

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE C. OTHER PROFESSIONS PERFORMING MEDICAL PROCEDURES

CHAPTER 205. ACUPUNCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Acudetox specialist" means a person certified under Section [205.303](#).

(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 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).

(3) "Acupuncture board" means the Texas State Board of Acupuncture Examiners.

(4) "Acupuncturist" means a person who:

(A) practices acupuncture; and

(B) directly or indirectly charges a fee for the performance of acupuncture services.

(5) "Chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

(6) "Executive director" means the executive director of the Texas Medical Board.

(7) "Medical board" means the Texas Medical Board.

(8) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 719, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.01, eff.

September 1, 2005.

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

(b) This chapter does not:

- (1) limit the practice of medicine by a physician;
- (2) permit the unauthorized practice of medicine; or
- (3) permit a person to dispense, administer, or supply a controlled substance, narcotic, or dangerous drug unless the person is authorized by other law to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER B. TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS

Sec. 205.051. BOARD; MEMBERSHIP. (a) The Texas State Board of Acupuncture Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four acupuncturist members who have at least five years of experience in the practice of acupuncture in this state and who are not physicians;

(2) two physician members experienced in the practice of acupuncture; and

(3) three members of the general public who are not licensed or trained in a health care profession.

(b) Appointments to the acupuncture board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.02, eff. September 1, 2005.

Sec. 205.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the acupuncture board if the person or the person's spouse:

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

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

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

(4) uses or receives a substantial amount of tangible goods, services, or funds from the medical board or acupuncture board, other than compensation or reimbursement authorized by law for acupuncture board membership, attendance, or expenses; or

(5) owns, operates, or has a financial interest in a school of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.056(a), eff. Sept. 1, 2001.

Sec. 205.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, board member, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the acupuncture board or an employee of the medical board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person may not be a member of the acupuncture board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used

for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) A person may not be a member of the acupuncture board or act as general counsel to the acupuncture board or the medical board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or acupuncture board.

(e) A person may not serve on the acupuncture board if the person owns, operates, or has a financial interest in a school of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.056(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.03, eff. September 1, 2005.

Sec. 205.054. TERMS; VACANCIES. (a) Members of the acupuncture board serve staggered six-year terms. The terms of three members expire on January 31 of each odd-numbered year.

(b) A vacancy on the acupuncture board shall be filled by appointment of the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.055. PRESIDING OFFICER. The governor shall designate an acupuncturist member of the acupuncture board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.04, eff. September 1, 2005.

Sec. 205.056. GROUND FOR REMOVAL. (a) It is a ground for removal from the acupuncture board that a member:

(1) does not have at the time of appointment the qualifications required by Sections 205.051 and 205.052;

(2) does not maintain during service on the acupuncture board the qualifications required by Sections 205.051 and 205.052;

(3) violates a prohibition established by Section 205.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled acupuncture board meetings that the member is eligible to attend during a calendar year.

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

(c) If the executive director has knowledge that a potential ground for removal of an acupuncture board member exists, the executive director shall notify the presiding officer of the acupuncture board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the acupuncture board, who shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the acupuncture board may not vote, deliberate, or be counted as a member in attendance at a meeting of the acupuncture board until the person completes a

training program that complies with this section.

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

- (1) this chapter;
- (2) the programs operated by the acupuncture board;
- (3) the role and functions of the acupuncture board;
- (4) the rules of the acupuncture board;
- (5) the current budget for the acupuncture board;
- (6) the results of the most recent formal audit of the acupuncture board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (8) any applicable ethics policies adopted by the acupuncture board or the Texas Ethics Commission.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.05, eff. September 1, 2005.

Sec. 205.058. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to members of the acupuncture board information regarding their:

- (1) qualifications for office under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.059. COMPENSATION; PER DIEM. An acupuncture board member may not receive compensation for service on the acupuncture board but is entitled to receive a per diem as set by

legislative appropriation for transportation and related expenses incurred for each day that the member engages in the acupuncture board's business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. POWERS AND DUTIES OF ACUPUNCTURE BOARD AND MEDICAL BOARD

Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE BOARD. (a) Subject to the advice and approval of the medical board, the acupuncture board shall:

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

(2) establish minimum education and training 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;

(7) 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) The acupuncture board does not have independent

rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.

