

By: Zedler

H.B. No. 2455

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of the practice of integrative medicine; providing penalties.

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

SECTION 1. Subtitle C, Title 3, Occupations Code, is amended by adding Chapter 207 to read as follows:

CHAPTER 207. INTEGRATIVE MEDICINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 207.001. SHORT TITLE. This chapter may be cited as the Licensed Integrative Medicine Practitioner Act.

Sec. 207.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Integrative Medicine.

(2) "Integrative medicine" means a medical system of diagnosing, treating, or correcting real or imagined human diseases, injuries, ailments, infirmities and deformities of a physical or mental origin and includes acupuncture, chelation therapy, homeopathy, minor surgery, and nonsurgical methods, the use of devices, physical, electrical, hygienic, and sanitary measures, and all forms of physical agents and modalities, neuromuscular integration, nutrition, orthomolecular therapy, and pharmaceutical medicine.

Sec. 207.003. APPLICABILITY; EXEMPTIONS. This chapter does not apply to a physician licensed to practice medicine in this state

1 unless the physician is a licensed integrative medicine
2 practitioner.

3 Sec. 207.004. APPLICATION OF SUNSET ACT. The Texas Board of
4 Integrative Medicine is subject to Chapter 325, Government Code
5 (Texas Sunset Act). Unless continued in existence as provided by
6 that chapter, the board is abolished and this chapter expires
7 September 1, 2023.

8 [Sections 207.005-207.050 reserved for expansion]

9 SUBCHAPTER B. TEXAS BOARD OF INTEGRATIVE MEDICINE

10 Sec. 207.051. BOARD; MEMBERSHIP. The Texas Board of
11 Integrative Medicine consists of nine members appointed by the
12 governor with the advice and consent of the senate as follows:

13 (1) six members who are physicians and who practice
14 integrative medicine; and

15 (2) three members who represent the public and are not
16 licensed or trained in a health care profession.

17 Sec. 207.052. PUBLIC MEMBER ELIGIBILITY. A person is not
18 eligible for appointment as a public member of the board if the
19 person or the person's spouse:

20 (1) is registered, certified, or licensed by an
21 occupational regulatory agency in the field of health care;

22 (2) is employed by or participates in the management
23 of a business entity or other organization regulated by the board or
24 receiving funds from the board;

25 (3) owns or controls, directly or indirectly, more
26 than a 10 percent interest in a business entity or other
27 organization regulated by the board or receiving funds from the

1 board; or

2 (4) uses or receives a substantial amount of tangible
3 goods, services, or money from the board, other than compensation
4 or reimbursement authorized by law for board membership,
5 attendance, or expenses.

6 Sec. 207.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)

7 In this section, "Texas trade association" means a cooperative and
8 voluntarily joined association of business or professional
9 competitors in this state designed to assist its members and its
10 industry or profession in dealing with mutual business or
11 professional problems and in promoting their common interest.

12 (b) A person may not be a member of the board employed in a
13 "bona fide executive, administrative, or professional capacity,"
14 as that phrase is used for purposes of establishing an exemption to
15 the overtime provisions of the federal Fair Labor Standards Act of
16 1938 (29 U.S.C. Section 201 et seq.) if:

17 (1) the person is an officer, employee, manager, or
18 paid consultant of a Texas trade association in the field of health
19 care; or

20 (2) the person's spouse is an officer, board member,
21 employee, or paid consultant of a Texas trade association in the
22 field of health care.

23 (c) A person may not be a member of the board if the person
24 is required to register as a lobbyist under Chapter 305, Government
25 Code, because of the person's activities for compensation on behalf
26 of a profession related to the operation of the board.

27 Sec. 207.054. MEMBERSHIP REQUIREMENTS. Each member of the

1 board must be a citizen of the United States and a resident of this
2 state. Each physician member of the board must be licensed to
3 practice medicine in this state.

4 Sec. 207.055. TERMS; VACANCIES. (a) Members of the board
5 serve staggered six-year terms. The terms of three members expire
6 on January 31 of each odd-numbered year.

7 (b) If a vacancy occurs during a member's term, the governor
8 shall appoint a new member to serve the unexpired term.

9 Sec. 207.056. OFFICERS; MEETINGS. (a) The board shall hold
10 an open annual meeting and elect a presiding officer and secretary
11 from among its members.

