

## **BILL ANALYSIS**

Senate Research Center  
79R711 JMM-D

S.B. 419  
By: Nelson  
Government Organization  
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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Texas began regulating physicians in 1837, and created the Texas State Board of Medical Examiners in 1907 to ensure that only qualified physicians practice medicine and provide health care to Texans. In 1993, the state established both the Texas State Board of Physician Assistant Examiners and the Texas State Board of Acupuncture Examiners as advisory boards to the medical board to assist in regulating physician assistants, who provide medical services under the supervision of licensed physicians, and acupuncturists. The main functions of these three boards include issuing licenses to qualified individuals; investigating and resolving complaints, including taking disciplinary action when necessary; and monitoring compliance with disciplinary orders.

With a staff of 133 employees and a budget of about \$8.3 million, the three boards regulate about 56,000 physicians, 6,500 physicians-in-training, 3,500 physician assistants, 700 acupuncturists, and 260 surgical assistants.

All three boards are subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The Sunset Commission found that the state has a continuing need for all three boards, but identified areas that could be improved to provide fair, objective process for licensees while continuing to meet high standards in protecting the safety, health, and welfare of Texans.

As proposed, S.B. 419 continues the boards until 2017 and adds additional enforcement abilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1.12 (Section 153.0045, Occupations Code), SECTION 1.23 (Section 155.009, Occupations Code), SECTION 1.24 (Section 155.056, Occupations Code), SECTION 1.25 (Section 156.001, Occupations Code), SECTION 1.27 (Section 157.0511, Occupations Code), SECTION 1.35 (Section 164.003, Occupations Code), and SECTION 4.05 (Section 206.313, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Physician Assistant Examiners in SECTION 2.08 (Section 204.105, Occupations Code), SECTION 2.15 (Section 204.153, Occupations Code), SECTION 2.16 (Section 204.156, Occupations Code), SECTION 2.17 (Section 204.1562, Occupations Code), SECTION 2.18 (Section 204.157, Occupations Code), SECTION 2.23 (Section 204.312, Occupations Code), and SECTION 2.26 (Section 204.315, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas State Board of Acupuncture Examiners in SECTION 3.08 (Section 205.1045, Occupations Code), SECTION 3.13 (Section 205.203, Occupations Code), SECTION 3.20 (Section 205.3541, Occupations Code), and SECTION 3.33 (Section 205.452, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Medical Board is modified by SECTION 1.17 (Section 154.056, Occupations Code), SECTION 1.30 (Section 162.103, Occupations Code), and SECTION 1.35 (Section 164.003, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

ARTICLE 1. CONTINUATION AND FUNCTIONS OF THE TEXAS STATE BOARD OF  
MEDICAL EXAMINERS

SECTION 1.01. Amends Section 151.002(a)(1), Occupations Code, to redefine "board."

SECTION 1.02. Amends Section 151.004, Occupations Code, to provide that the Texas Medical Board (medical board), rather than the Texas State Board of Medical Examiners, is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by this chapter, the medical board is abolished and this subtitle and Chapters 204 (Physician Assistants), 205 (Acupuncture), and 206 (Surgical Assistants), rather than this subtitle, expire September 1, 2017, rather than 2005.

SECTION 1.03. Amends Section 152.001, Occupations Code, as follows:

Sec. 152.001. New heading: TEXAS MEDICAL BOARD. (a) Provides that the Texas Medical Board, rather than the Texas State Board of Medical Examiners, is an agency of the executive branch of state government with the power to regulate the practice of medicine.

(b) Provides that a reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

SECTION 1.04. Amends Section 152.003(b), Occupations Code, to prohibit a person from being a public member of the medical board if the person or the person's spouse meets certain criteria. Deletes the provision that a public member may not be licensed to practice medicine, financially involved in certain organizations, or a provider of health care.

SECTION 1.05. Amends Sections 152.004(a)-(e), Occupations Code, as follows:

(a) Defines "Texas trade association." Deletes definition of "Texas trade or professional association."

(b) Deletes the provision that a person is ineligible to appointment to the medical board if the person is a paid full-time faculty member of a medical school.

(c) Sets forth certain persons who are prohibited to be members of the medical board or certain types of medical board employees. Deletes provisions relating to certain persons who are not eligible to be members of the medical board or certain types of medical board employees.

SECTION 1.06. Amends Subchapter A, Chapter 152, Occupations Code, by adding Section 152.0041, as follows:

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. Prohibits a physician who is a medical board member or acting as an agent of the medical board from using information to which the person has access by virtue of the person's position as a member or agent of the medical board for the benefit of the person's practice or of certain other persons.

SECTION 1.07. Amends Sections 152.006(a) and (c), Occupations Code, as follows:

(a) Provides that it is a ground for removal if a medical board member does not have certain qualifications at the time of taking office, rather than at the time of appointment. Provides that it is a ground for removal if a medical board member is ineligible for membership under Sections 152.003 (Additional Membership Requirements) and 152.004 (Membership and Employee Restrictions), rather than if the person violates a prohibition established by Section 152.004. Provides that it is a ground for removal if a medical board member is absent for a certain number of meetings without an excuse approved by a majority vote of the medical board.

(c) Requires the president of the medical board, upon being notified by the executive director of the medical board that a potential ground for removal exists, to notify the governor and attorney general, rather than the governor. Requires the executive director, if the potential ground for removal involves the president, to notify the next highest ranking officer of the medical board, who is required to notify the governor and attorney general.

SECTION 1.08. Amends Section 152.008, Occupations Code, to provide that the president of the medical board serves in that capacity at the pleasure of the governor.

SECTION 1.09. Amends Sections 152.010(a)-(c), Occupations Code, as follows:

(a) Prohibits a person who is appointed to and qualifies for office as a member of the medical board from performing certain medical board functions until the person completes a training program that complies with this section. Deletes the requirement that the member must complete at least one course of a training program before assuming duties and being confirmed by the senate.

(b) Requires the training program to provide the person with information regarding the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest. Deletes the provisions that information regarding certain chapters of the government code and conflict of interest laws and certain other laws must be provided. Makes nonsubstantive changes.

(c) Entitles a person appointed to the medical board to reimbursement for certain travel expenses incurred in attending the training program. Deletes the requirement that the medical board consult with certain persons and entities in the development of the training program.

SECTION 1.10. Amends Section 152.056, Occupations Code, to require the medical board to develop and implement policies that clearly separate the policy-making responsibilities of the medical board and the management responsibilities of the executive director and the staff of the medical board. Deletes the requirement that the medical board develop and implement policies that clearly define the respective responsibilities of the medical board and the staff of the medical board.

SECTION 1.11. Amends Subchapter A, Chapter 153, Occupations Code, by adding Section 153.0015, as follows:

Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) Requires the medical board to adopt guidelines to establish procedures for receiving input during the rulemaking process from certain individuals and groups. Requires the guidelines to provide an opportunity for those individuals and groups to provide input before the medical board provides notice of the proposed rule.

(b) Requires the medical board, in implementing the guidelines adopted under this section, to exercise its judgment in determining which rules require input.

