

1-1 By: Harris S.B. No. 1314
1-2 (In the Senate - Filed March 4, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Economic Development;
1-4 April 2, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 3, Nays 0; April 2, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1314 By: Harris

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

1-10 relating to the regulation of the practice of acupuncture.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 205.001, Occupations Code, is amended by
1-13 amending Subdivision (2) and adding Subdivision (2-a) to read as
1-14 follows:
1-15 (2) "Acupuncture" means:
1-16 (A) the ~~[nonsurgical, nonincisive]~~ insertion of
1-17 an acupuncture needle and the application of moxibustion to
1-18 specific areas of the human body as a primary mode of therapy to
1-19 treat and mitigate a human condition, including evaluation and
1-20 assessment of the condition; and
1-21 (B) the administration or recommendation of
1-22 thermal or electrical treatments or ~~[the recommendation]~~ of dietary
1-23 guidelines, energy flow exercise, or dietary or herbal supplements
1-24 in conjunction with the treatment described by Paragraph (A).
1-25 (2-a) "Acupuncture" does not include surgery or
1-26 clinical needle electromyography.
1-27 SECTION 2. Section 205.003, Occupations Code, is amended to
1-28 read as follows:
1-29 Sec. 205.003. EXEMPTION; LIMITATION. (a) This chapter
1-30 does not apply to a physician ~~[health care professional licensed~~
1-31 ~~under another statute of this state and acting within the scope of~~
1-32 ~~the license]~~.
1-33 (b) This chapter does not:
1-34 (1) limit the practice of medicine by a physician,
1-35 including the delegation and supervision of medical acts by a
1-36 physician;
1-37 (2) permit the unauthorized practice of medicine; or
1-38 (3) permit a person to dispense, administer, or supply
1-39 a controlled substance, narcotic, or dangerous drug ~~[unless the~~
1-40 ~~person is authorized by other law to do so]~~.
1-41 SECTION 3. Section 205.060, Occupations Code, is amended to
1-42 read as follows:
1-43 Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS,
1-44 AND ADMINISTRATIVE PROCEDURE LAWS. (a) Except as provided by
1-45 this chapter, the acupuncture board is subject to Chapters 551,
1-46 552, and 2001, Government Code.
1-47 (b) The acupuncture board may hear all evidence and
1-48 arguments and conduct deliberations relating to license
1-49 applications and disciplinary actions under this chapter in
1-50 executive sessions. The board shall vote and announce its
1-51 decisions in open session. Deliberations by the board relating to
1-52 license applications and disciplinary actions are exempt from
1-53 Chapter 551, Government Code.
1-54 SECTION 4. Section 205.101, Occupations Code, is amended by
1-55 amending Subsections (a) and (b) and adding Subsection (d) to read
1-56 as follows:
1-57 (a) Except as provided by Subsection (d) [Subject to the
1-58 advice and approval of the medical board], the acupuncture board
1-59 shall:
1-60 (1) establish qualifications for an acupuncturist to
1-61 practice in this state;
1-62 (2) establish minimum education and training
1-63 requirements necessary for the acupuncture board to ~~[recommend that~~

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

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

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

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

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

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

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

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

(d) A rule relating to the scope of practice of acupuncture must have the advice and approval of the medical board. [The acupuncture board does not have independent rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) verified by affidavit;

(3) filed with the executive director; and

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

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

Sec. 205.208. TEMPORARY LICENSE. The acupuncture board may

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

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

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

~~[(3) pays the appropriate fee,~~

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

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

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

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

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

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

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

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

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

(b) A license holder acting under Subsection (a) ~~[(a)(1)]~~ must obtain reasonable documentation that the required evaluation has taken place. If the license holder is unable to determine that an evaluation has taken place, the license holder must obtain a written statement signed by the person on a form prescribed by the acupuncture board that states the person has been evaluated by a physician, chiropractor, or dentist, or a person acting under the delegation and supervision of a physician, within the prescribed time. The form must contain a clear statement that the person should be evaluated by a physician, chiropractor, or dentist, or a person acting under the delegation and supervision of a physician, for the condition being treated by the license holder.

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

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

(2) the period during which treatment must begin under Subsection (a) ~~[(a)(1) or (2), or~~

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

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

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

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

(1) smoking addiction;

(2) weight loss; or

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

- (A) substance abuse;
- (B) chronic pain;
- (C) stress;
- (D) an allergy; or
- (E) nausea.

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

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

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

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

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

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

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

(1) provides to the medical board documentation that:

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

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

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

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

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES.

(a) 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 relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the acupuncture board or medical board employees or agents involved in discipline of a license holder.

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

(c) For purposes of this subsection, 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 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 Section 164.007(c)].~~

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

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

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

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

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

(c) An application for a license to practice acupuncture filed under Chapter 205, Occupations Code, before January 1, 2010, is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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

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