

BILL ANALYSIS

Senate Research Center
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S.B. 1314
By: Harris
Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the Board of Acupuncture exists under the oversight of the Texas Medical Board. Acupuncture is a unique and specialized medical practice and needs to have an self-regulating board that can establish appropriate standards of practice, set standards for licensure, collect fees, and oversee the practice of acupuncture in Texas.

As proposed, S.B. 1314 expands the authority of the Board of Acupuncture to regulate the practice of acupuncture.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the acupuncture board in SECTION 2 (Section 205.101, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Medical Board is modified in SECTION 2 (Section 205.101, Occupations Code), SECTION 8 (Section 205.301, Occupations Code), and SECTION 9 (Section 205.302, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Medical Board is rescinded in SECTION 9 (Section 205.302, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 205.001, Occupations Code, by amending Subdivision (2) and adding Subdivision (2-a), as follows:

(2) Redefines "acupuncture."

(2-a) Provides that "acupuncture" does not include surgery or clinical needle electromyography.

SECTION 2. Amends Section 205.101, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Requires the acupuncture board, except as provided by Subsection (d), rather than subject to the advice and approval of the Texas Medical Board (TMB), to establish qualifications for an acupuncturist to practice in this state; establish minimum education and training requirements necessary for the acupuncture board to issue a license to practice acupuncture; administer an examination that is validated by independent testing professionals for a license to practice acupuncture; develop requirements for licensure by endorsement of other states; prescribe the application form for a license to practice acupuncture; establish licensing and other fees; approve educational programs or institutions of acupuncture and oriental medicine that meet the acupuncture board's minimum standards; and adopt additional rules as are necessary to administer and enforce this chapter. Deletes existing text requiring the acupuncture board to make certain recommendations to the TMB and establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college.

(b) Requires the acupuncture board, in establishing minimum education and training requirements under Subsection (a)(2), to consider the minimum education and training

standards established by the Accreditation Commission for Acupuncture and Oriental Medicine. Deletes existing text providing that the acupuncture board does not have independent rulemaking authority and that a rule adopted by the acupuncture board is subject to TMB approval.

(d) Requires that a rule relating to the scope of practice of acupuncture have the advice and approval of the TMB.

SECTION 3. Amends Section 205.103, Occupations Code, as follows:

Sec. 205.103. FEES. Requires the acupuncture board to set fees, rather than set and collect fees, in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter, including the costs for the TMB to collect the fees, rather than without the use of any other funds generated by the TMB. Makes a conforming change.

SECTION 4. Amends Section 205.201, Occupations Code, as follows:

Sec. 205.201. LICENSE REQUIRED. (a) Creates this subsection from existing text. Prohibits a person, except as provided by Section 205.303, from practicing or representing that the person practices acupuncture in this state unless the person holds a license to practice acupuncture issued by the acupuncture board under this chapter.

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

(c) Provides that a person represents that the person practices acupuncture if the person uses in connection with the person's name or business activity the words "acupuncturist" or "acupuncture," the letters or abbreviation "L.Ac." or "Lic.Ac.," any other words, letters, abbreviations, or insignia indicating or implying that the person is an acupuncturist; or directly or by implication represents to the public that the person is an acupuncturist or that the person provides acupuncture.

(d) Provides that this section does not apply to a person acting under the delegation and supervision of a physician.

SECTION 5. Amends Section 205.204, Occupations Code, as follows:

Sec. 205.204. APPLICATION FOR EXAMINATION. Requires that an application for examination be in writing on a form prescribed by the acupuncture board; verified by affidavit; filed with the executive director of the TMB; and accompanied by a fee in an amount set by the acupuncture board. Makes a conforming change.

SECTION 6. Amends Section 205.206, Occupations Code, by adding Subsection (e), to authorize the acupuncture board to deny or withdraw the acupuncture board's approval of a school or educational program that does not meet the acupuncture board's prescribed course of study or other educational standards.

SECTION 7. Amends the heading to Section 205.301, Occupations Code, to read as follows:

Sec. 205.301. EVALUATION BY OTHER HEALTH CARE PRACTITIONER REQUIRED.

SECTION 8. Amends Sections 205.301(a), (b), and (d), Occupations Code, as follows:

(a) Authorizes a license holder to perform acupuncture on a person only if the person was evaluated by a physician, chiropractor, or dentist, or a person acting under the delegation and supervision of a physician, as appropriate, for the condition being treated within 12, rather than six, months before the date acupuncture is performed. Deletes existing text requiring that a person be referred by a chiropractor within 30 days before the date acupuncture is performed. Makes nonsubstantive changes.

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

(d) Authorizes the TMB, with advice from the acupuncture board, by rule to modify the scope of the evaluation under Subsection (a), rather than Subsection (a)(1), or the period during which treatment must begin under Subsection (a), rather than Subsection (a)(1) or (2). Deletes existing text authorizing the TMB, with advice from the acupuncture board, by rule to modify the number of treatments or days before referral to a physician is required under Subsection (c).

SECTION 9. Amends Section 205.302, Occupations Code, as follows:

Sec. 205.302. AUTHORIZED PRACTICE WITHOUT EVALUATION. Authorizes a license holder, notwithstanding Section 205.301, to, without an evaluation, rather than a referral, from a physician, dentist, or chiropractor, or a person acting under the delegation and supervision of a physician, perform acupuncture on a person for smoking addiction, weight loss, or to the extent permitted by TMB rule adopted with advice from the acupuncture board: substance abuse; chronic pain; stress; an allergy; nausea or a digestive disorder; depression; insomnia; or a cosmetic procedure. Deletes existing text requiring the TMB, after notice and public hearing, to determine by rule whether an acupuncturist may treat a patient for alcoholism or chronic pain without a referral from a physician, dentist, or chiropractor and to make the determination based on clinical evidence and what TMB determines to be in the best interest of affected patients. Makes a nonsubstantive change.

SECTION 10. Amends Sections 205.303(a) and (d), Occupations Code, to make conforming changes.

SECTION 11. Amends Section 205.355, Occupations Code, as follows:

Sec. 205.355. New heading: REQUIRED DISCIPLINARY ACTION FOR FAILURE TO OBTAIN EVALUATION. Requires that a license to practice acupuncture be denied or, after notice and hearing, revoked if the applicant or license holder violates Section 205.301(a), rather than Section 205.301(a)(1). Deletes existing text providing for an exception as provided by Section 205.301(a)(2).

SECTION 12. Repealer: Section 205.003(a) (relating to this chapter being applicable to a health care professional licensed under another statute of this state and acting within the scope of the license) and Section 205.301(c) (requiring a license holder acting under Subsection (a)(2) to refer a person to a physician after performing acupuncture for a certain period if substantial improvement does not occur in the person's condition for which the referral was made), Occupations Code.

SECTION 13. (a) Requires the Texas State Board of Acupuncture Examiners to adopt rules as required by Section 205.101, Occupations Code, as amended by this Act, not later than January 1, 2010. Provides that a rule or form in effect under Chapter 205, Occupations Code, on the effective date of this Act remains in effect until the rule or form is amended or replaced by a new rule or form adopted or prescribed under Section 205.101, Occupations Code, as amended by this Act.

(b) Requires the TMB to adopt necessary rules under Section 205.302, Occupations Code, as amended by this Act, not later than September 1, 2010.

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

SECTION 14. Effective date: upon passage or September 1, 2009.