(c) Requires the guidelines adopted under this section to include procedures for the medical board to receive comments on rules recommended by certain entities for adoption by the medical board.

SECTION 1.12. Amends Subchapter A, Chapter 153, Occupations Code, by adding Section 153.0045, as follows:

Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the medical board to adopt rules and guidelines and necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

SECTION 1.13. Amends Subchapter B, Chapter 153, Occupations Code, by adding Sections 153.057 and 153.058, as follows:

Sec. 153.057. USE OF TECHNOLOGY. Requires the medical board to implement a policy requiring the medical board to use appropriate technological solutions to improve the medical board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the medical board on the Internet.

Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the medical board to develop and implement a policy to encourage the use of certain negotiated rulemaking procedures for the adoption of medical board rules and appropriate alternative dispute resolution procedures to assist in resolution of internal and external disputes under the medical board's jurisdiction.

(b) Requires the medical board's procedures relating to alternative dispute resolution to conform, to the extent possible, to certain model guidelines.

(c) Requires the medical board to designate a trained person to perform certain tasks related to negotiated rulemaking and alternative dispute resolution.

SECTION 1.14. Amends Section 154.003, Occupations Code, by adding Subsection (d), as follows:

(d) Requires the medical board to publish certain information regarding errors in and reversals of disciplinary actions taken by the medical board and gives an example of required information. Requires the medical board to disseminate this information in a certain manner.

SECTION 1.15. Amends Section 154.052, Occupations Code, to require the medical board to maintain a system to promptly and efficiently act on complaints filed with the medical board. Requires the medical board to maintain certain information regarding the complaint and deletes the requirement that the medical board keep a file on certain information on file regarding each complaint filed with the medical board, and that the file be kept current.

SECTION 1.16. Amends Section 154.053(c), Occupations Code, to require the medical board to periodically, rather than at least as frequently as quarterly, notify parties to the complaint about the status of the complaint until the final disposition. Deletes the provision that notice need not be given if it would jeopardize an investigation. Makes nonsubstantive changes.

SECTION 1.17. Amends Section 154.056(e) Occupations Code, to require rules adopted by the medical board under this subsection regarding an expert physician panel to assist with complaints to include the length of time a member may serve on a panel, grounds for removal from a panel, and the avoidance of conflicts of interest. Sets forth specific requirements for the medical board's rules governing grounds for removal and the composition of a panel.

SECTION 1.18. Amends Subchapter B, Chapter 154, Occupations Code, by adding Section 154.0561, as follows:

Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN PANEL. (a) Requires a physician on an expert physician panel authorized by Section 154.056(e) who reviews a complaint to make a determination of whether the physician violated the standard of care and issue a preliminary report of that determination.

(b) Requires a second physician on the panel to review the first physician's preliminary report and certain other information. Requires the first physician to issue a final written report if the second physician agrees with the preliminary report.

(c) Requires a third physician, if the second physician does not agree with the first, to review the preliminary report and certain other information and decide between the conclusions. Authorizes the final report to be written by the third physician or by the physician with whom the third physician concurs.

SECTION 1.19. Amends Section 154.057(b), Occupations Code, to require the medical board to complete a preliminary investigation of the complaint not later than the 30th day after the date of receiving the complaint, rather than make a preliminary investigation of the complaint. Requires the medical board, on completion of the preliminary investigation, to determine whether to file an official complaint. Provides that if the medical board fails to complete the preliminary investigation in the time required by this subsection, the complaint is considered to be officially filed on that date.

SECTION 1.20. Amends Section 155.002, Occupations Code, to authorize the medical board to delegate authority to medical board employees to issue licenses to practice medicine to applicants who clearly meet all licensing requirements. Requires the application to be returned to the medical board if the medical board employees determine that the applicant does not clearly meet all licensing requirements. Provides that a license issued under this subsection does not require formal medical board approval. Creates a subsection from existing text.

SECTION 1.21. Amends Section 155.003(a), Occupations Code, to provide that to be eligible for a license to practice medicine, an applicant must present proof that the applicant has passed an examination accepted or administered by the medical board, rather than has passed such an examination within three attempts except as provided by Section 155.056.

SECTION 1.22. Amends Subchapter A, Chapter 155, Occupations Code, by adding Section 155.006, as follows:

Sec. 155.006. ISSUANCE OF INSTITUTIONAL MEDICAL LICENSE. (a) Authorizes the medical board to issue and renew a license under this section to a foreign medical graduate under certain circumstances.

(b) Authorizes a license holder under this section to practice as a physician only at the medical school that recommended and endorsed the person.

(c) Provides that a license under this section expires when the license holder's employment at the medical school ends.

SECTION 1.23. Amends Subchapter A, Chapter 155, Occupations Code, by adding Section 155.009, as follows:

Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF ADMINISTRATIVE MEDICINE. (a) Requires the medical board to adopt rules for the issuance of a license that limits the license holder to the practice of administrative medicine. Sets forth certain provisions that the medical board's rules must include.

(b) Requires an applicant for a license under this section to meet certain requirements.

(c) Requires a license holder under this section who seeks to practice medicine under a license issued under Section 155.002 to prove to the medical board that the license holder has the clinical competence to practice medicine under that license. Authorizes the medical board to require the license holder to pass any examination the medical board determines necessary.

SECTION 1.24. Amends Section 155.056, Occupations Code, to delete all exceptions to the provision that an applicant must pass each part of the examination within three attempts. Requires the medical board to adopt rules that prescribe how the limit on the number of examination attempts shall apply to certain applicants.

SECTION 1.25. Amends Section 156.001(a), Occupations Code, to delete the provision regarding the expiration date of the initial registration permit to practice medicine. Authorizes the medical board, by rule, to adopt a system under which licenses expire on various dates during the year.

SECTION 1.26. Amends Section 157.051(2), Occupations Code, to redefine "carrying out or signing a prescription drug order."

SECTION 1.27. Amends Section 157.0511, Occupations Code, by adding Subsection (b-1) to require the medical board to adopt rules that require a physician who delegates the carrying out or signing of a prescription drug order to maintain certain records. Authorizes the medical board to access the physician's records under this subsection as necessary for an investigation.

SECTION 1.28. Amends Section 160.006, Occupations Code, by amending Subsections (a) and (c) and adding Subsection (d) and (e), as follows:

(a) Authorizes the medical board to disclose certain confidential information received and maintained by the medical board in a disciplinary hearing before the State Office of Administrative Hearings, in addition to in a hearing before the medical board.

(c) Includes a record or report received or maintained by the State Office of Administrative Hearings under this subchapter in the list of records and reports that are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages. Makes nonsubstantive changes.

(d) Provides that peer review documents remain confidential at the medical board and at the State Office of Administrative Hearings.

(e) Sets forth circumstances under which the confidentiality requirements of this section do not apply.

SECTION 1.29. Amends Section 160.010, Occupations Code, by adding Subsection (e) to provide that a member of an expert panel under Section 154.056(e) and a person serving as consultant to the medical board are immune from suit and judgment and may not be subjected to a suit for damages for certain actions performed in the course of the person's duties in evaluating a medical competency case. Requires the attorney general to represent a member of an expert panel or consultant in any suit resulting from a duty provided by the person in good faith to the medical board.