(c) The acupuncture board shall:

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

(2) issue each license; and

(3) deny, suspend, or revoke a license or otherwise discipline a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.06, eff. September 1, 2005.

Sec. 205.102. ASSISTANCE BY MEDICAL BOARD. (a) The medical board shall provide administrative and clerical employees as necessary to enable the acupuncture board to administer this chapter.

(b) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement policies that clearly separate the policy-making responsibilities of the acupuncture board and the management responsibilities of the executive director and the staff of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.104. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The medical board may not adopt rules under this chapter restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

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

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the license holder; or
- (4) restricts the license holder's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The acupuncture board shall develop guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the acupuncture board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the acupuncture board submits the rule to the medical board for approval.

(b) A rule adopted by the acupuncture board may not be challenged on the grounds that the board did not comply with this section. If the acupuncture board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.07, eff. September 1, 2005.

Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The acupuncture board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.08, eff. September 1, 2005.

Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the acupuncture board shall

implement a policy requiring the acupuncture board to use appropriate technological solutions to improve the acupuncture board's ability to perform its functions. The policy must ensure that the public is able to interact with the acupuncture board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.09, eff. September 1, 2005.

Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.10, eff. September 1, 2005.

#### SUBCHAPTER D. PUBLIC ACCESS AND INFORMATION AND COMPLAINT

## PROCEDURES

Sec. 205.151. PUBLIC INTEREST INFORMATION. (a) The acupuncture board shall prepare information of public interest describing the functions of the acupuncture board and the procedures by which complaints are filed with and resolved by the acupuncture board.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.152. COMPLAINTS. (a) The acupuncture board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the acupuncture board for the purpose of directing a complaint to the acupuncture board. The acupuncture board may provide for that notification:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The acupuncture board shall keep information about each complaint filed with the acupuncture board. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the acupuncture board took no action, an explanation of the reason the complaint was closed without action.

(c) The acupuncture board shall keep a file about each

written complaint filed with the acupuncture board that the acupuncture board has authority to resolve. The acupuncture board shall provide to the person filing the complaint and each person who is the subject of the complaint the acupuncture board's policies and procedures pertaining to complaint investigation and resolution.

(d) The acupuncture board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture board shall complete a preliminary investigation of a complaint received by the acupuncture board not later than the 30th day after the date of receiving the complaint. The acupuncture board shall first determine whether the acupuncturist constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the acupuncture board shall determine whether to officially proceed on the complaint. If the acupuncture board fails to complete the preliminary investigation in the time required by this section, the acupuncture board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.11, eff. September 1, 2005.

Sec. 205.153. PUBLIC PARTICIPATION. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the acupuncture board and to speak on any issue under the acupuncture board's jurisdiction.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER E. LICENSE REQUIREMENTS

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.12, eff. September 1, 2005.

Sec. 205.202. ISSUANCE OF LICENSE. (a) The acupuncture board shall issue a license to practice acupuncture in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The acupuncture board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the acupuncture board. A license issued under this subsection does not require formal acupuncture board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.13, eff. September 1, 2005.

Sec. 205.203. LICENSE EXAMINATION. (a) An applicant for a license to practice acupuncture must pass an acupuncture examination and a jurisprudence examination approved by the acupuncture board as provided by this section.

(b) To be eligible for the examination, an applicant must:

- (1) be at least 21 years of age;
- (2) have completed at least 60 semester hours of college courses, including basic science courses as determined by

the acupuncture board; and

(3) be a graduate of an acupuncture school with entrance requirements and a course of instruction that meet standards set under Section 205.206.

(c) The acupuncture examination shall be conducted on practical and theoretical acupuncture and other subjects required by the acupuncture board.

(c-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the professional practice of acupuncture in this state.

(d) The examination may be in writing, by a practical demonstration of the applicant's skill, or both, as required by the acupuncture board.

(e) The medical board shall notify each applicant of the time and place of the examination.

(f) The acupuncture board shall adopt rules for the jurisprudence examination under Subsection (c-1) regarding:

- (1) the development of the examination;
- (2) applicable fees;
- (3) administration of the examination;
- (4) reexamination procedures;
- (5) grading procedures; and
- (6) notice of results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.057(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.14, eff. September 1, 2005.

