

BILL ANALYSIS

S.B. 1314
By: Harris
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, the Texas State Board of Acupuncture Examiners exists under the oversight of the Texas Medical Board. Acupuncture is a unique and specialized medical practice and needs to have a self-regulating board that can establish appropriate standards of practice, set standards for licensure, collect fees, and oversee the practice of acupuncture in Texas.

S.B. 1314 expands the authority of the Texas State Board of Acupuncture Examiners to regulate the practice of acupuncture.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Acupuncture Examiners in SECTIONS 4, 8, and 16 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTIONS 11 and 16 of this bill.

ANALYSIS

S.B. 1314 amends the Occupations Code to remove from the definition of "acupuncture" the specification that the insertion of an acupuncture needle be nonsurgical and nonincisive, and to clarify that, in addition to the insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body, "acupuncture" means the administration or recommendation of thermal or electrical treatments or of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with needle insertion and moxibustion treatments, rather than the administration of thermal or electrical treatments or the recommendation of those guidelines, exercises, or supplements in conjunction with needle insertion and moxibustion treatments. The bill specifies that the term "acupuncture" does not include surgery or clinical needle electromyography.

S.B. 1314 exempts a physician, rather than a health care professional licensed under another state statute and acting within the scope of the license, from provisions regulating the practice of acupuncture. The bill clarifies that provisions regulating the practice of acupuncture do not limit the practice of medicine by a physician, which, as added by the bill, includes the delegation and supervision of medical acts by a physician. The bill removes the exception to the provision establishing that provisions regulating the practice of acupuncture do not permit a person to dispense, administer, or supply a controlled substance, narcotic, or dangerous drug, such exception providing that a person may perform such actions if authorized by other law to do so. The bill authorizes the Texas State Board of Acupuncture Examiners to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under acupuncture provisions in executive sessions. The bill requires the acupuncture board to vote and announce its decisions in open session, and exempts deliberations by the acupuncture board relating to license applications and disciplinary actions from open meetings provisions.

S.B. 1314 removes language providing that certain required actions of the acupuncture board are subject to the advice and approval of the Texas Medical Board and makes conforming changes. The bill removes from those required actions the requirement that the acupuncture board recommend rules to establish licensing and other fees and instead requires the board to establish those fees. The bill removes from those required actions the requirement that the acupuncture board establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college. The bill requires the acupuncture board to adopt additional rules as necessary to administer and enforce provisions regulating the practice of acupuncture, rather than recommend such rules. The bill requires the acupuncture board, in establishing minimum education and training requirements as required, to consider the minimum education and training standards established by the Accreditation Commission for Acupuncture and Oriental Medicine. The bill requires a rule relating to the scope of practice of acupuncture to have the advice and approval of the medical board and removes provisions establishing that the acupuncture board does not have independent rulemaking authority and that a rule adopted by the acupuncture board is subject to medical board approval.

S.B. 1314 requires the acupuncture board, rather than the medical board, to set fees in amounts reasonable and necessary to cover the costs of administering and enforcing provisions regulating the practice of acupuncture, specifies that those administrative and enforcement costs include the costs for the medical board to collect the fees, and makes conforming changes. The bill prohibits a person from practicing, or representing that the person practices, acupuncture in Texas unless the person holds a license to practice acupuncture issued by the acupuncture board under state law, rather than only prohibiting the practice of acupuncture without a license. The bill establishes that a person practices acupuncture if the person performs, offers to perform, or attempts to perform acupuncture, and that a person represents that the person practices acupuncture if the person uses in connection with the person's name or business activity the word "acupuncturist" or "acupuncture," the letters or abbreviation "L.Ac." or "Lic.Ac.," or any other words, letters, abbreviations, or insignia indicating or implying that the person is an acupuncturist, or the person directly or by implication represents to the public that the person is an acupuncturist or that the person provides acupuncture. The bill exempts a physician or a person acting under the delegation or supervision of a physician from the acupuncture licensing requirements.

S.B. 1314 authorizes the acupuncture board to adopt rules and recommend to the medical board fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. The bill requires the acupuncture board by rule to set a time limit for the term of a temporary license. The bill makes conforming changes by removing the acupuncture board's authority, through the executive director of the Texas Medical Board, to issue a temporary license to an applicant who fulfills certain requirements and removing a provision relating to a temporary license's term.

S.B. 1314 adds a chiropractor and a person acting under the delegation and supervision of a physician to those professionals who must have evaluated a person before a license holder is authorized to perform acupuncture on that person, and makes conforming changes. The bill clarifies that a license holder is authorized to perform acupuncture on a person only if the person was evaluated by one of those professionals for the condition being treated within 12, rather than six, months before the date the acupuncture is performed. The bill removes the alternative condition that a license holder may perform acupuncture on a person only if the person was referred by a chiropractor within 30 days before the date the acupuncture is performed, and makes conforming changes.

S.B. 1314 removes the requirement that the medical board determine by rule whether an acupuncturist may treat a patient for substance abuse without a referral from a physician, dentist, or chiropractor, and makes conforming changes. The bill clarifies that a license holder may, without an evaluation, rather than a referral, from a physician, dentist, or chiropractor, or, as added by the bill, from a person acting under the delegation and supervision of a physician,

perform acupuncture on a person for smoking addiction or weight loss. The bill also authorizes a license holder, without such an evaluation, to perform acupuncture on a person for, to the extent permitted by medical board rule adopted with advice from the acupuncture board, chronic pain, stress, an allergy, or nausea, in addition to substance abuse. The bill requires the medical board to adopt necessary rules not later than September 1, 2010.

S.B. 1314 sets forth standard confidentiality provisions regarding each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the acupuncture board or a medical board employee or agent. The bill exempts investigation records relating to an application for license and disciplinary action of a license holder from open records laws. The bill establishes that investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the acupuncture board. The bill removes the requirement that the acupuncture board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by state law regarding administrative hearings and confidentiality issues for physicians.

S.B. 1314 requires the Texas State Board of Acupuncture Examiners to adopt rules as required by the bill not later than January 1, 2010, and establishes that a rule or form in effect under provisions regulating the practice of acupuncture on the effective date of the bill remains in effect until that date. The bill establishes that an application for a license to practice acupuncture filed before January 1, 2010, is covered by the law in effect before the effective date of the bill, which is continued in effect for that purpose.

S.B. 1314 repeals Section 205.301(c), Occupations Code.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.