SECTION 1.30. Amends Section 162.103, Occupations Code, to delete Subdivision (2) which provides that rules adopted by the medical board under this subchapter do not apply to certain outpatient settings. Redesignates existing Subdivisions (3)-(8) as Subdivisions (2)-(7).

SECTION 1.31. Amends Sections 163.003(a) and (f), Occupations Code, as follows:

(a) Provides that a district review committee consists of seven, rather than five, members. Provides that the committee contains three public members, rather than one public member.

(f) Includes Sections 152.004 (Membership and Employee Restrictions), 152.006 (Grounds for Removal), and 152.010 (Training; Guidelines) as laws to which a committee member is subject.

SECTION 1.32. Amends Chapter 163, Occupations Code, by adding Section 163.0045, as follows:

Sec. 163.0045. ASSISTANCE TO BOARD. Authorizes the medical board to request members of a committee to participate in an informal meeting. Requires a committee member who participates in an informal meeting on a complaint relating to medical competency to have certain qualifications.

SECTION 1.33. Amends Section 164.002, Occupations Code, by adding Subsection (e) to prohibit the medical board from dismissing a complaint solely on the grounds that the case has not been scheduled for an informal meeting within the required timeframe.

SECTION 1.34. Amends Subchapter A, Chapter 164, Occupations Code, by adding Section 164.0025, as follows:

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) Authorizes the medical board to delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of certain complaints. Requires the medical board to approve the disposition determinations of the committee.

(b) Sets forth the circumstances under which a complaint delegated under this section is required to be referred for informal proceedings.

SECTION 1.35. Amends Section 164.003, Occupations Code, by amending Subsection (b) and adding Subsections (f), (g), and (h), as follows:

(b) Requires rules adopted under this section [by the medical board] to require an informal meeting to be scheduled within a certain timeframe of the date a complaint is officially filed as provided by Section 154.057(b), rather than filed with the medical board under Section 154.051. Requires rules adopted under this section to require at least one of the medical board members or district review committee members participating in the informal meeting as a panelist to be a member who represents the public. Redesignates existing Subdivisions (4)-(5) as Subdivisions (5)-(6). Makes nonsubstantive changes.

(f) Requires that the notice to the license holder of the meeting be accompanied by a written statement containing certain information. Authorizes the license holder, if the medical board does not provide the information, to use that failure as grounds for rescheduling.

(g) Requires the medical board by rule to define circumstances constituting good cause for purposes of the medical board scheduling the informal meeting after the date required by Subsection (b).

(h) Provides that Section 164.007(c) (making certain investigative information confidential) applies to the medical board's investigation file use in an informal meeting under this section.

SECTION 1.36. Amends Subchapter A, Chapter 164, Occupations Code, by adding Sections 164.0031 and 164.0032, as follows:

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) Requires at least two panelists, at least one of whom must be a physician, to be appointed, in certain informal meetings or hearings, to determine whether an informal disposition is appropriate.

(b) Authorizes an informal proceeding, notwithstanding certain provisions, to be conducted by one panelist, either a physician or a member of the public, if the affected physician waives the two-panelist requirement.

(c) Provides that the panel requirements described by Subsection (a) do not apply to certain informal proceedings.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) Requires a medical board member or district review committee member that serves as a panelist at an informal meeting to make recommendations for the disposition of a complaint or allegation. Authorizes the member to request the assistance of a medical board employee at any time.

(b) Requires medical board employees to present a summary of the allegations and certain facts.

(c) Requires a medical board attorney to act as counsel to the panel and, notwithstanding Subsection (e), be present during the informal meeting and the panel's deliberations to advise the panel on legal issues. Authorizes the attorney to ask certain questions of participants in the informal meeting. Sets forth the duties of the attorney at the informal meeting.

(d) Requires the panel and medical board employees to provide an opportunity for the affected physician and the physician's authorized representative to reply to the medical board employees' presentation and present certain facts.

(e) Prohibits certain persons from being present during the deliberations of the panel unless the affected physician consents.

(f) Requires the panel to recommend the dismissal of the complaint, or, if the panel determines that the affected physician has violated a statute or medical board rule, authorizes the panel to recommend medical board action and terms for an informal settlement of the case.

(g) Sets forth the requirements for the panel's recommendations. Authorizes the physician to accept or reject the proposed settlement within a certain timeframe, and, if the physician rejects the settlement or fails to act within the timeframe, authorizes the medical board to proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

SECTION 1.37. Amends Subchapter A, Chapter 164, Occupations Code, by adding Section 164.0036, as follows:

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) Requires the medical board to provide notice to all parties to a complaint in which the investigation extends beyond a certain timeframe. Requires the notice to include an explanation of the reason the investigation must be extended.

(b) Requires the medical board to include in its annual report to the legislature certain information regarding complaints in which the investigation extends beyond certain timeframes.

SECTION 1.38. Amends Section 164.007, Occupations Code, by adding Subsection (a-1) to authorize the medical board to change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge under certain circumstances.

SECTION 1.39. Amends Subchapter A, Chapter 164, Occupations Code, by adding Section 164.0071, as follows:

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) Requires the medical board, in certain formal hearings, to provide evidence from its investigation that shows the basis for the medical board's findings.

(b) Prohibits information obtained as a result of peer review to be used as evidence in any formal hearing except under certain circumstances.

(c) Provides that a member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a formal hearing.

SECTION 1.40. Amends Section 164.052(a), Occupations Code, to provide that a physician or applicant for a license to practice medicine commits a prohibited practice if that person engages in conduct that misuses the peer review process, including certain fraudulent or malicious conduct. Makes a nonsubstantive change.

SECTION 1.41. Amends Section 164.056, Occupations Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:



(a) Requires the medical board, in enforcing Section 164.051(a)(4) (disciplinary action for inability to practice medicine safely due to substance abuse or other physical or mental impairment), to request the affected physician or applicant, rather than the affected physician, to submit to a mental or physical examination by physicians designated by the medical board. Requires the medical board to adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the medical board to evaluate circumstances in which a physician or applicant may be required to submit to an examination for mental or physical health conditions, alcohol or substance abuse, or professional behavior problems.

(d) Requires the medical board to refer a physician or applicant with a physical health condition to the most appropriate medical specialist for evaluation, with certain limitations.

(e) Provides that the guidelines adopted under this section do not impair or remove the medical board's power to make an independent licensing decision.

SECTION 1.42. Amends Section 164.202, Occupations Code, as follows:

(a) Adds the condition that the applicant or the license holder must not have committed a violation of the standard of care as a result of the intemperate use of drugs and alcohol to the provision that the medical board is authorized to impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on self-reported intemperate use of drugs or alcohol during the five years preceding the report that could adversely affect the reporter's ability to practice medicine safely. Creates this subsection from existing text.

(b) Requires the medical board to determine whether an individual has committed a standard of care violation as a result of the intemperate use of drugs and alcohol before imposing an order under this section.

