-60 entitled to reimbursement, as provided by the General
18-61 Appropriations Act, for the travel expenses incurred in attending
18-62 the training program regardless of whether the attendance at the
18-63 program occurs before or after the person qualifies for office.

18-64 SECTION 2.07. Subchapter C, Chapter 204, Occupations Code,
18-65 is amended by adding Section 204.1015 to read as follows:

18-66 Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN
18-67 RULEMAKING PROCESS. (a) The physician assistant board shall adopt
18-68 guidelines to establish procedures for receiving input during the
18-69 rulemaking process from individuals and groups that have an

19-1 interest in matters under the board's jurisdiction. The guidelines
 19-2 must provide an opportunity for those individuals and groups to
 19-3 provide input before the physician assistant board submits the rule
 19-4 to the medical board for approval.

19-5 (b) In implementing the guidelines adopted under this
 19-6 section, the physician assistant board shall exercise its judgment
 19-7 in determining which rules require input as described by Subsection
 19-8 (a).

19-9 SECTION 2.08. Subchapter C, Chapter 204, Occupations Code,
 19-10 is amended by adding Section 204.105 to read as follows:

19-11 Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.
 19-12 The physician assistant board shall adopt rules and guidelines as
 19-13 necessary to comply with Chapter 53, except to the extent the
 19-14 requirements of this chapter are stricter than the requirements of
 19-15 Chapter 53.

19-16 SECTION 2.09. Subchapter C, Chapter 204, Occupations Code,
 19-17 is amended by adding Section 204.106 to read as follows:

19-18 Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the
 19-19 advice and approval of the medical board, the physician assistant
 19-20 board shall develop and implement policies that clearly separate
 19-21 the policy-making responsibilities of the physician assistant
 19-22 board and the management responsibilities of the executive director
 19-23 and the staff of the medical board.

19-24 SECTION 2.10. Subchapter C, Chapter 204, Occupations Code,
 19-25 is amended by adding Section 204.107 to read as follows:

19-26 Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice
 19-27 and approval of the medical board, the physician assistant board
 19-28 shall develop and implement policies that provide the public with a
 19-29 reasonable opportunity to appear before the physician assistant
 19-30 board and to speak on any issue under the jurisdiction of the
 19-31 physician assistant board.

19-32 SECTION 2.11. Subchapter C, Chapter 204, Occupations Code,
 19-33 is amended by adding Section 204.108 to read as follows:

19-34 Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician
 19-35 assistant board shall maintain a system to promptly and efficiently
 19-36 act on complaints filed with the physician assistant board. The
 19-37 board shall maintain:

19-38 (1) information about the parties to the complaint and
 19-39 the subject matter of the complaint;

19-40 (2) a summary of the results of the review or
 19-41 investigation of the complaint; and

19-42 (3) information about the disposition of the
 19-43 complaint.

19-44 (b) The physician assistant board shall make information
 19-45 available describing its procedures for complaint investigation
 19-46 and resolution.

19-47 (c) The physician assistant board shall periodically notify
 19-48 the parties of the status of the complaint until final disposition
 19-49 of the complaint, unless the notice would jeopardize an
 19-50 investigation.

19-51 SECTION 2.12. Subchapter C, Chapter 204, Occupations Code,
 19-52 is amended by adding Section 204.109 to read as follows:

19-53 Sec. 204.109. USE OF TECHNOLOGY. Subject to the advice and
 19-54 approval of the medical board, the physician assistant board shall
 19-55 implement a policy requiring the physician assistant board to use
 19-56 appropriate technological solutions to improve the physician
 19-57 assistant board's ability to perform its functions. The policy
 19-58 must ensure that the public is able to interact with the board on
 19-59 the Internet.

19-60 SECTION 2.13. Subchapter C, Chapter 204, Occupations Code,
 19-61 is amended by adding Section 204.110 to read as follows:

19-62 Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE
 19-63 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
 19-64 of the medical board, the physician assistant board shall develop
 19-65 and implement a policy to encourage the use of:

19-66 (1) negotiated rulemaking procedures under Chapter
 19-67 2008, Government Code, for the adoption of physician assistant
 19-68 board rules; and

19-69 (2) appropriate alternative dispute resolution

20-1 procedures under Chapter 2009, Government Code, to assist in the
20-2 resolution of internal and external disputes under the physician
20-3 assistant board's jurisdiction.

20-4 (b) The physician assistant board's procedures relating to
20-5 alternative dispute resolution must conform, to the extent
20-6 possible, to any model guidelines issued by the State Office of
20-7 Administrative Hearings for the use of alternative dispute
20-8 resolution by state agencies.

20-9 (c) The physician assistant board shall designate a trained
20-10 person to:

20-11 (1) coordinate the implementation of the policy
20-12 adopted under Subsection (a);

20-13 (2) serve as a resource for any training needed to
20-14 implement the procedures for negotiated rulemaking or alternative
20-15 dispute resolution; and

20-16 (3) collect data concerning the effectiveness of those
20-17 procedures, as implemented by the physician assistant board.

20-18 SECTION 2.14. Section 204.152, Occupations Code, is amended
20-19 to read as follows:

20-20 Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician
20-21 assistant board shall issue a license to an applicant who:

20-22 (1) meets the eligibility requirements of Section
20-23 204.153;

20-24 (2) submits an application on a form prescribed by the
20-25 board;

20-26 (3) pays the required application fee;

20-27 (4) certifies that the applicant is mentally and
20-28 physically able to function safely as a physician assistant; and

20-29 (5) submits to the board any other information the
20-30 board considers necessary to evaluate the applicant's
20-31 qualifications.

20-32 (b) The physician assistant board may delegate authority to
20-33 medical board employees to issue licenses under this chapter to
20-34 applicants who clearly meet all licensing requirements. If the
20-35 medical board employees determine that the applicant does not
20-36 clearly meet all licensing requirements, the application shall be
20-37 returned to the physician assistant board. A license issued under
20-38 this subsection does not require formal physician assistant board
20-39 approval.

20-40 SECTION 2.15. Section 204.153, Occupations Code, is amended
20-41 by amending Subsection (a) and adding Subsection (a-1) to read as
20-42 follows:

20-43 (a) To be eligible for a license under this chapter, an
20-44 applicant must:

20-45 (1) successfully complete an educational program for
20-46 physician assistants or surgeon assistants accredited by the
20-47 Committee on Allied Health Education and Accreditation or by that
20-48 committee's predecessor or successor entities;

20-49 (2) pass the Physician Assistant National Certifying
20-50 Examination administered by the National Commission on
20-51 Certification of Physician Assistants;

20-52 (3) hold a certificate issued by the National
20-53 Commission on Certification of Physician Assistants;

20-54 (4) be of good moral character; ~~and~~

20-55 (5) meet any other requirement established by board
20-56 rule; and

20-57 (6) pass a jurisprudence examination approved by the
20-58 physician assistant board as provided by Subsection (a-1).

20-59 (a-1) The jurisprudence examination shall be conducted on
20-60 the licensing requirements and other laws, rules, or regulations
20-61 applicable to the physician assistant profession in this state.
20-62 The physician assistant board shall establish rules for the
20-63 jurisprudence examination under Subsection (a)(6) regarding:

20-64 (1) the development of the examination;

20-65 (2) applicable fees;

20-66 (3) administration of the examination;

20-67 (4) reexamination procedures;

20-68 (5) grading procedures; and

20-69 (6) notice of results.

21-1 SECTION 2.16. Section 204.156, Occupations Code, is amended
21-2 to read as follows:

21-3 Sec. 204.156. LICENSE RENEWAL. (a) On notification from
21-4 the physician assistant board, a person who holds a license under
21-5 this chapter may renew the license by:

- 21-6 (1) paying the required renewal fee;
21-7 (2) submitting the appropriate form; and
21-8 (3) meeting any other requirement established by board
21-9 rule.

21-10 (b) The physician assistant board by rule may adopt a system
21-11 under which licenses expire on various dates during the year.

21-12 (c) A person who is otherwise eligible to renew a license
21-13 may renew an unexpired license by paying the required renewal fee to
21-14 the physician assistant board before the expiration date of the
21-15 license. A person whose license has expired may not engage in
21-16 activities that require a license until the license has been
21-17 renewed.

21-18 (d) A person whose license has been expired for 90 days or
21-19 less may renew the license by paying to the physician assistant
21-20 board a fee that is equal to 1-1/2 times the renewal fee for the
21-21 license.

21-22 (e) A person whose license has been expired for more than 90
21-23 days but less than one year may renew the license by paying to the
21-24 physician assistant board a fee equal to two times the renewal fee
21-25 for the license.

21-26 (f) A person who was licensed in this state, moved to
21-27 another state, and is currently licensed and has been in practice in
21-28 the other state for the two years preceding the date of the
21-29 application may obtain a new license without reexamination. The
21-30 person must pay to the physician assistant board a fee that is equal
21-31 to two times the normally required renewal fee for the license.