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 medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.2045. APPEARANCE OF APPLICANT BEFORE ACUPUNCTURE BOARD. An applicant for a license to practice acupuncture may not be required to appear before the acupuncture board or a committee of the acupuncture board unless the application raises questions concerning:

- (1) a physical or mental impairment of the applicant;
- (2) a criminal conviction of the applicant; or
- (3) revocation of a professional license held by the applicant.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.057(b), eff. Sept. 1, 2001.

Sec. 205.205. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a licensing examination is administered under this chapter, the acupuncture board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the acupuncture board shall notify examinees of the results of the examination not later than the 14th day after the date the acupuncture board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the acupuncture board shall notify the examinee of the reason for the delay before the 90th day. The acupuncture board may require a testing service to notify examinees of the results of an examination.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the acupuncture board shall furnish the person with an analysis of the person's performance on the examination if an analysis is available from the national testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.206. ACUPUNCTURE SCHOOLS. (a) A reputable acupuncture school, in addition to meeting standards set by the acupuncture board, must:

(1) maintain a resident course of instruction equivalent to not less than six terms of four months each for a total of not less than 1,800 instructional hours;

(2) provide supervised patient treatment for at least two terms of the resident course of instruction;

(3) maintain a course of instruction in anatomy-histology, bacteriology, physiology, symptomatology, pathology, meridian and point locations, hygiene, and public health; and

(4) have the necessary teaching force and facilities for proper instruction in required subjects.

(b) In establishing standards for the entrance requirements and course of instruction of an acupuncture school, the acupuncture board may consider the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

(c) In addition to the other requirements of this section, an acupuncture school or degree program is subject to approval by the Texas Higher Education Coordinating Board unless the school or program qualifies for an exemption under Section [61.303](#), Education Code.

(d) In reviewing an acupuncture school or degree program as required by Subsection (c), the Texas Higher Education Coordinating Board shall seek input from the acupuncture board regarding the standards to be used for assessing whether a school or degree program adequately prepares an individual for the practice of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.15, eff. September 1, 2005.

Sec. 205.207. RECIPROCAL LICENSE. The medical board may waive any license requirement for an applicant after reviewing the

applicant's credentials and determining that the applicant holds a license from another state that has license requirements substantially equivalent to those of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.208. 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER F. LICENSE RENEWAL

Sec. 205.251. ANNUAL RENEWAL REQUIRED. (a) The medical board by rule shall provide for the annual renewal of a license to practice acupuncture.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.252. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the medical board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.253. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section or Section [205.254](#).

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board a fee in an amount equal to two times the required renewal fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.254. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The medical board may renew without reexamination the license of a person who was licensed to practice acupuncture in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the medical board a fee in an

amount equal to two times the required renewal fee for the license.  
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.255. CONTINUING EDUCATION. (a) The acupuncture board by rule may require a license holder to complete a certain number of hours of continuing education courses approved by the acupuncture board to renew a license.

(a-1) The acupuncture board shall establish written guidelines for granting continuing education credit that specify:

- (1) procedural requirements;
- (2) the qualifications needed to be considered a preferred provider of continuing education; and
- (3) course content requirements.

(b) The acupuncture board shall consider the approval of a course conducted by:

- (1) a knowledgeable health care provider; or
- (2) a reputable school, state, or professional organization.

(c) After guidelines are established under Subsection (a-1), the acupuncture board shall delegate to medical board employees the authority to approve course applications for courses that clearly meet the guidelines. Medical board employees shall refer any courses that are not clearly within the guidelines to the acupuncture board for review and approval.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.058(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.16, eff. September 1, 2005.

#### SUBCHAPTER G. PRACTICE BY LICENSE HOLDER

Sec. 205.301. REFERRAL BY OTHER HEALTH CARE PRACTITIONER REQUIRED. (a) A license holder may perform acupuncture on a person only if the person was:

- (1) evaluated by a physician or dentist, as appropriate, for the condition being treated within 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)(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 or dentist within the prescribed time. The form must contain a clear statement that the person should be evaluated by a physician or dentist for the condition being treated by the license holder.

(c) A license holder acting under Subsection (a)(2) shall refer the person to a physician after performing acupuncture 20 times or for 30 days, whichever occurs first, if substantial improvement does not occur in the person's condition for which the referral was made.

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

(1) the scope of the evaluation under Subsection (a)(1);

(2) the period during which treatment must begin under Subsection (a)(1) or (2); or

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.302. AUTHORIZED PRACTICE WITHOUT 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 a referral from a physician, dentist, or chiropractor,

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. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 719, Sec. 2, eff. Sept. 1, 2001.