12 (b) The board may hold additional meetings as necessary
13 provided that notice of each meeting is given to each member not
14 less than 10 days before the date of the meeting.

15 Sec. 207.057. APPLICABILITY OF OTHER LAW. (a) Chapter
16 2110, Government Code, does not apply to the board.

17 (b) Except as otherwise provided by this chapter, the board
18 is subject to Chapters 551 and 2001, Government Code.

19 Sec. 207.058. GROUNDS FOR REMOVAL. (a) It is a ground for
20 removal from the board that a member:

21 (1) does not have at the time of taking office the
22 qualifications required by Sections 207.051, 207.052, and 207.054;

23 (2) does not maintain during service on the board the
24 qualifications required by Sections 207.051, 207.052, and 207.054;

25 (3) is ineligible for membership under Section
26 207.053;

27 (4) cannot, because of illness or disability,

1 discharge the member's duties for a substantial part of the member's
2 term; or

3 (5) is absent from more than half of the regularly
4 scheduled board meetings that the member is eligible to attend
5 during a calendar year without an excuse approved by a majority vote
6 of the board.

7 (b) The validity of an action of the board is not affected by
8 the fact that it is taken when a ground for removal of a board member
9 exists.

10 (c) If the executive director of the board has knowledge
11 that a potential ground for removal of a board member exists, the
12 executive director shall notify the presiding officer of the board
13 of the potential ground. The presiding officer shall then notify
14 the governor and the attorney general that a potential ground for
15 removal exists. If the potential ground for removal involves the
16 presiding officer, the executive director shall notify the next
17 highest officer of the board, who shall notify the governor and the
18 attorney general that a potential ground for removal exists.

19 Sec. 207.059. TRAINING. (a) A person who is appointed to
20 and qualifies for office as a member of the board may not vote,
21 deliberate, or be counted as a member in attendance at a meeting of
22 the board until the person completes a training program that
23 complies with this section.

24 (b) The training program must provide the person with
25 information regarding:

26 (1) this chapter;

27 (2) the requirements of laws relating to open

1 meetings, public information, administrative procedure, and
2 conflict of interest; and

3 (3) any applicable ethics policies adopted by the
4 board or the Texas Ethics Commission.

5 (c) A person appointed to the board is entitled to
6 reimbursement, as provided by the General Appropriations Act, for
7 travel expenses incurred in attending the training program
8 regardless of whether the attendance at the program occurs before
9 or after the person qualifies for office.

10 Sec. 207.060. COMPENSATION; REIMBURSEMENT. A board member
11 may not receive compensation for service on the board but is
12 entitled to receive reimbursement under the General Appropriations
13 Act for transportation and related expenses incurred while
14 conducting board business.

15 [Sections 207.061-207.100 reserved for expansion]

16 SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

17 Sec. 207.101. EXECUTIVE DIRECTOR; DUTIES REGARDING MONEY.

18 (a) The board may employ an executive director to conduct the
19 affairs of the board under the board's direction. The executive
20 director shall receive a salary in an amount determined by the
21 board.

22 (b) The executive director shall receive and account for any
23 money derived, including any fee collected, under this chapter.

24 Sec. 207.102. PERSONNEL. (a) The board shall employ
25 clerical or other assistants as necessary to perform the board's
26 work.

27 (b) A salary paid under this section may not exceed the

1 salary paid for similar work in other departments.

2 Sec. 207.103. CAREER LADDER PROGRAM; PERFORMANCE
3 EVALUATIONS. (a) The executive director or the executive
4 director's designee shall develop an intra-agency career ladder
5 program. The program must require intra-agency posting of each
6 nonentry level position with the board at least 10 days before the
7 date of any public posting.

8 (b) The executive director or the executive director's
9 designee shall develop a system of annual performance evaluations
10 of the board's employees based on measurable job tasks. All merit
11 pay authorized by the executive director must be based on the system
12 established under this subsection.

13 Sec. 207.104. DIVISION OF RESPONSIBILITIES. The board
14 shall develop and implement policies that clearly separate the
15 policy-making responsibilities of the board and the management
16 responsibilities of the executive director and the staff of the
17 board.