21-32 SECTION 2.17. Subchapter D, Chapter 204, Occupations Code,
21-33 is amended by adding Section 204.1562 to read as follows:

21-34 Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

21-35 (a) The physician assistant board by rule shall adopt, monitor,
21-36 and enforce a reporting program for the continuing medical
21-37 education of license holders. The physician assistant board shall
21-38 adopt and administer rules that:

21-39 (1) establish the number of hours of continuing
21-40 medical education the physician assistant board determines
21-41 appropriate as a prerequisite to the renewal of a license under this
21-42 chapter;

21-43 (2) require at least one-half of the hours of
21-44 continuing medical education established under Subdivision (1) to
21-45 be approved by the physician assistant board; and

21-46 (3) adopt a process to assess a license holder's
21-47 participation in continuing medical education courses.

21-48 (b) The physician assistant board may require that a
21-49 specified number of continuing medical education hours be completed
21-50 informally, including through self-study and self-directed
21-51 education.

21-52 SECTION 2.18. Section 204.157, Occupations Code, is amended
21-53 by amending Subsection (c) and adding Subsection (d) to read as
21-54 follows:

21-55 (c) A person whose license is on inactive status under this
21-56 section may return the person's license to active status by:

- 21-57 (1) applying to the physician assistant board; ~~and~~
21-58 (2) satisfying the requirements of Section 204.156;

21-59 and

21-60 (3) paying the fee established by the physician
21-61 assistant board for returning a license to active status.

21-62 (d) The physician assistant board by rule shall establish a
21-63 limit on the length of time a physician assistant's license may
21-64 remain on inactive status.

21-65 SECTION 2.19. Subsection (a), Section 204.301, Occupations
21-66 Code, is amended to read as follows:

21-67 (a) Except as provided by Section 204.305, on a
21-68 determination that an applicant or license holder committed an act
21-69 described in Section 204.302, 204.303, or 204.304, the physician

assistant board by order shall take any of the following actions:

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

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

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

(4) require the person to complete additional training;

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

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

(B) stipulating periodic physician assistant board review;

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

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

(8) administer a public reprimand.

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

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

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

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

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

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

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

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

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

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

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

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

23-1 (1) the person's intemperate use of drugs or alcohol
23-2 directly resulting from habituation or addiction caused by medical
23-3 care or treatment provided by a physician;

23-4 (2) the person's intemperate use of drugs or alcohol
23-5 during the five years preceding the date of the report that could
23-6 adversely affect the person's ability to safely practice as a
23-7 physician assistant, if the person:

23-8 (A) reported the use; ~~and~~

23-9 (B) has not previously been the subject of a
23-10 substance abuse related order of the board; and

23-11 (C) has not committed a violation of the standard
23-12 of care as a result of the intemperate use of drugs or alcohol;

23-13 (3) a judgment by a court that the person is of unsound
23-14 mind; or

23-15 (4) the results of a mental or physical examination,
23-16 or an admission by the person, indicating that the person suffers
23-17 from a potentially dangerous limitation or an inability to practice
23-18 as a physician assistant with reasonable skill and safety because
23-19 of illness or any other physical or mental condition.

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

23-25 (c) The physician assistant board must determine whether an
23-26 individual has committed a standard of care violation described by
23-27 Subsection (a)(2) before imposing an order under this section.

23-28 SECTION 2.23. Subchapter G, Chapter 204, Occupations Code,
23-29 is amended by adding Section 204.3075 to read as follows:

23-30 Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

23-31 (a) If a rehabilitation order imposed under Section 204.305
23-32 requires a license holder to participate in activities or programs
23-33 provided by a local or statewide private association of physician
23-34 assistants, the physician assistant board shall inform the
23-35 association of the license holder's duties under the order. The
23-36 information provided under this section must include specific
23-37 guidance to enable the association to comply with any requirements
23-38 necessary to assist in the physician assistant's rehabilitation.

23-39 (b) The physician assistant board may provide to the
23-40 association any information that the board determines to be
23-41 necessary, including a copy of the rehabilitation order. Any
23-42 information received by the association remains confidential, is
23-43 not subject to discovery, subpoena, or other means of legal
23-44 compulsion, and may be disclosed only to the physician assistant
23-45 board.

23-46 SECTION 2.24. Subchapter G, Chapter 204, Occupations Code,
23-47 is amended by adding Section 204.312 to read as follows:

23-48 Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician
23-49 assistant board by rule shall adopt procedures governing:

23-50 (1) informal disposition of a contested case under
23-51 Section 2001.056, Government Code; and

23-52 (2) informal proceedings held in compliance with
23-53 Section 2001.054, Government Code.

23-54 (b) Rules adopted under this section must require that:

23-55 (1) an informal meeting in compliance with Section
23-56 2001.054, Government Code, be scheduled not later than the 180th
23-57 day after the date the complaint is filed with the physician
23-58 assistant board, unless good cause is shown by the physician
23-59 assistant board for scheduling the informal meeting after that
23-60 date;

23-61 (2) the physician assistant board give notice to the
23-62 license holder of the time and place of the meeting not later than
23-63 the 30th day before the date the meeting is held;

23-64 (3) the complainant and the license holder be provided
23-65 an opportunity to be heard;

23-66 (4) at least one of the physician assistant board
23-67 members participating in the informal meeting as a panelist be a
23-68 member who represents the public;

23-69 (5) the physician assistant board's legal counsel or a

24-1 representative of the attorney general be present to advise the
 24-2 physician assistant board or the medical board's staff; and

24-3 (6) a member of the medical board's staff be at the
 24-4 meeting to present to the physician assistant board's
 24-5 representative the facts the staff reasonably believes it could
 24-6 prove by competent evidence or qualified witnesses at a hearing.

24-7 (c) An affected physician assistant is entitled to:

24-8 (1) reply to the staff's presentation; and

24-9 (2) present the facts the physician assistant
 24-10 reasonably believes the physician assistant could prove by
 24-11 competent evidence or qualified witnesses at a hearing.

24-12 (d) After ample time is given for the presentations, the
 24-13 physician assistant board representative shall recommend that the
 24-14 investigation be closed or shall attempt to mediate the disputed
 24-15 matters and make a recommendation regarding the disposition of the
 24-16 case in the absence of a hearing under applicable law concerning
 24-17 contested cases.

24-18 (e) If the license holder has previously been the subject of
 24-19 disciplinary action by the physician assistant board, the physician
 24-20 assistant board shall schedule the informal meeting as soon as
 24-21 practicable but not later than the deadline prescribed by
 24-22 Subsection (b)(1).

24-23 SECTION 2.25. Subchapter G, Chapter 204, Occupations Code,
 24-24 is amended by adding Section 204.313 to read as follows:

24-25 Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN
 24-26 INFORMAL PROCEEDINGS. (a) In an informal meeting under Section
 24-27 204.312, at least two panelists shall be appointed to determine
 24-28 whether an informal disposition is appropriate.

24-29 (b) Notwithstanding Subsection (a) and Section
 24-30 204.312(b)(4), an informal proceeding may be conducted by one
 24-31 panelist if the affected physician assistant waives the requirement
 24-32 that at least two panelists conduct the informal proceeding. If the
 24-33 physician assistant waives that requirement, the panelist may be
 24-34 any member of the physician assistant board.

24-35 (c) The panel requirements described by Subsections (a) and
 24-36 (b) apply to an informal proceeding conducted by the physician
 24-37 assistant board under Section 204.312, including a proceeding to:

24-38 (1) consider a disciplinary case to determine if a
 24-39 violation has occurred; or

24-40 (2) request modification or termination of an order.

24-41 (d) The panel requirements described by Subsections (a) and
 24-42 (b) do not apply to an informal proceeding conducted by the
 24-43 physician assistant board under Section 204.312 to show compliance
 24-44 with an order of the physician assistant board.

24-45 SECTION 2.26. Subchapter G, Chapter 204, Occupations Code,
 24-46 is amended by adding Sections 204.314 and 204.3145 to read as
 24-47 follows:

24-48 Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN
 24-49 INFORMAL PROCEEDINGS. (a) A physician assistant board member that
 24-50 serves as a panelist at an informal meeting under Section 204.312
 24-51 shall make recommendations for the disposition of a complaint or
 24-52 allegation. The member may request the assistance of a medical
 24-53 board employee at any time.

24-54 (b) Medical board employees shall present a summary of the
 24-55 allegations against the affected physician assistant and of the
 24-56 facts pertaining to the allegation that the employees reasonably
 24-57 believe may be proven by competent evidence at a formal hearing.

24-58 (c) A physician assistant board or medical board attorney
 24-59 shall act as counsel to the panel and, notwithstanding Subsection
 24-60 (e), shall be present during the informal meeting and the panel's
 24-61 deliberations to advise the panel on legal issues that arise during
 24-62 the proceeding. The attorney may ask questions of participants in
 24-63 the informal meeting to clarify any statement made by the
 24-64 participant. The attorney shall provide to the panel a historical
 24-65 perspective on comparable cases that have appeared before the
 24-66 physician assistant board or medical board, keep the proceedings
 24-67 focused on the case being discussed, and ensure that the medical
 24-68 board's employees and the affected physician assistant have an
 24-69 opportunity to present information related to the case.

25-1 (d) The panel and medical board employees shall provide an
 25-2 opportunity for the affected physician assistant and the physician
 25-3 assistant's authorized representative to reply to the medical board
 25-4 employees' presentation and to present oral and written statements
 25-5 and facts that the physician assistant and representative
 25-6 reasonably believe could be proven by competent evidence at a
 25-7 formal hearing.

