

By: Howard of Travis

H.B. No. 1996

A BILL TO BE ENTITLED

AN ACT

relating to the licensure of a person practicing muscle activation techniques; providing administrative penalties.

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

SECTION 1. Subtitle H, Title 3, Occupations Code, is amended by adding Chapter 456 to read as follows:

CHAPTER 456. MUSCLE ACTIVATION TECHNIQUES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 456.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Muscle activation techniques" means the identification and correction of muscular imbalances through palpation and isometric exercises.

Sec. 456.002. APPLICABILITY OF CHAPTER. This chapter does not apply to a person licensed in this state as a physician, chiropractor, occupational therapist, physical therapist, massage therapist, nurse, cosmetologist, or athletic trainer or as a member of a similar profession subject to state licensing while the person is practicing within the scope of the license.

[Sections 456.003-456.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND

DEPARTMENT

Sec. 456.051. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter.

Sec. 456.052. GENERAL DUTIES OF DEPARTMENT. The department shall:

(1) administer this chapter; and

(2) investigate a person who may be engaging in a practice that violates this chapter.

[Sections 456.053-456.100 reserved for expansion]

SUBCHAPTER C. LICENSING

Sec. 456.101. LICENSE REQUIRED. (a) Except as provided by Section 456.002, a person may not employ muscle activation techniques unless the person holds a license issued under this chapter.

(b) A person may not represent that the person is certified, licensed, or trained in the use of muscle activation techniques unless the person holds a license under this chapter.

Sec. 456.102. APPLICATION FOR LICENSE. An applicant for a license under this chapter must:

(1) submit an application on a form provided by the department; and

(2) include with the application the application fee set by the executive commissioner.

Sec. 456.103. LICENSE REQUIREMENTS. (a) The department shall issue a license to each qualified applicant who applies for a license under this chapter.

(b) An applicant for a license under this section must be an

1 individual and:

2 (1) present evidence satisfactory to the department
3 that the person has satisfactorily completed muscle activation
4 techniques studies and passed the final examination in a 176-hour
5 minimum, supervised course of instruction provided by an entity
6 approved by the department; and

7 (2) be at least 18 years of age.

8 Sec. 456.104. LICENSE EXPIRATION AND RENEWAL. (a) A
9 license issued under this chapter expires on the second anniversary
10 of the date of issuance. A license holder may renew the person's
11 license by submitting an application for renewal accompanied by the
12 renewal fee prescribed by the executive commissioner or by the late
13 fee prescribed by this section.

14 (b) The department shall adopt a system under which licenses
15 expire on various dates during the year. Fees must be prorated so
16 that a licensed person pays only for that part of the renewal period
17 for which the license is issued until the expiration date of the
18 license.

19 (c) A person who is otherwise eligible to renew a license
20 may renew an unexpired license by paying the required renewal fee to
21 the department before the expiration date of the license. A person
22 whose license has expired may not engage in activities that require
23 a license until the license has been renewed.

24 (d) A person whose license has been expired for 90 days or
25 less may renew the license by paying to the department a renewal fee
26 that is equal to 1-1/2 times the normally required renewal fee.

27 (e) A person whose license has been expired for more than 90

1 days but less than one year may renew the license by paying to the
2 department a renewal fee that is equal to two times the normally
3 required renewal fee.

4 (f) A person whose license has been expired for one year or
5 more may not renew the license. The person may obtain a license by
6 complying with the requirements and procedures for obtaining a new
7 license.

8 (g) Not later than the 30th day before the date a person's
9 license is scheduled to expire, the department shall send written
10 notice of the impending expiration to the person at the person's
11 last known address according to the records of the department.

12 [Sections 456.105-456.150 reserved for expansion]

13 SUBCHAPTER D. LICENSE DENIAL OR DISCIPLINARY PROCEDURES

14 Sec. 456.151. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY
15 ACTION. The department may refuse to issue a license to a person and
16 shall suspend, revoke, or refuse to renew the license of a person or
17 shall reprimand a person licensed under this chapter if the person:

18 (1) obtains a license by fraud, misrepresentation, or
19 concealment of material facts;

20 (2) sells, barter, or offers to sell or barter a
21 license;

22 (3) violates a rule adopted by the executive
23 commissioner;

24 (4) engages in unprofessional conduct as defined by
25 executive commissioner rule that endangers or is likely to endanger
26 the health, welfare, or safety of the public; or

27 (5) violates this chapter.