(c) Prohibits the medical board from issuing an order under this section if, before the individual signs the proposed order, the medical board receives a valid complaint with the regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

SECTION 1.43. Amends Subchapter E, Chapter 164, Occupations Code, by adding Section 164.205, as follows:

Sec. 164.205. **RESPONSIBILITIES OF PRIVATE MEDICAL ASSOCIATIONS.** Requires the medical board to inform a local or statewide private medical association of certain duties of the association related to a rehabilitation order. Sets forth which information must be provided under this section.

SECTION 1.44. Amends Subchapter E, Chapter 164, Occupations Code, by adding Section 164.206, as follows:

Sec. 164.206. **REFUND.** (a) Authorizes the medical board, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference.

(b) Limits the amount of the refund to the amount the consumer paid for the service regulated by this subtitle. Prohibits the medical board from requiring payment of other damages or estimate harm in a refund order.

SECTION 1.45. Amends the heading to Subchapter B, Chapter 165, Occupations Code, to read as follows:

**SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS**

SECTION 1.46. Amends Subchapter B, Chapter 165, Occupations Code, by adding Section 165.052, as follows:

Sec. 165.052. CEASE AND DESIST ORDER. (a) Authorizes the medical board, under certain circumstances, to issue a cease and desist order to a person not licensed under this subtitle whom the medical board perceives to be violating certain laws or rules related to the practice of medicine.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 1.47. Repealer: Section 152.010(d) (Training; Guidelines) and Sections 157.0542(d)-(h) (Board Waiver of Delegation Requirements), Occupations Code.

SECTION 1.48. Requires the medical board, not later than January 1, 2006, to adopt the policies required by Sections 153.057 and 153.058, Occupations Code, as added by this article, and adopt the rules required by Subtitle B, Title 3, Occupations Code, as amended by this article.

SECTION 1.49. (a) Provides that the changes in law made by Sections 152.003, 152.006, and 152.010, Occupations Code, as amended by this article, regarding the prohibitions on or qualifications of members of the medical board do not affect the entitlement of a member serving on the medical board immediately before September 1, 2005, to continue to serve and function as a member of the medical board for the remainder of the member's term. Provides that the changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) Makes the changes in law made by this article related to the filing, investigation, or disposition of a complaint under Subtitle B, Title 3, Occupations Code, as amended by this article, prospective.

(c) Makes the changes in law made by this article governing the eligibility of a person for a license under Subtitle B, Title 3, Occupations Code, prospective.

(d) Makes the change in law with respect to conduct that is grounds for imposition of a disciplinary sanction prospective.

## ARTICLE 2. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS

SECTION 2.01. Amends Section 204.002(1), Occupations Code, to redefine "medical board."

SECTION 2.02. Amends Section 204.052, Occupations Code, to specify that the Texas State Board of Physician Assistant Examiners (PA board) is appointed by the governor with the advice and consent of the senate. Requires appointments to the PA board to be made without regard to race, color, disability, sex, religion, age, or national origin. Creates a subsection from existing text.

SECTION 2.03. Amends Section 204.053, Occupations Code, to define "Texas trade association." Modifies the provisions regarding which persons are prohibited from being public members of the PA board. Sets forth certain persons who are prohibited from being members or certain types of employees of the PA board. Makes nonsubstantive changes.

SECTION 2.04. Amends Section 204.055, Occupations Code, to require the governor to designate a public member of the PA board as the presiding officer of the PA board to serve in that capacity at the will of the governor. Deletes the requirement that the PA board select from its membership a presiding officer. Makes nonsubstantive changes.

SECTION 2.05. Amends Section 204.056, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that it is a ground for removal from the PA board if a member does not have the qualifications required by Sections 204.052 (Appointment of Board) and 204.053 (Membership Eligibility and Restrictions), rather than required by this subchapter for appointment to the PA board, at the time of taking office, rather than at the time of appointment. Provides that grounds for removal include ineligibility for membership, inability to discharge duties due to illness or disability, and absenteeism for more than half of the meetings without an excuse approved by the majority of the PA board. Makes conforming and nonsubstantive changes.

(c) Requires the executive director of the medical board, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the PA board. Requires the presiding officer to notify the governor and attorney general. Sets forth a procedure to be followed if the potential ground for removal involves the presiding officer.

SECTION 2.06. Amends Subchapter B, Chapter 204, Occupations Code, by adding Section 204.059, as follows:

Sec. 204.059. TRAINING. (a) Prohibits a person appointed for and qualified for office as a member of the PA board from performing certain PA board duties until the person completes a certain training program.

(b) Requires the training program to provide the person with certain information.

(c) Entitles a person appointed to the PA board to reimbursement for certain travel expenses incurred in attending the training program.

SECTION 2.07. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.1015, as follows:

Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) Requires the PA board to adopt guidelines to establish procedures for receiving input during the rulemaking process from certain individuals and groups. Sets forth the required provisions of the guidelines.

(b) Requires the PA board in implementing the guidelines to exercise its judgment in determining which rules required input during the rulemaking process.

SECTION 2.08. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.105, as follows:

Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the PA board to adopt rules and guidelines and necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

SECTION 2.09. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.106, as follows:

Sec. 204.106. DIVISION OF RESPONSIBILITIES. Requires the PA board, subject to the advice of the medical board, to develop and implement policies that clearly separate the policy-making responsibilities of the PA board and the management responsibilities of the executive director and the staff of the medical board.

SECTION 2.10. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.107, as follows:

Sec. 204.107. PUBLIC PARTICIPATION. Requires the PA board, subject to the advice and approval of the medical board, to develop and implement policies that provide the public with a reasonable opportunity to appear before the PA board and speak on any issue under the jurisdiction of the PA board.

SECTION 2.11. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.108, as follows:

Sec. 204.108. RECORDS OF COMPLAINTS. (a) Requires the PA board to maintain a system to promptly and efficiently act on complaints filed with the PA board. Requires the PA board to maintain certain information.

(b) Requires the PA board to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the PA board to periodically notify the parties of the status of the complaint until the final disposition of the complaint.

SECTION 2.12. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.109, as follows:

Sec. 204.109. USE OF TECHNOLOGY. Requires the PA board, subject to the advice and approval of the medical board, to implement a policy requiring the PA board to use appropriate technological solutions to improve the PA board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the PA board on the Internet.

SECTION 2.13. Amends Subchapter C, Chapter 204, Occupations Code, by adding Section 204.110, as follows:

Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the PA board, subject to the advice and approval of the medical board, to develop and implement a policy to encourage the use of certain negotiated rulemaking procedures for the adoption of PA board rules and appropriate alternative dispute resolution procedures to assist in resolution of internal and external disputes.

(b) Requires the PA board's procedures relating to alternative dispute resolution to conform to certain guidelines to the extent possible.

(c) Requires the PA board to designate a trained person to perform certain functions related to negotiated rulemaking and alternative dispute resolution.

SECTION 2.14. Amends Section 204.152, Occupations Code, to authorize the PA board to delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. Requires the application to be returned to the PA board if the medical board employees determine that the applicant does not clearly meet the licensing requirements. Provides that a license issued under this subsection does not require formal PA board approval. Creates a subsection from existing text.