Sec. 205.303. ACUDETOX SPECIALIST. (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 medical board.

(b) An acudetox specialist may practice acupuncture only:

(1) to the extent allowed by rules adopted by the medical board for the treatment of alcoholism, substance abuse, or chemical dependency; and

(2) under the supervision of a licensed acupuncturist or physician.

(c) A program that includes the services of an acudetox specialist shall:

(1) notify each participant in the program of the qualifications of the acudetox specialist and of the procedure for registering a complaint regarding the acudetox specialist with the medical board; and

(2) keep a record of each client's name, the date the client received the acudetox specialist's services, and the name, signature, and certification number of the acudetox specialist.

(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 medical board.

(e) The medical board shall establish continuing education requirements for an acudetox specialist that, at a minimum, include six hours of education in the practice of acupuncture and a course in either clean needle technique or universal infection control precaution procedures.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.059(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 33, eff. Sept. 1, 2003.

Sec. 205.304. PROFESSIONAL REVIEW ACTION. Sections 160.002, 160.003, 160.006, 160.007(d), 160.013, 160.014, and 160.015 apply to professional review actions relating to the practice of acupuncture by an acupuncturist or acupuncturist student.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.060, eff. Sept. 1, 2001.

Sec. 205.305. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the acupuncture board:

(1) the license holder's mailing address;

(2) the address of the license holder's residence;

(3) the mailing address of each office of the license holder; and

(4) the address for the location of each office of the license holder that has an address different from the office's mailing address.

(b) A license holder shall:

(1) notify the acupuncture board of a change of the license holder's residence or business address; and

(2) provide the acupuncture board with the license holder's new address not later than the 30th day after the date the address change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 205.351. GROUND FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) A license to practice acupuncture may be denied or, after notice and hearing, a license holder may be subject to disciplinary action under Section 205.352 if the license applicant or license holder:

(1) intemperately uses drugs or intoxicating liquors to an extent that, in the opinion of the board, could endanger the lives of patients;

(2) obtains or attempts to obtain a license by fraud or deception;

(3) has been adjudged mentally incompetent by a court;

(4) has a mental or physical condition that renders the person unable to perform safely as an acupuncturist;

(5) fails to practice acupuncture in an acceptable manner consistent with public health and welfare;

(6) violates this chapter or a rule adopted under this chapter;

(7) has been convicted of a crime involving moral turpitude or a felony or is the subject of deferred adjudication or pretrial diversion for such an offense;

(8) holds the person out as a physician or surgeon or any combination or derivative of those terms unless the person is also licensed by the medical board as a physician or surgeon;

(9) fraudulently or deceptively uses a license;

(10) engages in unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure a member of the public;

(11) commits an act in violation of state law if the

act is connected with the person's practice as an acupuncturist;

(12) fails to adequately supervise the activities of a person acting under the supervision of the license holder;

(13) directly or indirectly aids or abets the practice of acupuncture by any person not licensed to practice acupuncture by the acupuncture board;

(14) is unable to practice acupuncture with reasonable skill and with safety to patients because of illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or any other type of material or because of any mental or physical condition;

(15) is the subject of repeated or recurring meritorious health-care liability claims that in the opinion of the acupuncture board evidence professional incompetence likely to injure the public;

(16) has had a license to practice acupuncture suspended, revoked, or restricted by another state or has been subject to other disciplinary action by another state or by the uniformed services of the United States regarding practice as an acupuncturist; or

(17) sexually abuses or exploits another person through the license holder's practice as an acupuncturist.

(b) If the acupuncture board proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(c) A complaint, indictment, or conviction of a violation of law is not necessary for an action under Subsection (a)(11). Proof of the commission of the act while in the practice of acupuncture or under the guise of the practice of acupuncture is sufficient for action by the acupuncture board.

(d) A certified copy of the record of the state or uniformed services of the United States taking an action is conclusive evidence of the action for purposes of Subsection (a)(16).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.17, eff. September 1, 2005.

Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.