1 Sec. 456.152. HEARING ON DENIAL OR DISCIPLINARY ACTION. (a)

2 A person whose application for a license is denied, whose license is
3 suspended or revoked, or who has been reprimanded is entitled to a
4 hearing before the State Office of Administrative Hearings if the
5 person submits a written request to the department.

6 (b) A hearing under this subchapter is a contested case
7 under Chapter 2001, Government Code.

8 Sec. 456.153. PROBATION. The department may place on
9 probation a person whose license is suspended. If a license
10 suspension is probated, the department may require the person to:

11 (1) report regularly to the department on matters that
12 are the basis of the probation;

13 (2) limit practice to the areas prescribed by the
14 department; or

15 (3) continue or review professional education until
16 the person attains a degree of skill satisfactory to the department
17 in those areas that are the basis of the probation.

18 Sec. 456.154. EMERGENCY SUSPENSION. (a) The department
19 shall temporarily suspend the license of a license holder if the
20 department determines from the evidence or information presented to
21 it that continued practice by the license holder would constitute a
22 continuing and imminent threat to the public welfare.

23 (b) A license may be suspended under this section without
24 notice or hearing on the complaint if:

25 (1) action is taken to initiate proceedings for a
26 hearing before the State Office of Administrative Hearings
27 simultaneously with the temporary suspension; and

1 (2) a hearing is held as soon as practicable under this
2 chapter and Chapter 2001, Government Code.

3 (c) The State Office of Administrative Hearings shall hold a
4 preliminary hearing not later than the 14th day after the date of
5 the temporary suspension to determine if there is probable cause to
6 believe that a continuing and imminent threat to the public welfare
7 still exists. A final hearing on the matter shall be held not later
8 than the 61st day after the date of the temporary suspension.

9 [Sections 456.155-456.200 reserved for expansion]

10 SUBCHAPTER E. ADMINISTRATIVE PENALTY

11 Sec. 456.201. IMPOSITION OF PENALTY. The department may
12 impose an administrative penalty against a person who violates this
13 chapter or a rule adopted under this chapter.

14 Sec. 456.202. AMOUNT OF PENALTY. (a) The amount of the
15 administrative penalty may not exceed \$1,000 for each violation.
16 Each day of a continuing violation is a separate violation.

17 (b) The amount of the penalty shall be based on:

18 (1) the seriousness of the violation;

19 (2) the history of previous violations;

20 (3) the amount necessary to deter a future violation;

21 (4) efforts made to correct the violation; and

22 (5) any other matter that justice may require.

23 Sec. 456.203. NOTICE OF VIOLATION AND PENALTY. (a) If,
24 after investigating a possible violation and the facts surrounding
25 that possible violation, the department determines that a violation
26 occurred, the department shall give written notice of the violation
27 to the person alleged to have committed the violation.

1 (b) The notice must:

2 (1) include a brief summary of the alleged violation;

3 (2) state the amount of the proposed administrative
4 penalty; and

5 (3) inform the person of the person's right to a
6 hearing on the occurrence of the violation, the amount of the
7 penalty, or both.

8 Sec. 456.204. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
9 Not later than the 30th day after the date the person receives the
10 notice, the person may:

11 (1) accept the department's determination, including
12 the proposed administrative penalty; or

13 (2) make a written request for a hearing on that
14 determination.

15 (b) If the person accepts the department's determination,
16 the department by order shall approve the determination and impose
17 the proposed penalty.

18 Sec. 456.205. HEARING. (a) If the person timely requests a
19 hearing, the department shall:

20 (1) set a hearing; and

21 (2) give written notice of the hearing to the person.

22 (b) A hearing under this subchapter shall be conducted by
23 the State Office of Administrative Hearings.

24 (c) The administrative law judge shall make findings of fact
25 and conclusions of law and promptly issue to the department a
26 proposal for decision regarding the occurrence of the violation and
27 the amount of any proposed administrative penalty.

1 Sec. 456.206. DECISION BY DEPARTMENT. (a) Based on the
2 findings of fact and conclusions of law and the recommendations of
3 the administrative law judge, the department by order may determine
4 that:

5 (1) a violation has occurred and may impose an
6 administrative penalty; or

7 (2) a violation did not occur.

8 (b) The department shall give notice of the order to the
9 person. The notice must include:

10 (1) separate statements of the findings of fact and
11 conclusions of law;

12 (2) the amount of any penalty imposed; and

13 (3) a statement of the right of the person to judicial
14 review of the order.

15 Sec. 456.207. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

16 (a) Not later than the 30th day after the date on which the order
17 becomes final, the person shall:

18 (1) pay the administrative penalty;

19 (2) pay the penalty and file a petition for judicial
20 review contesting the occurrence of the violation, the amount of
21 the penalty, or both; or

22 (3) without paying the penalty, file a petition for
23 judicial review contesting the occurrence of the violation, the
24 amount of the penalty, or both.