SECTION 2.15. Amends Section 204.153, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires an applicant, to be eligible for a license under this chapter, to pass a jurisprudence examination approved by the PA board as provided by Subsection (a-1).

(a-1) Requires the jurisprudence examination to be conducted on the licensing requirements and other laws, rules, or regulations relating to the physician assistant profession in this state. Requires the PA board to establish rules for the jurisprudence examination, and sets forth the required areas of rulemaking.

SECTION 2.16. Amends Section 204.156, Occupations Code, as follows:

(a) Creates this subsection from existing text.

(b) Authorizes the PA board by rule to adopt a system under which licenses expire on various dates during the year.

(c) Sets forth the procedure for unexpired license renewal. Prohibits a person with an expired license from engaging in activities that require a license until the license has been renewed.

(d) Sets forth the procedure for renewing a license that has been expired for 90 days or less.

(e) Sets forth the procedure for renewing a license that has been expired for more than 90 days but for less than a year.

(f) Sets forth the procedure for certain persons who previously held a license in this state but moved out of state for a period of time to obtain a new license without reexamination.

SECTION 2.17. Amends Subchapter D, Chapter 204, Occupations Code, by adding Section 204.1562, as follows:

Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS. (a) Requires the PA board, by rule, to adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. Sets forth the rules the PA board is required to adopt.

(b) Authorizes the PA board to require that a specified number of continuing medical education hours be completed informally, through self-study and self-directed education.

SECTION 2.18. Amends Section 204.157, Occupations Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Authorizes a person whose license is on inactive status under this section to return the person's license to active status if the person pays a certain fee established by the PA board, in addition to certain other requirements. Makes a nonsubstantive change.

(d) Requires the PA board by rule to establish a limit on the length of time a physician assistant's license may remain on inactive status.

SECTION 2.19. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.3011, as follows:

Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) Authorizes the PA board to delegate to a committee of medical board employees, in certain cases, the authority to dismiss or enter into an agreed settlement. Requires the disposition of the committee to be approved by the PA board.

(b) Sets forth the circumstances under which a complaint delegated under this section is required to be referred for informal proceedings.

SECTION 2.20. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.3045, as follows:

Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) Requires the PA board to adopt guidelines, in conjunction with certain persons, to evaluate circumstances in which a physician assistant 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) Requires the PA board to refer a physician assistant or an applicant with a physical health condition to the most appropriate medical specialist for evaluation, with certain limitations.

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

SECTION 2.21. Amends Section 204.305, Occupations Code, as follows:

- (a) Adds the condition that the applicant or the license holder must not have committed a violation of the standard of care as a result of the intemperate use of drugs and alcohol to the provision that the PA board is authorized to impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on self-reported intemperate use of drugs or alcohol during the five years preceding the report that could adversely affect the reporter's ability to practice as a physician assistant safely. Creates this subsection from existing text.
- (b) Requires the PA board to determine whether an individual has committed a standard of care violation as a result of the intemperate use of drugs and alcohol before imposing an order under this section.
- (c) Prohibits the PA board from issuing an order under this section if, before the individual signs the proposed order, the PA board receives a valid complaint with the regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

SECTION 2.22. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.3075, as follows:

Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. Requires the PA board to inform an association of physician assistants of certain duties of the association related to a rehabilitation order. Sets forth which information must be provided under this section.

SECTION 2.23 Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.312, as follows:

- Sec. 204.312. INFORMAL PROCEEDINGS. (a) Requires the PA board, by rule, to adopt procedures governing informal disposition of certain cases and informal proceedings.
- (b) Sets forth the requirements for rules adopted under this section, including that a member of the PA board's staff present certain facts at the meeting.
  - (c) Entitles an affected physician assistant to reply to the staff's presentation and present certain facts.
  - (d) Requires the PA board representative, after ample time is given for the presentations, to recommend that the investigation be closed or attempt to mediate the disputed case in the absence of a hearing.
  - (e) Requires the PA board to schedule the informal meeting within a certain timeframe if the license holder has previously been the subject of disciplinary action by the PA board.

SECTION 2.24. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.313, as follows:

- Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) Requires at least two panelists, in certain informal meetings or hearings, to determine whether an informal disposition is appropriate.
- (b) Authorizes an informal proceeding, notwithstanding certain provisions, to be conducted by one panelist if the affected physician assistant waives the two-

panelist requirement. Provides that the panelist may be any member of the PA board.

(c) Sets forth to which proceedings the panel requirements described by Subsections (a) and (b) apply.

(d) Provides that the panel requirements described by Subsections (a) and (b) do not apply to certain informal proceedings.

SECTION 2.25. Amends Subchapter G, Chapter 204, Occupations Code, by adding Sections 204.314 and 204.3145, as follows:

Sec. 204.314. **ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS** (a) Requires a PA board member that serves as a panelist at an informal meeting to make recommendations for the disposition of a complaint or allegation. Permits the member to request the assistance of a medical board employee at any time.

(b) Requires medical board employees to present a summary of the allegations and certain facts.

(c) Requires a PA board or medical board attorney to act as counsel to the panel and, notwithstanding Subsection (e), be present during the informal meeting and the panel's deliberations to advise the panel on legal issues. Authorizes the attorney to ask certain questions of participants in the informal meeting. Sets forth the duties of the attorney at the informal meeting.

(d) Requires the panel and medical board employees to provide an opportunity for the affected physician assistant and the physician assistant's authorized representative to reply to the medical board employees' presentation and present certain facts.

(e) Prohibits certain persons from being present during the deliberations of the panel unless the affected physician assistant consents.

(f) Requires the panel to recommend the dismissal of the complaint, or, if the panel determines that the affected physician assistant has violated a statute or PA board rule, authorizes the panel to recommend PA board action and terms for an informal settlement of the case.

(g) Sets forth the requirements for the panel's recommendations. Authorizes the physician assistant to accept or reject the proposed settlement within a certain timeframe, and, if the physician assistant rejects the settlement or fails to act within the timeframe, authorizes the PA board to proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Sec. 204.3145. **LIMIT ON ACCESS TO INVESTIGATION FILES.** Requires the PA board to prohibit or limit access to an investigation file relating to a license holder in an informal proceeding.

SECTION 2.26. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.315, as follows:

Sec. 204.315. **SURRENDER OF LICENSE.** (a) Authorizes the PA board to accept the voluntary surrender of a license.

(b) Prohibits a surrendered license from being returned to the license holder unless certain conditions apply.

(c) Requires the PA board by rule to establish guidelines for determining the competency of a former license holder to return to practice.

SECTION 2.27. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.316, as follows:

Sec. 204.316. REFUND. (a) Authorizes the PA board, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference.

(b) Limits the amount of the refund to the amount the consumer paid for the service regulated by this chapter. Prohibits the PA board from requiring payment of other damages or estimating harm in a refund order.

SECTION 2.28. Amends Subchapter G, Chapter 204, Occupations Code, by adding Section 204.317, as follows:

Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. Authorizes the PA board to change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge under certain circumstances.

