

By: Harris

S.B. No. 1314

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, Occupations Code, is amended by amending Subdivision (2) and adding Subdivision (2-a) 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).

(2-a) "Acupuncture" does not include surgery or clinical needle electromyography.

SECTION 2. Section 205.003, Occupations Code, is amended to read as follows:

Sec. 205.003. EXEMPTION; LIMITATION. (a) This chapter does not apply to a physician [~~health care professional licensed under another statute of this state and acting within the scope of the license~~].

1 (b) This chapter does not:

2 (1) limit the practice of medicine by a physician,
3 including the delegation and supervision of medical acts by a
4 physician;

5 (2) permit the unauthorized practice of medicine; or

6 (3) permit a person to dispense, administer, or supply
7 a controlled substance, narcotic, or dangerous drug [~~unless the~~
8 ~~person is authorized by other law to do so~~].

9 SECTION 3. Section 205.060, Occupations Code, is amended to
10 read as follows:

11 Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS,
12 AND ADMINISTRATIVE PROCEDURE LAWS. (a) Except as provided by
13 this chapter, the acupuncture board is subject to Chapters 551,
14 552, and 2001, Government Code.

15 (b) The acupuncture board may hear all evidence and
16 arguments and conduct deliberations relating to license
17 applications and disciplinary actions under this chapter in
18 executive sessions. The board shall vote and announce its
19 decisions in open session. Deliberations by the board relating to
20 license applications and disciplinary actions are exempt from
21 Chapter 551, Government Code.

22 SECTION 4. Section 205.101, Occupations Code, is amended by
23 amending Subsections (a) and (b) and adding Subsection (d) to read
24 as follows:

25 (a) Except as provided by Subsection (d) [~~Subject to the~~
26 ~~advice and approval of the medical board~~], the acupuncture board
27 shall:

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

3 (2) establish minimum education and training
4 requirements necessary for the acupuncture board to [~~recommend that~~
5 ~~the medical board~~] issue a license to practice acupuncture;

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

9 (4) develop requirements for licensure by endorsement
10 of other states;

11 (5) prescribe the application form for a license to
12 practice acupuncture;

13 (6) [~~recommend rules to~~] establish licensing and other
14 fees; and

15 (7) adopt [~~establish the requirements for a tutorial~~
16 ~~program for acupuncture students who have completed at least 48~~
17 ~~semester hours of college; and~~

18 [~~(8) recommend~~] additional rules as are necessary to
19 administer and enforce this chapter.

20 (b) In establishing minimum education and training
21 requirements under Subsection (a)(2), the acupuncture board shall
22 consider the minimum education and training standards established
23 by the Accreditation Commission for Acupuncture and Oriental
24 Medicine.

25 (d) A rule relating to the scope of practice of acupuncture
26 must have the advice and approval of the medical board. [~~The~~
27 ~~acupuncture board does not have independent rulemaking authority.~~

1 ~~A rule adopted by the acupuncture board is subject to medical board~~
2 ~~approval.]~~

3 SECTION 5. Section 205.103, Occupations Code, is amended to
4 read as follows:

5 Sec. 205.103. FEES. The acupuncture ~~[medical]~~ board shall
6 set ~~[and collect]~~ fees in amounts that are reasonable and necessary
7 to cover the costs of administering and enforcing this chapter,
8 including the costs for the medical board to collect the fees,
9 without the use of any ~~[other]~~ funds generated by the medical board.

10 SECTION 6. Section 205.201, Occupations Code, is amended to
11 read as follows:

12 Sec. 205.201. LICENSE REQUIRED. (a) Except as provided by
13 Section 205.303, a person may not practice or represent that the
14 person practices acupuncture in this state unless the person holds
15 a license to practice acupuncture issued by the acupuncture board
16 under this chapter.

17 (b) A person practices acupuncture if the person performs,
18 offers to perform, or attempts to perform acupuncture.

19 (c) A person represents that the person practices
20 acupuncture if the person:

21 (1) uses in connection with the person's name or
22 business activity:

23 (A) the word "acupuncturist" or "acupuncture";

24 (B) the letters or abbreviation "L.Ac." or
25 "Lic.Ac."; or

26 (C) any other words, letters, abbreviations, or
27 insignia indicating or implying that the person is an

1 acupuncturist; or

2 (2) directly or by implication represents to the
3 public that the person is an acupuncturist or that the person
4 provides acupuncture.

