

By: King of Zavala

H.B. No. 1028

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the practice of acupuncture.

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

SECTION 1. Section 205.001(2), Occupations Code, is amended to read as follows:

(2) "Acupuncture" means:

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

(B) the administration or recommendation of thermal or electrical treatments or ~~[the recommendation]~~ of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A).

SECTION 2. Section 205.101, Occupations Code, is amended to read as follows:

Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE BOARD. (a) The ~~[Subject to the advice and approval of the medical board, the]~~ acupuncture board shall:

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

(2) establish minimum education and training requirements necessary for the acupuncture board to ~~[recommend that~~

1 ~~the medical board]~~ issue a license to practice acupuncture;

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

5 (4) develop requirements for licensure by endorsement  
6 of other states;

7 (5) prescribe the application form for a license to  
8 practice acupuncture;

9 (6) recommend rules to establish licensing and other  
10 fees;

11 (7) approve educational programs or institutions of  
12 acupuncture and oriental medicine that meet the acupuncture board's  
13 minimum standards [~~establish the requirements for a tutorial~~  
14 ~~program for acupuncture students who have completed at least 48~~  
15 ~~semester hours of college~~]; and

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

18 (b) In establishing minimum education and training  
19 requirements under Subsection (a)(2), the acupuncture board shall  
20 consider the minimum education and training standards established  
21 by the Accreditation Commission for Acupuncture and Oriental  
22 Medicine [~~The acupuncture board does not have independent~~  
23 ~~rulemaking authority. A rule adopted by the acupuncture board is~~  
24 ~~subject to medical board approval~~].

25 SECTION 3. Section 205.201, Occupations Code, is amended to  
26 read as follows:

27 Sec. 205.201. LICENSE REQUIRED. (a) Except as provided by

1 Section 205.303, a person may not practice acupuncture in this  
2 state unless the person holds a license to practice acupuncture  
3 issued by the acupuncture board under this chapter.

4 (b) A person practices acupuncture if the person:

5 (1) performs, offers to perform, or attempts to  
6 perform acupuncture; or

7 (2) represents to the public that the person is an  
8 acupuncturist or that the person provides acupuncture.

9 (c) Unless the person holds a license under this chapter,  
10 the person may not:

11 (1) use in connection with the person's name or  
12 business activity:

13 (A) the words "acupuncturist" or "acupuncture";

14 (B) the letters or abbreviations "L.Ac." or  
15 "Lic.Ac."; or

16 (C) any other words, letters, abbreviations, or  
17 insignia indicating or implying that the person is an  
18 acupuncturist; or

19 (2) directly or by implication represent in any way  
20 that the person is an acupuncturist.

21 SECTION 4. Section 205.206, Occupations Code, is amended by  
22 adding Subsection (e) to read as follows:

23 (e) The acupuncture board may deny or withdraw the board's  
24 approval of a school or educational program that does not meet the  
25 board's prescribed course of study or other educational standards.

26 SECTION 5. The heading to Section 205.301, Occupations  
27 Code, is amended to read as follows:

1           Sec. 205.301. EVALUATION [~~REFERRAL~~] BY OTHER HEALTH CARE  
2 PRACTITIONER REQUIRED.

3           SECTION 6. Sections 205.301(a), (b), and (d), Occupations  
4 Code, are amended to read as follows:

5           (a) A license holder may perform acupuncture on a person  
6 only if the person was[+]

7                   [~~(1)~~] evaluated by a physician, physician assistant,  
8 nurse practitioner, chiropractor, or dentist, as appropriate, for  
9 the condition being treated within 12 [~~six~~] months before the date  
10 acupuncture is performed[~~, or~~

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

13           (b) A license holder acting under Subsection (a)[~~(1)~~] must  
14 obtain reasonable documentation that the required evaluation has  
15 taken place. If the license holder is unable to determine that an  
16 evaluation has taken place, the license holder must obtain a  
17 written statement signed by the person on a form prescribed by the  
18 acupuncture board that states the person has been evaluated by a  
19 physician, physician assistant, nurse practitioner, chiropractor,  
20 or dentist within the prescribed time. The form must contain a  
21 clear statement that the person should be evaluated by a physician,  
22 physician assistant, nurse practitioner, chiropractor, or dentist  
23 for the condition being treated by the license holder.

24           (d) The medical board, with advice from the acupuncture  
25 board, by rule may modify:

26                   (1) the scope of the evaluation under Subsection  
27 (a) [~~(1)~~]; or

1           (2) the period during which treatment must begin under  
2 Subsection (a) [~~(1) or (2); or~~  
3           ~~(3) the number of treatments or days before referral~~  
4 ~~to a physician is required under Subsection (c)] .~~

5           SECTION 7. Section 205.302, Occupations Code, is amended to  
6 read as follows:

7           Sec. 205.302. AUTHORIZED PRACTICE WITHOUT EVALUATION  
8 [~~REFERRAL~~]. [~~(a) After notice and public hearing, the medical~~  
9 ~~board shall determine by rule whether an acupuncturist may treat a~~  
10 ~~patient for alcoholism or chronic pain without a referral from a~~  
11 ~~physician, dentist, or chiropractor. The medical board shall make~~  
12 ~~the determination based on clinical evidence and what the medical~~  
13 ~~board determines to be in the best interest of affected patients.~~

14           ~~[(b)]~~ Notwithstanding Section 205.301, a license holder  
15 may, without an evaluation [~~a referral~~] from a physician, dentist,  
16 physician assistant, nurse practitioner, or chiropractor, perform  
17 acupuncture on a person for:

- 18           (1) smoking addiction;  
19           (2) weight loss; [~~or~~]  
20           (3) substance abuse, to the extent permitted by  
21 medical board rule adopted with advice from the acupuncture board;  
22           (4) chronic pain;  
23           (5) stress;  
24           (6) an allergy;  
25           (7) nausea or a digestive disorder;  
26           (8) depression;  
27           (9) insomnia; or

1           (10) a cosmetic procedure.

2           SECTION 8. Section 205.355, Occupations Code, is amended to  
3 read as follows:

4           Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO  
5 OBTAIN EVALUATION [~~REFERRAL~~]. A [~~Except as provided by Section~~  
6 ~~205.301(a)(2), a~~] license to practice acupuncture shall be denied  
7 or, after notice and hearing, revoked if the applicant or license  
8 holder violates Section 205.301(a) [~~205.301(a)(1)~~].

9           SECTION 9. Sections 205.003(a) and 205.301(c), Occupations  
10 Code, are repealed.

11           SECTION 10. (a) The Texas State Board of Acupuncture  
12 Examiners shall adopt rules as required by Section 205.101,  
13 Occupations Code, as amended by this Act, not later than January 1,  
14 2008. A rule or form in effect under Chapter 205, Occupations Code,  
15 on the effective date of this Act remains in effect until the rule  
16 or form is amended or replaced by a new rule or form adopted or  
17 prescribed under Section 205.101, Occupations Code, as amended by  
18 this Act.

19           (b) An application for a license to practice acupuncture  
20 filed under Chapter 205, Occupations Code, before the effective  
21 date of this Act is covered by the law in effect immediately before  
22 the effective date of this Act, and the former law is continued in  
23 effect for that purpose.

24           SECTION 11. This Act takes effect immediately if it  
25 receives a vote of two-thirds of all the members elected to each  
26 house, as provided by Section 39, Article III, Texas Constitution.  
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2007.