18 Sec. 207.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
19 INFORMATION. The executive director or the executive director's
20 designee shall provide to members of the board and to board
21 employees, as often as necessary, information regarding the
22 requirements for office or employment under this chapter, including
23 information regarding a person's responsibilities under applicable
24 laws relating to standards of conduct for state officers or
25 employees.

26 Sec. 207.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

27 (a) The executive director or the executive director's designee

1 shall prepare and maintain a written policy statement that
2 implements a program of equal employment opportunity to ensure that
3 all personnel decisions are made without regard to race, color,
4 disability, sex, religion, age, or national origin.

5 (b) The policy statement must include:

6 (1) personnel policies, including policies relating
7 to recruitment, evaluation, selection, training, and promotion of
8 personnel, that show the intent of the board to avoid the unlawful
9 employment practices described by Chapter 21, Labor Code; and

10 (2) an analysis of the extent to which the composition
11 of the board's personnel is in accordance with state and federal law
12 and a description of reasonable methods to achieve compliance with
13 state and federal law.

14 (c) The policy statement must:

15 (1) be updated annually;

16 (2) be reviewed by the civil rights division of the
17 Texas Workforce Commission for compliance with Subsection (b)(1);
18 and

19 (3) be filed with the governor.

20 [Sections 207.107-207.150 reserved for expansion]

21 SUBCHAPTER D. POWERS AND DUTIES OF BOARD

22 Sec. 207.151. GENERAL POWERS AND DUTIES OF BOARD. The board
23 shall:

24 (1) establish qualifications for integrative medicine
25 practitioners in this state;

26 (2) establish the examination requirements for
27 issuance of a licensed integrative medicine practitioner license;

1 (3) establish minimum education and training
2 requirements necessary for issuance of a licensed integrative
3 medicine practitioner license;

4 (4) prescribe the application form for issuance of a
5 licensed integrative medicine practitioner license;

6 (5) develop an approved program of mandatory
7 continuing education for licensed integrative medicine
8 practitioners and the manner in which attendance at all approved
9 courses, clinics, forums, lectures, programs, or seminars is
10 monitored and recorded;

11 (6) adopt rules that are reasonable and necessary for
12 the performance of the board's duties under this chapter, as
13 provided by Chapter 2001, Government Code, including rules to
14 establish:

15 (A) licensing and other fees;

16 (B) license renewal dates; and

17 (C) procedures for disciplinary actions;

18 (7) review and approve or reject each application for
19 the issuance or renewal of a license;

20 (8) issue each license;

21 (9) deny, suspend, or revoke a license or otherwise
22 discipline a license holder; and

23 (10) take any action necessary to carry out the
24 functions and duties of the board under this chapter.

25 Sec. 207.152. RULES RESTRICTING ADVERTISING OR COMPETITIVE
26 BIDDING. (a) The board by rule shall prescribe standards for
27 compliance with Subchapter A, Chapter 2254, Government Code.

1 (b) Except as provided by Subsection (a), the board may not
2 adopt rules restricting advertising or competitive bidding by a
3 license holder except to prohibit false, misleading, or deceptive
4 practices.

5 (c) In its rules to prohibit false, misleading, or deceptive
6 practices, the board may not include a rule that:

7 (1) restricts the use of any medium for advertising;

8 (2) restricts the use of a license holder's personal
9 appearance or voice in an advertisement;

10 (3) relates to the size or duration of an
11 advertisement by the license holder; or

12 (4) restricts the license holder's advertisement under
13 a trade name.

14 Sec. 207.153. STANDARDS OF CONDUCT AND ETHICS. The board
15 may establish standards of conduct and ethics for license holders
16 in keeping with the purposes and intent of this chapter and to
17 ensure strict compliance with and enforcement of this chapter.

18 Sec. 207.154. CONTINUING EDUCATION PROGRAMS. The board
19 shall recognize, prepare, or administer continuing education
20 programs for its license holders. A license holder must
21 participate in the programs to the extent required by the board to
22 keep the person's license.

23 Sec. 207.155. RECORDS. (a) The board shall maintain a
24 record of its proceedings.

25 (b) The board's records shall be available to the public at
26 all times.

27 (c) The board's records are prima facie evidence of the

1 proceedings of the board set forth in the records. A transcript of
2 the records certified by the secretary of the board under seal is
3 admissible in evidence with the same effect as if it were the
4 original.