(a) On finding that grounds exist to deny a license or take disciplinary action against a license holder, the acupuncture board by order may:

(1) deny the person's application for a license, license renewal, or certificate to practice acupuncture or revoke the person's license or certificate to practice acupuncture;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the acupuncture board as a condition for the issuance, continuance, or renewal of a license or certificate to practice acupuncture;

(3) require the person to participate in a program of education or counseling prescribed by the acupuncture board;

(4) suspend, limit, or restrict the person's license or certificate to practice acupuncture, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of acupuncture or stipulating periodic review by the acupuncture board;

(5) require the person to practice under the direction of an acupuncturist designated by the acupuncture board for a specified period of time;

(6) assess an administrative penalty against the person as provided by Subchapter J;

(7) require the person to perform public service considered appropriate by the acupuncture board;

(8) stay enforcement of an order and place the person on probation with the acupuncture board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section;

(9) require the person to continue or review professional education until the person attains a degree of skill satisfactory to the acupuncture board in those areas that are the basis of the probation under Subdivision (8);

(10) require the person to report regularly to the acupuncture board on matters that are the basis of the probation

under Subdivision (8); or

(11) administer a public reprimand.

(b) The acupuncture board may reinstate or reissue a license or remove any disciplinary or corrective measure that the acupuncture board has imposed under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.18, eff. September 1, 2005.

Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the acupuncture board determines, under acupuncture board rules, that the former holder of the license is competent to resume practice.

(c) The acupuncture board shall recommend rules to the medical board for determining the competency of a former license holder to return to practice.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.19, eff. September 1, 2005.

Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The acupuncture board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which an acupuncturist or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The acupuncture board shall refer an acupuncturist or applicant with a physical or mental health condition to the most appropriate medical specialist. The acupuncture board may not require an acupuncturist or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The acupuncture board may not require an acupuncturist or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place

of business unless the acupuncturist or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the acupuncture board's power to make an independent licensing decision.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.20, eff. September 1, 2005.

Sec. 205.354. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of practice adopted by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the acupuncture board, unless good cause is shown by the acupuncture board for scheduling the informal meeting after that date;

(2) the acupuncture board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the acupuncture board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the acupuncture board's legal counsel or a

representative of the attorney general be present to advise the acupuncture board or the medical board's staff; and

(6) an employee of the medical board be at the meeting to present to the acupuncture board's representative the facts the medical board staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected acupuncturist is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the acupuncturist reasonably believes the acupuncturist could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the acupuncture board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the acupuncture board, the acupuncture board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.21, eff. September 1, 2005.

Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 205.3541, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 205.3541(b)(4), an informal proceeding may be conducted by one panelist if the affected acupuncturist waives the requirement that at least two panelists conduct the informal proceeding. If the acupuncturist waives that requirement, the panelist may be any member of the acupuncture board.

(c) The panel requirements described by Subsection (a) apply to an informal proceeding conducted by the acupuncture board under Section 205.3541, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the acupuncture board under Section 205.3541 to show compliance with an order of the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.22, eff. September 1, 2005.

Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that serves as a panelist at an informal meeting under Section 205.3541 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected acupuncturist and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An acupuncture board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the acupuncture board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected acupuncturist have an opportunity to present information related to the case. During the panel's deliberation, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the acupuncture board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected acupuncturist and the acupuncturist's

authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the acupuncturist and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected acupuncturist, the acupuncturist's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected acupuncturist has violated a statute or acupuncture board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected acupuncturist and the acupuncturist's authorized representative. The acupuncturist may accept the proposed settlement within the time established by the panel at the informal meeting. If the acupuncturist rejects the proposed settlement or does not act within the required time, the acupuncture board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.23, eff. September 1, 2005.

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

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.24, eff. September 1, 2005.

Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO

OBTAIN REFERRAL. 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)(1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as an acupuncturist, if the person:

(A) reported the use;

(B) has not previously been the subject of a substance abuse related order of the acupuncture board; and

(C) did not violate the standard of care as a result of the impairment;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as an acupuncturist with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) The acupuncture board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The acupuncture board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The acupuncture board may disclose a rehabilitation order to a local or statewide private acupuncture association only as provided by Section [205.3562](#).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.25, eff. September 1, 2005.

Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the acupuncture board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the expert in good faith to the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.26, eff. September 1, 2005.

Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

(a) If a rehabilitation order imposed under Section [205.356](#) requires a license holder to participate in activities or programs provided by a local or statewide private acupuncture association, the acupuncture board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the acupuncturist's rehabilitation.

