

BILL ANALYSIS

Senate Research Center

S.B. 361
By: Madla
Health & Human Services
4-11-97
Committee Report (Amended)

DIGEST

The Texas State Board of Acupuncture Examiners (acupuncture board) was created as an administratively attached board to the Board of Medical Examiners (medical board) in 1993 by the 73rd Legislature. The acupuncture board is responsible for providing an orderly system of regulating the practice of acupuncture, subject to the advice and approval of the medical board. The acupuncture board carries out its programs and functions through a nine-member board appointed by the governor and through the use of the staff of the medical board. To carry out these programs, the acupuncture board has a budget of \$59,614 and 2.18 medical board employees for fiscal year 1996.

The acupuncture board is subject to the Sunset Act and will be abolished September 1, 1997, unless continued by the legislature. As a result of its review of the acupuncture board, the Sunset Advisory Commission recommended continuation and several statutory modifications that are contained in this legislation.

PURPOSE

As proposed, S.B. 361 continues the Texas State Board of Acupuncture Examiners for an eight-year period and makes statutory modifications recommended by the Sunset Advisory Commission.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Board of Acupuncture Examiners in SECTION 5 (Sections 6.051(b) and 6.075(a)(1), Article 4495b, V.T.C.S.) and to the Board of Medical Examiners in SECTIONS 5 and 7 (Sections 6.085(a) and 6.10(j), Article 4495b, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 6.02, Article 4495b, V.T.C.S. (Medical Practice Act), to redefine "acupuncture" to mean 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; and 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) of this subdivision.

SECTION 2. Amends Section 6.04, Article 4495b, V.T.C.S., by amending Subsections (b), (d), (g), and (h), and by adding Subsections (i)-(l), to update the standard language developed by the Sunset Commission prohibiting lobbyists from serving as a member on the Board of Acupuncture Examiners (acupuncture board). Deletes provision relating to persons employed by certain statewide or national organizations. Updates standard language developed by the Sunset Commission regarding the presiding officer of the acupuncture board. Adds standard language developed by the Sunset Commission regarding the eligibility of a person for an appointment to the acupuncture board. Adds standard language developed by the Sunset Commission regarding an officer, employee, or paid consultant of a Texas trade association in the field of health care, or that person's spouse. Defines "Texas trade association." Deletes provision regarding the open meetings law, open records law, and the Administrative Procedure Act. Adds standard language developed by the Sunset Commission regarding appointments to the acupuncture board. Provides that unless continued in existence as provided by this chapter, the acupuncture board is abolished and this subchapter expires September

1, 2005, rather than September 1, 1997. Makes a conforming change.

SECTION 3. Amends Subchapter F, Article 4495b, V.T.C.S., by adding Sections 6.041 and 6.042, as follows:

Sec. 6.041. **GROUND FOR REMOVAL FROM ACUPUNCTURE BOARD.** Adds standard language developed by the Sunset Commission regarding grounds for removal from the acupuncture board and requiring the executive director of the Board of Medical Examiners (medical board) or the executive director's designee to provide to members of the acupuncture board certain information regarding their qualifications for office and their legal responsibilities.

Sec. 6.042. **BOARD MEMBER TRAINING.** Adds standard language developed by the Sunset Commission regarding board member training prior to joining the acupuncture board and prior to senate confirmation.

SECTION 4. Amends Section 6.05, Article 4495b, V.T.C.S., to update standard language developed by the Sunset Commission regarding the powers and duties of the acupuncture board. Deletes a clause requiring the acupuncture board to establish a procedure for reporting and processing complaints relating to the practice of acupuncture under this article. Makes conforming changes.

SECTION 5. Amends Subchapter F, Article 4495b, V.T.C.S., by adding Sections 6.051, 6.071, 6.075, and 6.085, as follows:

Sec. 6.051. **PUBLIC INTEREST INFORMATION; COMPLAINTS.** Adds standard language developed by the Sunset Commission regarding public interest information, consumer complaints, and a complaint file.