5 Sec. 207.156. CONFIDENTIALITY OF CERTAIN INFORMATION
6 RELATED TO LICENSE APPLICATION. (a) A statement made by a person
7 providing a reference for an applicant and other pertinent
8 information compiled by or submitted to the board relating to an
9 applicant for a license under this chapter is privileged and
10 confidential.

11 (b) Information described by Subsection (a) may be used only
12 by the board or its employees or agents who are directly involved in
13 the application or licensing process. The information is not
14 subject to discovery, subpoena, or other disclosure.

15 Sec. 207.157. SUBPOENA. (a) The board may request and, if
16 necessary, compel by subpoena:

17 (1) the attendance of a witness for examination under
18 oath; and

19 (2) the production for inspection or copying of
20 records, documents, and other evidence relevant to the
21 investigation of an alleged violation of this chapter.

22 (b) The board, acting through the attorney general, may
23 bring an action to enforce a subpoena issued under Subsection (a)
24 against a person who fails to comply with the subpoena.

25 (c) Venue for an action brought under Subsection (b) is in a
26 district court in:

27 (1) Travis County; or

1 (2) the county in which the board may hold a hearing.

2 (d) The court shall order compliance with the subpoena if
3 the court finds that good cause exists to issue the subpoena.

4 Sec. 207.158. TECHNOLOGY POLICY. The board shall develop
5 and implement a policy requiring the executive director and board
6 employees to research and propose appropriate technological
7 solutions to improve the board's ability to perform its functions.
8 The technological solutions must:

9 (1) ensure that the public is able to find information
10 about the board on the Internet;

11 (2) ensure that persons who want to use the board's
12 services are able to:

13 (A) interact with the board through the Internet;
14 and

15 (B) access any service that can be provided
16 effectively through the Internet; and

17 (3) be cost-effective and developed through the
18 board's planning processes.

19 Sec. 207.159. NEGOTIATED RULEMAKING AND ALTERNATIVE
20 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
21 implement a policy to encourage the use of:

22 (1) negotiated rulemaking procedures under Chapter
23 2008, Government Code, for the adoption of board rules; and

24 (2) appropriate alternative dispute resolution
25 procedures under Chapter 2009, Government Code, to assist in the
26 resolution of internal and external disputes under the board's
27 jurisdiction.

1 (b) The board's procedures relating to alternative dispute
2 resolution must conform, to the extent possible, to any model
3 guidelines issued by the State Office of Administrative Hearings
4 for the use of alternative dispute resolution by state agencies.

5 (c) The board shall designate a trained person to:

6 (1) coordinate the implementation of the policy
7 adopted under Subsection (a);

8 (2) serve as a resource for any training needed to
9 implement the procedures for negotiated rulemaking or alternative
10 dispute resolution; and

11 (3) collect data concerning the effectiveness of those
12 procedures, as implemented by the board.

13 [Sections 207.160-207.200 reserved for expansion]

14 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

15 Sec. 207.201. PUBLIC INTEREST INFORMATION. (a) The board
16 shall prepare information of public interest describing the
17 functions of the board and the procedures by which complaints are
18 filed with and resolved by the board.

19 (b) The board shall make the information available to the
20 public and appropriate state agencies.

21 Sec. 207.202. PUBLIC PARTICIPATION. (a) The board shall
22 develop and implement policies that provide the public with a
23 reasonable opportunity to appear before the board and to speak on
24 any issue under the board's jurisdiction.

25 (b) The board shall prepare and maintain a written plan that
26 describes how a person who does not speak English may be provided
27 reasonable access to the board's programs.

1 Sec. 207.203. COMPLAINTS. (a) The board by rule shall
2 establish methods by which consumers and service recipients are
3 notified of the name, mailing address, and telephone number of the
4 board for the purpose of directing complaints to the board. The
5 board may provide for that notice:

6 (1) on each registration form, application, or written
7 contract for services of a person regulated by the board; or

8 (2) on a sign prominently displayed in the place of
9 business of each person regulated by the board.

10 (b) The board shall list with its regular telephone number
11 any toll-free telephone number established under other state law
12 that may be called to present a complaint about a health
13 professional.