SECTION 2.29. Amends the heading to Subchapter H, Chapter 204, Occupations Code, to read as follows:

#### SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 2.30. Amends Subchapter H, Chapter 204, Occupations Code, by adding Section 204.353, as follows:

Sec. 204.353. CEASE AND DESIST ORDER. (a) Authorizes the PA board, under certain circumstances, to issue a cease and desist order to a person not licensed under this chapter whom the PA board perceives to be violating certain laws or rules related to physician assistant practice.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 2.31. Repealer: Section 204.004 (Application of Sunset Act), Occupations Code.

SECTION 2.32. (a) Requires the PA board to adopt the policies required by Sections 204.109 and 204.110, Occupations Code, as added by this article and to adopt the rules required by Chapter 204, Occupations Code, as amended by this article, not later than January 1, 2006.

(b) Requires the PA board to develop the jurisprudence examination required by Section 204.153, Occupations Code, as amended by this article, not later than March 1, 2006.

(c) Makes the requirement to pass a jurisprudence examination prospective to September 1, 2006.

SECTION 2.33. (a) Provides that the changes in law made by Sections 204.053, 204.056, and 204.059, Occupations Code, as amended by this article, regarding the prohibitions on or qualifications of members of the PA board do not affect the entitlement of a member serving on the PA board immediately before September 1, 2005, to continue to serve and function as a member of the PA board for the remainder of the member's term. Makes the changes in the law made by those sections prospective to a member appointed on or after September 1, 2005.

(b) Makes the changes in law made by this article related to the filing, investigation, or resolution of a complaint under Chapter 204, Occupations Code, as amended by this article, prospective.



(c) Makes the changes in law made by this article governing the authority of the PA board to issue, renew, or revoke a license under Chapter 204, Occupations Code, prospective.

(d) Makes the change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction prospective.

### ARTICLE 3. CONTINUATION AND FUNCTIONS OF THE TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS

SECTION 3.01. Amends Sections 205.001(6), (7), and (8), Occupations Code, to redefine "executive director," "medical board," and "physician."

SECTION 3.02. Amends Section 205.051(a), Occupations Code, to specify that the Texas State Board of Acupuncture Examiners (acupuncture board) is appointed by the governor with the advice and consent of the senate.

SECTION 3.03. Amends Sections 205.053(a), (c), and (d), Occupations Code, as follows:

(a) Redefines "Texas trade association."

(c) Sets forth certain persons who are prohibited to be members of the acupuncture board or certain types of acupuncture board employees. Deletes provisions relating to certain persons who are not eligible to be members of the acupuncture board or certain types of acupuncture board employees.

(d) Prohibits a person required to register as a lobbyist because of activities related to the operation of the medical board or acupuncture board from acting as general counsel to the acupuncture board or medical board. Makes nonsubstantive changes.

SECTION 3.04. Amends Section 205.055, Occupations Code, to require the governor to designate an acupuncturist member of the acupuncture board, rather than a member of the acupuncture board, as presiding officer.

SECTION 3.05. Amends Section 205.057, Occupations Code, to prohibit a person who is appointed to and qualifies for office as a member of the acupuncture board to perform certain acupuncture board functions until the person completes a certain training program. Deletes the provision that to be eligible for office as a member of the acupuncture board, a person appointed to the acupuncture board must complete at least one course of a certain training program. Modifies the information the training program must provide the person by deleting the requirements of instruction regarding the acupuncture board and regarding an emphasis on the rules that relate to disciplinary and investigatory authority, and requiring instruction on ethics policies adopted by the acupuncture board, rather than the medical board. Makes nonsubstantive changes.

SECTION 3.06. Amends Section 205.101, Occupations Code, to require the acupuncture board to recommend rules to establish licensing and other fees, rather than make recommendations on applications for licenses to practice acupuncture. Provides that a rule adopted by the acupuncture board is subject to medical board approval. Sets forth the duties of the acupuncture board regarding issuing, denying, suspending, and revoking licenses.

SECTION 3.07. Amends Subchapter C, Chapter 205, Occupations Code, by adding Section 205.1041, as follows:

Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) Requires the acupuncture board to develop guidelines and establish procedures for receiving input during the rulemaking process from certain individuals and groups. Sets forth the requirements for the guidelines.

(b) Requires the acupuncture board, in implementing the guidelines adopted under this section, to exercise its judgment in determining which rules require input as described by Subsection (a).

SECTION 3.08. Amends Subchapter C, Chapter 205, Occupations Code, by adding Section 205.1045, as follows:

Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the acupuncture board to adopt rules and guidelines and necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

SECTION 3.09. Amends Subchapter C, Chapter 205, Occupations Code, by adding Section 205.106, as follows:

Sec. 205.106. USE OF TECHNOLOGY. Requires the acupuncture board, subject to the advice and approval of the medical board, to implement a policy requiring the acupuncture board to use appropriate technological solutions to improve the acupuncture board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the acupuncture board on the Internet.

SECTION 3.10. Amends Subchapter C, Chapter 205, Occupations Code, by adding Section 205.107, as follows:

Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the acupuncture board, subject to the advice and approval of the medical board, to develop and implement a policy to encourage the use of certain negotiated rulemaking procedures for the adoption of acupuncture board rules and appropriate alternative dispute resolution procedures to assist in resolution of internal and external disputes.

(b) Requires the acupuncture board's procedures relating to alternative dispute resolution to conform to certain guidelines to the extent possible.

(c) Requires the acupuncture board to designate a trained person to perform certain functions related to negotiated rulemaking and alternative dispute resolution.

SECTION 3.11. Amends Section 205.201, Occupations Code, to prohibit the practice of acupuncture without a license issued by the acupuncture board, rather than by the medical board.

SECTION 3.12. Amends Section 205.202, Occupations Code, to require the acupuncture board, rather than the medical board in consultation with the acupuncture board, to issue licenses to practice acupuncture in this state. Authorizes the acupuncture board to delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. Requires the application to be returned to the acupuncture board if the medical board employees determine that the applicant does not clearly meet the licensing requirements. Provides that a license issued under this subsection does not require formal acupuncture board approval. Creates a subsection from existing text.

SECTION 3.13. Amends Section 205.203, Occupations Code, by amending Subsections (a) and (c) and adding Subsections (c-1) and (f), as follows:

(a) Requires an applicant for a license to practice acupuncture to pass an acupuncture examination and a jurisprudence examination as provided by this section, rather than pass an examination.

(c) Makes a conforming change.

(c-1) Sets forth the required topics on the jurisprudence examination.

(f) Requires the acupuncture board to adopt rules for the jurisprudence examination, and sets forth the required areas of rulemaking.

SECTION 3.14. Amends Section 205.206, Occupations Code, by adding Subsection (c), to provide that an acupuncture school or degree program is subject to approval by the Texas Higher Education Coordinating Board unless certain conditions apply.

SECTION 3.15. Amends Section 205.255, Occupations Code, by adding Subsections (a-1) and (c), as follows:

(a-1) Requires the acupuncture board to establish written guidelines granting continuing education credit that specify certain requirements.

(c) Requires the acupuncture board to delegate to medical board employees the authority to approve course applications that clearly meet the guidelines. Requires medical board employees to refer any courses that are not clearly within the guidelines to the acupuncture board for review and approval.