25-8 (e) An employee of the medical board who participated in the
 25-9 presentation of the allegation or information gathered in the
 25-10 investigation of the complaint, the affected physician assistant,
 25-11 the physician assistant's authorized representative, the
 25-12 complainant, the witnesses, and members of the public may not be
 25-13 present during the deliberations of the panel. Only the members of
 25-14 the panel and the attorney serving as counsel to the panel may be
 25-15 present during the deliberations.

25-16 (f) The panel shall recommend the dismissal of the complaint
 25-17 or allegations or, if the panel determines that the affected
 25-18 physician assistant has violated a statute or physician assistant
 25-19 board rule, the panel may recommend physician assistant board
 25-20 action and terms for an informal settlement of the case.

25-21 (g) The panel's recommendations under Subsection (f) must
 25-22 be made in a written order and presented to the affected physician
 25-23 assistant and the physician assistant's authorized representative.
 25-24 The physician assistant may accept the proposed settlement within
 25-25 the time established by the panel at the informal meeting. If the
 25-26 physician assistant rejects the proposed settlement or does not act
 25-27 within the required time, the physician assistant board may proceed
 25-28 with the filing of a formal complaint with the State Office of
 25-29 Administrative Hearings.

25-30 Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The
 25-31 physician assistant board shall prohibit or limit access to an
 25-32 investigation file relating to a license holder in an informal
 25-33 proceeding in the manner provided by Section 164.007(c).

25-34 SECTION 2.27. Subchapter G, Chapter 204, Occupations Code,
 25-35 is amended by adding Section 204.315 to read as follows:

25-36 Sec. 204.315. SURRENDER OF LICENSE. (a) The physician
 25-37 assistant board may accept the voluntary surrender of a license.

25-38 (b) A surrendered license may not be returned to the license
 25-39 holder unless the physician assistant board determines, under
 25-40 physician assistant board rules, that the former holder of the
 25-41 license is competent to resume practice.

25-42 (c) The physician assistant board by rule shall establish
 25-43 guidelines for determining the competency of a former license
 25-44 holder to return to practice.

25-45 SECTION 2.28. Subchapter G, Chapter 204, Occupations Code,
 25-46 is amended by adding Section 204.316 to read as follows:

25-47 Sec. 204.316. REFUND. (a) Subject to Subsection (b), the
 25-48 physician assistant board may order a license holder to pay a refund
 25-49 to a consumer as provided in an agreement resulting from an informal
 25-50 settlement conference instead of or in addition to imposing an
 25-51 administrative penalty under Section 204.351.

25-52 (b) The amount of a refund ordered as provided in an
 25-53 agreement resulting from an informal settlement conference may not
 25-54 exceed the amount the consumer paid to the license holder for a
 25-55 service regulated by this chapter. The physician assistant board
 25-56 may not require payment of other damages or estimate harm in a
 25-57 refund order.

25-58 SECTION 2.29. Subchapter G, Chapter 204, Occupations Code,
 25-59 is amended by adding Section 204.317 to read as follows:

25-60 Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY
 25-61 ADMINISTRATIVE LAW JUDGE. The physician assistant board may change
 25-62 a finding of fact or conclusion of law or vacate or modify an order
 25-63 of an administrative law judge only if the physician assistant
 25-64 board makes a determination required by Section 2001.058(e),
 25-65 Government Code.

25-66 SECTION 2.30. Subchapter G, Chapter 204, Occupations Code,
 25-67 is amended by adding Section 204.318 to read as follows:

25-68 Sec. 204.318. EXPERT IMMUNITY. An expert who assists the
 25-69 physician assistant board is immune from suit and judgment and may

26-1 not be subjected to a suit for damages for any investigation,
26-2 report, recommendation, statement, evaluation, finding, or other
26-3 action taken without fraud or malice in the course of assisting the
26-4 board in a disciplinary proceeding. The attorney general shall
26-5 represent the expert in any suit resulting from a service provided
26-6 by the person in good faith to the physician assistant board.

26-7 SECTION 2.31. The heading to Subchapter H, Chapter 204,
26-8 Occupations Code, is amended to read as follows:

26-9 SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

26-10 SECTION 2.32. Subchapter H, Chapter 204, Occupations Code,
26-11 is amended by adding Section 204.353 to read as follows:

26-12 Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to
26-13 the physician assistant board that a person who is not licensed
26-14 under this chapter is violating this chapter, a rule adopted under
26-15 this chapter, or another state statute or rule relating to
26-16 physician assistant practice, the board after notice and
26-17 opportunity for a hearing may issue a cease and desist order
26-18 prohibiting the person from engaging in the activity.

26-19 (b) A violation of an order under this section constitutes
26-20 grounds for imposing an administrative penalty under this
26-21 subchapter.

26-22 SECTION 2.33. Section 204.004, Occupations Code, is
26-23 repealed.

26-24 SECTION 2.34. (a) Not later than January 1, 2006, the
26-25 Texas State Board of Physician Assistant Examiners shall:

26-26 (1) adopt the policies required by Sections 204.109
26-27 and 204.110, Occupations Code, as added by this article; and

26-28 (2) adopt the rules required by Chapter 204,
26-29 Occupations Code, as amended by this article.

26-30 (b) Not later than March 1, 2006, the Texas State Board of
26-31 Physician Assistant Examiners shall develop the jurisprudence
26-32 examination required by Section 204.153, Occupations Code, as
26-33 amended by this article.

26-34 (c) The requirement to pass a jurisprudence examination
26-35 under Section 204.153, Occupations Code, as amended by this
26-36 article, applies only to an individual who applies for a license as
26-37 a physician assistant on or after September 1, 2006.

26-38 SECTION 2.35. (a) The changes in law made by Sections
26-39 204.053, 204.056, and 204.059, Occupations Code, as amended or
26-40 added by this article, regarding the prohibitions on or
26-41 qualifications of members of the Texas State Board of Physician
26-42 Assistant Examiners do not affect the entitlement of a member
26-43 serving on the board immediately before September 1, 2005, to
26-44 continue to serve and function as a member of the board for the
26-45 remainder of the member's term. The changes in law made by those
26-46 sections apply only to a member appointed on or after September 1,
26-47 2005.

26-48 (b) The changes in law made by this article related to the
26-49 filing, investigation, or resolution of a complaint under Chapter
26-50 204, Occupations Code, as amended by this article, apply only to a
26-51 complaint filed with the Texas State Board of Physician Assistant
26-52 Examiners on or after the effective date of this Act. A complaint
26-53 filed before the effective date of this Act is governed by the law
26-54 as it existed immediately before that date, and the former law is
26-55 continued in effect for that purpose.

26-56 (c) The changes in law made by this article governing the
26-57 authority of the Texas State Board of Physician Assistant Examiners
26-58 to issue, renew, or revoke a license under Chapter 204, Occupations
26-59 Code, apply only to an application for a license filed with the
26-60 Texas State Board of Physician Assistant Examiners under Chapter
26-61 204, Occupations Code, as amended by this article, on or after the
26-62 effective date of this Act. A license application filed before the
26-63 effective date of this Act is governed by the law in effect at the
26-64 time the application was filed, and the former law is continued in
26-65 effect for that purpose.

26-66 (d) The change in law made by this article with respect to
26-67 conduct that is grounds for imposition of a disciplinary sanction,
26-68 including a refund or cease and desist order, applies only to
26-69 conduct that occurs on or after the effective date of this Act.

27-1 Conduct that occurs before the effective date of this Act is
27-2 governed by the law in effect on the date the conduct occurred, and
27-3 the former law is continued in effect for that purpose.

27-4 ARTICLE 3. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
27-5 ACUPUNCTURE EXAMINERS

27-6 SECTION 3.01. Subdivisions (6), (7), and (8), Section
27-7 205.001, Occupations Code, are amended to read as follows:

27-8 (6) "Executive director" means the executive director
27-9 of the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

27-10 (7) "Medical board" means the Texas Medical [~~State~~]
27-11 Board [~~of Medical Examiners~~].

27-12 (8) "Physician" means a person licensed to practice
27-13 medicine by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

27-14 SECTION 3.02. Subsection (a), Section 205.051, Occupations
27-15 Code, is amended to read as follows:

27-16 (a) The Texas State Board of Acupuncture Examiners consists
27-17 of nine members appointed by the governor with the advice and
27-18 consent of the senate as follows:

27-19 (1) four acupuncturist members who have at least five
27-20 years of experience in the practice of acupuncture in this state and
27-21 who are not physicians;

27-22 (2) two physician members experienced in the practice
27-23 of acupuncture; and

27-24 (3) three members of the general public who are not
27-25 licensed or trained in a health care profession.

27-26 SECTION 3.03. Subsections (a), (c), and (d), Section
27-27 205.053, Occupations Code, are amended to read as follows:

27-28 (a) In this section, "Texas trade association" means a
27-29 [~~nonprofit,~~] cooperative[~~r~~] and voluntarily joined statewide
27-30 association of business or professional competitors in this state
27-31 designed to assist its members and its industry or profession in
27-32 dealing with mutual business or professional problems and in
27-33 promoting their common interest.

