

## **BILL ANALYSIS**

Senate Research Center  
81R20194 NC-F

C.S.S.B. 1314  
By: Harris  
Economic Development  
3/31/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, the Texas State Board of Acupuncture Examiners 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.

C.S.S.B. 1314 expands the authority of the Texas State Board of Acupuncture Examiners to regulate the practice of acupuncture.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Acupuncture Examiners in SECTION 4 (Section 205.101, Occupations Code) and SECTION 8 (Section 205.208, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Medical Board is modified in SECTION 4 (Section 205.101, Occupations Code), SECTION 10 (Section 205.301, Occupations Code), and SECTION 11 (Section 205.302, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Medical Board is rescinded in SECTION 11 (Section 205.302, Occupations Code) of this bill.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 205.003, Occupations Code, as follows:

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

(b) Provides that this chapter does not limit the practice of medicine by a physician, including the delegation and supervision of medical acts by a physician or permit a person to dispense, administer, or supply a controlled substance, narcotic, or dangerous drug. Deletes existing text providing that this chapter does not 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.

SECTION 3. Amends Section 205.060, Occupations Code, as follows:

Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. (a) Creates this subsection from existing text.

(b) Authorizes the Texas State Board of Acupuncture Examiners (board) to hear all evidence and arguments and conduct deliberations relating to license applications and disciplinary actions under this chapter in executive sessions. Requires the board to vote and announce its decisions in open session. Provides that deliberations by the board relating to license applications and disciplinary actions are exempt from Chapter 551 (Open Meetings), Government Code.

SECTION 4. Amends Section 205.101, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Requires the 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 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; and adopt additional rules as are necessary to administer and enforce this chapter. Deletes existing text requiring the board to make certain recommendations to 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 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.

(d) Requires that a rule relating to the scope of practice of acupuncture have the advice and approval of the TMB. Deletes existing text providing that the board does not have independent rulemaking authority and that a rule adopted by the board is subject to TMB approval.

SECTION 5. Amends Section 205.103, Occupations Code, as follows:

Sec. 205.103. FEES. Requires the 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 TMB to collect the fees, without the use of any funds, rather than any other funds, generated by TMB. Makes a conforming change.

SECTION 6. 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 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 physician or person acting under the delegation and supervision of a physician.

SECTION 7. 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 board; verified by affidavit; filed with the executive director of TMB; and accompanied by a fee in an amount set by the board. Makes a conforming change.

SECTION 8. Amends Section 205.208, Occupations Code, as follows:

Sec. 205.208. TEMPORARY LICENSE. Authorizes the board to adopt rules and recommend to TMB fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. Requires the board by rule to set a time limit for the term of a temporary license. Deletes existing Subsection (a) (relating to the authorization of the board to issue a temporary license to practice acupuncture to certain applicants). Deletes existing Subsection (b) (relating to a provision that a temporary license is valid for 100 days after the date issued and is authorized to be extended only for another 30 days after the date the initial temporary license expires).

SECTION 9. Amends the heading to Section 205.301, Occupations Code, to read as follows:

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

SECTION 10. 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 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 TMB, with advice from the 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 TMB, with advice from the board, by rule to modify the number of treatments or days before referral to a physician is required under Subsection (c).

SECTION 11. 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 board: substance abuse; chronic pain; stress; an allergy; or nausea. Deletes existing text requiring 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 12. Amends Sections 205.303(a) and (d), Occupations Code, to make conforming changes.

SECTION 13. Amends Section 205.3544, Occupations Code, as follows:

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. (a) Provides that each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or a TMB employee or agent relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or TMB employees or agents involved in discipline of a license holder.

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

(c) Provides that for purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board. Deletes existing text requiring the board to 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) (relating to certain information, files, and reports that are privileged and confidential and not subject to discovery, subpoena, or other means of legal compulsion for release).

SECTION 14. 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 15. Repealer: 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 16. (a) Requires the board to adopt rules as required by Sections 205.101 or 205.208, 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 January 1, 2010.

(b) Requires 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 January 1, 2010, is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 17. Effective date: upon passage or September 1, 2009.