Sec. 6.071. **EXAMINATION RESULTS.** Adds standard language developed by the Sunset Commission regarding notification of examination.

Sec. 6.075. **TEMPORARY LICENSE.** Authorizes the acupuncture board, through the executive director of the medical board, to issue a temporary license to an applicant who submits an application on a form prescribed by the acupuncture board; has passed a national or other examination recognized by the acupuncture board relating to practice of acupuncturist; pay the appropriate fee prescribed by the medical board; if licensed in another state, the District of Columbia, or a territory of the United States, is in good standing as an acupuncture; and meets all the qualifications for a license under this Act but is waiting for the next scheduled meeting of the medical board for the license to be issued. Provides that a temporary license is valid for 100 days from the date issued and may be extended only for another 30 days after the date the initial temporary license expires.

Sec. 6.085. **ADVERTISING.** Adds standard language developed by the Sunset Commission regarding restrictions by the medical board of advertising to prohibit false, misleading, or deceptive practices.

SECTION 6. Amends Section 6.09, Article 4495b, V.T.C.S., by adding Subsections (c) and (d), to add standard language developed by the Sunset Commission regarding the acupuncture board's funds and the acupuncture board's annual financial report.

SECTION 7. Amends Section 6.10, Article 4495b, V.T.C.S., as follows:

Sec. 6.10. New heading: **ISSUANCE AND RENEWAL OF LICENSE.** Adds standard language developed by the Sunset Commission regarding licensing of out-of-state applicants and renewal of licenses. Makes a conforming change.

SECTION 8. Amends Subchapter F, Article 4495b, V.T.C.S., by adding 6.101, as follows:

Sec. 6.101. LICENSE HOLDER INFORMATION. Sets forth the information each license holder is required to file with the acupuncture board. Requires a license holder to notify the acupuncture board of a change of address by a certain date.

SECTION 9. Amends Section 6.11, Article 4495b, V.T.C.S., and redesignates Sections 6.11(b)-(g) as Section 6.115, as follows:

Sec. 6.11. DENIAL OF LICENSE; DISCIPLINE OF LICENSE HOLDER. Authorizes a license to practice acupuncture to be denied, suspended, probated, or revoked if the applicant for a license or the holder of a license, among other items, has been, rather than is, adjudged mentally incompetent by a court of competent jurisdiction or has a mental or physical condition that renders the person unable to perform safely as an acupuncturist; has practiced, rather than practices, acupuncture in a manner detrimental to the public health and welfare; fraudulently or deceptively uses a license; has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure a member of the public; has committed an act in violation of state law if the act is connected with the person's practice as an acupuncturist; or has had the person's license suspended, revoked, or restricted, has had other disciplinary action taken by another state regarding the person's practice as an acupuncturist, or has had disciplinary action taken against the person by the uniformed services of the U.S. based on acts by the license holder similar to acts described in this section. Provides that a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of a denial, suspension, probation, or revocation of an applicant for a license or the holder of a license who has committed an act in violation of certain state laws. Provides that proof of the commission of an act while in practice as an acupuncturist or under the guise of practice as an acupuncturist is sufficient for action by the medical board. Provides that a certified copy of the record of the state or uniformed services of the U.S. taking an action is conclusive evidence that a person's license has been suspended, revoked, or restricted, or the person has had other disciplinary action taken against the person by another state or the U.S. Makes conforming and nonsubstantive changes.

Sec. 6.115. SCOPE OF PRACTICE. Redesignated from Sections 6.11(b)-(g), Article 4495b, V.T.C.S. Makes conforming changes.

SECTION 10. Amends Subchapter F, Article 4495b, by adding Sections 6.116, 6.117 and 6.118, as follows:

Sec. 6.116. ADDITIONAL DISCIPLINARY AUTHORITY. Adds standard language developed by the Sunset Commission regarding additional disciplinary authority and punishment by the acupuncture board upon a finding that an acupuncturist has committed an offense described in Section 6.11 of this Act.