SECTION 3.16. Amends Sections 205.351(b) and (c), Occupations Code, to provide that the acupuncture board, rather than the medical board, suspends, revokes, or refuses to renew a person's license. Makes a conforming change.

SECTION 3.17. Amends Section 205.352, Occupations Code, as follows:

Sec. 205.352. New heading: DISCIPLINARY POWERS OF ACUPUNCTURE BOARD. (a) Specifies that this section regarding disciplinary powers of the board applies to the acupuncture board specifically and makes conforming changes. Authorizes the acupuncture board to deny a person's application for a license renewal. Authorizes the acupuncture board to assess an administrative penalty against a person as provided by Subchapter J (Administrative Penalties), as added by this Act, rather than by Chapter 65 (Penalties). Authorizes the acupuncture board to stay enforcement of an order and place the person on probation, to require the person to continue or review professional education, and require the person to report regularly to the acupuncture board on matter that are the basis of probation. Creates this subsection from existing text. Redesignates Subdivision (8) as Subdivision (11) and makes a nonsubstantive change.

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

SECTION 3.18. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3522, as follows:

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

(b) Prohibits a surrendered license from being returned to the license holder unless certain conditions apply.

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

SECTION 3.19. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3523, as follows:

Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) Requires the acupuncture board to adopt guidelines, in conjunction with certain persons, 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) Requires the acupuncture board to refer an acupuncturist or an applicant with a physical health condition to the most appropriate medical specialist for evaluation, with certain limitations.

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

SECTION 3.20. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3541, as follows:

Sec. 205.3541. **INFORMAL PROCEEDINGS.** (a) Requires the acupuncture board, by rule, to adopt procedures governing informal disposition of certain cases and informal proceedings.

(b) Sets forth the requirements for rules adopted under this section, including that an employee of the medical board present certain facts at the meeting.

(c) Entitles an affected acupuncturist to reply to the staff's presentation and present certain facts.

(d) Requires the acupuncture board representative, after ample time is given for the presentations, to recommend that the investigation be closed or attempt to mediate the disputed case in the absence of a hearing.

(e) Requires the acupuncture board to schedule the informal meeting within a certain timeframe if the license holder has previously been the subject of disciplinary action by the acupuncture board.

SECTION 3.21. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3542, as follows:

Sec. 205.3542. **ACUPUNCTURE BOARD REPRESENTATION IN INFORMAL PROCEEDINGS.** (a) Requires at least two panelists, in certain informal meetings or hearings, to determine whether an informal disposition is appropriate.

(b) Authorizes an informal proceeding, notwithstanding certain provisions, to be conducted by one panelist if the affected acupuncturist waives the two-panelist requirement. Provides that the panelist may be any member of the acupuncture board.

(c) Sets forth to which proceedings the panel requirements described by Subsections (a) and (b) apply.

(d) Provides that the panel requirements described by Subsections (a) and (b) do not apply to certain informal proceedings.

SECTION 3.22. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3543, as follows:

Sec. 205.3543. **ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS.** (a) Requires an acupuncture board member that serves as a panelist at an informal meeting to make recommendations for the disposition of a complaint or allegation. Permits the member to request the assistance of a medical board employee at any time.

(b) Requires medical board employees to present a summary of the allegations and certain facts.

(c) Requires an acupuncture board or medical board attorney to act as counsel to the panel and, notwithstanding Subsection (e), be present during the informal meeting and the panel's deliberations to advise the panel on legal issues.

Authorizes the attorney to ask certain questions of participants in the informal meeting. Sets forth the duties of the attorney at the informal meeting.

(d) Requires the panel and medical board employees to provide an opportunity for the affected acupuncturist and the acupuncturist's authorized representative to reply to the medical board employees' presentation and present certain facts.

(e) Prohibits certain persons from being present during the deliberations of the panel unless the affected acupuncturist consents.

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

(g) Sets forth the requirements for the panel's recommendations. Authorizes the acupuncturist to accept or reject the proposed settlement within a certain timeframe, and, if the acupuncturist rejects the settlement or fails to act within the timeframe, authorizes the acupuncture board to proceed with the filing of a formal complaint.

SECTION 3.23. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3544, as follows:

Sec. 205.3544. **LIMIT ON ACCESS TO INVESTIGATION FILES.** Requires the acupuncture board to prohibit or limit access to an investigation file relating to a license holder in an in formal proceeding.

SECTION 3.24. Amends Section 205.356, Occupations Code, as follows:

(a) Adds the condition that the applicant or the license holder must not have committed a violation of the standard of care as a result of the intemperate use of drugs and alcohol to the provision that the acupuncture board is authorized to impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on self-reported intemperate use of drugs or alcohol during the five years preceding the report that could adversely affect the reporter's ability to practice acupuncture safely. Creates this subsection from existing text.

(b) Requires the acupuncture board to determine whether an individual has committed a standard of care violation as a result of the intemperate use of drugs and alcohol before imposing an order under this section.

(c) Prohibits the acupuncture board from issuing an order under this section if, before the individual signs the proposed order, the acupuncture board receives a valid complaint with the regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

SECTION 3.25. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.3561, as follows:

Sec. 205.3561. **RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.** Requires the acupuncture board to inform a local or statewide acupuncture association of certain duties of the association related to a rehabilitation order. Sets forth which information must be provided under this section.

SECTION 3.26. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.360, as follows:

Sec. 205.360. **DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.** (a) Authorizes the acupuncture board to delegate to a committee of medical board

employees, in certain cases, the authority to dismiss or enter into an agreed settlement. Requires the disposition of the committee to be approved by the acupuncture board.

(b) Sets forth the circumstances under which a complaint delegated under this section is required to be referred for informal proceedings.

SECTION 3.27. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.361, as follows:

Sec. 205.361. TEMPORARY SUSPENSION. (a) Requires the presiding officer of the acupuncture board to 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) Describes the circumstances under which the disciplinary panel is required to suspend the license.

(c) Sets forth the circumstances under which a license may be suspended under this section without notice or hearing.

(d) Authorizes the disciplinary panel to hold a meeting by telephone conference call under certain circumstances.

SECTION 3.28. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.362, as follows:

Sec. 205.362. CEASE AND DESIST ORDER. (a) Authorizes the acupuncture board, under certain circumstances, to issue a cease and desist order to a person not licensed under this chapter whom the acupuncture board perceives to be violating certain laws or rules related to the practice of acupuncture.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty.

SECTION 3.29. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.363, as follows:

Sec. 205.363. REFUND. (a) Authorizes the acupuncture board, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference.

(b) Limits the amount of the refund to the amount the consumer paid for the service regulated by this chapter. Prohibits the acupuncture board from requiring payment of other damages or estimate harm in a refund order.

SECTION 3.30. Amends Subchapter H, Chapter 205, Occupations Code, by adding Section 205.364, as follows:

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. Authorizes the acupuncture board to change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge under certain circumstances.

SECTION 3.31. Amends Sections 205.402(a) and (d), Occupations Code, to authorize the acupuncture board, rather than the medical board, to bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter. Makes a conforming change.