27-34 (c) A person [~~who is the spouse of an officer, board member,~~
27-35 ~~manager, or paid consultant of a Texas trade association in the~~
27-36 ~~field of health care~~] may not be a member of the acupuncture board
27-37 and may not be a an employee of the medical board employee in a
27-38 "bona fide executive, administrative, or professional capacity,"
27-39 as that phrase is used for purposes of establishing an exemption to
27-40 the overtime provisions of the federal Fair Labor Standards Act of
27-41 1938 (29 U.S.C. Section 201 et seq.), if:

27-42 (1) the person is an officer, employee, or paid
27-43 consultant of a Texas trade association in the field of health care;
27-44 or

27-45 (2) the person's spouse is an officer, manager, or paid
27-46 consultant of a Texas trade association in the field of health care
27-47 [who is exempt from the state's position classification plan or is
27-48 compensated at or above the amount prescribed by the General
27-49 Appropriations Act for step 1, salary group A17, of the position
27-50 classification salary schedule].

27-51 (d) A person may not be a member of [~~serve on~~] the
27-52 acupuncture board or act as general counsel to the acupuncture
27-53 board or the medical board if the person is required to register as
27-54 a lobbyist under Chapter 305, Government Code, because of the
27-55 person's activities for compensation on behalf of a profession
27-56 related to the operation of the medical board or acupuncture board.

27-57 SECTION 3.04. Section 205.055, Occupations Code, is amended
27-58 to read as follows:

27-59 Sec. 205.055. PRESIDING OFFICER. The governor shall
27-60 designate an acupuncturist [~~a~~] member of the acupuncture board as
27-61 presiding officer. The presiding officer serves in that capacity
27-62 at the will of the governor.

27-63 SECTION 3.05. Section 205.057, Occupations Code, is
27-64 amended to read as follows:

27-65 Sec. 205.057. TRAINING. (a) A [~~To be eligible to take~~
27-66 ~~office as a member of the acupuncture board,~~] person who is
27-67 appointed to and qualifies for office as a member of the acupuncture
27-68 board may not vote, deliberate, or be counted as a member in
27-69 attendance at a meeting of the acupuncture board until the person

28-1 completes [~~must complete at least one course of~~] a training program
28-2 that complies with this section.

28-3 (b) The training program must provide the person with
28-4 information [~~to the person~~] regarding:

- 28-5 (1) this chapter [~~and the acupuncture board~~];
- 28-6 (2) the programs operated by the acupuncture board;
- 28-7 (3) the role and functions of the acupuncture board;
- 28-8 (4) the rules of the acupuncture board [~~, with an~~
28-9 ~~emphasis on the rules that relate to disciplinary and investigatory~~
28-10 ~~authority~~];

- 28-11 (5) the current budget for the acupuncture board;
- 28-12 (6) the results of the most recent formal audit of the
28-13 acupuncture board;

28-14 (7) the requirements of laws relating to open
28-15 meetings, public information, administrative procedure, and
28-16 conflicts of interest [~~the~~;

28-17 [~~(A) open meetings law, Chapter 551, Government~~
28-18 ~~Code;~~

28-19 [~~(B) open records law, Chapter 552, Government~~
28-20 ~~Code; and~~

28-21 [~~(C) administrative procedure law, Chapter 2001,~~
28-22 ~~Government Code~~]; and

28-23 (8) [~~the requirements of the conflict of interest laws~~
28-24 ~~and other laws relating to public officials; and~~

28-25 [~~(9)~~] any applicable ethics policies adopted by the
28-26 acupuncture [~~medical~~] board or the Texas Ethics Commission.

28-27 (c) A person appointed to the acupuncture board is entitled
28-28 to reimbursement, as provided by the General Appropriations Act,
28-29 for the travel expenses incurred in attending the training program
28-30 regardless of whether the attendance at the program occurs before
28-31 or after [~~, as provided by the General Appropriations Act and as if~~
28-32 ~~the person qualifies for office~~ [~~were a member of the acupuncture~~
28-33 ~~board~~].

28-34 SECTION 3.06. Section 205.101, Occupations Code, is amended
28-35 to read as follows:

28-36 Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE
28-37 BOARD. (a) Subject to the advice and approval of the medical
28-38 board, the acupuncture board shall:

28-39 (1) establish qualifications for an acupuncturist to
28-40 practice in this state;

28-41 (2) establish minimum education and training
28-42 requirements necessary for the acupuncture board to recommend that
28-43 the medical board issue a license to practice acupuncture;

28-44 (3) administer an examination that is validated by
28-45 independent testing professionals for a license to practice
28-46 acupuncture;

28-47 (4) develop requirements for licensure by endorsement
28-48 of other states;

28-49 (5) prescribe the application form for a license to
28-50 practice acupuncture;

28-51 (6) recommend rules to establish licensing and other
28-52 fees [~~make recommendations on applications for licenses to practice~~
28-53 ~~acupuncture~~];

28-54 (7) establish the requirements for a tutorial program
28-55 for acupuncture students who have completed at least 48 semester
28-56 hours of college; and

28-57 (8) recommend additional rules as are necessary to
28-58 administer and enforce this chapter.

28-59 (b) The acupuncture board does not have independent
28-60 rulemaking authority. A rule adopted by the acupuncture board is
28-61 subject to medical board approval.

28-62 (c) The acupuncture board shall:

28-63 (1) review and approve or reject each application for
28-64 the issuance or renewal of a license;

28-65 (2) issue each license; and

28-66 (3) deny, suspend, or revoke a license or otherwise
28-67 discipline a license holder.

28-68 SECTION 3.07. Subchapter C, Chapter 205, Occupations Code,
28-69 is amended by adding Section 205.1041 to read as follows:

29-1 Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN
 29-2 RULEMAKING PROCESS. (a) The acupuncture board shall develop
 29-3 guidelines to establish procedures for receiving input during the
 29-4 rulemaking process from individuals and groups that have an
 29-5 interest in matters under the acupuncture board's jurisdiction.
 29-6 The guidelines must provide an opportunity for those individuals
 29-7 and groups to provide input before the acupuncture board submits
 29-8 the rule to the medical board for approval.

29-9 (b) In implementing the guidelines adopted under this
 29-10 section, the acupuncture board shall exercise its judgment in
 29-11 determining which rules require input as described by Subsection
 29-12 (a).

29-13 SECTION 3.08. Subchapter C, Chapter 205, Occupations Code,
 29-14 is amended by adding Section 205.1045 to read as follows:

29-15 Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL
 29-16 CONVICTION. The acupuncture board shall adopt rules and guidelines
 29-17 as necessary to comply with Chapter 53, except to the extent the
 29-18 requirements of this chapter are stricter than the requirements of
 29-19 Chapter 53.

29-20 SECTION 3.09. Subchapter C, Chapter 205, Occupations Code,
 29-21 is amended by adding Section 205.106 to read as follows:

29-22 Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and
 29-23 approval of the medical board, the acupuncture board shall
 29-24 implement a policy requiring the acupuncture board to use
 29-25 appropriate technological solutions to improve the acupuncture
 29-26 board's ability to perform its functions. The policy must ensure
 29-27 that the public is able to interact with the acupuncture board on
 29-28 the Internet.

29-29 SECTION 3.10. Subchapter C, Chapter 205, Occupations Code,
 29-30 is amended by adding Section 205.107 to read as follows:

29-31 Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE
 29-32 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
 29-33 of the medical board, the acupuncture board shall develop and
 29-34 implement a policy to encourage the use of:

29-35 (1) negotiated rulemaking procedures under Chapter
 29-36 2008, Government Code, for the adoption of acupuncture board rules;
 29-37 and

29-38 (2) appropriate alternative dispute resolution
 29-39 procedures under Chapter 2009, Government Code, to assist in the
 29-40 resolution of internal and external disputes under the acupuncture
 29-41 board's jurisdiction.

29-42 (b) The acupuncture board procedures relating to
 29-43 alternative dispute resolution must conform, to the extent
 29-44 possible, to any model guidelines issued by the State Office of
 29-45 Administrative Hearings for the use of alternative dispute
 29-46 resolution by state agencies.

29-47 (c) The acupuncture board shall designate a trained person
 29-48 to:

29-49 (1) coordinate the implementation of the policy
 29-50 adopted under Subsection (a);

29-51 (2) serve as a resource for any training needed to
 29-52 implement the procedures for negotiated rulemaking or alternative
 29-53 dispute resolution; and

29-54 (3) collect data concerning the effectiveness of those
 29-55 procedures, as implemented by the acupuncture board.

29-56 SECTION 3.11. Section 205.201, Occupations Code, is amended
 29-57 to read as follows:

29-58 Sec. 205.201. LICENSE REQUIRED. Except as provided by
 29-59 Section 205.303, a person may not practice acupuncture in this
 29-60 state unless the person holds a license to practice acupuncture
 29-61 issued by the acupuncture [~~medical~~] board under this chapter.

29-62 SECTION 3.12. Section 205.202, Occupations Code, is amended
 29-63 to read as follows:

29-64 Sec. 205.202. ISSUANCE OF LICENSE. (a) The [~~After~~
 29-65 ~~consulting the~~] acupuncture board[~~, the medical board~~] shall issue
 29-66 a license to practice acupuncture in this state to a person who
 29-67 meets the requirements of this chapter and the rules adopted under
 29-68 this chapter.