(b) The acupuncture board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. [419](#)), Sec. 3.26, eff. September 1, 2005.

Sec. 205.357. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 205.356 is a nondisciplinary private order. If entered by agreement, the order is an agreed disposition or settlement agreement for purposes of civil litigation and is exempt from the open records law.

(b) A rehabilitation order imposed under Section 205.356 must contain findings of fact and conclusions of law. The order may impose a revocation, cancellation, suspension, period of probation or restriction, or any other term authorized by this chapter or agreed to by the acupuncture board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under the provisions of this chapter for contested matters or the terms of the agreed order.

(d) A violation of a rehabilitation order is grounds for disciplinary action based on:

(1) unprofessional or dishonorable conduct; or

(2) any provision of this chapter that applies to the conduct resulting in the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.358. AUDIT OF REHABILITATION ORDER. (a) The acupuncture board shall keep rehabilitation orders imposed under Section 205.356 in a confidential file. The file is subject to an independent audit to ensure that only qualified license holders are subject to rehabilitation orders. The audit shall be conducted by a state auditor or private auditor with whom the acupuncture board contracts to perform the audit.

(b) An audit may be performed at any time at the direction of the acupuncture board. The acupuncture board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are a matter of public record and shall be reported in a manner that maintains the confidentiality of each license holder who is subject to a rehabilitation order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.359. SUBPOENA. (a) On behalf of the acupuncture

board, the executive director of the medical board or the presiding officer of the acupuncture board may issue a subpoena or subpoena duces tecum:

(1) for purposes of an investigation or contested proceeding related to:

(A) alleged misconduct by an acupuncturist; or

(B) an alleged violation of this chapter or other law related to practice as an acupuncturist or to the provision of health care under the authority of this chapter; and

(2) to determine whether to:

(A) issue, suspend, restrict, revoke, or cancel a license authorized by this chapter; or

(B) deny or grant an application for a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the acupuncture board or any other licensing or regulatory agency with jurisdiction over the individual or entity subject to the subpoena; and

(2) denial of a license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The acupuncture board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the acupuncture board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section [205.3541](#) if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected acupuncturist requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.27, eff. September 1, 2005.

Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding officer of the acupuncture board, with that board's approval, shall appoint a three-member disciplinary panel consisting of acupuncture board members to determine whether a person's license to practice as an acupuncturist should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice as an acupuncturist would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

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

(1) institution of proceedings for a hearing before the acupuncture board is initiated simultaneously with the temporary suspension; and

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

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.  
Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.28, eff. September 1, 2005.

Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to the acupuncture board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of acupuncture, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section

205.352.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.29, eff. September 1, 2005.

Sec. 205.363. REFUND. (a) Subject to Subsection (b), the acupuncture board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this subchapter.

(b) The amount of a refund ordered under Subsection (a) may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The acupuncture board may not require payment of other damages or estimate harm in a refund order. Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.30, eff. September 1, 2005.

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the acupuncture board makes a determination required by Section 2001.058(e), Government Code. Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.31, eff. September 1, 2005.

#### SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 205.401. CRIMINAL PENALTY. (a) Except as provided by Section 205.303, a person commits an offense if the person practices acupuncture in this state without a license issued under this chapter.

(b) Each day a person practices acupuncture in violation of Subsection (a) constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.402. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The

acupuncture board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(b) In addition to injunctive relief or any other remedy provided by law, a person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty in an amount not to exceed \$2,000 for each violation.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a civil penalty.

(d) The attorney general, at the request of the acupuncture board or on the attorney general's own initiative, may bring a civil action to collect a civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.32, eff. September 1, 2005.

#### SUBCHAPTER J. ADMINISTRATIVE PENALTIES

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The acupuncture board by order may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.452. PROCEDURE. (a) The acupuncture board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate

violation for purposes of imposing a penalty.

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

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the acupuncture board by order determines that a violation has occurred and imposes an administrative penalty, the acupuncture board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the acupuncture board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

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

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

(b) Within the 30-day period, a person who acts under

Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

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

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

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

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the presiding officer of the acupuncture board by certified mail.

(c) If the presiding officer of the acupuncture board receives a copy of an affidavit under Subsection (b)(2), the presiding officer may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

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

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.456. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the presiding officer of the acupuncture board may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal the

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

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

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.