5 (d) This section does not apply to a physician or a person
6 acting under the delegation and supervision of a physician.

7 SECTION 7. Section 205.204, Occupations Code, is amended to
8 read as follows:

9 Sec. 205.204. APPLICATION FOR EXAMINATION. An application
10 for examination must be:

11 (1) in writing on a form prescribed by the acupuncture
12 board;

13 (2) verified by affidavit;

14 (3) filed with the executive director; and

15 (4) accompanied by a fee in an amount set by the
16 acupuncture [medical] board.

17 SECTION 8. Section 205.208, Occupations Code, is amended to
18 read as follows:

19 Sec. 205.208. TEMPORARY LICENSE. The acupuncture board may
20 adopt rules and recommend to the medical board fees relating to
21 granting temporary licenses and extending the expiration dates of
22 temporary licenses. The acupuncture board by rule shall set a time
23 limit for the term of a temporary license [~~(a) The acupuncture~~
24 ~~board may, through the executive director, issue a temporary~~
25 ~~license to practice acupuncture to an applicant who:~~

26 [~~(1) submits an application on a form prescribed by~~
27 ~~the acupuncture board,~~

1 ~~[(2) has passed a national or other examination~~
2 ~~recognized by the acupuncture board relating to the practice of~~
3 ~~acupuncture;~~

4 ~~[(3) pays the appropriate fee;~~

5 ~~[(4) if licensed in another state, is in good standing~~
6 ~~as an acupuncturist; and~~

7 ~~[(5) meets all the qualifications for a license under~~
8 ~~this chapter but is waiting for the next scheduled meeting of the~~
9 ~~medical board for the license to be issued.~~

10 ~~[(b) A temporary license is valid for 100 days after the~~
11 ~~date issued and may be extended only for another 30 days after the~~
12 ~~date the initial temporary license expires].~~

13 SECTION 9. The heading to Section 205.301, Occupations
14 Code, is amended to read as follows:

15 Sec. 205.301. EVALUATION ~~[REFERRAL]~~ BY OTHER HEALTH CARE
16 PRACTITIONER REQUIRED.

17 SECTION 10. Subsections (a), (b), and (d), Section 205.301,
18 Occupations Code, are amended to read as follows:

19 (a) A license holder may perform acupuncture on a person
20 only if the person was~~+~~

21 ~~[(1)]~~ evaluated by a physician, chiropractor, or
22 dentist, or a person acting under the delegation and supervision of
23 a physician, as appropriate, for the condition being treated within
24 12 ~~[six]~~ months before the date acupuncture is performed~~[, or~~

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

27 (b) A license holder acting under Subsection (a) ~~[(a)(1)]~~

1 must obtain reasonable documentation that the required evaluation
2 has taken place. If the license holder is unable to determine that
3 an evaluation has taken place, the license holder must obtain a
4 written statement signed by the person on a form prescribed by the
5 acupuncture board that states the person has been evaluated by a
6 physician, chiropractor, or dentist, or a person acting under the
7 delegation and supervision of a physician, within the prescribed
8 time. The form must contain a clear statement that the person
9 should be evaluated by a physician, chiropractor, or dentist, or a
10 person acting under the delegation and supervision of a physician,
11 for the condition being treated by the license holder.

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

14 (1) the scope of the evaluation under Subsection (a)
15 ~~[(a)(1)]~~; or

16 (2) the period during which treatment must begin under
17 Subsection (a) ~~[(a)(1) or (2)]~~; or

18 ~~[(3) the number of treatments or days before referral~~
19 ~~to a physician is required under Subsection (c)].~~

20 SECTION 11. Section 205.302, Occupations Code, is amended
21 to read as follows:

22 Sec. 205.302. AUTHORIZED PRACTICE WITHOUT EVALUATION
23 ~~[REFERRAL]. [(a) After notice and public hearing, the medical~~
24 ~~board shall determine by rule whether an acupuncturist may treat a~~
25 ~~patient for alcoholism or chronic pain without a referral from a~~
26 ~~physician, dentist, or chiropractor. The medical board shall make~~
27 ~~the determination based on clinical evidence and what the medical~~