29-69 (b) The acupuncture board may delegate authority to medical

30-1 board employees to issue licenses under this chapter to applicants
 30-2 who clearly meet all licensing requirements. If the medical board
 30-3 employees determine that the applicant does not clearly meet all
 30-4 licensing requirements, the application shall be returned to the
 30-5 acupuncture board. A license issued under this subsection does not
 30-6 require formal acupuncture board approval.

30-7 SECTION 3.13. Section 205.203, Occupations Code, is amended
 30-8 by amending Subsections (a) and (c) and adding Subsections (c-1)
 30-9 and (f) to read as follows:

30-10 (a) An applicant for a license to practice acupuncture must
 30-11 pass an acupuncture examination and a jurisprudence examination
 30-12 approved by the acupuncture board as provided by this section.

30-13 (c) The acupuncture examination shall be conducted on
 30-14 practical and theoretical acupuncture and other subjects required
 30-15 by the acupuncture board.

30-16 (c-1) The jurisprudence examination shall be conducted on
 30-17 the licensing requirements and other laws, rules, or regulations
 30-18 applicable to the professional practice of acupuncture in this
 30-19 state.

30-20 (f) The acupuncture board shall adopt rules for the
 30-21 jurisprudence examination under Subsection (c-1) regarding:

30-22 (1) the development of the examination;

30-23 (2) applicable fees;

30-24 (3) administration of the examination;

30-25 (4) reexamination procedures;

30-26 (5) grading procedures; and

30-27 (6) notice of results.

30-28 SECTION 3.14. Section 205.206, Occupations Code, is amended
 30-29 by adding Subsection (c) to read as follows:

30-30 (c) In addition to the other requirements of this section,
 30-31 an acupuncture school or degree program is subject to approval by
 30-32 the Texas Higher Education Coordinating Board unless the school or
 30-33 program qualifies for an exemption under Section 61.303, Education
 30-34 Code.

30-35 SECTION 3.15. Section 205.255, Occupations Code, is amended
 30-36 by adding Subsections (a-1) and (c) to read as follows:

30-37 (a-1) The acupuncture board shall establish written
 30-38 guidelines for granting continuing education credit that specify:

30-39 (1) procedural requirements;

30-40 (2) the qualifications needed to be considered a
 30-41 preferred provider of continuing education; and

30-42 (3) course content requirements.

30-43 (c) After guidelines are established under Subsection
 30-44 (a-1), the acupuncture board shall delegate to medical board
 30-45 employees the authority to approve course applications for courses
 30-46 that clearly meet the guidelines. Medical board employees shall
 30-47 refer any courses that are not clearly within the guidelines to the
 30-48 acupuncture board for review and approval.

30-49 SECTION 3.16. Subsections (b) and (c), Section 205.351,
 30-50 Occupations Code, are amended to read as follows:

30-51 (b) If the acupuncture [~~medical~~] board proposes to suspend,
 30-52 revoke, or refuse to renew a person's license, the person is
 30-53 entitled to a hearing conducted by the State Office of
 30-54 Administrative Hearings.

30-55 (c) A complaint, indictment, or conviction of a violation of
 30-56 law is not necessary for an action under Subsection (a)(11). Proof
 30-57 of the commission of the act while in the practice of acupuncture or
 30-58 under the guise of the practice of acupuncture is sufficient for
 30-59 action by the acupuncture [~~medical~~] board.

30-60 SECTION 3.17. Section 205.352, Occupations Code, is amended
 30-61 to read as follows:

30-62 Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.
 30-63 (a) On finding that grounds exist to deny a license or take
 30-64 disciplinary action against a license holder, the acupuncture board
 30-65 by order may:

30-66 (1) deny the person's application for a license,
 30-67 license renewal, or certificate to practice acupuncture or revoke
 30-68 the person's license or certificate to practice acupuncture;

30-69 (2) require the person to submit to the care,

31-1 counseling, or treatment of a health care practitioner designated
 31-2 by the acupuncture board as a condition for the issuance,
 31-3 continuance, or renewal of a license or certificate to practice
 31-4 acupuncture;

31-5 (3) require the person to participate in a program of
 31-6 education or counseling prescribed by the acupuncture board;

31-7 (4) suspend, limit, or restrict the person's license
 31-8 or certificate to practice acupuncture, including limiting the
 31-9 practice of the person to, or excluding from the practice, one or
 31-10 more specified activities of acupuncture or stipulating periodic
 31-11 review by the acupuncture board;

31-12 (5) require the person to practice under the direction
 31-13 of an acupuncturist designated by the acupuncture board for a
 31-14 specified period of time;

31-15 (6) assess an administrative penalty against the
 31-16 person as provided by Subchapter J [Chapter 165];

31-17 (7) require the person to perform public service
 31-18 considered appropriate by the acupuncture board; [~~or~~]

31-19 (8) stay enforcement of an order and place the person
 31-20 on probation with the acupuncture board retaining the right to
 31-21 vacate the probationary stay and enforce the original order for
 31-22 noncompliance with the terms of probation or impose any other
 31-23 remedial measure or sanction authorized by this section;

31-24 (9) require the person to continue or review
 31-25 professional education until the person attains a degree of skill
 31-26 satisfactory to the acupuncture board in those areas that are the
 31-27 basis of the probation under Subdivision (8);

31-28 (10) require the person to report regularly to the
 31-29 acupuncture board on matters that are the basis of the probation
 31-30 under Subdivision (8); or

31-31 (11) administer a public reprimand.

31-32 (b) The acupuncture board may reinstate or reissue a license
 31-33 or remove any disciplinary or corrective measure that the
 31-34 acupuncture board has imposed under this section.

31-35 SECTION 3.18. Subchapter H, Chapter 205, Occupations Code,
 31-36 is amended by adding Section 205.3522 to read as follows:

31-37 Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture
 31-38 board may accept the voluntary surrender of a license.

31-39 (b) A surrendered license may not be returned to the license
 31-40 holder unless the acupuncture board determines, under acupuncture
 31-41 board rules, that the former holder of the license is competent to
 31-42 resume practice.

31-43 (c) The acupuncture board shall recommend rules to the
 31-44 medical board for determining the competency of a former license
 31-45 holder to return to practice.

31-46 SECTION 3.19. Subchapter H, Chapter 205, Occupations Code,
 31-47 is amended by adding Section 205.3523 to read as follows:

31-48 Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The
 31-49 acupuncture board shall adopt guidelines, in conjunction with
 31-50 persons interested in or affected by this section, to enable the
 31-51 board to evaluate circumstances in which an acupuncturist or
 31-52 applicant may be required to submit to an examination for mental or
 31-53 physical health conditions, alcohol and substance abuse, or
 31-54 professional behavior problems.

31-55 (b) The acupuncture board shall refer an acupuncturist or
 31-56 applicant with a physical or mental health condition to the most
 31-57 appropriate medical specialist. The acupuncture board may not
 31-58 require an acupuncturist or applicant to submit to an examination
 31-59 by a physician having a specialty specified by the board unless
 31-60 medically indicated. The acupuncture board may not require an
 31-61 acupuncturist or applicant to submit to an examination to be
 31-62 conducted an unreasonable distance from the person's home or place
 31-63 of business unless the acupuncturist or applicant resides and works
 31-64 in an area in which there are a limited number of physicians able to
 31-65 perform an appropriate examination.

31-66 (c) The guidelines adopted under this section do not impair
 31-67 or remove the acupuncture board's power to make an independent
 31-68 licensing decision.

31-69 SECTION 3.20. Subchapter H, Chapter 205, Occupations Code,

32-1 is amended by adding Section 205.3541 to read as follows:
 32-2 Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture
 32-3 board by rule shall adopt procedures governing:

32-4 (1) informal disposition of a contested case under
 32-5 Section 2001.056, Government Code; and

32-6 (2) informal proceedings held in compliance with
 32-7 Section 2001.054, Government Code.

32-8 (b) Rules adopted under this section must require that:

32-9 (1) an informal meeting in compliance with Section
 32-10 2001.054, Government Code, be scheduled not later than the 180th
 32-11 day after the date the complaint is filed with the acupuncture
 32-12 board, unless good cause is shown by the acupuncture board for
 32-13 scheduling the informal meeting after that date;

32-14 (2) the acupuncture board give notice to the license
 32-15 holder of the time and place of the meeting not later than the 30th
 32-16 day before the date the meeting is held;

32-17 (3) the complainant and the license holder be provided
 32-18 an opportunity to be heard;

32-19 (4) at least one of the acupuncture board members
 32-20 participating in the informal meeting as a panelist be a member who
 32-21 represents the public;

32-22 (5) the acupuncture board's legal counsel or a
 32-23 representative of the attorney general be present to advise the
 32-24 acupuncture board or the medical board's staff; and

32-25 (6) an employee of the medical board be at the meeting
 32-26 to present to the acupuncture board's representative the facts the
 32-27 medical board staff reasonably believes it could prove by competent
 32-28 evidence or qualified witnesses at a hearing.