14 Sec. 207.204. RECORDS OF COMPLAINTS. (a) The board shall
15 keep an information file about each complaint filed with the board.
16 The board's information file must be kept current and contain a
17 record for each complaint of:

18 (1) each person contacted in relation to the
19 complaint;

20 (2) a summary of findings made at each step of the
21 complaint process;

22 (3) an explanation of the legal basis and reason for a
23 complaint that is dismissed;

24 (4) the schedule required under Section 207.205 and a
25 notification of any change in the schedule; and

26 (5) other relevant information.

27 (b) Except as provided by Subsection (c), if a written

1 complaint is filed with the board that the board has authority to
2 resolve, the board, at least quarterly and until final disposition
3 of the complaint, shall notify the parties to the complaint of the
4 status of the complaint unless the notice would jeopardize an
5 undercover investigation.

6 (c) If a written complaint that the board has authority to
7 resolve is referred to the enforcement committee, the board at
8 least semiannually and until final disposition of the complaint,
9 shall notify the parties to the complaint of the status of the
10 complaint unless the notice would jeopardize an undercover
11 investigation.

12 Sec. 207.205. GENERAL RULES REGARDING COMPLAINT
13 INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules
14 concerning the investigation of a complaint filed with the
15 board. The rules adopted under this section must:

16 (1) distinguish between categories of complaints;
17 (2) require the board to prioritize complaints for
18 purposes of determining the order in which they are investigated,
19 taking into account the seriousness of the allegations made in a
20 complaint and the length of time a complaint has been pending;

21 (3) ensure that a complaint is not dismissed without
22 appropriate consideration;

23 (4) require that the board be advised of a complaint
24 that is dismissed and that a letter be sent to the person who filed
25 the complaint explaining the action taken on the complaint;

26 (5) ensure that the person who filed the complaint has
27 the opportunity to explain the allegations made in the complaint;

1 and

2 (6) prescribe guidelines concerning the categories of
3 complaints that require the use of a private investigator and the
4 procedures for the board to obtain the services of a private
5 investigator.

6 (b) The board shall:

7 (1) dispose of a complaint in a timely manner; and

8 (2) establish a schedule for conducting each phase of
9 the complaint process that is under the control of the board not
10 later than the 30th day after the date the board receives the
11 complaint.

12 (c) The board shall notify the parties to the complaint of
13 the projected time requirements for pursuing the complaint.

14 (d) The board shall notify the parties to the complaint of
15 any change in the schedule not later than the seventh day after the
16 date the change is made.

17 (e) The executive director shall notify the board of a
18 complaint that is unresolved after the time prescribed by the board
19 for resolving the complaint so that the board may take necessary
20 action on the complaint.

21 Sec. 207.206. CONFIDENTIALITY OF INVESTIGATION FILES. (a)
22 The board's investigation files are confidential, privileged, and
23 not subject to discovery, subpoena, or any other means of legal
24 compulsion for release other than to the board or an employee or
25 agent of the board.

26 (b) The board shall share information in investigation
27 files, on request, with another state or federal regulatory agency

1 or with a local, state, or federal law enforcement agency
2 regardless of whether the investigation has been completed. The
3 board is not required to disclose under this subsection information
4 that is an attorney-client communication, an attorney work product,
5 or other information protected by a privilege recognized by the
6 Texas Rules of Civil Procedure or the Texas Rules of Evidence.

7 (c) On the completion of the investigation and before a
8 hearing under Section 207.302, the board shall provide to the
9 license holder, subject to any other privilege or restriction set
10 forth by rule, statute, or legal precedent, access to all
11 information in the board's possession that the board intends to
12 offer into evidence in presenting its case in chief at the contested
13 case hearing on the complaint. The board is not required to
14 provide:

- 15 (1) a board investigative report or memorandum;
16 (2) the identity of a nontestifying complainant; or
17 (3) attorney-client communications, attorney work
18 product, or other materials covered by a privilege recognized by
19 the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

20 (d) Notwithstanding Subsection (a), the board may:

21 (1) disclose a complaint to the affected license
22 holder; and

23 (2) provide to a complainant the license holder's
24 response to the complaint, if providing the response is considered
25 by the board to be necessary to investigate the complaint.