25 (b) Within the 30-day period following the date on which the
26 order becomes final, a person who acts under Subsection (a)(3) may:

27 (1) stay enforcement of the penalty by:

1 (A) paying the penalty to the court for placement
2 in an escrow account; or

3 (B) giving to the court a supersedeas bond that
4 is approved by the court for the amount of the penalty and that is
5 effective until all judicial review of the order is final; or

6 (2) request the court to stay enforcement of the
7 penalty by:

8 (A) filing with the court a sworn affidavit of
9 the person stating that the person is financially unable to pay the
10 penalty and is financially unable to give the supersedeas bond; and

11 (B) giving a copy of the affidavit to the
12 department by certified mail.

13 (c) If the department receives a copy of an affidavit as
14 provided by Subsection (b)(2), the department may file with the
15 court a contest to the affidavit not later than the fifth day after
16 the date the copy is received.

17 (d) The court shall hold a hearing on the facts alleged in
18 the affidavit as soon as practicable and shall stay the enforcement
19 of the penalty on finding that the alleged facts are true. The
20 person who files an affidavit has the burden of proving that the
21 person is financially unable to pay the penalty and to give a
22 supersedeas bond.

23 Sec. 456.208. COLLECTION OF PENALTY. If the person does not
24 pay the administrative penalty and the enforcement of the penalty
25 is not stayed, the department may refer the matter to the attorney
26 general for collection.

27 Sec. 456.209. DETERMINATION BY COURT. (a) If the court

1 sustains the determination that a violation occurred, the court may
2 uphold or reduce the amount of the administrative penalty and order
3 the person to pay the full or reduced amount.

4 (b) If the court does not sustain the determination that a
5 violation occurred, the court shall order that a penalty is not
6 owed.

7 Sec. 456.210. REMITTANCE OF PENALTY AND INTEREST. (a) If,
8 after judicial review, the administrative penalty is reduced or not
9 imposed by the court, the court shall, after the judgment becomes
10 final:

11 (1) order the appropriate amount, plus accrued
12 interest, be remitted to the person by the department if the person
13 paid the penalty under Section 456.207(a)(2); or

14 (2) if the person paid the penalty under Section
15 456.207(b)(1)(A) or posted a supersedeas bond, order the department
16 to:

17 (A) execute a complete release of the escrow
18 account or bond, as appropriate, if the penalty is not imposed; or

19 (B) release the escrow account or bond, as
20 appropriate, after the reduced penalty has been paid from the
21 account or by the person.

22 (b) The interest paid under Subsection (a)(1) is accrued at
23 the rate charged on loans to depository institutions by the New York
24 Federal Reserve Bank. The interest shall be paid for the period
25 beginning on the date the penalty is paid and ending on the date the
26 penalty is remitted.

27 Sec. 456.211. EXPENSES AND COSTS. (a) In this section,

1 "reasonable expenses and costs" includes expenses incurred by the
2 department and the attorney general in the investigation,
3 initiation, or prosecution of an action, including reasonable
4 investigative costs, court costs, attorney's fees, witness fees,
5 and deposition expenses.

6 (b) The department may assess reasonable expenses and costs
7 against a person in an administrative hearing if, as a result of the
8 hearing, an administrative penalty is assessed against the person.
9 The person shall pay expenses and costs assessed under this
10 subsection not later than the 30th day after the date the order of
11 the department requiring the payment of expenses and costs is
12 final. The department may refer the matter to the attorney general
13 for collection of the expenses and costs.

14 (c) If the attorney general brings an action against a
15 person to enforce an administrative penalty assessed under this
16 subchapter and the person is found liable for an administrative
17 penalty, the attorney general may recover, on behalf of the
18 attorney general and the department, reasonable expenses and costs.

19 Sec. 456.212. ADMINISTRATIVE PROCEDURE. A proceeding under
20 this subchapter is subject to Chapter 2001, Government Code.

21 SECTION 2. Not later than January 1, 2012, the executive
22 commissioner of the Health and Human Services Commission shall
23 adopt all rules, fees, and forms as required by Chapter 456,
24 Occupations Code, as added by this Act.

25 SECTION 3. (a) Except as provided by Subsection (b) of this
26 section, this Act takes effect September 1, 2011.

27 (b) Section 456.101 and Subchapter E, Chapter 456,

H.B. No. 1996

1 Occupations Code, as added by this Act, take effect March 1, 2012.