32-29 (c) An affected acupuncturist is entitled, orally or in
 32-30 writing, to:

32-31 (1) reply to the staff's presentation; and

32-32 (2) present the facts the acupuncturist reasonably
 32-33 believes the acupuncturist could prove by competent evidence or
 32-34 qualified witnesses at a hearing.

32-35 (d) After ample time is given for the presentations, the
 32-36 acupuncture board panel shall recommend that the investigation be
 32-37 closed or shall attempt to mediate the disputed matters and make a
 32-38 recommendation regarding the disposition of the case in the absence
 32-39 of a hearing under applicable law concerning contested cases.

32-40 (e) If the license holder has previously been the subject of
 32-41 disciplinary action by the acupuncture board, the acupuncture board
 32-42 shall schedule the informal meeting as soon as practicable but not
 32-43 later than the deadline prescribed by Subsection (b)(1).

32-44 SECTION 3.21. Subchapter H, Chapter 205, Occupations Code,
 32-45 is amended by adding Section 205.3542 to read as follows:

32-46 Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN
 32-47 INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section
 32-48 205.3541, at least two panelists shall be appointed to determine
 32-49 whether an informal disposition is appropriate.

32-50 (b) Notwithstanding Subsection (a) and Section
 32-51 205.3541(b)(4), an informal proceeding may be conducted by one
 32-52 panelist if the affected acupuncturist waives the requirement that
 32-53 at least two panelists conduct the informal proceeding. If the
 32-54 acupuncturist waives that requirement, the panelist may be any
 32-55 member of the acupuncture board.

32-56 (c) The panel requirements described by Subsection (a)
 32-57 apply to an informal proceeding conducted by the acupuncture board
 32-58 under Section 205.3541, including a proceeding to:

32-59 (1) consider a disciplinary case to determine if a
 32-60 violation has occurred; or

32-61 (2) request modification or termination of an order.

32-62 (d) The panel requirements described by Subsection (a) do
 32-63 not apply to an informal proceeding conducted by the acupuncture
 32-64 board under Section 205.3541 to show compliance with an order of the
 32-65 acupuncture board.

32-66 SECTION 3.22. Subchapter H, Chapter 205, Occupations Code,
 32-67 is amended by adding Section 205.3543 to read as follows:

32-68 Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
 32-69 IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that

33-1 serves as a panelist at an informal meeting under Section 205.3541
 33-2 shall make recommendations for the disposition of a complaint or
 33-3 allegation. The member may request the assistance of a medical
 33-4 board employee at any time.

33-5 (b) Medical board employees shall present a summary of the
 33-6 allegations against the affected acupuncturist and of the facts
 33-7 pertaining to the allegation that the employees reasonably believe
 33-8 may be proven by competent evidence at a formal hearing.

33-9 (c) An acupuncture board or medical board attorney shall act
 33-10 as counsel to the panel and, notwithstanding Subsection (e), shall
 33-11 be present during the informal meeting and the panel's
 33-12 deliberations to advise the panel on legal issues that arise during
 33-13 the proceeding. The attorney may ask questions of participants in
 33-14 the informal meeting to clarify any statement made by the
 33-15 participant. The attorney shall provide to the panel a historical
 33-16 perspective on comparable cases that have appeared before the
 33-17 acupuncture board or medical board, keep the proceedings focused on
 33-18 the case being discussed, and ensure that the medical board's
 33-19 employees and the affected acupuncturist have an opportunity to
 33-20 present information related to the case.

33-21 (d) The panel and medical board employees shall provide an
 33-22 opportunity for the affected acupuncturist and the acupuncturist's
 33-23 authorized representative to reply to the board employees'
 33-24 presentation and to present oral and written statements and facts
 33-25 that the acupuncturist and representative reasonably believe could
 33-26 be proven by competent evidence at a formal hearing.

33-27 (e) An employee of the medical board who participated in the
 33-28 presentation of the allegation or information gathered in the
 33-29 investigation of the complaint, the affected acupuncturist, the
 33-30 acupuncturist's authorized representative, the complainant, the
 33-31 witnesses, and members of the public may not be present during the
 33-32 deliberations of the panel. Only the members of the panel and the
 33-33 attorney serving as counsel to the panel may be present during the
 33-34 deliberations.

33-35 (f) The panel shall recommend the dismissal of the complaint
 33-36 or allegations or, if the panel determines that the affected
 33-37 acupuncturist has violated a statute or acupuncture board rule, the
 33-38 panel may recommend board action and terms for an informal
 33-39 settlement of the case.

33-40 (g) The panel's recommendations under Subsection (f) must
 33-41 be made in a written order and presented to the affected
 33-42 acupuncturist and the acupuncturist's authorized representative.
 33-43 The acupuncturist may accept the proposed settlement within the
 33-44 time established by the panel at the informal meeting. If the
 33-45 acupuncturist rejects the proposed settlement or does not act
 33-46 within the required time, the acupuncture board may proceed with
 33-47 the filing of a formal complaint with the State Office of
 33-48 Administrative Hearings.

33-49 SECTION 3.23. Subchapter H, Chapter 205, Occupations Code,
 33-50 is amended by adding Section 205.3544 to read as follows:

33-51 Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The
 33-52 acupuncture board shall prohibit or limit access to an
 33-53 investigation file relating to a license holder in an informal
 33-54 proceeding in the manner provided by Section 164.007(c).

33-55 SECTION 3.24. Section 205.356, Occupations Code, is amended
 33-56 to read as follows:

33-57 Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture
 33-58 board, through an agreed order or after a contested proceeding, may
 33-59 impose a nondisciplinary rehabilitation order on an applicant, as a
 33-60 prerequisite for issuing a license, or on a license holder based on:

33-61 (1) the person's intemperate use of drugs or alcohol
 33-62 directly resulting from habituation or addiction caused by medical
 33-63 care or treatment provided by a physician;

33-64 (2) the person's intemperate use of drugs or alcohol
 33-65 during the five years preceding the date of the report that could
 33-66 adversely affect the person's ability to safely practice as an
 33-67 acupuncturist, if the person:

33-68 (A) reported the use; ~~and~~

33-69 (B) has not previously been the subject of a

substance abuse related order of the acupuncture board; and
(C) did not violate the standard of care as a
result of the impairment;

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

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

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

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

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

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

Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

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

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

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

Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT

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

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

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

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

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

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

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

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

(b) If the disciplinary panel determines from the

35-1 information presented to the panel that a person licensed to
 35-2 practice as an acupuncturist would, by the person's continuation in
 35-3 practice, constitute a continuing threat to the public welfare, the
 35-4 disciplinary panel shall temporarily suspend the license of that
 35-5 person.

35-6 (c) A license may be suspended under this section without
 35-7 notice or hearing on the complaint if:

35-8 (1) institution of proceedings for a hearing before
 35-9 the acupuncture board is initiated simultaneously with the
 35-10 temporary suspension; and

35-11 (2) a hearing is held under Chapter 2001, Government
 35-12 Code, and this chapter as soon as possible.

35-13 (d) Notwithstanding Chapter 551, Government Code, the
 35-14 disciplinary panel may hold a meeting by telephone conference call
 35-15 if immediate action is required and convening of the panel at one
 35-16 location is inconvenient for any member of the disciplinary panel.

35-17 SECTION 3.28. Subchapter H, Chapter 205, Occupations Code,
 35-18 is amended by adding Section 205.362 to read as follows:

35-19 Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to
 35-20 the acupuncture board that a person who is not licensed under this
 35-21 chapter is violating this chapter, a rule adopted under this
 35-22 chapter, or another state statute or rule relating to the practice
 35-23 of acupuncture, the board, after notice and opportunity for a
 35-24 hearing, may issue a cease and desist order prohibiting the person
 35-25 from engaging in the activity.

35-26 (b) A violation of an order under this section constitutes
 35-27 grounds for imposing an administrative penalty under Section
 35-28 205.352.

35-29 SECTION 3.29. Subchapter H, Chapter 205, Occupations Code,
 35-30 is amended by adding Section 205.363 to read as follows:

35-31 Sec. 205.363. REFUND. (a) Subject to Subsection (b), the
 35-32 acupuncture board may order a license holder to pay a refund to a
 35-33 consumer as provided in an agreement resulting from an informal
 35-34 settlement conference instead of or in addition to imposing an
 35-35 administrative penalty under this subchapter.

35-36 (b) The amount of a refund ordered under Subsection (a) may
 35-37 not exceed the amount the consumer paid to the license holder for a
 35-38 service regulated by this chapter. The acupuncture board may not
 35-39 require payment of other damages or estimate harm in a refund order.

35-40 SECTION 3.30. Subchapter H, Chapter 205, Occupations Code,
 35-41 is amended by adding Section 205.364 to read as follows:

35-42 Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY
 35-43 ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a
 35-44 finding of fact or conclusion of law or vacate or modify an order of
 35-45 an administrative law judge only if the acupuncture board makes a
 35-46 determination required by Section 2001.058(e), Government Code.

35-47 SECTION 3.31. Subsections (a) and (d), Section 205.402,
 35-48 Occupations Code, are amended to read as follows:

35-49 (a) The ~~acupuncture [medical]~~ board, the attorney general,
 35-50 or a district or county attorney may bring a civil action to compel
 35-51 compliance with this chapter or to enforce a rule adopted under this
 35-52 chapter.