26 (e) This section does not prohibit the board or another
27 party in a disciplinary action from offering into evidence in a

1 contested case under Chapter 2001, Government Code, a record,
2 document, or other information obtained or created during an
3 investigation.

4 Sec. 207.207. INSPECTIONS. (a) The board, during
5 reasonable business hours, may:

6 (1) conduct an on-site inspection of an integrative
7 medicine office or facility to investigate a complaint filed with
8 the board; and

9 (2) examine and copy records of the integrative
10 medicine office or facility pertinent to the inspection or
11 investigation.

12 (b) The board is not required to provide notice before
13 conducting an inspection under this section.

14 [Sections 207.208-207.250 reserved for expansion]

15 SUBCHAPTER F. LICENSE REQUIREMENTS; RENEWALS

16 Sec. 207.251. LICENSE REQUIRED. A person may not engage in
17 the practice of integrative medicine in this state unless the
18 person holds a license issued under this chapter.

19 Sec. 207.252. ISSUANCE OF LICENSE. The board shall issue a
20 license to an applicant who:

21 (1) meets the eligibility requirements of Section
22 207.253;

23 (2) submits an application on a form prescribed by the
24 board;

25 (3) pays the required application fee; and

26 (4) submits to the board any other information the
27 board considers necessary to evaluate the applicant's

1 qualifications.

2 Sec. 207.253. ELIGIBILITY REQUIREMENTS. To be eligible for
3 a license under this chapter, an applicant must:

4 (1) successfully complete an educational program
5 approved by the board;

6 (2) pass an examination approved by the board;

7 (3) be of good moral character; and

8 (4) meet any other requirement established by board
9 rule.

10 Sec. 207.254. LICENSE RENEWAL. (a) On notification from
11 the board, a person who holds a license under this chapter may renew
12 the license by:

13 (1) paying the required renewal fee;

14 (2) submitting the appropriate form; and

15 (3) meeting any other requirement established by board
16 rule.

17 (b) The board by rule may adopt a system under which
18 licenses expire on various dates during the year.

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 board before the expiration date of the license. A person whose
22 license has expired may not engage in activities that require a
23 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 board a fee that is equal
26 to 1-1/2 times the renewal fee for the license.

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 board a fee equal to two times the renewal fee for the license.

3 Sec. 207.255. INACTIVE STATUS. (a) A person licensed under
4 this chapter may place the person's license on inactive status by
5 applying to the board. A person whose license is on inactive status
6 is not required to pay renewal fees for the license.

7 (b) The holder of a license on inactive status may not
8 engage in the practice of integrative medicine. A violation of this
9 subsection is considered to be practicing without a license.

10 (c) A person whose license is on inactive status under this
11 section may return the person's license to active status by:

12 (1) applying to the board;

13 (2) paying the fee established by the board for
14 returning a license to active status; and

15 (3) satisfying any other requirements established by
16 the board.

17 (d) The board by rule shall establish a limit on the length
18 of time a license holder's license may remain on inactive status.

19 [Sections 207.256-207.300 reserved for expansion]

20 SUBCHAPTER G. LICENSE DENIAL OR DISCIPLINARY PROCEDURES

21 Sec. 207.301. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY
22 ACTION. The board may refuse to issue a license to a person and
23 shall suspend, revoke, or refuse to renew the license of a person or
24 shall reprimand a person licensed under this chapter if the person:

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

27 (2) violates a rule adopted by the board;

1 (3) engages in unprofessional conduct as defined by
2 board rule that endangers or is likely to endanger the health,
3 welfare, or safety of the public; or

4 (4) violates this chapter.

5 Sec. 207.302. HEARING ON DENIAL OR DISCIPLINARY ACTION. (a)

6 A person whose application for a license is denied, whose license is
7 suspended or revoked, or who has been reprimanded is entitled to a
8 hearing before the State Office of Administrative Hearings if the
9 person submits a written request to the board.

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

12 Sec. 207.303. PROBATION. The board may place on probation a
13 person whose license is suspended. If a license suspension is
14 probated, the board may require the person to:

15 (1) report regularly to the board on matters that are
16 the basis of the probation;

17 (2) limit practice to the areas prescribed by the
18 board; or

19 (3) continue or review professional education until
20 the person attains a degree of skill satisfactory to the board in
21 those areas that are the basis of the probation.