Sec. 6.117. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE. Adds standard language developed by the Sunset Commission regarding disciplinary hearings conducted by the State Office of Administrative Hearings.

Sec. 6.118. REHABILITATION ORDER. (a) Authorizes the acupuncture board, through an agreed order or after a contested proceeding, to impose a nondisciplinary rehabilitation order on any licensee or as a prerequisite for issuing a license, on any licensure applicant based on intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician; self-reported intemperate use of drugs or alcohol during the last five years immediately preceding the report which could adversely affect the reporter's ability to safely practice as an acupuncturist, but only if the reporting individual has not previously been the subject of a substance abuse related order of the board; judgment by a court of competent jurisdiction that the individual is of unsound mind; or results from a mental or physical examination, or admissions by the individual, indicating that the licensee or applicant suffers from a potentially dangerous limitation or an inability to safely practice as an acupuncturist with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) Requires a rehabilitation order entered pursuant to this section to be a nondisciplinary private order and to contain findings of fact and conclusions of law. Requires a rehabilitation order, if entered by agreement, to be an agreed disposition or settlement agreement for purposes of civil litigation and to be exempt from the open records law, Chapter 552, Government Code.

(c) Authorizes a rehabilitation orders entered pursuant to this section to impose a revocation, cancellation, suspension, period of probation or restriction, or any other terms and conditions authorized under this Act or as otherwise agreed to by the acupuncture board and the individual subject to the order.

(d) Provides that a violation of a rehabilitation order entered pursuant to this section may result in disciplinary action under the provisions of this Act for contested matters or pursuant to the terms of the agreed order. Authorizes a violation of a rehabilitation order to be grounds for disciplinary action based on unprofessional or dishonorable conduct or on any of the provisions of this Act which may apply to the misconduct which resulted in violation of the rehabilitation order.

(e) Requires the rehabilitation order entered pursuant to this section to be kept in a confidential file which shall be subject to an independent audit by state auditors or private auditors contracted with by the acupuncture board to perform such an audit. Authorizes audits to be performed at any time at the direction of the acupuncture board but shall be performed at least once every three years. Requires the audit results to be reported in a manner that maintains the confidentiality of all licensees who are subject to rehabilitation orders and to be a public record. Requires the audit to be for the purpose of ensuring that only qualified licensees are subject to rehabilitation orders.

SECTION 11. Amends Section 6.12(b), Article 4495b, V.T.C.S., to provide that a person commits a third degree felony, rather than a Class A misdemeanor, if the person violates Section 6.06, Article 4495b, V.T.C.S., requiring a person to practice acupuncture with a license issued by the medical board.

SECTION 12. Amends Subchapter F, Article 4495b, V.T.C.S., by adding Section 6.125, as follows:

Sec. 6.125. SUBPOENAS. Authorizes the executive director of the medical board or the presiding officer of the acupuncture board to issue a subpoena or subpoena duces tecum for certain purposes. Provides that failure to timely comply with a subpoena issued under this section is a ground for 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 denial of a license application.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Makes application of changes in law made by this Act, relating to members of the acupuncture board, prospective. Provides that this Act does not prohibit a person who is a member of the acupuncture board on September 1, 1997, from being reappointed to the acupuncture board if the person has the qualifications required for a member under Subchapter F, Article 4495b, V.T.C.S., as amended by this Act.

SECTION 15. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 16. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1

Page 1, line 5, adds SECTION 1, Section 6.02, Article 4495b, V.T.C.S., to redefine "acupuncture." SECTIONS 1-15 are subsequently renumbered as SECTIONS 2-16.

Amendment 2

Page 18, line 27, adds Section 6.118, Article 4495b, V.T.C.S., regarding a rehabilitation order.

Amendment 3

Page 10, line 8, strike Section 6.075, Article 4495b, V.T.C.S., regarding a temporary license, in its entirety and replace with revised version of Section 6.075, Article 4495b, V.T.C.S.