35-53 (d) The attorney general, at the request of the acupuncture
 35-54 ~~[medical]~~ board or on the attorney general's own initiative, may
 35-55 bring a civil action to collect a civil penalty.

35-56 SECTION 3.32. The heading to Subchapter I, Chapter 205,
 35-57 Occupations Code, is amended to read as follows:

35-58 SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

35-59 SECTION 3.33. Chapter 205, Occupations Code, is amended by
 35-60 adding Subchapter J to read as follows:

35-61 SUBCHAPTER J. ADMINISTRATIVE PENALTIES

35-62 Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 35-63 acupuncture board by order may impose an administrative penalty
 35-64 against a person licensed or regulated under this chapter who
 35-65 violates this chapter or a rule or order adopted under this chapter.

35-66 Sec. 205.452. PROCEDURE. (a) The acupuncture board by
 35-67 rule shall prescribe the procedure by which it may impose an
 35-68 administrative penalty.

35-69 (b) A proceeding under this subchapter is subject to Chapter

36-1 2001, Government Code.

36-2 Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an
 36-3 administrative penalty may not exceed \$5,000 for each violation.
 36-4 Each day a violation continues or occurs is a separate violation for
 36-5 purposes of imposing a penalty.

36-6 (b) The amount of the penalty shall be based on:
 36-7 (1) the seriousness of the violation, including:
 36-8 (A) the nature, circumstances, extent, and
 36-9 gravity of any prohibited act; and
 36-10 (B) the hazard or potential hazard created to the
 36-11 health, safety, or economic welfare of the public;
 36-12 (2) the economic harm to property or the environment
 36-13 caused by the violation;
 36-14 (3) the history of previous violations;
 36-15 (4) the amount necessary to deter a future violation;
 36-16 (5) efforts to correct the violation; and
 36-17 (6) any other matter that justice may require.

36-18 Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the
 36-19 acupuncture board by order determines that a violation has occurred
 36-20 and imposes an administrative penalty, the acupuncture board shall
 36-21 notify the affected person of the board's order.

36-22 (b) The notice must include a statement of the right of the
 36-23 person to judicial review of the order.

36-24 Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
 36-25 (a) Not later than the 30th day after the date the acupuncture
 36-26 board's order imposing the administrative penalty is final, the
 36-27 person shall:

36-28 (1) pay the penalty;
 36-29 (2) pay the penalty and file a petition for judicial
 36-30 review contesting the occurrence of the violation, the amount of
 36-31 the penalty, or both; or
 36-32 (3) without paying the penalty, file a petition for
 36-33 judicial review contesting the occurrence of the violation, the
 36-34 amount of the penalty, or both.

36-35 (b) Within the 30-day period, a person who acts under
 36-36 Subsection (a)(3) may:

36-37 (1) stay enforcement of the penalty by:
 36-38 (A) paying the penalty to the court for placement
 36-39 in an escrow account; or
 36-40 (B) giving to the court a supersedeas bond
 36-41 approved by the court for the amount of the penalty and that is
 36-42 effective until all judicial review of the acupuncture board's
 36-43 order is final; or

36-44 (2) request the court to stay enforcement of the
 36-45 penalty by:

36-46 (A) filing with the court an affidavit of the
 36-47 person stating that the person is financially unable to pay the
 36-48 penalty and is financially unable to give the supersedeas bond; and
 36-49 (B) giving a copy of the affidavit to the
 36-50 presiding officer of the acupuncture board by certified mail.

36-51 (c) If the presiding officer of the acupuncture board
 36-52 receives a copy of an affidavit under Subsection (b)(2), the
 36-53 presiding officer may file with the court a contest to the affidavit
 36-54 not later than the fifth day after the date the copy is received.

36-55 (d) The court shall hold a hearing on the facts alleged in
 36-56 the affidavit as soon as practicable and shall stay the enforcement
 36-57 of the penalty on finding that the alleged facts are true. The
 36-58 person who files an affidavit has the burden of proving that the
 36-59 person is financially unable to pay the penalty and to give a
 36-60 supersedeas bond.

36-61 Sec. 205.456. COLLECTION OF PENALTY. If the person does not
 36-62 pay the administrative penalty and the enforcement of the penalty
 36-63 is not stayed, the presiding officer of the acupuncture board may
 36-64 refer the matter to the attorney general for collection of the
 36-65 penalty.

36-66 Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal
 36-67 the court sustains the determination that a violation occurred, the
 36-68 court may uphold or reduce the amount of the administrative penalty
 36-69 and order the person to pay the full or reduced penalty.

37-1 (b) If the court does not sustain the determination that a
 37-2 violation occurred, the court shall order that a penalty is not
 37-3 owed.

37-4 Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If
 37-5 after judicial review the administrative penalty is reduced or not
 37-6 imposed by the court, the court shall, after the judgment becomes
 37-7 final:

37-8 (1) order that the appropriate amount, plus accrued
 37-9 interest, be remitted to the person if the person paid the penalty;
 37-10 or

37-11 (2) order the release of the bond in full if the
 37-12 penalty is not imposed or order the release of the bond after the
 37-13 person pays the penalty imposed if the person posted a supersedeas
 37-14 bond.

37-15 (b) The interest paid under Subsection (a)(1) is the rate
 37-16 charged on loans to depository institutions by the New York Federal
 37-17 Reserve Bank. The interest is paid for the period beginning on the
 37-18 date the penalty is paid and ending on the date the penalty is
 37-19 remitted.

37-20 SECTION 3.34. Sections 205.002 and 205.353, Occupations
 37-21 Code, are repealed.

37-22 SECTION 3.35. (a) Not later than January 1, 2006, the
 37-23 Texas State Board of Acupuncture Examiners shall:

37-24 (1) adopt the policies required by Sections 205.106
 37-25 and 205.107, Occupations Code, as added by this article; and

37-26 (2) adopt the rules required by Chapter 205,
 37-27 Occupations Code, as amended by this article.

37-28 (b) Not later than March 1, 2006, the Texas State Board of
 37-29 Acupuncture Examiners shall develop the jurisprudence examination
 37-30 required by Section 205.203, Occupations Code, as amended by this
 37-31 article.

37-32 (c) The requirement to pass a jurisprudence examination
 37-33 under Section 205.203, Occupations Code, as amended by this
 37-34 article, applies only to an individual who applies for a license as
 37-35 an acupuncturist on or after September 1, 2006.

37-36 SECTION 3.36. (a) The changes in law made by Sections
 37-37 205.053 and 205.057, Occupations Code, as amended by this article,
 37-38 regarding the prohibitions on or qualifications of members of the
 37-39 Texas State Board of Acupuncture Examiners do not affect the
 37-40 entitlement of a member serving on the board immediately before
 37-41 September 1, 2005, to continue to serve and function as a member of
 37-42 the board for the remainder of the member's term. The changes in
 37-43 law made by those sections apply only to a member appointed on or
 37-44 after September 1, 2005.

37-45 (b) The changes in law made by this article related to the
 37-46 filing, investigation, or resolution of a complaint under Chapter
 37-47 205, Occupations Code, as amended by this article, apply only to a
 37-48 complaint filed with the Texas State Board of Acupuncture Examiners
 37-49 on or after the effective date of this Act. A complaint filed
 37-50 before the effective date of this Act is governed by the law as it
 37-51 existed immediately before that date, and the former law is
 37-52 continued in effect for that purpose.

37-53 (c) The changes in law made by this article governing the
 37-54 authority of the Texas State Board of Acupuncture Examiners to
 37-55 issue, renew, or revoke a license under Chapter 205, Occupations
 37-56 Code, apply only to an application for a license filed with the
 37-57 Texas State Board of Acupuncture Examiners under Chapter 205,
 37-58 Occupations Code, as amended by this article, on or after the
 37-59 effective date of this Act. A license application filed before the
 37-60 effective date of this Act is governed by the law in effect at the
 37-61 time the application was filed, and the former law is continued in
 37-62 effect for that purpose.

37-63 (d) The change in law made by this article with respect to
 37-64 conduct that is grounds for imposition of a disciplinary sanction,
 37-65 including a refund, temporary license suspension, or cease and
 37-66 desist order, applies only to conduct that occurs on or after the
 37-67 effective date of this Act. Conduct that occurs before the
 37-68 effective date of this Act is governed by the law in effect on the
 37-69 date the conduct occurred, and the former law is continued in effect

38-1 for that purpose.

38-2 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

38-3 SECTION 4.01. Subdivision (5), Section 206.001,
38-4 Occupations Code, is amended to read as follows:

38-5 (5) "Medical board" means the Texas ~~[State Board of]~~
38-6 Medical Board [Examiners].

38-7 SECTION 4.02. Section 206.209, Occupations Code, is amended
38-8 to read as follows:

38-9 Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The
38-10 medical board shall issue a surgical assistant license in this
38-11 state to a person who meets the requirements of this chapter and the
38-12 rules adopted under this chapter.

38-13 (b) The medical board may delegate authority to board
38-14 employees to issue licenses under this chapter to applicants who
38-15 clearly meet all licensing requirements. If the medical board
38-16 employees determine that the applicant does not clearly meet all
38-17 licensing requirements, the application shall be returned to the
38-18 medical board. A license issued under this subsection does not
38-19 require formal medical board approval.