1 ~~board determines to be in the best interest of affected patients.~~

2 ~~[(b)]~~ Notwithstanding Section 205.301, a license holder
3 may, without an evaluation ~~[a referral]~~ from a physician, dentist,
4 or chiropractor, or a person acting under the delegation and
5 supervision of a physician, perform acupuncture on a person for:

6 (1) smoking addiction;

7 (2) weight loss; or

8 (3) ~~[substance abuse,]~~ to the extent permitted by
9 medical board rule adopted with advice from the acupuncture board:

10 (A) substance abuse;

11 (B) chronic pain;

12 (C) stress;

13 (D) an allergy; or

14 (E) nausea.

15 SECTION 12. Subsection (a) and (d), Section 205.303,
16 Occupations Code, are amended to read as follows:

17 (a) The medical board may certify a person as an acudetox
18 specialist under this section if the person:

19 (1) provides to the medical board documentation that
20 the person:

21 (A) is a licensed social worker, licensed
22 professional counselor, licensed psychologist, licensed chemical
23 dependency counselor, licensed vocational nurse, or licensed
24 registered nurse; and

25 (B) has successfully completed a training
26 program in acupuncture detoxification that meets guidelines
27 approved by the medical board; and

1 (2) pays a certification fee in an amount set by the
2 acupuncture [~~medical~~] board.

3 (d) The medical board may annually renew the certification
4 of an acudetox specialist under this section if the person:

5 (1) provides to the medical board documentation that:

6 (A) the certification or license required under
7 Subsection (a)(1)(A) is in effect; and

8 (B) the person has successfully met continuing
9 education requirements established by the medical board under
10 Subsection (e); and

11 (2) pays a certification renewal fee in an amount set
12 by the acupuncture [~~medical~~] board.

13 SECTION 13. Section 205.3544, Occupations Code, is amended
14 to read as follows:

15 Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES.

16 (a) Each complaint, adverse report, investigation file, other
17 investigation report, and other investigative information in the
18 possession of or received or gathered by the acupuncture board or a
19 medical board employee or agent relating to a license holder, an
20 application for license, or a criminal investigation or proceeding
21 is privileged and confidential and is not subject to discovery,
22 subpoena, or other means of legal compulsion for release to anyone
23 other than the acupuncture board or medical board employees or
24 agents involved in discipline of a license holder.

25 (b) Investigation records relating to an application for
26 license and disciplinary action of a license holder are exempt from
27 Chapter 552, Government Code.

1 (c) For purposes of this subsection, investigative
2 information includes information relating to the identity of, and a
3 report made by, a physician performing or supervising compliance
4 monitoring for the acupuncture board [~~The acupuncture board shall~~
5 ~~prohibit or limit access to an investigation file relating to a~~
6 ~~license holder in an informal proceeding in the manner provided by~~
7 ~~Section 164.007(c)~~].

8 SECTION 14. Section 205.355, Occupations Code, is amended
9 to read as follows:

10 Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO
11 OBTAIN EVALUATION [~~REFERRAL~~]. A [~~Except as provided by Section~~
12 ~~205.301(a)(2), a~~] license to practice acupuncture shall be denied
13 or, after notice and hearing, revoked if the applicant or license
14 holder violates Section 205.301(a) [~~205.301(a)(1)~~].

15 SECTION 15. Subsection (c), Section 205.301, Occupations
16 Code, is repealed.

17 SECTION 16. (a) The Texas State Board of Acupuncture
18 Examiners shall adopt rules as required by Section 205.101 or
19 205.208, Occupations Code, as amended by this Act, not later than
20 January 1, 2010. A rule or form in effect under Chapter 205,
21 Occupations Code, on the effective date of this Act remains in
22 effect until January 1, 2010.

23 (b) The Texas Medical Board shall adopt necessary rules
24 under Section 205.302, Occupations Code, as amended by this Act,
25 not later than September 1, 2010.

26 (c) An application for a license to practice acupuncture
27 filed under Chapter 205, Occupations Code, before January 1, 2010,

1 is covered by the law in effect immediately before the effective
2 date of this Act, and the former law is continued in effect for that
3 purpose.

4 SECTION 17. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect September 1, 2009.