22 Sec. 207.304. EMERGENCY SUSPENSION. (a) The board shall
23 temporarily suspend the license of a license holder if the board
24 determines from the evidence or information presented to it that
25 continued practice by the license holder would constitute a
26 continuing and imminent threat to the public welfare.

27 (b) A license may be suspended under this section without

1 notice or hearing on the complaint if:

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

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

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

13 [Sections 207.305-207.350 reserved for expansion]

14 SUBCHAPTER H. ADMINISTRATIVE PENALTY

15 Sec. 207.351. IMPOSITION OF PENALTY. The board may impose
16 an administrative penalty against a person who violates this
17 chapter or a rule adopted under this chapter.

18 Sec. 207.352. AMOUNT OF PENALTY. (a) The amount of the
19 administrative penalty may not exceed \$1,000 for each violation.
20 Each day of a continuing violation is a separate violation.

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

22 (1) the seriousness of the violation;

23 (2) the history of previous violations;

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

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

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

27 Sec. 207.353. NOTICE OF VIOLATION AND PENALTY. (a) If,

1 after investigating a possible violation and the facts surrounding
2 that possible violation, the board determines that a violation
3 occurred, the board shall give written notice of the violation to
4 the person alleged to have committed the violation.

5 (b) The notice must:

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

7 (2) state the amount of the proposed administrative
8 penalty; and

9 (3) inform the person of the person's right to a
10 hearing on the occurrence of the violation, the amount of the
11 penalty, or both.

12 Sec. 207.354. PENALTY TO BE PAID OR HEARING REQUESTED. (a)

13 Not later than the 30th day after the date the person receives the
14 notice, the person may:

15 (1) accept the board's determination, including the
16 proposed administrative penalty; or

17 (2) make a written request for a hearing on that
18 determination.

19 (b) If the person accepts the board's determination, the
20 board by order shall approve the determination and impose the
21 proposed penalty.

22 Sec. 207.355. HEARING. (a) If the person timely requests a
23 hearing, the board shall:

24 (1) set a hearing; and

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

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

1 (c) The administrative law judge shall make findings of fact
2 and conclusions of law and promptly issue to the board a proposal
3 for decision regarding the occurrence of the violation and the
4 amount of any proposed administrative penalty.

5 Sec. 207.356. DECISION BY BOARD. (a) Based on the findings
6 of fact and conclusions of law and the recommendations of the
7 administrative law judge, the board by order may determine that:

8 (1) a violation has occurred and may impose an
9 administrative penalty; or

10 (2) a violation did not occur.

11 (b) The board shall give notice of the order to the person.
12 The notice must include:

13 (1) separate statements of the findings of fact and
14 conclusions of law;

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

16 (3) a statement of the right of the person to judicial
17 review of the order.

18 Sec. 207.357. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

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

21 (1) pay the administrative penalty;

22 (2) pay the penalty and file a petition for judicial
23 review contesting the occurrence of the violation, the amount of
24 the penalty, or both; or

25 (3) without paying the penalty, file a petition for
26 judicial review contesting the occurrence of the violation, the
27 amount of the penalty, or both.

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

3 (1) stay enforcement of the penalty by:

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

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

9 (2) request the court to stay enforcement of the
10 penalty by:

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

14 (B) giving a copy of the affidavit to the board by
15 certified mail.

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

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

26 Sec. 207.358. COLLECTION OF PENALTY. If the person does not
27 pay the administrative penalty and the enforcement of the penalty

1 is not stayed, the board may refer the matter to the attorney
2 general for collection.

3 Sec. 207.359. DETERMINATION BY COURT. (a) If the court
4 sustains the determination that a violation occurred, the court may
5 uphold or reduce the amount of the administrative penalty and order
6 the person to pay the full or reduced amount.

7 (b) If the court does not sustain the determination that a
8 violation occurred, the court shall order that a penalty is not
9 owed.

10 Sec. 207.360. REMITTANCE OF PENALTY AND INTEREST. (a) If,
11 after judicial review, the administrative penalty is reduced or not
12 imposed by the court, the court shall, after the judgment becomes
13 final:

14 (1) order the appropriate amount, plus accrued
15 interest, be remitted to the person by the board if the person paid
16 the penalty under Section 207.357(a)(2); or

17 (2) if the person paid the penalty under Section
18 207.357(b)(1)(A) or posted a supersedeas bond, order the board to:

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

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

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

1 penalty is remitted.