38-20 SECTION 4.03. Section 206.305, Occupations Code, is amended
38-21 to read as follows:

38-22 Sec. 206.305. REHABILITATION ORDER. (a) The medical
38-23 board, through an agreed order or after a contested case
38-24 proceeding, may impose a rehabilitation order on an applicant, as a
38-25 prerequisite for issuing a license, or on a license holder based on:

38-26 (1) the person's intemperate use of drugs or alcohol
38-27 directly resulting from habituation or addiction caused by medical
38-28 care or treatment provided by a physician;

38-29 (2) the person's intemperate use of drugs or alcohol
38-30 during the five years preceding the date of the report that could
38-31 adversely affect the person's ability to safely practice as a
38-32 surgical assistant, if the person:

38-33 (A) reported the use; ~~and~~

38-34 (B) has not previously been the subject of a
38-35 substance abuse related order of the medical board; and

38-36 (C) has not committed a violation of the standard
38-37 of care as a result of the intemperate use of drugs or alcohol;

38-38 (3) a judgment by a court that the person is of unsound
38-39 mind; or

38-40 (4) the results of a mental or physical examination,
38-41 or an admission by the person, indicating that the person suffers
38-42 from a potentially dangerous limitation or an inability to practice
38-43 as a surgical assistant with reasonable skill and safety because of
38-44 illness or any other physical or mental condition.

38-45 (b) The medical board may not issue an order under this
38-46 section if, before the individual signs the proposed order, the
38-47 board receives a valid complaint with regard to the individual
38-48 based on the individual's intemperate use of drugs or alcohol in a
38-49 manner affecting the standard of care.

38-50 (c) The medical board must determine whether an individual
38-51 has committed a standard of care violation described by Subsection
38-52 (a)(2) before imposing an order under this section.

38-53 SECTION 4.04. Subchapter G, Chapter 206, Occupations Code,
38-54 is amended by adding Section 206.3075 to read as follows:

38-55 Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

38-56 (a) If a rehabilitation order imposed under Section 206.305
38-57 requires a license holder to participate in activities or programs
38-58 provided by a local or statewide private medical or surgical
38-59 assistant association, the medical board shall inform the
38-60 association of the license holder's duties under the order. The
38-61 information provided under this section must include specific
38-62 guidance to enable the association to comply with any requirements
38-63 necessary to assist in the surgical assistant's rehabilitation.

38-64 (b) The medical board may provide to the association any
38-65 information that the board determines to be necessary, including a
38-66 copy of the rehabilitation order. Any information received by the
38-67 association remains confidential, is not subject to discovery,
38-68 subpoena, or other means of legal compulsion, and may be disclosed
38-69 only to the medical board.

39-1 SECTION 4.05. Subchapter G, Chapter 206, Occupations Code,
39-2 is amended by adding Sections 206.313, 206.314, and 206.315 to read
39-3 as follows:

39-4 Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board
39-5 by rule shall adopt procedures under this chapter governing:

39-6 (1) informal disposition of a contested case under
39-7 Section 2001.056, Government Code; and

39-8 (2) informal proceedings held in compliance with
39-9 Section 2001.054, Government Code.

39-10 (b) Rules adopted under this section must require that:

39-11 (1) an informal meeting in compliance with Section
39-12 2001.054, Government Code, be scheduled not later than the 180th
39-13 day after the date the medical board's official investigation of
39-14 the complaint is commenced, unless good cause is shown by the board
39-15 for scheduling the informal meeting after that date;

39-16 (2) the medical board give notice to the license
39-17 holder of the time and place of the meeting not later than the 30th
39-18 day before the date the meeting is held;

39-19 (3) the complainant and the license holder be provided
39-20 an opportunity to be heard;

39-21 (4) at least one of the medical board members or
39-22 district review committee members participating in the informal
39-23 meeting as a panelist be a member who represents the public;

39-24 (5) the medical board's legal counsel or a
39-25 representative of the attorney general be present to advise the
39-26 medical board or the board's staff; and

39-27 (6) a member of the medical board's staff be at the
39-28 meeting to present to the panel the facts the staff reasonably
39-29 believes it could prove by competent evidence or qualified
39-30 witnesses at a hearing.

39-31 (c) An affected surgical assistant is entitled, orally or in
39-32 writing, to:

39-33 (1) reply to the staff's presentation; and

39-34 (2) present the facts the surgical assistant
39-35 reasonably believes the surgical assistant could prove by competent
39-36 evidence or qualified witnesses at a hearing.

39-37 (d) After ample time is given for the presentations, the
39-38 medical board panel shall recommend that the investigation be
39-39 closed or shall attempt to mediate the disputed matters and make a
39-40 recommendation regarding the disposition of the case in the absence
39-41 of a hearing under applicable law concerning contested cases.

39-42 (e) If the license holder has previously been the subject of
39-43 disciplinary action by the medical board, the board shall schedule
39-44 the informal meeting as soon as practicable but not later than the
39-45 deadline prescribed by Subsection (b)(1).

39-46 Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN
39-47 INFORMAL PROCEEDINGS. (a) A medical board or district review
39-48 committee member that serves as a panelist at an informal meeting
39-49 under Section 206.313 shall make recommendations for the
39-50 disposition of a complaint or allegation. The member may request
39-51 the assistance of a medical board employee at any time.

39-52 (b) Medical board employees shall present a summary of the
39-53 allegations against the affected surgical assistant and of the
39-54 facts pertaining to the allegation that the employees reasonably
39-55 believe may be proven by competent evidence at a formal hearing.

39-56 (c) A medical board attorney shall act as counsel to the
39-57 panel and, notwithstanding Subsection (e), shall be present during
39-58 the informal meeting and the panel's deliberations to advise the
39-59 panel on legal issues that arise during the proceeding. The
39-60 attorney may ask questions of participants in the informal meeting
39-61 to clarify any statement made by the participant. The attorney
39-62 shall provide to the panel a historical perspective on comparable
39-63 cases that have appeared before the medical board, keep the
39-64 proceedings focused on the case being discussed, and ensure that
39-65 the medical board's employees and the affected surgical assistant
39-66 have an opportunity to present information related to the case.

39-67 (d) The panel and medical board employees shall provide an
39-68 opportunity for the affected surgical assistant and the surgical
39-69 assistant's authorized representative to reply to the board

40-1 employees' presentation and to present oral and written statements
40-2 and facts that the surgical assistant and representative reasonably
40-3 believe could be proven by competent evidence at a formal hearing.

40-4 (e) An employee of the medical board who participated in the
40-5 presentation of the allegation or information gathered in the
40-6 investigation of the complaint, the affected surgical assistant,
40-7 the surgical assistant's authorized representative, the
40-8 complainant, the witnesses, and members of the public may not be
40-9 present during the deliberations of the panel. Only the members of
40-10 the panel and the medical board attorney serving as counsel to the
40-11 panel may be present during the deliberations.

40-12 (f) The panel shall recommend the dismissal of the complaint
40-13 or allegations or, if the panel determines that the affected
40-14 surgical assistant has violated a statute or medical board rule,
40-15 the panel may recommend board action and terms for an informal
40-16 settlement of the case.

40-17 (g) The panel's recommendations under Subsection (f) must
40-18 be made in a written order and presented to the affected surgical
40-19 assistant and the surgical assistant's authorized representative.
40-20 The surgical assistant may accept the proposed settlement within
40-21 the time established by the panel at the informal meeting. If the
40-22 surgical assistant rejects the proposed settlement or does not act
40-23 within the required time, the medical board may proceed with the
40-24 filing of a formal complaint with the State Office of
40-25 Administrative Hearings.

40-26 Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL
40-27 PROCEEDINGS. (a) In an informal proceeding under Section 206.313,
40-28 at least two panelists shall be appointed to determine whether an
40-29 informal disposition is appropriate.

40-30 (b) The medical board may request members of a committee
40-31 under Chapter 163 to participate in an informal meeting under
40-32 Section 206.313.

40-33 (c) Notwithstanding Subsection (a) and Section
40-34 206.313(b)(4), an informal proceeding may be conducted by one
40-35 panelist if the affected surgical assistant waives the requirement
40-36 that at least two panelists conduct the informal proceeding. If the
40-37 surgical assistant waives that requirement, the panelist may be
40-38 either a physician or a member who represents the public.

40-39 (d) The panel requirements described by Subsection (a) do
40-40 not apply to an informal proceeding conducted by the medical board
40-41 under Section 206.313 to show compliance with an order of the board.

40-42 SECTION 4.06. The changes in law made by this article
40-43 related to the filing, investigation, or disposition of a complaint
40-44 under Chapter 206, Occupations Code, as amended by this article,
40-45 apply only to a complaint filed with the Texas Medical Board on or
40-46 after the effective date of this Act. A complaint filed before the
40-47 effective date of this Act is governed by the law as it existed
40-48 immediately before that date, and the former law is continued in
40-49 effect for that purpose.

40-50 ARTICLE 5. EFFECTIVE DATE

40-51 SECTION 5.01. This Act takes effect September 1, 2005.

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