SECTION 3.32. Amends the heading to Subchapter I, Chapter 205, Occupations Code, to read as follows:

SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 3.33. Amends Chapter 205, Occupations Code, by adding Subchapter J, as follows:

SUBCHAPTER J. ADMINISTRATIVE PENALTIES

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the acupuncture board by order to impose an administrative penalty against a person licensed or regulated under this chapter.

Sec. 205.452. PROCEDURE. Requires the acupuncture board, by rule, to prescribe the procedure by which it may impose an administrative penalty, and provides that the proceeding under this subchapter is subject to Chapter 2001 (Administrative Procedure), Government Code.

Sec. 205.453. AMOUNT OF PENALTY. (a) Prohibits an administrative penalty from exceeding \$5,000 for each violation and provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) Sets forth the factors upon which the amount of the penalty is required to be based.

Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. Requires the acupuncture board to notify the affected person if the acupuncture board issues an order that a violation has occurred and imposes an administrative penalty. Sets forth the information required to be included in the notice.

Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person to pay the penalty, appeal, or both, within 30 days of the order.

(b) Authorizes a person who appeals without paying the fee within the 30-day period to stay enforcement of the penalty or request the court stay enforcement of the penalty by following certain procedures.

(c) Authorizes the presiding officer, if the presiding officer receives a copy of an affidavit filed by the person who appeals without paying which states that the person is financially unable to pay the penalty or give a bond, to file with the court a contest to the affidavit within a certain timeframe.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proof.

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

Sec. 205.457. DETERMINATION BY COURT. (a) Authorizes the court, if it sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. Sets forth the procedures under which the court is required to remit part or all of the penalty, plus interest, to the person after final judgment. Sets forth the interest rate.

SECTION 3.34. Repealer: Sections 205.002 (Application of Sunset Act) and 205.353 (Disciplinary Powers of Acupuncture), Occupations Code.

SECTION 3.35. (a) Requires the acupuncture board to adopt the policies required by Sections 205.106 and 205.107, Occupations Code, as added by this article and the rules required by Chapter 205, Occupations Code, as amended by this article, not later than January 1, 2006.

(b) Requires the acupuncture board to develop the jurisprudence examination required by Section 205.203, Occupations Code, as amended by this article, not later than March 1, 2006.

(c) Makes the requirement to pass a jurisprudence examination under Section 205.203, Occupations Code, as amended by this article, prospective to September 1, 2006.

SECTION 3.36. (a) Provides that the changes in law made by Sections 205.053 and 205.057, Occupations Code, as amended by this article, regarding the prohibitions on or qualifications of members of the acupuncture board do not affect the entitlement of members serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. Makes the changes in law made by those sections prospective to a member appointed on or after September 1, 2005.

(b) Makes the changes in law made by this article related to the filing, investigation, or resolution of a complaint under Chapter 205, Occupations Code, as amended by this article, prospective.

(c) Makes the changes in law made by this article governing the authority of the acupuncture board to issue, renew, or revoke a license under Chapter 205, Occupations Code, prospective.

(d) Makes the change in law made by this article with respect to conduct that is the grounds for imposition of a disciplinary sanction prospective.

#### ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

SECTION 4.01. Amends Section 206.001(5), Occupations Code, to redefine "medical board."

SECTION 4.02. Amends Section 206.209, Occupations Code, to authorize the medical board to delegate authority to board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. Requires the application to be returned to the medical board if the medical board employees determine that the applicant does not clearly meet all licensing requirements. Provides that a license under this provision does not require formal medical board approval. Creates a subsection from existing text.

SECTION 4.03. Amends Section 206.305, Occupations Code, as follows:

(a) Adds the condition that the applicant or the license holder must not have committed a violation of the standard of care as a result of the intemperate use of drugs and alcohol to the provision that the medical board is authorized to impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on self-reported intemperate use of drugs or alcohol during the five years preceding the report that could adversely affect the reporter's ability to practice as a surgical assistant safely. Creates this subsection from existing text.

(b) Requires the medical board to determine whether an individual has committed a standard of care violation as a result of the intemperate use of drugs and alcohol before imposing an order under this section.

(c) Prohibits the medical board from issuing an order under this section if, before the individual signs the proposed order, the medical board receives a valid complaint with the regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

SECTION 4.04. Amends Subchapter G, Chapter 206, Occupations Code, by adding Section 206.3075, as follows:

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. Requires the medical board to inform an association of surgical assistants of certain duties of the



association related to a rehabilitation order. Sets forth which information must be provided under this section.

SECTION 4.05. Amends Subchapter G, Chapter 206, Occupations Code, by adding Sections 206.313-206-315, as follows:

Sec. 206.313. INFORMAL PROCEEDINGS. (a) Requires the medical board, by rule, to adopt procedures governing informal disposition of certain cases and informal proceedings.

(b) Sets forth the requirements for rules adopted under this section, including that a member of the medical board's staff present certain facts at the meeting.

(c) Entitles an affected surgical assistant to reply to the staff's presentation and present certain facts.

(d) Requires the medical board panel, after ample time is given for the presentations, to recommend that the investigation be closed or attempt to mediate the disputed case in the absence of a hearing.

(e) Requires the medical board to schedule the informal meeting within a certain timeframe if the license holder has previously been the subject of disciplinary action by the medical board.

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS (a) Requires a medical board member or district review committee member that serves as a panelist at an informal meeting to make recommendations for the disposition of a complaint or allegation. Permits the member to request the assistance of a medical board employee at any time.

(b) Requires medical board employees to present a summary of the allegations and certain facts.

(c) Requires a medical board attorney to act as counsel to the panel and, notwithstanding Subsection (e), be present during the informal meeting and the panel's deliberations to advise the panel on legal issues. Authorizes the attorney to ask certain questions of participants in the informal meeting. Sets forth the duties of the attorney at the informal meeting.

(d) Requires the panel and medical board employees to provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the medical board employees' presentation and present certain facts.

(e) Prohibits certain persons from being present during the deliberations of the panel unless the affected surgical assistant consents.

(f) Requires the panel to recommend the dismissal of the complaint, or, if the panel determines that the affected surgical assistant has violated a statute or medical board rule, authorizes the panel to recommend medical board action and terms for an informal settlement of the case.

(g) Sets forth the requirements for the panel's recommendations. Authorizes the surgical assistant to accept or reject the proposed settlement within a certain timeframe, and, if the surgical assistant rejects the settlement or fails to act within the timeframe, authorizes the medical board to proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) Requires at least two panelists, one of whom must be a physician,

in certain informal meetings or hearings, to determine whether an informal disposition is appropriate.

(b) Authorizes the medical board to request member of a committee under Chapter 163 to participate in the informal meeting. Requires at least one of the committee members who participates in an informal meeting as described by Subsection (a) to be a public member.

(c) Authorizes an informal proceeding, notwithstanding certain provisions, to be conducted by one panelist if the affected surgical assistant waives the two-panelist requirement. Provides that the panelist may be either a physician or a member who represents the public.

SECTION 4.06. Makes the changes in law made by this article related to the filing, investigation, or disposition of a complaint under Chapter 206, Occupations Code, as amended by this article, prospective.

#### ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: September 1, 2005.