2 Sec. 207.361. ADMINISTRATIVE PROCEDURE. A proceeding under
3 this subchapter is subject to Chapter 2001, Government Code.

4 [Sections 207.362-207.400 reserved for expansion]

5 SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

6 Sec. 207.401. INJUNCTIVE RELIEF. (a) The board may
7 institute in the board's name an action to restrain a violation of
8 this chapter. An action under this subsection is in addition to any
9 other action authorized by law.

10 (b) The state may sue for an injunction to restrain the
11 practice of integrative medicine in violation of this chapter.

12 (c) The state shall be represented in suits for injunction
13 by:

14 (1) the attorney general;

15 (2) the district attorney of the district in which the
16 defendant resides; or

17 (3) the county attorney of the county in which the
18 defendant resides.

19 (d) A suit for injunction under Subsection (b) may not be
20 filed before the final conviction for a violation of this chapter of
21 the party sought to be enjoined.

22 (e) The state is not required to show that a person is
23 personally injured by the defendant's unlawful practice of
24 integrative medicine.

25 (f) A court may not grant a temporary or permanent
26 injunction until a hearing of the complaint on its merits. A court
27 may not issue an injunction or restraining order until the final

1 trial and final judgment on the merits of the suit.

2 (g) If the defendant is shown to have been unlawfully
3 practicing integrative medicine or to have been about to unlawfully
4 practice integrative medicine, the court shall perpetually enjoin
5 the defendant from practicing integrative medicine in the manner
6 that was the subject of the suit.

7 (h) A defendant who disobeys the injunction is subject to
8 the penalties provided by law for the violation of an injunction.
9 The remedy by injunction is in addition to a criminal prosecution.

10 (i) A suit for injunction under this section shall be
11 advanced for trial on the docket of the trial court and advanced and
12 tried in the appellate courts in the same manner as other suits for
13 injunction.

14 Sec. 207.402. CEASE AND DESIST ORDER. (a) If it appears to
15 the board that a person is engaging in an act or practice that
16 constitutes the practice of integrative medicine without a license
17 or registration under this chapter, the board, after notice and
18 opportunity for a hearing, may issue a cease and desist order
19 prohibiting the person from engaging in that activity.

20 (b) A violation of an order under this section constitutes
21 grounds for imposing an administrative penalty under Subchapter H.

22 Sec. 207.403. CIVIL PENALTY. (a) A person who violates
23 this chapter or a rule adopted by the board under this chapter is
24 liable to the state for a civil penalty of \$1,000 for each day of
25 violation.

26 (b) At the request of the board, the attorney general shall
27 bring an action to recover a civil penalty authorized by this

1 section.

2 Sec. 207.404. CRIMINAL PENALTY. A person commits an
3 offense if the person violates this chapter. An offense under this
4 section is a misdemeanor punishable by a fine of not less than \$50
5 or more than \$500 or by confinement in the county jail for not more
6 than 30 days.

7 SECTION 2. As soon as practicable after the effective date
8 of this Act, the governor shall appoint nine members to the Texas
9 Board of Integrative Medicine in accordance with Chapter 207,
10 Occupations Code, as added by this Act. In making the initial
11 appointments, the governor shall designate three members for terms
12 expiring January 31, 2013, three members for terms expiring January
13 31, 2015, and three members for terms expiring January 31, 2017.

14 SECTION 3. Not later than June 1, 2012, the Texas Board of
15 Integrative Medicine shall adopt the rules, procedures, and fees
16 necessary to administer Chapter 207, Occupations Code, as added by
17 this Act.

18 SECTION 4. Notwithstanding Chapter 207, Occupations Code,
19 as added by this Act, a practitioner of integrative medicine is not
20 required to hold a license under that chapter to practice
21 integrative medicine in this state before September 1, 2012.

22 SECTION 5. (a) Except as provided by Subsection (b) of this
23 section, this Act takes effect September 1, 2011.

24 (b) Section 207.251 and Subchapters G, H, and I, Chapter
25 207, Occupations Code, as added by this Act, take effect September
26 1, 2012.